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Worldwide Tax Summaries

Corporate Taxes 2018/19

Quick access to information about corporate tax systems in 152 territories worldwide.

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Corporate Taxes 2018/19

All information in this book, unless otherwise stated, is up to date as of 1 June 2018.

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Foreword

Welcome to the 2018/19 edition of *Worldwide Tax Summaries – Corporate Taxes*, one of the most comprehensive tax guides available. This year's edition provides detailed information on tax rates and rules in 152 territories worldwide.

As governments across the globe are looking for greater transparency and with the increase of cross-border activities, tax professionals often need access to the current tax rates and other major tax law features in a wide range of territories. The territory summaries, written by our local PwC tax specialists, include recent changes in tax legislation, as well as key information about income taxes, residency, income determination, deductions, group taxation, credits and incentives, withholding taxes, indirect taxes, and tax administration. All information in this book, unless otherwise stated, is up to date as of 1 June 2018.

Our online version of the summaries is available at *www.pwc.com/taxsummaries*. The Worldwide Tax Summaries (WWTS) website also covers the taxation of individuals and is fully mobile compatible, giving you quick and easy access to regularly updated information anytime on your mobile device.

Some of the enhanced features available online include Quick Charts to compare rates across jurisdictions. You may also access WWTS content through Tax Analysts at *www.taxnotes.com*.

If you have any questions, or need more detailed advice on any aspect of tax, please get in touch with us. The PwC tax network has member firms throughout the world, and our specialist networks can provide both domestic and cross-border perspectives on today's critical tax challenges.

Colm Kelly

Colm Kelly
Global Tax &
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Significant developments

There have been no significant corporate tax developments in Albania during the past year.

Taxes on corporate income

Albanian law applies the principle of worldwide taxation. Resident entities are taxed on all sources of income in and outside the territory of Albania, while non-resident entities are taxed on income generated only in the territory of Albania.

The corporate income tax (CIT) rate in Albania is 15%. CIT is assessed on the taxable profits calculated as taxable income less deductible expenses.

Taxpayers with annual turnover up to 5 million Albanian lek (ALL) are exempt from CIT, whereas those with annual turnover between ALL 5 million and ALL 8 million are subject to a reduced CIT rate of 5%.

Local income taxes

Local taxes on income depend on a number of factors, such as type of activity, municipality where the business is located, and the annual turnover. Consequently, these taxes may vary from ALL 20,000 to ALL 143,000.

Corporate residence

Based on Albanian legislation, a legal entity is deemed to be resident in Albania if it has its head office or its place of effective management in Albania.

Permanent establishment (PE)

PE in Albania means a fixed place of business where an entity carries out, wholly or partly, its business activities, including, but not limited to, an administration office, a branch, a factory, a workshop, a mine, and a construction or installation site.

The determination of a PE, where applicable, is based on the provisions of the double tax treaties (DTTs) that Albania has entered into with a number of countries. When dealing with DTT provisions, the Albanian tax authorities refer to the Organisation for Economic Co-operation and Development (OECD) commentaries.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 20%, and the standard VAT period is the calendar month.

Taxable transactions include goods and services supplied domestically as well as goods imported into Albania by a taxable person. The following transactions are also taxable:

- Transactions performed for no consideration or for a consideration less than market value (the latter applies if the parties included in the transaction are considered as related parties).
- Barter transactions.
- The private use of taxable goods by a taxable person (self-supply).

Determination of VAT payers

'Taxable person' shall mean any person who, despite the legal form of organisation, independently carries out any economic activity, whatever the place and the purpose or results of that activity.

The VAT registration threshold in Albania is annual turnover over ALL 5 million. Any person providing taxable supplies and whose annual turnover does not exceed ALL 5 million is not required to register, although voluntary registration is possible.

VAT obligations for non-resident entities

For a non-taxable person, the place of supply shall be in Albania if the supplier of the non-taxable person has established their business or a PE there.

For a taxable person, the place of supply of services shall be in Albania if the taxable person who receives the service has established their business or PE there.

Reduced VAT rate

Starting from June 2017, a reduced VAT rate of 6% is applied to the supply of accommodation services in all accommodation facilities, as determined by the applicable legislation for the tourism sector.

Zero-rated goods and services

The following goods and services are subject to 0% VAT in Albania:

- Exports.
- The supply of goods transported in the personal luggage of travellers.
- International transport.
- Supply of gold for the Bank of Albania.

VAT-exempt goods and services

The VAT Law provides a list of supplies that are considered as VAT-exempt:

- The supply by the public postal services of services, and the supply of goods incidental thereto.
- Hospital and medical care and closely related activities.
- The provision of medical care in the exercise of the medical and paramedical professions.
- The supply of human organs, blood, and milk.

- The supply of services by dental technicians in their professional capacity.
- The supply of services by independent groups of persons who are carrying on an activity that is exempt from VAT.
- The supply of services and of goods closely linked to welfare and social security work.
- The supply of services and of goods closely linked to the protection of children and young persons.
- The provision of children's or young people's school or university education.
- Tuition given privately by teachers and covering school or university education.

VAT calculation

The amount of VAT to be paid is calculated as the difference between the VAT applied to purchases (input VAT) and the VAT applied to sales (output VAT). If the input is higher than the output, then the difference is a VAT credit that can be carried forward to subsequent months. Otherwise, if the output VAT is higher than the input VAT, the difference represents VAT payable to the state.

Taxpayers who carry out taxable VAT activities, as well as VAT-exempt activities, can credit only that portion of their input VAT that corresponds to the taxable activities. To determine the amount of input VAT that can be claimed from the state, the taxpayer should estimate a VAT credit coefficient (i.e. the rate of the taxable VAT activities over total activities).

VAT reimbursement

Taxable entities have the right to claim VAT reimbursement if the period in which VAT credits are carried forward exceeds three consecutive months and the total amount of accumulated VAT credit is equal to or above ALL 400,000.

Following the request for VAT reimbursement, taxable entities have the right to obtain the reimbursement of VAT credit within 60 days after the request is submitted. For all taxable persons who are considered as exporters based on the criteria established by the Instruction of Council of Ministers, the deadline for tax authority approval, or not, of VAT reimbursement requests is within 30 days.

VAT returns

The submission of VAT returns and sales and purchase books must be done electronically by all taxpayers, including VAT representatives.

Electronic submission deadlines fall on the dates below:

- For VAT books, the deadline is the tenth day of the following month.
- For VAT returns and for the payment of the related VAT liability, the deadline is the 14th day of the following month.

Customs duties

Albania uses the Harmonized Code System for tariff classification.

The customs duty rates range from 0% to 15%, depending on the type of goods.

Import of machinery and equipment for use in the taxpayer's business activity are generally subject to customs duties at the zero rate.

Import of vehicles are subject to customs duties at a rate of 0%.

Excise duties

Excise duty is a tax applicable to certain goods consumed in Albania, whether imported or produced in the country.

Albanian excise legislation is based on EU Council Directive 2008/118/EC, which defines common provisions applicable for all excisable goods. It also integrates specific provisions applicable for each category of excise products.

Categories of products subject to excise duty in Albania are:

- Energy products (e.g. petroleum, gasoil, gas).
- Tobacco products (e.g. tobacco, cigarettes).
- Alcohol and alcoholic beverages (e.g. beer, wine, spirits).
- Other products (e.g. baked coffee, fireworks).

Excise duty is usually calculated as an amount per quantitative measuring unit defined for that product (e.g. per litre, per kilogram, per hectolitre, per 1,000 pieces).

Albania levies excise tax on the following products:

- Beer of alcohol by volume 4.2%: ALL 15.12/litre to ALL 29.82/litre, depending on the annual produced quantity in hectolitres.
- Wine, champagne, fermented and sparkling beverage: ALL 30/litre to ALL 120 litre, depending on the alcoholic content and depending on the annual produced quantity in hectolitre.
- Other alcoholic drinks of above 38%: ALL 247/litre to ALL 321/litre depending on the annual produced quantity in hectolitre.
- Processed tobacco: ALL 2,500/kg to ALL 4,400/kg, depending on whether tobacco leaves were or not cultivated in Albania.
- Liquid nicotine for e-cigarettes: ALL 10/millilitre.
- Cigarettes containing tobacco: ALL 117/20 pieces.
- Liquid by-products of petroleum: ALL 5/litre to ALL 50/litre.
- Solid by-products of petroleum: ALL 2/kg to ALL 5/kg.
- Fireworks: ALL 200/kg.
- Pneumatic tires: ALL 20/kg for new tires and ALL 40/kg for recycled tires.
- Incandescent lamps: ALL 100/unit.

Reimbursement of excise tax can be obtained on:

- Goods that are used in a process previously approved by the customs authorities.
- Exported products that have previously been subject to excise duty in Albania.
- Fuel used by companies involved in the construction of electric energy resources, with an installed power of not less than five MW per source.
- Fuel used in greenhouses, for the production of industrial and agri-industrial products.
- Biodiesel used in transportation.

The reimbursement procedure is subject to special provisions and pre-defined criteria on the basis of which the amount to be reimbursed is calculated.

Real estate tax

Entities that own real estate property in Albania are subject to real estate tax.

Real estate tax on buildings

Real estate tax on buildings is calculated based on the type of activity the business entity owning the building carries out. The basis for this tax is the value of the building.

Tax due is calculated on a yearly basis as a percentage of the value of the building, depending on the use of the latter, as outlined below:

Type of building		Tax rate (%)
I.	Residential buildings	0.05
II.	Buildings used for commercial purposes	0.20
III.	Construction sites for which building has not been finalised within the deadline outlined in the construction permit	30.00

Real estate tax on agricultural land

Real estate tax on agricultural land is levied on each hectare and varies depending on the district where the agricultural land is located and on the land productivity categorisation.

Real estate tax on land (non-agricultural)

Real estate tax on land (non-agricultural) is levied per square metre and varies depending on the district where the land is located.

Stamp duties and notary taxes

There are no stamp duties on the sale contract of land or other properties. There are, however, notary taxes that are, in nature, similar to stamp duties. The notary tax on sales contracts that relate to change in ownership of immovable properties is ALL 1,000. The notary tax on sales contracts that relate to change in ownership of movable properties is ALL 700.

Depending on the agreement reached between the seller and the buyer, the notary tax can be paid either by the seller, or by the buyer, or shared between both of them.

Registration taxes

The fee for the registration of a business entity is ALL 100; however, it can be reduced to ALL 0 if the registration is made online.

Payroll-related taxes

Entities shall withhold personal income tax (PIT) from the gross salaries of their employees.

Social and health contributions (SHC)

Employers shall pay SHC to the tax authorities at a rate of 15% and 1.7%, respectively. The social contributions are paid between the minimum and maximum gross salary for SHC purposes, which are ALL 24,000 and ALL 105,850, respectively. The health contributions are calculated on the total gross salary.

Branch income

Branch offices in Albania are subject to the same taxes as all other forms of legal entities.

Income determination

Inventory valuation

Inventory is valued at the end of each tax period using the methods stipulated in the Accounting Law, which should be applied systematically. The methods stipulated in the National Accounting Standards for the valuation of inventory at year-end are the average cost and first in first out (FIFO) methods.

Capital gains

Capital gains are taxed at the rate of 15%.

Dividend income

Dividends and other profit distributions received by a resident entity from another resident entity or from a non-resident entity are not subject to CIT for the resident beneficiary of such income. This applies despite the participation quote (in amounts or number of shares) of the entity distributing profits in the shareholder capital, voting rights, or its participation in initial capital of the beneficiary.

Interest income

Interest income is taxed at the rate of 15%.

Royalty income

Royalty income is taxed as ordinary income, at the rate of 15%.

Foreign income

Albanian resident corporations are taxed on their worldwide income. If a DTT is in force, double taxation is avoided either through an exemption or by granting a tax credit up to the amount of the applicable Albanian CIT rate.

Albanian legislation does not contain any provisions under which income earned abroad may be tax deferred.

Deductions

Depreciation and amortisation

Allowed tax depreciation and amortisation rates and methods for each category of fixed assets are shown below:

Asset category	Method	Rate (%)
Buildings and machinery and other fixed structures installed in the building	Reducing-balance basis	5 (1)
Computers, software products, and information systems	Reducing-balance basis	25 (2)
Other assets	Reducing-balance basis	20 (2)
Intangible assets (including goodwill and start-up expenses)	Straight-line basis	15

Notes

1. In case the net book value of the asset (in the beginning of the fiscal period) is less than 3% of the historical costs, the taxpayer may expense it entirely.
2. In case the net book value of the asset (in the beginning of the fiscal period) is less than 10% of the historical costs, the taxpayer may expense it entirely.

Land, fine art, antiques, and jewelleries are non-depreciable assets.

Depreciation and amortisation of fixed assets at amounts higher than those allowed for tax purposes is considered a non-deductible expense.

Interest expenses

Interest paid in excess of the average 12-month credit interest rate applied in the banking system, as determined by the Bank of Albania, is a non-deductible expense. The amount of deductible interest expense may also be limited by thin capitalisation rules (*see Thin capitalisation in the Group taxation section*).

Additional to the above, any interest expenses that take at least 30% or more of earnings before interest, taxes, depreciation, and amortisation (EBITDA) are recognised as non-deductible for CIT purposes if these interest expenses arise from loans or financing from related parties.

Bad debt

Bad debts are only deductible if the following conditions are met simultaneously:

- An amount corresponding with the bad debt was included earlier in income.
- The bad debt is removed from the taxpayer's accounting books.
- All possible legal action to recover the debt has been taken.

This applies to all entities except those operating in the financial sector.

Charitable contributions

There are no provisions in Albania regarding the tax treatment of charitable contributions. In general, contributions are considered as non-deductible expenses for CIT purposes.

Fines and penalties

Fines and other tax-related sanctions are non-deductible expenses.

Taxes

Income taxes, VAT, and excise duties are non-deductible expenses.

Other significant items

The Albanian legislation also defines the following specific costs as non-deductible:

- Expenses not supported with fiscal invoices.
- Expenses paid in cash of amounts exceeding ALL 150,000.
- Benefits in kind and gifts.
- Wages, bonuses, and any other form of income deriving from an employment relationship and paid to the employees in cash.
- Provisions and reserves (with some exemptions applicable to the financial sector).

- Expenses for technical services, consultancy, and management received from foreign entities that are not registered for tax purposes in Albania and for which no withholding tax (WHT) has been paid by 20 January of the following year, at the latest.
- Losses, damages, and wastage incurred during production, transiting, or warehousing exceeding the norms defined by laws and related instructions.
- Impairment losses on fixed assets.
- Representation and reception expenses exceeding 0.3% of annual turnover.
- Sponsorship expenses exceeding 3% of profit before tax and sponsorships of press and publications exceeding 15% of profit before tax.

The amounts allocated to special reserve accounts in banks and insurance companies are deductible, provided that they do not exceed the limits stated in the Bank of Albania regulations.

Employers' contributions towards the life and health insurance of employees are deductible.

Banks can deduct only loan impairments (provisions) calculated under International Financial Reporting Standards (IFRS) for CIT purposes.

Net operating fiscal losses

Fiscal losses may be carried forward up to three consecutive years. However, losses may not be carried forward if more than 50% of direct or indirect ownership of the share capital or voting rights of the company is transferred during the tax year.

Albanian legislation does not allow losses to be carried back.

Payments to foreign affiliates

Payments to foreign affiliates are subject to WHT unless tax relief is requested in accordance with the local legislation or any DTT in place. These payments are tax deductible if they are properly documented and incurred for business purposes only.

Payments to foreign affiliates made for the purpose of profit transfer might be subject to price revaluation by the tax authorities. Any transactions/payments made to foreign affiliates shall be performed on an arm's-length basis.

Group taxation

There is no group taxation in Albania.

Transfer pricing

The law on transfer pricing in Albania emphasises the following:

- The general rule provides the application of the arm's-length principle.
- The taxpayer is subject to transfer pricing rules if the taxpayer performs controlled transactions with its related parties where:
  - Controlled transactions are considered the cross-border transactions only.
  - Related parties are considered the situations where:
    - one person participates, directly or indirectly, in the management, control, or capital of the other person, and

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

The taxpayer subject to transfer pricing rules must have in place the following information:

- Documented information and analysis to verify that its controlled transactions are performed in consistency with the arm's-length principle. Transfer pricing documentation shall be provided to the tax administration upon its request within 30 days of receiving the tax administration's request. The content and form of the transfer pricing documentation is specified by instruction of the Minister of Finance.
- Taxpayers engaged in controlled transactions above ALL 50 million are required to submit an annual controlled transactions template by 31 March of the year following the year subject to documentation.
- The consistency of a controlled transaction(s) with the arm's-length principle shall be determined by applying the most appropriate transfer pricing method from the methods provided below:
  - Comparable uncontrolled price method.
  - Resale price method.
  - Cost plus method.
  - Transactional net margin method.
  - Transactional profit split method.
  - Other methods.

Taxpayers with a total value of related-party transactions of over 30 million euros (EUR) in a five-year period can enter into an Advance Pricing Agreement (APA) with the tax authority.

Thin capitalisation

The interest paid on outstanding loans and prepayments exceeding four times the amount of net assets is not deductible. This rule does not apply to banks and insurance companies.

Controlled foreign companies (CFCs)

There is no CFC regime in Albania.

Tax credits and incentives

The following entities are exempt from CIT:

- Legal entities that conduct religious, humanitarian, charitable, scientific, or educational activities.
- Trade unions or chambers of commerce, industry, or agriculture.
- International organisations, agencies for technical cooperation, and their representatives, the tax exemptions of which are established by specific agreements.
- Foundations or non-banking financial institutions established to support development policies of the government through credit activities.
- Film studios and cinematographic productions (among other types of entity/activity) that are licensed and funded by the National Cinematographic Centre.
- Voluntary pension funds administrated from the competent companies.

Foreign tax credit

Albania does not apply foreign tax credits except in the case of DTTs (*see Foreign income in the Income determination section*).

Withholding taxes

The gross amount of interest, royalties, dividends, and shares of partnerships' profits paid to non-resident companies is subject to a 15% WHT, unless a DTT provides for a lower rate.

The 15% WHT is levied on the gross amount of payments for technical, management, installation, assembly, or supervisory work, as well as payments to management and board members.

If a non-resident company does not create a PE in Albania, and a DTT exists between Albania and the home country of the non-resident company, the payment of WHT can be avoided.

Double tax treaties (DTTs)

Albania has signed 41 DTTs, of which 39 are in force.

WHT rates envisaged by applicable DTTs are provided in the following table:

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Applicable from**
Non-treaty	15	15	15	
Treaty:				
Austria	5/15 (6)	5	5	1/1/2009
Belgium	5/15 (6)	5	5	1/1/2005
Bosnia and Herzegovina	5/10 (5)	10	10	1/1/2009
Bulgaria	5/15 (6)	10	10	1/1/2000
China	10	10	10	1/1/2006
Croatia	10	10	10	1/1/1999
Czech Republic	5/15 (6)	5	10	1/1/1997
Egypt	10	10	10	1/1/2006
Estonia	5/10 (5)	5	5	1/1/2018
France	5/15 (6)	10	5	1/1/2006
Germany	5/15 (6)	5	5	1/1/2012
Greece	5	5	5	1/1/2001
Hungary	5/10 (5)	N/A	5	1/1/1996
Iceland	5/10 (5)	10	10	1/1/2017
India	10	10	10	-
Ireland	5/10 (5)	7	7	1/1/2012
Italy	10	5	5	1/1/2000
Korea	5/10 (5)	10	10	1/1/2009
Kosovo	10	10	10	1/1/2006
Kuwait	0/5/10 (3)	10	10	1/1/2014
Latvia	5/10 (5)	5/10 (2)	5	1/1/2009
Luxembourg	5/10 (5)	5	5	-
Macedonia	10	10	10	1/1/1999

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Applicable from**
Malaysia	5/15 (6)	10	10	1/1/1995
Malta	5/15 (6)	5	5	1/1/2001
Moldova	5/10 (5)	5	10	1/1/2004
Netherlands	0/5/15 (1)	5/10 (2)	10	1/1/2006
Norway	5/15 (6)	10	10	1/1/2000
Poland	5/10 (5)	10	5	1/1/1995
Qatar	5	5	6	3/5/2012
Romania	10/15 (7)	10	15	1/1/1995
Russia	10	10	10	1/1/1998
Serbia and Montenegro	5/15 (6)	10	10	1/1/2006
Singapore	5	5	5	1/1/2012
Slovenia	5/10 (5)	7	7	1/1/2010
Spain	0/5/10 (4)	6	0	4/5/2011
Sweden	5/15 (6)	5	5	1/1/2000
Switzerland	5/15 (6)	5	5	1/1/2001
Turkey	5/15 (6)	10	10	1/1/1997
United Arab Emirates	0/5/10 (3)	N/A	5	1/1/2014
United Kingdom	5/10/15 (8)	6	N/A	1/1/2014

Notes

1. If the recipient company directly or indirectly owns 50% of the capital of the paying company, a 0% rate of the gross amount of the dividends applies. If the recipient company directly or indirectly owns 25% of the capital of the paying company, a 5% rate of the gross amount of the dividends applies. A tax rate of 15% of the gross amount of the dividends applies in all other cases.
2. A tax rate of 5% of the gross amount of the interests applies in case of interests in a contracting state, which are paid to a loan granted by a bank or any other financial institution of the other contracting state, including investment banks and savings banks and insurance. A tax rate of 10% of the gross amount of the interests applies in all other cases.
3. If the recipient company or any other governmental body is a resident of the other contracting state, a 0% rate of the gross amount of the dividend applies. If the recipient company (other than a partnership) directly or indirectly owns at least 10% of the capital of the paying company, a 5% rate of the gross amount of the dividends applies. A tax rate of 10% of the gross amount of the dividends applies in all other cases.
4. If the recipient company (other than a partnership) directly or indirectly owns at least 75% of the capital of the paying company, a 0% rate of the gross amount of the dividends applies. If the recipient company (other than a partnership) directly or indirectly owns at least 10% of the capital of the paying company, a 5% rate of the gross amount of the dividends applies. A tax rate of 10% of the gross amount of the dividends applies in all other cases.
5. If the recipient company (other than a partnership) directly or indirectly owns at least 25% of the capital of the paying company, a 5% rate of the gross amount of the dividends applies. A tax rate of 10% of the gross amount of the dividends applies in all other cases.
6. If the recipient company (other than a partnership) directly or indirectly owns at least 25% of the capital of the paying company, a 5% rate of the gross amount of the dividends applies. A tax rate of 15% of the gross amount of the dividends applies in all other cases.
7. If the recipient company (other than a partnership) directly or indirectly owns at least 25% of the capital of the paying company, a 10% rate of the gross amount of the dividends applies. A tax rate of 15% of the gross amount of the dividends applies in all other cases.
8. If the recipient company (other than a partnership) directly or indirectly owns at least 25% of the capital of the paying company or is a pension scheme, a 5% rate of the gross amount of the dividends applies. The tax rate switches to 15% of the gross amount of the dividends where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle that distributes most of this income annually and whose income from such immovable property is exempted from tax. A tax rate of 10% of the gross amount of the dividends is applied in all other cases.

Tax administration

Taxable period

The tax year is the calendar year.

Tax returns

The final CIT return is due by 31 March of the year following the tax year.

Payment of tax

Predetermined advance payments of CIT are due either by the 15th day of each month or by the end of each quarter.

According to the tax laws, CIT is paid during the year on a prepayment basis. The amount of monthly CIT prepayments is determined as follows:

- For each of the following months: January, February, and March of the following fiscal period, the income tax amount of the fiscal period two years prior to the current period, divided by 12.
- For each of the next nine months of the following fiscal period, the income tax amount of the previous fiscal period divided by 12.

The final due date for the payment of the final CIT for a fiscal year is 31 March of the following year. Note that this payment is calculated as the total amount of CIT self-assessed from the taxpayer for that particular fiscal year less total CIT instalments paid related to that year.

Penalties for non-compliance with CIT prepayment deadlines are 10% of the unpaid liability.

Companies have the obligation to pay the non-resident WHT on dividends to the tax authorities no later than 20 August of the year the financial results are approved, regardless of the fact of whether the dividend has been distributed or not to the shareholders.

Tax audit process

Generally, the Albanian tax system is based on self-assessment, which is under continuous audit by the tax authorities. Such audits include all types of taxes that the business is subject to. If any discrepancies result from the tax audit, the tax authorities issue an assessment notice, which the taxpayer might appeal within 30 calendar days.

Taxpayers may submit a corrected declaration within 36 months from the submission of the initial declaration, provided that this declaration has not been previously inspected by the tax authorities.

Statute of limitations

With regard to Albania's tax administration practices, the statute of limitations of a tax audit is five years. However, the statute of limitations can be extended by 30 calendar days in cases where:

- a new assessment is made as a result of an appeal against a previous tax assessment
- a tax assessment is made as a result of a tax audit or investigation of the taxpayer by the tax administration, or

- the taxpayer is subject to a penal case related to one's tax liabilities.

The right of the taxpayer to submit a reimbursement request is limited to five years from the moment that the credit position is confirmed.

Topics of focus for tax authorities

During a tax audit, the main focus of the tax authorities is on areas related to transfer pricing, which is becoming an increasing area of focus; WHT; and aspects affecting CIT, such as expense deductibility.

Tax Certificates

If a taxpayer's financial statements and tax declarations are certified as compliant with the tax legislation by certified auditing companies, the tax administration will include this as a parameter in the taxpayer risk analysis for tax inspection purposes.

Algeria

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Significant developments

The Finance Law for 2018 was introduced in a complex economic context, marked by sluggish economic growth, strong tensions over the state's budget, as well as volatility of oil and ordinary taxation revenues. The government's main goal is balancing the budget by increasing local tax resources and limiting importation and currency devaluation. The main new tax provisions are as follows:

- Reform the tax preferential regime for export operations: This measure provides for a corporate income tax (CIT) exoneration of income resulting from transactions generating foreign currency revenues in particular export transactions of goods and services. However, it excludes from the above exoneration maritime, aviation, and inland transportation services, banks, and reinsurance companies.
- Higher taxation of dividends distributed to resident individuals: Article 5 of the Finance Law for 2018 provides for an increase of the withholding tax (WHT) rate applicable to dividends distributed to resident natural persons. The WHT rate levied for personal income tax (PIT) purposes, will be increased from 10% to 15%.
- Adjustment of the tax regime for capital gains on real estate disposals: As a reminder, the Finance Law for 2017 reinstated the taxation of capital gains on the sale of real estate, at a rate of 5%. However, the legislature exempted capital gains realised on properties held for more than ten years. In this context, article 3 of the Finance Law of 2018 has limited the above-mentioned exemption to the capital gains generated on the disposal of collective dwellings constituting the sole property and the main dwelling of the transferor, and which must have been held for more than ten years.
- Directorate of Large Companies (*Direction des Grandes Entreprises* or DGE) eligibility: Article 55 of the Finance Law of 2018 provides for an amendment of the criteria of eligibility to the DGE. In this context, the new criteria of eligibility to this tax administration were set as follows: companies or groups of companies operating in the hydrocarbon sector, and which are governed by the legislation relating to hydrocarbons; and foreign companies operating temporarily in Algeria in a contractual framework, and which are followed under the real profits regime, when the amount of the contract(s) is equal to or higher than 1 billion Algerian dinars (DZD).
- The concept of abuse of law in the Algerian taxation regime: Article 41 of the Finance Law of 2018 introduced an important measure relating to the concept of abuse of law in the Algerian tax legislation system.

Taxes on corporate income

Corporate entities are taxed on activities performed in Algeria via the following two regimes:

Algeria

Standard tax regime

Resident companies

The standard tax regime is applicable for all tax resident companies, which are taxed in Algeria on their worldwide income. The standard tax regime includes the following taxes:

- *Impôt sur le Bénéfice des Sociétés (*IBS) at the rate of:
  - 19% for manufacturing activities.
  - 23% for building activities, public works, and hydraulics, as well as tourist and thermal activities, excluding travel agencies.
  - 26% for all other activities not mentioned above.

  For mixed activities, companies should keep management accounts to determine the portion of each activity performed. Failing this, the highest rate (i.e. 26%) will be applicable for all of the taxable profits.

  Nil corporate annual tax returns include the payment of a minimum corporate tax amounting to DZD 10,000.

- Tax on business activity (TAP) at the rate of 1% for manufacturing activities, without any reduction. However, this tax is fixed at 2% for all other activities, with a reduction of 25% for building and public works and hydraulic activities, and computed based on the invoiced turnover. However, the TAP rate is increased to 3% in respect of the turnover from the hydrocarbon pipeline transport activity.
- Value-added tax (VAT) at the rate of 19% or 9% (except any specific exemption). *See VAT in the Other taxes section for more information.*
- Branch tax set at the rate of 15% calculated on net profits after IBS. *See the Branch income section for more information*.

Non-resident companies

In the absence of a double tax treaty (DTT), the basic principle that governs taxation of non-resident entities is that such entities are taxable in Algeria on their Algerian-source income whatever the way and wherever the location the work is carried out, provided only that the same are rendered or used in Algeria.

As a consequence, an entity will be liable for IBS via the WHT regime (*see below*) in Algeria through the execution of a related contract (services contract) to be performed in Algeria. From an Algerian point of view, such a contract is not an investment and is, by nature, temporary. Note that it is possible to execute several contracts under the same permanent establishment (PE).

In the presence of a DTT, a foreign company will be taxed in Algeria if it has a PE only.

Withholding tax (WHT) regime

Non-resident entities performing service contracts in Algeria are subject to the WHT regime. The 24% WHT, which encompasses the IBS, the TAP, and the VAT, is required to be levied on services only. The calculation base is the gross amount of the services invoiced.

Please note that, since 2017, contracts that had been taxed under the 24% WHT are also subject to the Algerian VAT when its basis of calculation benefited from a reduction in the rate or rebates as provided for by the local tax legislation or the DTTs (i.e. software licence contracts, international lease agreements, etc.).

Local income taxes

There are no local or provincial taxes on income in Algeria. The TAP is being distributed for each district/location where there is a principal or secondary establishment.

Corporate residence

According to the provisions of Article 137 of the Algerian Tax Code, a company is considered as an Algerian tax resident entity in cases where it is incorporated under the Algerian law and is realising (i) commercial, industrial, or agricultural activities (physical presence obligation) or (ii) taxable profits through dependent agents. However, please note the existence of the PE concept, which can also refer to permanent place of business.

Permanent establishment (PE)

The Algerian legislation introduces the PE concept in Article 137 of the Algerian Tax Code, relating to territoriality rules of IBS. This Article provides that IBS is due in Algeria on:

- Profits made by companies, which, without owning in Algeria an establishment or designated representatives, directly or indirectly perform an activity in Algeria resulting in a complete cycle of commercial operations.
- Profits made by companies using the assistance of representatives in Algeria that don’t have a separate professional personality from these companies.

Based on the above, a PE is created under Algerian law if a professional activity is performed in Algeria by a foreign entity and this activity is generating a complete business cycle, or in the case whereby a foreign company is making profits in Algeria through a dependent agent.

Other taxes

Value-added tax (VAT)

VAT is applied on the supply of goods or services in Algeria. It includes all economic activities conducted in Algeria. The zero rate is also applied to all exports and sales to exempted sectors under specific regimes. The standard VAT rate is 19%. The reduced rate is 9%, applying to various basic items listed by law.

Monthly VAT returns and payments are due by the 20th day of the following month.

Customs duties

Algerian imports are subject to payment of customs duties in the following increments: duty-free, 5%, 15%, 30%, or 60%.

A list of banned equipment for importation has been published in January 2018.

Algeria

Specific customs exemptions and temporary admission regimes are granted to the oil and gas sector and to investments under the incentives tax regime of the National Agency of Investment (ANDI in French).

Excise taxes

All tobacco products are subject to excise tax.

Property taxes

An annual property tax is levied on real estates in Algeria. Rates depend on the location of real estate.

Wealth tax

Wealth tax is calculated as follows:

Value of the holdings (DZD)	Rate (%)
Less than 100,000,000	0
100,000,001 to 150,000,000	0.50
150,000,001 to 250,000,000	0.75
250,000,001 to 350,000,000	1.00
350,000,001 to 450,000,000	1.25
More than 450,000,000	1.75

Transfer taxes

A transfer tax is applicable to land, buildings, and ongoing business at a rate of 5% for registration fees, plus 1% tax applicable for publication formalities of land and building transfer of ownership. Additionally, registration duties are due on the transfer of shares or movable assets and on the merger, demerger, increase, or decrease of the share capital of existing companies.

Stamp taxes

Stamp duty is levied at varying rates on transactions, including the execution of various documents and deeds.

Payroll taxes

PIT is withheld on salary and assimilated income (minus employee social security contributions) by applying the progressive scale rates (with a maximum rate of 35%). Additionally, training tax and apprenticeship tax are each levied at the rate of 1% of the payroll cost.

Social security contributions

Social security contributions are levied at the rate of 35% on the gross salary (26% borne by the employer and 9% borne by the employee).

Bank domiciliation tax

A 3% tax (*Taxe de domiciliation bancaire*) applies on the importation of services.

This tax is reduced to 0.3% for the importation of goods or merchandise, without the amount of the tax being less than DZD 20,000.

Pollution tax

Assets that may cause environmental damage are subject to a pollution tax.

Branch income

Branch tax is levied at the rate of 15%. Note that, since 2010, it is no longer possible to register a legal branch in Algeria. However, under certain conditions, a foreign company could operate in Algeria by registering its contract with the local tax authorities by registering a tax branch/PE. Under this scenario, a 15% tax rate applies on the deemed distribution of profits after tax, which may be reduced or removed by the applicable DTT provisions.

Income determination

Taxable income is determined using the accounting profits and adding back non-deductible expenses and deducting the allowable non-taxable incomes.

Inventory valuation

The inventory valuation method for tax purposes must match the accounting method as defined by the Algerian Financial Standards (SCF).

Capital gains

Capital gains realised on the sale of assets are taxed as ordinary income when realised by a company subject to IBS. For certain assets, 30% relief is given where the assets have been held for up to three years, and 65% relief is given where the movable assets have been held longer. Capital gains on the disposal of assets can be exempted if the company commits to re-invest them within a three-year period.

Dividend income

Dividends to non-resident shareholders are subject to WHT at source of 15%, which may be reduced or neutralised by an applicable DTT. Starting with fiscal year (FY) 2018, dividends to resident shareholders are subject to a WHT at source of 15% (previously, 10%). If the dividends are received by a parent entity resident in Algeria, they are not included in the taxable profits for IBS purposes.

Interest income

Interests paid are subject to 10% WHT and are included in the income of the beneficiary and subject to IBS if the beneficiary is a legal entity. Interests paid to a non-resident are generally subject to a 10% WHT. The rate may be reduced under an applicable DTT.

Rental income

Rental income is subject to IBS when received by a taxable corporate entity in Algeria. Rental income paid to non-residents is subject to 24% WHT, except for international lease agreements, where a reduction of 60% on the taxable basis is applicable, making the effective tax rate 9.60%. However, since January 2017, international lease agreements having benefited from the 60% taxable base reduction are subject to the Algerian VAT, which must be self-assessed by the local payer.

Royalty income

Subject to DTT provisions, royalties are subject to 24% WHT. A reduction of 80% on the taxable basis is applicable for software, making the effective tax rate 4.80%. Since January 2017, the royalties on software having benefited from the 80% taxable base reduction are subject to the Algerian VAT, which must be self-assessed by the local payer.

Furthermore, the 24% WHT rate could change in presence of a DTT.

Unrealised gains/losses

Realised gains and losses are subject to IBS. However, unrealised gains and losses are not subject to IBS. There are specific provisions relating to the free re-evaluation of assets.

Foreign currency exchange gains/losses

Foreign realised currency exchange gains/losses are subject to IBS.

Foreign income

Subject to DTT provisions, income from other countries is liable to IBS in Algeria, except exportation revenues and revenues realised in hard currency by resident legal entities, which are exempted.

Deductions

Depreciation and amortisation

The depreciation rates are determined according to tax administration instructions and common usage, for example:

- The depreciation rate for office items is 10% or 20%.
- The depreciation rate for industrial buildings is 5%.
- The depreciation rate for cars is 20% or 25%. The depreciation base for cars is limited to DZD 1 million.

Accelerated depreciation rates, when justified, can be used, depending on the activity sector and the economic use of the assets.

Goodwill

Under the SCF, goodwill is registered in the local books as a non-current/intangible asset of the balance sheet and cannot be amortised. Consequently, the accounting of goodwill has no fiscal impact for companies.

Start-up expenses

Start-up expenses are deductible when paid and cannot be capitalised and depreciated.

Interest expenses

Interest expenses are deductible when paid.

Bad debt

A bad debt provision becomes deductible when legal action has been taken to recover the debt or when evidence is provided that the receivable has become irrecoverable.

Charitable contributions

Charitable contributions are deductible, up to a limit of DZD 1 million.

Pension expenses

Pension expenses are deductible when paid.

Payments to directors

Payments to directors are deductible.

Research and development (R&D) expenses

R&D expenses are fully deductible when paid by the entity bearing the expenses and when justified. Revenues derived from R&D activities are exempted from IBS, up to a limit of 10% of the taxable benefit or DZD 100 million. The exempted amount has to be reinvested in R&D activities.

Bribes, kickbacks, and illegal payments

Bribes, kickbacks, and illegal payments are non-deductible from the IBS basis.

Fines and penalties

Fines and penalties are non-deductible from the IBS basis.

Taxes

Taxes duly paid are deductible, except for the IBS itself, which is not deductible. Also non-deductible for IBS purposes are the tax on apprenticeship and training and tax on passenger cars.

Net operating losses

Carryforward losses are permitted until the fourth fiscal year following the year of loss. Carryback losses are not permitted.

Payments to foreign affiliates

Payments to foreign affiliates are deductible.

Group taxation

When an Algerian company holds 90% or more of the shares of one or more Algerian companies, the group may choose to be taxed as a single entity. Hence, IBS is payable only by the parent company. Under this system, the profits and losses of all controlled subsidiaries in Algeria are consolidated. The consolidated group may also benefit from other tax advantages, such as exemption from VAT and TAP on the inter-group transactions.

Transfer pricing

An arm's-length approach to transfer pricing applies. All entities registered with the tax department responsible for large-sized companies (*Direction des Grandes Enterprises*), in addition to the other foreign companies established in Algeria, must submit their transfer pricing documentation along with their annual tax returns (before 30 April of each year). Failing this, and should the documentation to support one's transfer pricing practices not be provided within 30 days after a first request is made by the Algerian tax administration, a fine of 25% of the deemed transferred benefits on top of the late payment penalties of 25% are applicable.

Please note that, since 2017, related companies should keep management accounts in order to justify their transfer pricing policies, which should be provided upon tax administration request. Moreover, since 2018, related companies are required to present the consolidated accounts, upon request of the tax administration, if these entities keep consolidated accounts.

Thin capitalisation

There are no thin capitalisation provisions in Algeria.

Controlled foreign companies (CFCs)

There are no CFC rules in Algeria.

Tax credits and incentives

Investment incentives

Tax incentives can be granted to new investors, subject to the application of a specific request with the ANDI. The tax incentives can be granted for the investment phase and for the exploitation phase. They can be granted for a period of three years or five years, depending on the kind and the size of the business.

Other incentives can be granted for start-up businesses to encourage youth investment.

Many tax regimes and tax holidays/incentives are available to attract foreign direct investors in Algeria. For example, there is a temporary exemption from IBS for investing companies creating 100 jobs or more. VAT and custom duties exemptions are also available during the investment phase.

There is also a temporary exemption from IBS for companies that invest in certain strategic sectors, such as advanced technologies, the food industry, mechanics, and the automotive sector.

There is a five-year reduction of IBS for companies whose securities are introduced on the stock exchange.

Foreign tax credit

Algerian tax law does not provide for unilateral tax relief. A DTT, however, may provide for bilateral relief.

Withholding taxes

As explained in the Taxes on corporate income section, The WHT levied on services is 24%, which covers IBS, TAP, and VAT (i.e. three taxes in one). The calculation base is the gross amount of the services invoiced. In principle, it could be reduced or removed by a DTT.

The WHT levied on dividends (10% for residents and 15% for non-residents) and the 10% WHT levied on interest can be reduced in the presence of a DTT.

The WHT levied on royalties is 24%. In the presence of a DTT, the WHT cannot exceed 5%, 10%, or 12%, depending on different cases.

Double tax treaty (DTT) rates

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	15	10	24 (1)
Treaty:			
Arab Maghreb Union	15	10	24
Austria	5/15 (17)	0/10	10
Bahrain	0	0	(2)
Belgium	15	0/15	5/15
Bosnia	10	10	12
Bulgaria	10	10	10
Canada	15	0/15	15
China	5/10 (19)	7	10
Egypt	10	5	10
France	5/15 (3)	10/12 (4)	5/10/12 (5)
Germany	5/15 (16)	10	10
Indonesia	15	15	15
Iran	5	5	5
Italy	15	15	5/15
Jordan	15	15	15
Kuwait	0	0	15
Lebanon	15	10	10
Mauritania	10	10	15
Portugal	10/15 (9)	15	10
Qatar	0	0	5
Romania	15	15	15
Russia	5/15 (11)	15	15
Saudi Arabia	0	0	7
South Africa	10/15 (10)	10	10
South Korea	5/15 (11)	10	2/10 (12)
Spain	5/15 (13)	5	7/14 (14)
Sultanate of Oman	5/10 (18)	5	10
Switzerland	5/15 (15)	10	10
Turkey	12	10	10
Ukraine	5/15 (11)	10	10
United Arab Emirates	0	0	10
United Kingdom (6)	5/15 (7)	0/7 (8)	10

Notes

1. Equipment rental may be considered as royalties, or remuneration of services entering in the scope of industrial and commercial benefits, or other remuneration. Royalties paid for the use of industrial equipment in the frame of an international leasing contract is subject to a tax allowance of 60% applied on the basis of such WHT. Thus, the effective tax rate of WHT will be 9.6% = 24% * (1 - 60%). For software, a reduction of 80% is applicable, making the effective tax rate 4.80%. VAT should be self-assessed in this case.
2. Domestic rate applies. There is no reduction under the treaty.
3. 5% if the beneficial owner is a company that directly or indirectly holds at least 10% of the capital of the company paying the dividends. 15% in all other cases.
4. 10% if the beneficial owner is resident in Algeria and interests sourced from France and 12% if the beneficial owner is resident in France and interests sourced from Algeria.

5. 5% for royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, or films, tapes, and other means of image or sound reproduction. In other cases, 10% if royalties sourced from France and 12% if royalties sourced from Algeria.
6. DTT provisions entered into force on 1 January 2017 in Algeria for WHTs and other taxes.
7. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends. 15% in all other cases.
8. 0% if the interests are paid: (i) to the United Kingdom (UK) state, its central bank, a political subdivision, or a local authority, (ii) by the Algeria state, its central bank, a political subdivision, a local authority, or a statutory body, (iii) if the interests are paid in respect of a loan, debt-claim, or credit that is owed to, or made, provided, guaranteed, or insured by, Algeria, or a political subdivision, local authority, or export financing agency in Algeria. 7% in all other cases.
9. 10% of the gross amount of the dividends if the beneficial owner is a corporation that, for a consecutive period of two years, prior to the payment of the dividends, directly holds at least 25% of the share capital of the company paying the dividends. 15% of the gross amount of the dividends in all other cases.
10. 10% of the gross amount of the dividends if the beneficial owner is a (non-contracting) company that directly owns at least 25% of the capital of the company paying the dividends. 15% of the gross amount of the dividends in all other cases.
11. 5% of the gross amount of the dividends if the beneficial owner is a (non-contracting) company that directly owns at least 25% of the capital of the company paying the dividends. 15% of the gross amount of the dividends in all other cases.
12. 2% of the gross amount of royalties that are paid for the use of, or right to use, any industrial, commercial, or scientific equipment. 10% of the gross amount of the royalties in all other cases.
13. 5% of the gross amount of the dividends if the beneficial owner is a company that directly or indirectly holds at least 10% of the capital of the company paying the dividends. 15% of the gross amount of the dividends in all other cases.
14. 14% of the gross amount of the royalties paid for the use of, or the right to use, a copy of a literary, artistic, or scientific work, including motion pictures or films, tapes, and any other means of image or sound reproduction. 7% of the gross amount of royalties in other cases.
15. 5% of the gross amount of the dividends if the beneficial owner is a corporation (other than a partnership) that directly owns 20% of the capital of the company paying the dividends. 15% of the gross amount of the dividends in all other cases.
16. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a company of persons) that directly owns at least 10% of the capital of the company paying the dividends. 15% of the gross amount of the dividends in all other cases.
17. 5% of the gross amount of the dividends if the beneficial owner is a corporation (other than a partnership) that directly holds at least 10% of the capital of the corporation that pays the dividends. 15% of the gross amount of the dividends in all other cases.
18. 5% of the gross amount of the dividends if the beneficial owner is a (non-contracting) company that directly owns at least 15% of the capital of the company paying the dividends. 10% of the gross amount of the dividends in all other cases.
19. 5% of the gross amount of the dividends if the beneficial owner is a (non-contracting) company that directly owns at least 25% of the capital of the company paying the dividends. 10% of the gross amount of the dividends in all other cases.

Tax administration

Taxable period

The taxable period is the fiscal year, which corresponds generally to the calendar year. For periodic activity, the fiscal year could be different from the calendar year.

Tax returns

Companies are required to file an annual tax return before 30 April of the following year together with a detailed statement of proceeds paid to third parties with respect to subcontracted services, hiring of personnel and equipment, leases, and technical assistance services, as well as transfer pricing documentation. Monthly tax returns, which include VAT, IBS instalments, WHTs, PIT, and payroll taxes, should be filed within 20 days of the following month.

Payment of tax

IBS is paid when the tax return is submitted after offsetting the corporate income instalments already paid before the IBS liquidation. Three IBS instalments are due on

20 March, 20 June, and 20 November, each equal to 30% of the IBS of the previous year.

Tax audit process

As a general rule, the tax administration informs the company when a tax audit has to be performed. The tax audit notification indicates the audited taxes (in all cases: IBS/TAP/VAT) and the concerned period. The company can be assisted by an expert, and it can ask the tax administration about several issues subject to audit. The tax audit is concluded by sending a final tax reassessment notification.

Some discounts or moderations can be granted to a debtor that is usually punctual in meeting its tax obligations and honouring its debts. For this purpose, taxpayers may, if indigent or hinders introduce a release request to the tax administration, seek remission or moderation of direct taxes properly established. A payment schedule may be granted to a company or to an individual in order to honour, progressively, their liabilities.

Taxpayers may also apply for some reconsideration by the tax administration. There are two alternatives:

- Applications for reconsideration by the tax administration (*recours gracieux*). The application may refer to direct and assimilated taxes, related penalties, recovery penalties, and fiscal fines.
- Conditional rebate (*remise conditionnelle*). Conditional rebate could relate to penalties and fiscal fines. It may concern tax penalties applied under direct taxes, turnover taxes, registration fees, stamp duties, indirect taxes, and non-codified taxes. In order to enjoy these arrangements, the taxpayer must make a written application to the competent authority to which the conditional rebate is requested.

Statute of limitations

Subject to some exceptions, the fiscal statute of limitations is four years.

Topics of focus for tax authorities

The tax administration will focus on non-deductible expenses, the declaration of turnover, and, more often, on transfer pricing issues.

Other issues

Exchange controls

A non-resident foreign company can open a non-resident account in local currency (i.e. dinars), called an 'INR account', based on the contract to be performed and on its registration to tax. An INR account can be used only for the object (purpose) for which it is opened.

A non-resident foreign company can also open a CEDAC (*Compte Etranger en Dinars Algériens Convertible*) account, which must be credited only from abroad in foreign currency.

The CEDAC account allows payment in dinars as well as in hard currency. Furthermore, there is no restriction or limitation for transferring any remaining sum in the CEDAC account back abroad in foreign currency or for drawing any foreign payment instrument. The exchange rate that will be used for converting dinar to foreign currency is the official rate at the date of the debit.

Please note that a non-resident foreign company will not be able to transfer any balances from INR accounts to its CEDAC account or abroad without the express authorisation of the central bank, except in case of reimbursing temporary funding from the CEDAC account (such reimbursement must be for the exact same amount).

Please note that trading companies cannot pay any dividends to their foreign shareholders.

Choice of business entity

Foreign companies can run a business in Algeria through various forms of legal entities (e.g. joint stock company [SPA], limited liability company, partnership company), a joint venture or consortium, or PE. As for legal entities, the foreign companies should comply with the local shareholding requirement. Indeed, the foreign company cannot hold more than 49% of joint venture share-capital in Algeria.

Angola

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Significant developments

The major recent tax changes were the following:

- New Customs Tariff was published by means of the Presidential Legislative Decree No. 3/18, of 9 of May 2018, and will enter into force on 7 August 2018. The new Customs Tariff includes a reduction of the Consumption Tax and Customs Duties rates applicable to the importation of various goods, such as:

    - Malt beer: Consumption tax is reduced to 30% (formerly, 60%).
    - Tobacco: Consumption tax is reduced to 30% (formerly, 80%).
    - Sheep and goat meat: Customs duties are reduced to 10% (formerly, 20%).

  The new Customs Tariff foresees an exemption from consumption tax and customs duties on several goods, including raw materials for the agriculture sector, such as wheat, rye, oat, barley; medicines; and paper and cardboard products; amongst other goods.

  It also foresees an exemption for any items that are imported in order to be incorporated in an industrial process, provided that the final product is substantially different from the product that was imported (according to the customs table) and provided that there is no product available in the Angolan market that is similar to the imported product.

  The exportation of goods that are not produced in Angola is subject to customs duties at the rate of 20% computed on the customs value, with the exception of goods covered by the Customs Regime Applicable to the Petroleum and Mining Sectors.

- The State Budget for 2018 was approved by Law No. 3/18, of 1 March 2018. The State Budget for 2018 grants a legislative authorisation to the government. This legislative authorisation aims to amend the Customs Code, the Investment Income Tax (Code, the Consumption Tax Code, and the Stamp Duty Code.

  Additionally, the State Budget foresees that the special contribution on foreign exchange transactions applicable to cash transfers made under contracts for the provision of foreign technical assistance and management services remains applicable without changes during 2018.

- On 28 February 2018, the government approved a new draft of the Private Investment Law. The revision of Private Investment Law has the purposes of establishing new principles and rules aimed at facilitating, promoting, and

accelerating private investment operations in Angola. The draft law is still pending approval by the National Assembly.
- On 8 February 2018, Angola and the United Arab Emirates signed a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. Although signed, the Double Tax Treaty is not yet in force.
- Presidential Legislative Decree No. 1/17, of 7 December 2017, enacted the financial information reporting for the Foreign Account Tax Compliance Act (FATCA).
- Presidential Decree No. 258/17, of 27 October 2017, approved the Interim Plan containing the Policies and Action Measures to improve the country's economic and social situation to be introduced during the months of October 2017 to March 2018. One of the implementations the Angolan authorities plans is to introduce value-added tax (VAT) in the 2019 General State Budget.
- Executive Decree No. 456/17, of 2 October 2017, published the new tax returns templates.
- Order No. 678/17, of 25 September 2017, created the Transfer Pricing Unit.
- Law No. 18/17, of 17 August 2017, amends articles of the General Tax Code (*Código Geral Tributário*) relating to the extinction of the tax obligation (extinction resulting from payment or compensation of tax credits with non-fiscal debts).
- Executive Decree No. 366/17, of 27 July 2017, approved the Legal Framework of the Tax Identification Number.
- Order No. 316/17, of 17 July 2017, which updates the Large Taxpayers List, revoking the previous Order No. 599/14.

Taxes on corporate income

Corporate income tax (CIT) is levied, currently at a 30% rate, on the profits deriving from business activities carried out in Angola by resident entities or non-resident entities with a tax permanent establishment (PE), as defined by Angolan domestic legislation.

Tax residents are taxed on worldwide profits, while PEs are liable to taxation on the profits attributable to the PE, sales in Angola of goods or merchandise of the same or a similar kind to that sold by the PE, and to any other business activity that is of the same or similar kind to that conducted by the PE.

There are two CIT payer groups:

- Group A: Public companies, private companies with a share capital above 2 million Angola kwanza (AOA), private companies with annual profits above AOA 500 million, and branches of foreign companies.
- Group B: Taxpayers not included in group A.

Special tax regimes apply to the oil and gas industry and to the mining industry.

Exemptions from CIT are provided for non-resident shipping and airline operators (as long as reciprocity exists in the foreign jurisdiction).

Investment income tax (Imposto sobre a Aplicação de Capitais or IAC)

The IAC is due on interest, dividends, royalties, and other income of a similar nature. In Angola, the IAC Code divides such income into two sections, as follows:

Section A

Section A includes:

- Interest on credit facilities.
- Interest on loans.
- Income derived from deferred payments.

The tax is due at the moment that the income starts to be due or is presumed to be due.

A minimum annual interest rate of 6% is deemed on loan agreements and credit facilities, except if another rate is proven through a written and stamped contract.

Section B

Section B includes (amongst others):

- Dividends.
- Repatriation of profits attributable to PEs.
- Interest, premiums on the amortisation, reimbursement, and other forms of remuneration of: (i) bonds and securities or other financial instruments issued by any company, (ii) treasury bills and treasury bonds, and (iii) Central Bank Securities.
- Interest on shareholder loans (or other shareholder financing). A deemed minimum annual interest rate equal to the rate used by the commercial banks is imposed.
- Indemnities paid to entities for the suspension of their business activity.
- Capital gains on shares and other financial investments.
- Royalties.

The concept of royalties includes payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experience.

Exemptions

The following income is exempt from IAC:

- Interest on deferred payments regarding commercial transactions.
- Payment of dividends to Angolan CIT payers that hold a participation higher than 25% for more than one year.
- Interest from financial products approved by the Ministry of Finance that intend to encourage savings, capped to capital invested of AOA 500,000 for each person.
- Interest from housing saving accounts intended to encourage savings for main permanent dwelling.

IAC rate

The IAC rate is 15%, except for certain income, for which the rate is 10% or 5%.

The tax rate is 10% for the following income (amongst others):

- Dividends and repatriation of profits.
- Bond interest.

- Interest from shareholder loans.
- Capital gains.
- Royalties.

The tax rate is 5% for the following income (amongst others):

- Interest and capital gains on bonds, securities, or other financial instruments issued by any company, Treasury Bills and Treasury Bonds, and Central Bank Securities, when these instruments are traded on a regulated market and have a maturity equal to or in excess of three years.
- Dividends and capital gains on shares when traded in a regulated market.

Assessment and payment

Generally, for section B, the IAC is withheld by the payer entity.

On Section A, the IAC is paid and assessed by the receiving entity, through the filing of a tax return in January of the following year the tax relates to. If the income is paid to a foreign entity, then the obligation shifts to the Angolan resident paying entity.

Local income taxes

There are no provincial or local taxes on income in Angola.

Corporate residence

Business entities with a head office or effective management in Angola are considered resident entities and are taxed on worldwide income.

Permanent establishment (PE)

Angola has not signed any double tax treaties (DTTs); consequently, its domestic tax provisions apply with regards to PE.

The Angolan concept of tax PE is inspired in the United Nations (UN) Double Tax Treaty Model. A foreign entity is deemed to create a PE in Angola if it:

- has a branch, an office, or place of management in Angola
- has a construction or installation site, or provides supervision over such site, only when such site or activities exceed a period of 90 days in any given 12-month period, or
- carries out services in Angola, including consulting, acting through employees or other personnel contracted for that end, when such services are provided for a period of at least 90 days in any given period of 12 months.

Other taxes

Consumption tax

Consumption tax is due on imported or locally produced goods at rates varying from 2% up to 80%. The consumption tax is also due on some services, as follows:

Type of service	Consumption tax rate (%)
Hotel services and similar services	10
Services relating to electronic communications and telecommunications, regardless of its nature	5
Water supply	5
Electricity supply	5
Lease of areas designated for collection and parking of vehicles	5
Leasing of machinery and other equipment, if not subject to the IAC	5
Leasing of areas used for conferences, colloquiums, seminars, exhibitions, showrooms, advertising, or other events	5
Consultancy services, namely legal, tax, financial, accounting, audit, information technology (IT), engineering, architecture, economic, and real estate	5
Photographic services, film processing and imaging, IT services, and construction of web sites	5
Private security services	5
Tourism and travel services promoted by travel agencies or equivalent tour operators	5
Canteen, cafeteria, dormitory, real estate, and condominium management services	5
Car rental	5

Assessment and payment

The consumption tax is assessed by:

- The manufacturers, in the case of goods produced in Angola.
- Customs services, in the case of imports.
- The service provider, in the case of services liable to tax. However, if the service providers are non-resident entities in Angola, the obligation will revert to the resident acquiring entity.

Service providers are exempt from consumption tax if the services are provided to oil and gas companies, under certain conditions.

The consumption tax amount supported by oil and gas companies is deductible for petroleum income tax purposes.

Customs duties

Customs duties are levied on imports at *ad valorem* rates varying from 2% to 50% and consumption tax at *ad valorem* rates varying from 2% to 80%. The range of taxation for both customs duties and consumption tax varies according to the type of goods. The rates are set out in the tariff book.

Listed equipment may be imported temporarily if a bank guarantee is provided.

A 1% stamp tax is also due on importation plus customs fees (from 2%).

A special exemption regime applies for the oil industry for some listed equipment.

Stamp tax

Stamp tax is payable on a wide variety of transactions and documents, at specific amounts or at a percentage based on value.

Important examples include:

Type of operations	Stamp tax rates
On receipts:	
Stamp tax on receipts (in cash or in kind).	1%
Financing operations:	
Stamp tax is applicable to the use of credit in general at rates depending on the period.	Period less than or equal to one year: 0.5% Period greater than one year: 0.4% Period greater than or equal to five years: 0.3% Period not determined (e.g. current account), per month by the monthly average of the debt: 0.1%
Real estate operations:	
Stamp tax is due on the acquisition for consideration of property.	0.3%
Stamp tax is also due on letting and sub-letting, as well as on financial leasing of real estate, except when the leasing is for a permanent dwelling, which is exempt from stamp tax.	Commercial purposes: 0.4% Residential purposes: 0.1%
Corporate acts:	
Stamp tax is due on the initial or increase of share capital, whether made in cash or in kind.	0.1%
Insurance:	
Insurance provided by national companies is subject to stamp tax. The tax is settled by the insurance company, and the cost is recharged to the insured person. The commissions generated in the insurance mediation business are also subject to stamp tax. Premiums and commission related to life insurance products, insurance against accidents at work, health insurance, and agricultural processing and livestock insurance are exempt from stamp tax.	The stamp tax applies on the amount of premium paid, and rates may vary from 0.1% to 0.3%, depending on the policy's nature. Commissions for mediation are subject to stamp tax at a rate of 0.4%.
Other operations:	
In addition to the operations referred to above, stamp tax is also applicable to written agreements, financial and operational leasing in tangible assets, customs operations, cheques, lending, civil deposits, gambling, licences, traders' books, deeds, report, credit bonds, and transfer of business, among other acts.	Rates vary depending on the nature of the transaction.

The following exemptions apply:

- Credit granted for a period of up to a maximum of five days, micro-credit, credit related to young accounts and old age accounts and others of a similar nature that does not exceed the amount of AOA 17,600 each month.
- Credit derived from credit card utilisation, when the reimbursement is made free of interest, according to the terms of the contract.
- Credits related with exportation, when duly documented with the respective customs clearance.
- Amounts due on the mortgage for the acquisition of a permanent dwelling.
- On interest and commissions charged on financial operations, such as young accounts, old age accounts, and credits related to export under the terms mentioned above.

- Interest from Treasury Bonds and Angolan Central Bank notes.
- Commissions charged for subscriptions, deposit and withdrawal from units of investment funds, as well as the charges from pension funds.
- Commission charged on the opening and utilisation of saving accounts.
- Credit operations (including interest) for periods not exceeding one year, provided these are obtained exclusively to cover treasury needs, when realised between shareholders and entities in which a direct capital shareholding not lower than 10% is held and which has remained in their ownership for a year (consecutively), or since the incorporation of the respective entity.
- Loans bearing the characteristics of shareholder loans, including the respective interest, made by shareholders to the company in respect of which an initial period not shorter than one year is stated and no reimbursement is occurred before the end of that period.
- Treasury management operations carried out between companies within the same group.
- The exemption foreseen for the reporting of securities or equivalent rights includes other financial instruments negotiated on the regulated market.
- Sale of negotiable securities.
- Transfer of real estate (under a merger, demerger, or incorporation operations if approved by the tax authorities).
- Employment contracts.
- Exports, except for the export of products listed in the Stamp Tax Code table.
- Insurance premiums and commissions related to life insurance, work accidents, health, and agriculture and livestock insurance products.

Real estate income tax (IPU)

IPU is levied on rental income earned by individuals or companies owning real estate assets. It is based on actual rental income when the assets are leased and on the assets' registered value when the assets are not leased.

Leased assets

IPU is levied on rental income at a 25% nominal rate. However, the tax basis is only 60% of the rental income, as it is presumed that 40% relates to costs. Consequently, the effective IPU rate for rental income is 15%.

Assets that are not leased

IPU is levied as follows for the ownership of assets that are not leased:

Patrimonial value (AOA)	IPU rate (%)
Up to 5 million	0
Over 5 million (on the excess) (1)	0.5

Notes

1. For example, an asset registered at AOA 35 million will pay IPU only on AOA 30 million, resulting in an IPU payable of AOA 150,000.

Exemptions

The following entities are exempt from IPU:

- State public entities and associations that are granted with the public utility statute.

- Property of Embassies or Consulates of foreign countries, provided there is reciprocity.
- Religious temples.

Payment

Rents paid by Angolan companies or individuals that carry out a commercial activity are subject to withholding tax (WHT) of 15%. The IPU so withheld must be paid to the tax authorities by the end of the following month.

For property not leased, the respective owners must pay the IPU in January and July of the following year. The payment in four instalments (January, April, July, and October) is possible if approved by the tax authorities.

Filing requirements

IPU Model 1 must be filed by IPU taxpayers each January, disclosing the rents effectively received in the previous year, distinguishing the leases agreed and received.

Real estate transfer tax (SISA)

SISA is levied at a 2% rate for all acts that involve the transfer for consideration of property.

The taxable basis is the higher of (i) the selling price or (ii) the property value registered for tax purposes.

The following entities are exempt from SISA:

- State public entities and associations that are granted with the public utility statute.
- Property of Embassies or Consulates of foreign countries, provided there is reciprocity.
- Religious temples.

Payroll taxes

Employment income tax (IRT)

Resident and non-resident individuals earning income from employment sourced in Angola (if paid for or borne by an Angolan employer) are subject to monthly taxation (IRT) at rates progressing from 0% to 17%. Angola operates a fairly straightforward pay-as-you-earn (PAYE) system, in which the Angolan employer withholds monthly from each employee's gross compensation the Angolan income tax.

Individuals do not file tax returns, as the employment income tax is withheld at source by their employer.

Social security contributions

Social security contributions are due on the gross income of employees at rates of 3% for the employee and 8% for the employer.

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

Special contribution

The Special Contribution is levied on payments due to non-residents under Foreign Technical Assistance and Management Contracts governed by the Presidential Decree 273/11.

This regime introduces restrictions on the payment for technical assistance and management services to foreign entities, particularly by imposing a special contribution of 10% on the amount of the transfer due by the entity requesting the transfer of funds abroad.

This regime applies to both private and public companies. Petroleum activities are not liable to the special contribution.

Branch income

The repatriation of profits attributable to PEs of non-resident companies in Angola (e.g. branches of foreign entities) is taxable under the IAC at the rate of 10%.

Income determination

Inventory valuation

Inventory is valued at the historic acquisition cost. Any other method of valuation needs to be approved by the tax authorities.

Capital gains

Capital gains on fixed assets are taxed under CIT with no tax adjustments.

Capital gains arising from the disposal of shares, bonds, securities, or other financial instruments, Treasury Bills and Bonds, as well as Central Bank Securities, are taxable under the IAC Code.

Dividend income

Dividend income is only taxed under the IAC.

Interest income

Interest income is only taxed under the IAC.

Rental income

Rental income on immovable property is only taxed under the IPU.

Royalty income

Royalty income is only taxed under the IAC.

Foreign income

An Angolan resident CIT payer is taxed on its worldwide income. No foreign tax credits are available to deduct against domestic tax.

No tax deferral provisions exist in Angola.

Deductions

Depreciation

Depreciation should be computed using the straight-line method; any other method must be approved by the tax authorities.

The tax depreciation rates should respect the limits imposed by Presidential Decree no. 207/15, of 5 November 2015.

The table below summarises some examples of the depreciation tax rates.

Type of asset	Rate (%)
Office buildings	4
Industrial buildings	4
Computers	33.33
Furniture	Between 12.5% and 25%
Software	20
Light passenger vehicles	25
Start-up expenses	20

Depreciation that is non-deductible for CIT purposes, for exceeding the maximum depreciation rate, may be deducted in subsequent periods, provided the respective accounting adjustment is made.

An intensive operating regime is foreseen allowing accelerated depreciations. The depreciation rate can be increased by 25% in the case of production on two shifts and by 50% in the case of continuous production.

Goodwill

Goodwill is not deductible for CIT purposes.

Interest expenses

Interest costs are deductible for CIT purposes, except the interest on shareholder loans or other shareholder funds.

Bad debt

Write-off of bad debts may only be deducted for CIT purposes to the extent they result from the execution, bankruptcy, or insolvency of the debtor and they are duly supported with public certificates.

Provisions

The following provisions are accepted as tax deductible:

- Those related to contingencies and liabilities resulting from lawsuits for facts that would determine their inclusion as costs deductible for tax purposes.
- Those related to bad debts, when the risk of non-recovery is considered to be justified, and subject to certain tax limits.
- Those related to inventory depreciation within certain tax limits.
- Those respecting the limits and rules imposed by the Insurance Supervision Institute for insurance companies, as well as the Central Bank for Financial Institutions.

In relation to doubtful debts, the regime:

- Limits the provision's deductibility to credits in which the risk of collection is considered duly justified. According to the tax law, the recovery risk is justified whenever:
  - The debtor is in insolvency, recovery proceedings, and enforcement procedure.
  - The credit was claimed in court.
  - The credit is overdue for more than six months and there is proof of collection diligences.
- Excludes from tax deductibility the provisions of credits covered by insurance, over shareholders and subsidiaries (at least 10% share), and over the state and public companies.

In relation to the losses incurred with inventories, the regime:

- Foresees different tax limits, depending on the sector of activity.
- Imposes that the provision is calculated by the difference between the stock's market price and its acquisition cost.
- Foresees a special regime for taxpayers engaged in editorial activities.

Charitable contributions

Donations are only deductible for CIT purposes if fully compliant with the Patronage Law. The requirements imposed by this law are very restrictive.

Fines and penalties

Fines and penalties are not accepted for tax purposes.

Taxes

Indirect taxes are deductible for CIT purposes. Direct taxes are non-deductible, namely the CIT itself, IRT, IAC, IPU, or taxes paid on behalf of third parties (e.g. social security contribution and IRT supported on behalf of the employees).

Autonomous Taxation

Unduly documented expenses, non-documented expenses, and confidential expenses are subject to autonomous taxation at rates ranging between 2% and 50%. The donations granted outside the scope of Patronage Law are also subject to autonomous taxation at rate of 15%. The amount of autonomous taxation should be added to the taxable income.

Net operating losses

Tax losses can be carried forward for three years.

Carryback of losses is not allowed.

Payments to foreign affiliates

Payments to foreign affiliates are accepted for tax purposes, although the arm's-length principle should be complied with.

Group taxation

Major taxpayers that are members of an economic group may opt to be taxed under the tax regime of group taxation.

The option for the group taxation regime is available when:

- The company is included in the major taxpayers list.
- The parent company holds, directly or indirectly, at least 90% of the share capital of other companies (controlled entities), and more than 50% of the voting rights.

Some limitations apply, and the option to apply group taxation depends on the approval of the tax authorities.

Transfer pricing

Under a special regime for 'so-called' major taxpayers, being the ones identified in a list published by the Ministry of Finance, there are additional specific reporting and administrative obligations, namely the obligation of audited accounts and to prepare special transfer pricing documentation (e.g. the same will have to, under certain requisites, organise their transfer pricing documentation and submit it to the tax authorities). This is applicable to those major taxpayers that have registered annual profits higher than 70 million United States dollars (USD).

Thin capitalisation

There are no thin capitalisation rules in Angola.

Controlled foreign companies (CFCs)

There are no CFC rules in Angola.

Tax credits and incentives

Foreign tax credit

No foreign tax credits are available to deduct against domestic tax.

Private Investment Law

The implementation of investment projects in Angola in the amount equivalent to USD 1 million (for foreign investments) and USD 500,000 (for internal investments) may benefit from tax incentives for CIT, IAC, and SISA.

The extent of the incentives (tax rate reduction and period of the incentive) depends on several variables, such as the creation of jobs for Angolan citizens, the investment amount, the investment location, the sector of the activity of the investment, the equity held by Angolan shareholders, and the value added to the national market.

In addition, for investment projects in an amount equal to or above of USD 50 million, special benefits can also be obtained under negotiation with the cabinet of the President of the Republic.

Please note that a new Private Investment Law is under discussion.

Special regulations also provide tax and customs incentives for investment projects in strategic economic development areas and sectors.

Reinvestment of reserves

Profits retained and then reinvested in new installations or equipment during the following three financial years may be deductible from taxable income during the following three years after the investment is finalised, at up to 50% of the value reinvested.

Withholding taxes

WHT is applicable on payments of services (some exemptions apply) granted by resident and non-resident entities at the rate of 6.5%. For Angolan taxpayers, this is regarded as an advance CIT payment due at the year-end; the deduction of these WHTs against CIT payable is limited to a period of five years. For non-resident companies, this is a final tax.

Dividends, interest, and royalties are subject to WHT under the IAC (*see the Taxes on corporate income section for more information*).

Tax administration

Taxable period

The tax year follows the calendar year.

Tax returns

The annual CIT return for Group A and B must be submitted by the last business day of May and April, respectively, following the year to which the income relates.

Payment of tax

Taxpayers from Groups A and B that record sales (granting of services subject to WHT are excluded) are required to make advance CIT payments until the end of August and July, respectively.

This tax is to be calculated by applying the rate of 2% on the total amount of sales recorded by the taxpayers in the first half of the tax year. Advance payments are offset against the final CIT assessed.

Advance payments made in excess may be deducted from subsequent advance payments up to the statute of limitation period of five years.

The final tax must be settled by the last business day of the month of April (Group B) and May (Group A) of the following year.

Tax audit process

The tax authorities may carry out tax audits to the monthly and annual tax returns.

Taxpayers may challenge any decision and file an appeal to the Chief of the respective Tax Office within 15 days upon receiving the tax notification.

Based on an unsatisfactory decision of the Chief of the Tax Office, the taxpayer may also file a hierarchical appeal addressed to the National Director of Taxes (DNI) within 15 days upon receiving the tax notification.

The taxpayer still has the right to appeal against the final decision of the DNI in court within 60 days upon receiving the final decision from the DNI.

Statute of limitations

The statute of limitations in Angola is five years.

Topics of focus for tax authorities

The main areas of focus of the tax authorities relate to:

- WHTs due (regarding several taxes: CIT, IPU, IAC, and IRT).
- 1% stamp tax on receipts.
- Deductibility of costs for CIT purposes.
- Transfer pricing.

Legal regime on invoices and similar documents

Invoices or similar documents must comply with the legal regime of invoices and similar documents (governed by the Presidential Decree 149/13).

Invoices and similar documents must comply with the following requirements (amongst other):

- Include the name, firm, tax address, and tax number of the supplier.
- Be duly dated, sequentially numbered.
- Include details on the nature, quantity, and price of the goods and services, as well as the taxes due.
- Be written in Portuguese and expressly mention that they were computer processed.

Suppliers that do not comply with this regime will be subject to fines and penalties. In addition, the acquiring entities cannot deduct the cost for CIT purposes and will be subject to an autonomous taxation on an amount that varies depending on the extent of the failure.

Other issues

Intergovernmental agreements (IGAs)

An agreement under the Foreign Account Tax Compliance Act (FATCA), between the government of Angola and the government of the United States (US), was signed on 9 November 2015. This FATCA regime aims to fight tax evasion of US taxable persons who hold financial assets through financial institutions outside the US territory.

Antigua and Barbuda

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Significant developments

The Tax Information Exchange Agreement (TIEA) with Belgium entered into force on 9 November 2017.

Starting in 2017, offshore banks licensed in Antigua and Barbuda must pay tax on profits and gains. The taxes must be paid annually by 31 March, and the rates are as follows:

- 2.5% on all profits and gains up to 10 million East Caribbean dollars (XCD).
- 2% on all profits and gains in amounts exceeding XCD 10 million but not exceeding XCD 20 million.
- 1.5% on all profits and gains in amounts exceeding XCD 20 million but not exceeding XCD 30 million.
- 1% on all profits and gains exceeding XCD 30 million.

Taxes on corporate income

Companies incorporated in Antigua and Barbuda pay corporate income tax (CIT) on their worldwide income, with relief available under existing double taxation agreements (DTAs). Non-resident companies deriving income from Antigua and Barbuda are liable for CIT and should be registered if they have a physical presence in Antigua and Barbuda.

Antigua and Barbuda imposes a flat CIT rate of 25%.

Taxable income or chargeable income is ascertained by deducting from income all expenses that are wholly and exclusively incurred during the year for the production of that income. Chargeable income is normally arrived at by adjusting the net profit per the financial statements for non-taxable income, non-deductible expenses, and prior period losses of up to 50% of chargeable income.

Where a person resident in Antigua and Barbuda makes to another person not resident in Antigua and Barbuda a payment other than interest, that person shall deduct or withhold 25% of that amount.

Reduced CIT rate for certain financial institutions

Financial institutions licensed under the Banking Act that maintain, throughout the tax year, residential mortgage rates at or below 7% are subject to a reduced CIT rate of 22.5%.

See International Banking Act (2016) in the Tax credits and incentives section for a description of the taxation of international banking business in Antigua and Barbuda.

Corporate residence

A corporation is deemed to be a resident if it is incorporated in Antigua and Barbuda, if it is registered as an external company doing business in Antigua and Barbuda, or if the central management and control of its business are exercised in Antigua and Barbuda.

Permanent establishment (PE)

The concept of a PE is described within a number of Antigua and Barbuda's DTAs. A PE is, in general, created in line with the Organisation for Economic Co-operation and Development (OECD) Model Convention.

A PE is not defined in the Income Tax Act; however, any company that would meet the general definition of a PE must be registered.

Other taxes

Antigua and Barbuda Sales Tax (ABST)

ABST is an indirect tax and is levied at the rate of 15% on the value of a wide range of goods and services imported or supplied in Antigua and Barbuda by ABST-registered persons. The rate applied in respect of hotel accommodation is 12.5%.

A number of services, including financial services, local transport, the sale of residential land, education, long-term accommodation (greater than 45 days), and medical and veterinary services, are exempt. Inter-group transactions are taxable.

Persons operating under the ABST regime must be registered for ABST. The threshold for ABST registration is XCD 300,000 in taxable activity per 12-month period. A period in the ABST Act represents one month.

Certain supplies are zero-rated, including exports, basic food items, water, electricity for residential use, sale of new residential property, construction of new residential premises, and fuel.

Registered persons may deduct input tax from their output tax in calculating the tax payable for that ABST accounting period. Where input tax exceeds output tax, the registrant will be entitled to a refund of ABST.

Customs duties

All imports are subject to customs duties, ABST, Revenue Recovery Charge (RRC), and environmental levy. In all instances, certain exemptions will apply.

Customs duty is levied on a wide range of imported goods at rates from 0% to 70% as specified in the Custom Duties Act. Customs duty is levied on goods based on the cost, insurance, and freight (CIF) values and rates determined by the Caribbean Community (CARICOM) Common External Tariff.

Antigua and Barbuda Revenue Recovery Charge (RRC)

The Antigua and Barbuda RRC is applied at a flat rate of 10% on the CIF value on all goods imported into or produced in Antigua and Barbuda. Exemptions will include entities with which the government has International Assistance Agreements, certain government entities, and most supplies or imports of fuel.

Excise taxes

There are no excise taxes in Antigua and Barbuda.

Property taxes

Property tax is levied annually at graduated rates on the basis of the market value of real property (as assessed by the Property Valuation Department) and its use (residential or commercial).

Property tax rates are as follows:

- Agricultural land: 0.10%.
- Residential land: 0.20%.
- Residential building: 0.30%.
- Buildings classified as other property: 0.50%.
- Land classified as other property: 0.40%.

Allowances and tax rebates are available as follows:

- Dwelling house allowance of XCD 150,000 from the taxable value.
- 5% rebate for payment of tax on or before the due date.
- New dwelling house will be exempt from tax for the first two years of being habitable.
- Between 25% and 100% tax rebate available for special development property and property for public use; 25% for hotels.

Residential land and buildings used in commercial activities, such as short-term rental accommodation (less than 45 days), are now classified as other property and are required to pay property tax as follows:

- Residential buildings classified as other property: 0.50%.
- Residential land classified as other property: 0.40%.

Non-citizens undeveloped land tax

Undeveloped land tax is levied on the basis of the value of land owned by non-citizens that has not been developed. The tax takes effect from the date of declaration by the government.

Rates of tax are as follows:

- First year of ownership: 10%.
- Second year of ownership: 15%.

- Third and subsequent years of ownership: 20%.

The charge is cumulative and based on market value as assessed.

Stamp tax

Stamp tax applies to a very wide range of transactions (e.g. bill of sale, lease, mortgage, contract, bill of lading). Stamp tax on transfer of real property and shares are specifically covered below.

Transfer of real property

Stamp tax is imposed on both the buyer and the seller and is levied on the consideration for the sale or the value of property (as assessed by the Chief Valuation Officer), whichever is higher. The stamp tax for vendors is 7.5%, and the stamp tax for purchasers is 2.5%.

Non-citizens vendors are required to pay a land value appreciation tax at the rate of 5%, which is assessed on the difference between the value of property when purchased, plus improvements, and the value of property at the time of sale.

Non-citizens purchasers are also required to pay 5% of the value of property with reference to a non-citizens licence required to hold property in Antigua and Barbuda.

Transfer of shares

Stamp tax is imposed on both the buyer and the seller of shares and is levied on the market value of the shares or book value of the shares, whichever is higher. The stamp tax for vendors is 5%, and the stamp tax for purchasers is 2.5%.

A non-citizen must obtain a licence (at a cost of XCD 400) to hold shares or be a director in a company that owns land or has a lease on land in excess of five acres for a period greater than five years.

Payroll taxes

There is no payroll tax in Antigua and Barbuda.

Social security contributions

The employer portion of social security contributions is 7% of chargeable income of up to XCD 6,500 per month.

Medical benefits

The employer portion of medical benefits payments is 3.5% of salary and wages of an employee who is between 16 and 60 years of age.

Environmental levy

Environmental levy is calculated based on dollar value rates from XCD 0.25 to XCD 2,000 and is used to finance the cost of protecting and preserving the environment.

Life insurance premium tax

A premium tax of 3% is levied on the premium income (net of agent's commission) of all life insurance companies, whether resident or non-resident.

General insurance premium tax

A premium tax of 3% is levied on the premium income, excluding motor business (net of agent's commission), of all general insurance companies, whether resident or non-resident.

Branch income

Branch income is taxed on the same basis and at the same rate as that of corporations. A resident branch of a foreign company shall be regarded as a separate company and shall be taxed on the same basis as that of a locally registered corporation.

Recharges of expenses from head office to the branch are subject to withholding tax (WHT) at a rate of 25%. The recharges have to be justifiable, consistent, and cannot just be based on a percentage allocation.

Income determination

Inventory valuation

Inventories are generally stated at the lower of cost or net realisable value. First in first out (FIFO) and average cost methods of valuation are generally used for book and tax purposes. However, the Commissioner of Inland Revenue will normally accept a method of valuation that conforms to standard accounting practice in the trade concerned. Last in first out (LIFO) is not permitted for tax or book purposes.

Capital gains

Capital gains are not subject to tax in Antigua and Barbuda.

Dividend income

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

Stock dividends

An Antigua and Barbuda corporation may distribute a tax-free stock dividend proportionately to all shareholders.

Interest income

Interest income received by a company registered in Antigua and Barbuda is taxed at the CIT rate of 25%. Interest earned on local and other CARICOM government securities are normally exempt from the payment of CIT.

Royalty income

Royalties received by a corporation are taxable as income from a business or property. Royalties received from CARICOM sources are normally exempt from the payment of CIT.

Foreign income

An Antigua and Barbuda corporation is taxed on foreign branch income as earned and on foreign dividends as received. Double taxation is avoided by means of foreign tax credits where active tax treaties exist and through deduction of foreign income taxes in other cases (the United Kingdom [UK] and CARICOM). There is also relief from British Commonwealth taxes. *See Foreign tax credit in the Tax credits and incentives section for more information*.

Deductions

Depreciation

Depreciation allowed for tax purposes is computed by the diminishing-balance method at prescribed rates (*see table below*). Initial allowances are granted on industrial buildings and on capital expenditures incurred on plant and machinery by a person carrying on a trade or undertaking, as defined. In addition, an annual allowance of 2% is granted on all buildings. Conformity between book and tax depreciation is not required.

Any gain on the sale of depreciated assets is taxable as ordinary income up to the amount of tax depreciation recaptured.

Assets	Depreciation rate (%)
Building, roads, fencing, and pavements	2.00
Plant and machinery, generators	10.00
Furniture, fixtures, fittings, and equipment	10.00
Air conditioning units	12.50
Motor vehicles	20.00
Computer hardware, accessories, and software	33.33

Goodwill

Goodwill and trademarks are not depreciating assets, and amortisation is not allowed.

Start-up expenses

There are no specific provisions in relation to deductions for start-up expenses. However, certain start-up expenses, such as costs of incorporation and other initial start-up costs, may qualify for a five year straight-line write-off.

Interest expenses

No deduction is allowed for interest on loans owing to shareholders, directors, their spouses, children or relatives, or to any related parties. Only interest paid to banks and financial institutions licensed under the Financial Institutions (Non-Banking) Act on loans borrowed at commercial rates and terms is deductible.

Bad debt

General allowances made for bad debts are not deductible. For a bad debt claim to be deductible, it must be specific and the taxpayer must prove to the Inland Revenue Department (IRD) that the debt arose during the year.

Cultural and social contributions

A deduction of 50% of all substantial contributions made by any person with respect to sport, education, or culture in Antigua and Barbuda is allowed against a person's assessable income from trade, business, or profession. Contributions must be in excess of XCD 10,000 in any assessment year, and deductions during any assessment year will be limited to XCD 250,000.

Restriction on rents paid

Rents paid by a company to shareholders, directors, their spouses, children or relatives, or to any related parties in excess of 5% of the otherwise chargeable profits of the company may not be deducted.

Restriction on compensation

Salaries, wages, directors' fees, and other payments made for services rendered by the shareholders, directors, their spouses, children, or relatives in excess of 25% of otherwise chargeable profits may not be deducted.

Fines and penalties

Fines and penalties imposed under Antigua and Barbuda tax law are not deductible expenses.

Taxes

There are no provisions in the Income Tax Act in relation to the deductibility of taxes paid by a company. However, in general, ABST, ABST input tax credits, and adjustments under the ABST Act are disregarded for income tax purposes. Other taxes, including property tax, transfer taxes, payroll taxes, and insurance premium taxes, except income tax and share transfer tax, are deductible to the extent they are incurred in producing chargeable income.

Net operating losses

Income tax losses may be carried forward for six years following the year in which the loss was incurred. However, the chargeable income of a company in any one income year may not be reduced by more than one half by losses brought forward. No carryback of losses is permitted.

Payments to foreign affiliates

An Antigua and Barbuda corporation may claim a deduction for royalties, management fees, and interest charges paid to foreign affiliates, provided the payments are equal to or less than what the corporation would pay to an unrelated entity. The deductibility of any payments to a foreign affiliate will be subject to an arm's-length test and WHTs.

Group taxation

Group taxation is not permitted in Antigua and Barbuda.

Transfer pricing

There are no provisions for transfer pricing in the tax laws of Antigua and Barbuda.

Thin capitalisation

There are no provisions for thin capitalisation in the tax laws of Antigua and Barbuda.

Controlled foreign companies (CFCs)

There are no special rules relating to CFCs.

Tax credits and incentives

Tax incentives are currently available under the following legislation.

Fiscal Incentives Ordinance (1975)

The Fiscal Incentive Ordinance provides manufacturers of an 'approved product' with an exemption from taxes for varying periods, up to a maximum of 15 years. After the period of exemption, relief by way of tax credits of up to 50% of CIT paid on profits derived from certain export sales may be obtained. The net losses arising during the tax holiday period (i.e. the excess of accumulated tax losses over total profits) may be carried forward and relieved against profits following the expiration of the tax holiday in accordance with the normal rules for set-off of losses.

International Business Corporations (IBC) Act (1982)

An IBC is an entity incorporated under the IBC Act for the purpose of carrying on international trade or business. The IBC structure allows for a comprehensive range of business opportunities, including trust business, insurance, manufacturing, and other international trade activities, to persons outside of Antigua and Barbuda within a tax-free environment. An IBC is exempt from the payment of CIT, ABST, and WHT.

The Investment Authority Act (2006)

The Investment Authority Act provides the framework for the promotion of investment opportunities in Antigua and Barbuda by introducing a system of registration of businesses, an investment code, and a range of incentives that are available to both resident and non-resident investors. The available incentives and concessions to which an investor may be entitled for consideration are as follows:

- Exemption from the payment of customs duty.
- Exemption from CIT.
- Reduction of stamp duty.
- Exemption from WHT.

The amount of the incentives and concessions depend on the amount of the investment and the number of employees in the proposed business.

The investment categories are as follows:

- Capital investment of up to XCD 1 million or employs up to 26 persons: This investor may qualify for exemption from the payment of customs duty on certain imports, exemption from the payment of CIT and WHT for up to three years, and a reduction of stamp duty by up to 10% on the sale of land and buildings used in the business operation.
- Capital investment of over XCD 1 million, employs over 26 persons, and has at least one director or owner who is a resident of Antigua and Barbuda: This investor could qualify for exemption from the payment of customs duty on certain imports, exemption from the payment of CIT and WHT for up to five years, and a reduction of stamp duty by up to 20% on the sale of land and buildings used in the business operation.

- Capital investment of over XCD 10 million, employs over 51 persons, and has at least one director or owner who is a resident of Antigua and Barbuda: This investor could qualify for exemption from the payment of customs duty on certain imports, exemption from the payment of CIT and WHT for up to ten years, and a reduction of stamp duty by up to 30% on the sale of land and buildings used in the business operation.
- Capital investment of over XCD 25 million, employs over 75 persons, and has at least one director or owner who is a resident of Antigua and Barbuda: This investor could qualify for exemption from the payment of customs duty on certain imports, exemption from the payment of CIT and WHT for up to 12 years, and a reduction of stamp duty by up to 40% on the sale of land and buildings used in the business operation.
- Capital investment of over XCD 75 million, employs over 100 persons, and has at least one director or owner who is a resident of Antigua and Barbuda: This investor could qualify for exemption from the payment of customs duty on certain imports, exemption from the payment of CIT and WHT for up to 15 years, and a reduction of stamp duty by up to 50% on the sale of land and buildings used in the business operation.
- Capital investment of over XCD 100 million, employs over 150 persons, and has at least one director or owner who is a resident of Antigua and Barbuda: This investor could qualify for exemption from the payment of customs duty on certain imports, exemption from the payment of CIT and WHT for up to 20 years, and a reduction of stamp duty by up to 75% on the sale of land and buildings used in the business operation.

The Tourism and Business (Special Incentives) Act 2013

The Tourism and Business (Special Incentives) Act provides special incentives in the areas of tourism industry and other specified business activities for a period of two years unless it is extended by resolution of Parliament. This was extended for another two years commencing 7 April 2016 to 16 April 2018.

The available incentives and concessions to which an investor would be entitled for consideration are as follows:

- Exemption from the payment of customs duties, ABST, and RRC.
- Exemption from income tax.
- Reduction of stamp duty on land transfers and non-citizen licences.
- Exemption from WHT.

The amount of the incentives and concessions will depend on the amount of the investment in the proposed business.

The investment categories are as follows:

- Capital investment of up to XCD 1 million will receive no special incentives.
- Capital investment of XCD 1 million to XCD 10 million: This investor could qualify for exemption from the payment of customs duties on certain imports, exemption from the payment of income tax and WHT for up to six years with the ability to carry forward losses up to three years, and a reduction of stamp duty on land transfers and non-citizen licences of up to 25% on the sale of land and buildings used in the business operation.

- Capital investment of XCD 10 million to XCD 25 million: This investor could qualify for exemption from the payment of customs duties on certain imports, exemption from the payment of income tax and WHT for up to 12 years with the ability to carry forward losses up to four years, and a reduction of stamp duty on land transfers and non-citizen licences of up to 35% on the sale of land and buildings used in the business operation.
- Capital investment of XCD 25 million to XCD 75 million: This investor could qualify for exemption from the payment of customs duties on certain imports, waiver of customs duties, ABST, and RRC on all capital items imported, exemption from the payment of income tax and WHT for up to 15 years with the ability to carry forward losses up to five years, and a reduction of stamp duty on land transfers and non-citizen licences of up to 50% on the sale of land and buildings used in the business operation.
- Capital investment of XCD 75 million to XCD 100 million: This investor could qualify for exemption from the payment of customs duties on certain imports, waiver of customs duties, ABST, and RRC on all capital items imported, exemption from the payment of income tax and WHT for up to 20 years with the ability to carry forward losses up to 7 years, and a reduction of stamp duty on land transfers and non-citizen licences of up to 75% on the sale of land and buildings used in the business operation.
- Capital investment of over XCD 100 million: This investor could qualify for exemption from the payment of customs duties on certain imports, waiver of customs duties, ABST, and RRC on all capital items imported, exemption from the payment of income tax and WHT for up to 25 years with the ability to carry forward losses up to 7 years, and waiver of all stamp duty on land transfers and non-citizen licences on the sale of land and buildings used in the business operation.

The Small Business Development Act (2007)

The Small Business Development Act provides the framework for the growth of the small business sector in Antigua and Barbuda by introducing a system of registration of small businesses and a range of concessions that are available to the business. The available concessions to any small business that would be entitled for consideration are as follows:

- Concession on customs duty of up to 100% (includes raw material, building material, equipment, vehicles, furniture, furnishings, appliances, fixtures and fittings, tools, spare parts, and machinery and equipment used in the construction and operation of the business).
- CIT exemption for a period not exceeding five years.
- CIT exemption after the initial five year period of up to 10%.
- WHT exemption for a period of up to three years.
- Stamp duty exemption on the registration of a mortgage.
- Stamp duty exemption on the transfer of property and any applicable non-citizen land holding licence.

A small business to which this Act applies must meet all of the following criteria:

- No more than 25 employees.
- Not a wholly owned or majority owned business or subsidiary of a larger company.
- Capital investment not exceeding XCD 3 million.
- Annual sales that do not exceed XCD 2 million.

- Majority owned by citizens of Antigua and Barbuda, or majority owned by non-citizens with all of the following restrictions:
  - Over 50% of the products must be exported.
  - Minimum investment of XCD 500,000.
  - At least 50% of the employees must be citizens of Antigua and Barbuda.
  - At least 40% of the goods and services used in production must be acquired from businesses in Antigua and Barbuda.

International Banking Act (2016)

A person who desires to carry on international banking business in Antigua and Barbuda shall apply in writing to the Commission for the granting of a licence under any of the following categories:

- Class I International Banking Licence.
- Class II International Banking Licence.
- Class III Composite International Banking and Trust Licence.

A licensed financial institution may conduct one or more of the following activities:

- Acceptance of deposits and other repayable funds.
- Lending.
- Financial leasing.
- Investment in financial securities.
- Money transmission services.
- Issuing and administering means of payment, including credit cards, travellers cheques, bankers’ drafts, and electronic money.
- Guarantees and commitments.
- The keeping and administration of securities.
- Credit reference services.
- Electronic banking.
- Payment and collection services.
- Dealing in foreign currency.
- Trust business, providing it’s the holder of a composite international banking and trust licence.
- Any other services that the Commissioner may determine as banking practice.

The available incentives and concessions to which an investor would be entitled for consideration are as follows:

- Tax on income on a sliding scale, from a maximum of 2.5% to a minimum of 1%, as follows:
  - 2.5% on all profits and gains up to XCD 10 million.
  - 2% on all profits and gains in amounts exceeding XCD 10 million but not exceeding XCD 20 million.
  - 1.5% on all profits and gains in amounts exceeding XCD 20 million but not exceeding XCD 30 million.
  - 1% on all profits and gains exceeding XCD 30 million.
- A tax credit in respect of taxes paid outside of Antigua and Barbuda, but only insofar as it reduces the tax payable in Antigua and Barbuda to a minimum of 1%.
- Exemption from all WHTs on dividends, interest, or other returns payable in respect of any borrowings.

- Trusts under the management of an exempt licensed financial institution are exempt from any taxes, duties, or imposts.
- Exemption from custom duties on importation of equipment or fixtures for carrying on business.
- Income tax concessions for specially qualified expatriate employees.

Foreign tax credit

Double taxation is avoided by means of foreign tax credits where active tax treaties exist and through deduction of foreign income taxes in other cases (the United Kingdom and CARICOM). A foreign tax credit is also available to persons in Antigua and Barbuda who have paid or are liable to pay British Commonwealth income tax.

Residents

The relief available from tax in Antigua and Barbuda for a person resident in Antigua and Barbuda from tax payable in Antigua and Barbuda is the British Commonwealth income tax rate if that rate does not exceed one half the tax rate in Antigua and Barbuda. If the British Commonwealth income tax rate exceeds the Antigua and Barbuda tax rate, then the relief will be limited to one half the tax rate in Antigua and Barbuda.

Non-residents

The relief available from tax in Antigua and Barbuda for a person not resident in Antigua and Barbuda from tax payable in Antigua and Barbuda is one half the British Commonwealth income tax rate if that rate does not exceed one half the tax rate in Antigua and Barbuda. If the British Commonwealth income tax rate exceeds the Antigua and Barbuda tax rate, then the relief will be limited to the amount by which it exceeded one half the rate of British Commonwealth income tax.

No relief is available unless similar provisions exist in the laws of the relevant British Commonwealth country.

Withholding taxes

Tax is currently withheld from income as follows:

	WHT (%)				
Recipient	**Dividends**	**Dividends (preferred shares)**	**Interest and rentals**	**Management fees, royalties, and other payments to a non-resident**	**Interest on bank deposits**
Resident corporations and individuals	0	0	0	0	0
Non-resident corporations	25	25	25	25	25
Non-resident individuals	25	25	20	25	0
Residents of a CARICOM member state:					
Corporations	0	15	15	15	15
Individuals	0	15	15	15	0

Note that interest payments on bank deposits made to non-resident individuals are not subject to WHT. Interest payments on bank deposits made to non-resident corporations are taxed at the rate of 25%.

Where a non-resident lends money at arm's length for the purpose of promoting industrial, commercial, scientific, housing, or other development, the rate of WHT is 10%. Prior approval must be sought from the Commissioner of Inland Revenue, and it is recommended that Cabinet approval also be obtained.

WHT becomes due at the time of payment or accrual and must be paid within seven days thereof.

Tax treaties

There is a tax treaty with the United Kingdom and a DTA between member states of CARICOM.

The UK tax treaty provides that persons in either the United Kingdom or Antigua and Barbuda are entitled to relief from CIT and WHT. The treaty allows for the following relief:

- Where a UK resident is liable to pay income tax in the United Kingdom in respect of the same income that is taxable in Antigua and Barbuda, one will be entitled to relief at a rate that is equal to the amount by which the tax rate in Antigua and Barbuda exceeds one half the UK rate.
- If the tax rate in Antigua and Barbuda exceeds the UK tax rate, then one will be entitled only to relief at a rate equal to one half the UK tax rate.

Tax administration

Taxable period

Taxes are assessed on a fiscal-year basis.

Tax returns

The taxpayer must file a CIT return, which includes audited financial statements, within three months of the fiscal-year end. The authorities will subsequently raise an assessment.

If a return is not filed on a timely basis, the authorities have the power to issue estimated assessments. There is a 5% penalty for late filing (minimum of XCD 500). The taxpayer can object to assessments raised within 30 days and ask the Commissioner of Inland Revenue to review and revise. In the event that the objection is unsuccessful, the taxpayer may appeal to the Tax Appeal Board. The Commissioner of Inland Revenue has the power to enforce the collection of tax prior to the determination of any objection or appeal. The Commissioner also has the discretion to order a stay on the collection and payment of all or part of any assessed tax until such time as the objection or appeal is finalised if it would be unjust not to do so. Assessments for the past six years may be reviewed and revised.

Payment of tax

Advance tax is payable in monthly instalments and is ordinarily based on the tax chargeable and assessed in the previous fiscal year. The standard amount of each instalment is determined as one-twelfth of the tax chargeable in the previous fiscal year. If the assessment for the prior year has not been finalised, the Commissioner of Inland Revenue can raise an assessment based on best judgment.

The balance of tax due after deduction of advance tax, as notified in the assessment, is payable at the time of submitting the annual CIT return, which must not be later than three months after the financial year-end or one month after service of the final assessment.

Tax is deemed to be in default if not paid within 30 days of the date on which it becomes due and payable. A penalty of 20% and interest of 1% per month is charged on unpaid taxes in default.

Tax audit process

The Antigua and Barbuda tax system for companies is based on self-assessment; however, the IRD undertakes ongoing compliance activities to ensure that corporations are meeting their tax obligation. There is no specific approach used by the IRD in relation to compliance and audit activities. Compliance activities generally take the form of reviews of specific issues and audits.

Statute of limitations

The IRD can reassess CIT returns within a six-year period. In addition, the IRD can make additional assessments of tax, interest, or penalties.

Topics of focus for tax authorities

The IRD does not have any specific compliance program; however, when an audit is done, the focus is mainly on the detection of basic non-compliance, such as omission of income, inclusion of non-deductible expenses, and classification of items between expenses and capital items.

Other issues

Tax Information Exchange Agreements (TIEAs)

TIEAs provide for the exchange of information on tax matters. TIEAs with Aruba, Australia, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Liechtenstein, the Netherlands, Netherlands Antilles, Norway, Sweden, the United Kingdom, and the United States are in force.

Foreign Account Tax Compliance Act (FATCA)

An intergovernmental agreement (IGA) between Antigua and Barbuda and the United States to improve international tax compliance and to implement the US FATCA was signed on 31 August 2016 and entered into force on 7 June 2017. The IGA is a Model 1 Reciprocal Agreement, meaning that financial institutions in each country will report specific information to their own governments, which will then automatically exchange that information annually on a reciprocal basis.

The first step for any entity registered in Antigua and Barbuda, whether a company, partnership, or trust, is to establish whether it is classified as a ‘financial institution’ (i.e. a custodial institution, a depositary institution, an investment entity, or a specified insurance company) for the purposes of the Agreement. The reporting guidelines are included in the IGA.

Common Reporting Standard (CRS)

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the OECD. Under the CRS, foreign tax authorities will provide information to the IRD relating to financial accounts in their jurisdiction held by Antigua and Barbuda residents. The IRD will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Antigua and Barbuda. Antigua and Barbuda's first reporting year is to be 2018.

Argentina

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Significant developments

The tax reform

In its commitment to modernising the tax system, but also with an eye on monitoring the fiscal deficit, the Argentine Congress passed, on 27 December 2017, a large tax reform package that became effective on 1 January 2018.

Profits tax rate reduction

The most significant change in the tax reform is a profits tax rate reduction that applies in two phases. For the first two taxable years starting on or after 1 January 2018, the profits tax rate is reduced from the prior 35% rate to 30%. For taxable years beginning on or after 1 January 2020 and on a going-forward basis, the tax rate is further reduced to 25%.

This measure is offset by the introduction of a withholding tax (WHT) on dividend distributions and branch profit remittances at rates of 7% (while the applicable profits tax rate is at 30%) and 13%, respectively, going forward. The WHT on dividends and branch profits can be reduced by tax treaties. The tax reform has also abolished the so-called 'equalisation tax' for profits generated in taxable years starting on or after 1 January 2018, although it remains applicable on dividend and branch profit distributions made out of earnings accumulated prior to 1 January 2018 and which were in excess of tax earnings as of the year-end prior to the relevant distribution.

Transfers of Argentine shares

The tax reform has confirmed that the transfer of Argentine securities that occurred after 23 September 2013, including transfers of Argentine shares made between non-residents, is subject to tax. The tax, however, does not apply to the sale of shares and American Depository Receipts (ADRs) made by non-residents through stock exchanges (whether local or foreign).

The tax reform now provides that it should be the seller, and not the buyer, that is the party responsible for withholding the tax. In this regard, Resolution No. 4227 has established a new mechanism regulating how non-resident sellers should pay the tax on the capital gain for transactions that have taken place on or after 1 January 2018. In summary, the non-resident seller should pay the tax directly through an international wire transfer unless there is a local withholding agent (i.e. local buyer or local custodial institution) involved in the payment.

Non-residents are now exempt from tax on capital gains realised on the sale of shares in publicly traded companies but only to the extent that the shares are actually sold through the local stock exchange. Furthermore, non-residents continue to be exempt from tax on capital gains arising from the sale of sovereign bonds and corporate bonds issued in an initial public offering (IPO). Yields from those bonds are also exempt from Argentine tax. In all cases, the exemption is conditioned on the foreign seller being a resident in a jurisdiction having an exchange of information agreement with Argentina and the funds coming from these jurisdictions. Only yields and capital gains derived from specific securities issued by the Argentine Central Bank (LEBACs) do not benefit from this exemption. In these cases, both the income and the capital gain are subject to tax at a rate of 5% tax. If the tax cost cannot be determined in the case of a sale, the tax is levied at a rate of 4.5% over the sales proceeds.

Indirect transfers of Argentine assets (including shares) are now taxable under the tax reform, provided that (i) the value of the Argentine assets exceed 30% of the transaction's overall value, and (ii) the equity interest sold in the foreign entity exceeds 10%. The tax is also due if any of these thresholds were met during the 12-month period prior to the sale. The indirect transfer of Argentine assets, however, is only subject to tax to the extent those assets are acquired on or after 1 January 2018. Furthermore, indirect transfers of Argentine assets within the same economic group do not trigger taxation, provided the requirements to be set by regulations are met.

Other income tax changes

In line with the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital guidelines, the tax reform limits the concept of 'ancillary or preparatory' in order to limit the type of activities that are not deemed to constitute a permanent establishment (PE).

The tax reform has also replaced the 2:1 debt-to-equity thin capitalisation rule with the base erosion and profit shifting (BEPS)-based rule, where the deduction on interest expense and foreign exchange losses with local and foreign related parties is now limited to 30% of the taxpayer's taxable income before interest, foreign exchange losses, and depreciation. The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilised deduction capacity for three years.

Amendments have also been introduced to relax the so-called 'sixth method' for transfer pricing analysis in cases involving commodity transactions with foreign intermediaries.

The Argentine controlled foreign company (CFC) rules have also been amended. Thus, an Argentine taxpayer is immediately taxed on the passive income generated by a CFC that is directly or indirectly held by the Argentine taxpayer to the extent that more than 50% of that CFC's income is passive and is effectively subject to a tax that is lower than 75% of the applicable Argentine income tax rate.

The tax reform also confirms that ADRs generate Argentine-sourced income. However, as stated, a non-resident is exempt from the current 15% capital gains tax on the sale of ADRs if one resides in a jurisdiction having an exchange of information agreement with Argentina.

Other tax changes

A new 10% excise tax has been introduced on drinks with caffeine and taurine. The excise tax rate on certain automobiles has been reduced.

The tax reform has also increased the tax on financial transactions that is creditable against the profits tax liability.

With respect to value-added tax (VAT), the tax reform provides for an expedient VAT recovery mechanism for VAT credit balances on certain infrastructure and investments in capital goods, to the extent that companies have not been able to recover the VAT within six months. VAT legislation has also been amended to include 'digital transactions' (e.g. digital services, hosting, on-line technical support, software services, Internet services) as a taxable event. Hence, these types of services are now subject to VAT at a 21% rate if they are supplied by a non-resident entity to an Argentine customer, provided that that they are effectively used in Argentina.

The tax reform also updates the minimum thresholds to characterise a tax omission as tax fraud and introduces other amendments to the Tax Procedure Act.

Tax on asset revaluations

As part of the reform package, the Argentine Congress also approved a one-time tax aimed at offsetting the absence of inflation adjustments rules with an optional revaluation of assets for companies and individual entrepreneurs.

Under this revaluation tax, taxpayers are entitled to adjust their tax basis in fixed and movable assets (except automobiles), shares in Argentine companies, and intangible assets. Assets that have been fully depreciated are excluded. The revaluation has to be made by computing certain factors, although an external appraisal instead of those factors can be used for real estate that is not treated as inventory as well as for movable assets, provided that the revaluation does not exceed 1.5 times the revaluation that would have resulted had those factors been applied.

The tax is levied on the amount of the adjustment at a rate of 8% in the case of real estate (15% if it is considered inventory), 5% for shares if held by individuals, and 10% for other assets. The taxpayer can select which class of assets to adjust, but once the category has been selected, all of the assets included in that category have to be adjusted.

The basis adjustment is depreciable over the remaining useful life with a minimum of five years, except for basis adjustments in real estate and intangibles, where the depreciation must be made over the longer of either ten years or 50% of the remaining useful life. Going forward, for newly acquired assets as well as those whose bases have been adjusted, taxpayers are entitled to recover their lost value by adjusting the tax basis for inflation, as inflation adjustments have been reinstated for those assets.

Taxpayers opting to revalue their assets must withdraw judicial or administrative proceedings claiming inflation adjustments for past or future taxable years.

Taxes on corporate income

Profits tax

According to the recent tax reform, the rate of profits tax on net taxable business profits has been reduced to 30% (formerly 35%) for fiscal years beginning on or after 1 January 2018. Such rate will be further reduced to 25% for fiscal years beginning on or after 1 January 2020. Legal entities resident in Argentina are subject to tax on Argentine and foreign-source income. Resident legal entities are able to claim any similar taxes actually paid abroad on foreign-source income as a tax credit. The tax rate applies on net income determined on a worldwide basis.

The aforementioned tax reform also introduced a WHT on dividend distributions and branch profit remittances at rates of 7% (while the applicable profits tax rate is at 30%) and 13%, respectively, going forward.

The tax reform has also abolished the so-called 'equalisation tax' for profits generated in taxable years starting on or after 1 January 2018. The equalisation tax was a WHT levied at a 35% rate on dividend distributions in excess of tax earnings. The equalisation tax, however, remains applicable on dividend and branch profit distributions made out of earnings accumulated prior to 1 January 2018 and which were in excess of tax earnings as of the year-end prior to the relevant distribution.

Argentine-source income (e.g. royalties, interests) received by foreign entities is subject to WHT in full and final settlement at source (*see the Withholding taxes section*).

Tax on minimum notional income

In addition to the profits tax, there is a tax on minimum notional income. The rate is 1% on the value of fixed and current assets. The presumed tax, imposed annually, is applied only in excess of the profits tax of the same fiscal year. In addition, payment of this presumed tax, not offset by the profits tax, will be treated as payment on account of profits tax chargeable during a maximum period of ten years.

Banking and insurance entities are only subject to this tax on 20% of the corresponding taxable assets.

This tax will be repealed as of 2019.

Local income taxes

For a description of the local (jurisdictional) tax on gross revenues from the sale of goods and services, see Turnover tax in the Other taxes section.

Corporate residence

Corporate residence is determined on the basis of centres of activity, which may be the location of a company's economic activity or management activity.

Permanent establishment (PE)

Centres of activity in Argentina of non-Argentine corporations are treated as PEs.

As part of the 2017 tax reform, a PE definition has been introduced into the Income Tax Law. Such a definition is aligned to the one included in the OECD's Model Tax Convention for the Avoidance of Double Taxation.

Other taxes

Value-added tax (VAT)

VAT is assessable on the sales value of products (e.g. raw materials, produce, finished or partly finished merchandise) with few exemptions, most services (e.g. construction, utilities, professional and personal services not derived from employment, rental), and on import of goods and services. The VAT rate is 21%, although certain specific items are subject to a 27% or 10.5% rate. VAT is payable by filing monthly tax returns.

The increased rate of 27% applies to 'utilities services' (e.g. telecommunications, household gas, running water, sewerage, and energy) not rendered to dwelling-purposes real estate.

A reduced rate of 10.5% applies to certain transactions, including (but not limited to) the following:

- Construction of housing.
- Interest and other costs on personal loans granted to final consumers by financial institutions.
- Sales and imports of living bovine animals.
- Supply of publicity and advertising in some specific cases.
- Any passenger transportation operating inside the country when the distance does not exceed 100 km.
- Medical assistance in some specific cases.
- Certain capital goods, depending on the Customs Duty Code.

VAT paid on purchases, final imports, and rental of automobiles not considered as inventory cannot be computed by the purchaser as a VAT credit. The same tax treatment applies to other services, such as those provided by restaurants, hotels, and garages.

As a result of the 2017 tax reform, VAT legislation has also been amended to include 'digital transactions' (e.g. digital services, hosting, on-line technical support, software services, Internet services) provided from abroad as a taxable event. Hence, these types of services are now subject to VAT at a 21% rate if they are supplied by a non-resident entity to an Argentine customer, provided that they are effectively used in Argentina.

VAT exemptions

Among others, the following transactions are exempt from VAT:

- Sales of books, ordinary natural water, common bread, milk, medicine, postage stamps, aircraft used in commercial activities and for defence or internal safety, and ships or boats acquired by the national government.
- Supply of certain services, such as services rendered by the government (national, provincial, or local) or by public institutions; school or university education provided by private institutions subject to public educational programmes; cultural services supplied by religious institutions; hospital and medical care and related activities; transportation services for sick or injured persons in vehicles specially designed for the purpose; tickets for theatre, cinema, musical shows, and sport events; the production and distribution of motion picture films; local transport of passengers (e.g. taxis, buses) up to 100 km; and international transportation.
- Rental of real estate for housing purposes.

VAT exemption on importation

The following import transactions are also exempted from VAT:

- Final importation of goods qualifying for exemption from customs duties under special regimes for tourists, scientists and technicians, diplomatic agents, etc.
- Final importation of samples and parcels exempted from customs duties.

VAT export reimbursement regime

Exports of goods and services are treated as zero-rated transactions. Nevertheless, input VAT related to these transactions can either be used as a credit against output VAT or refunded pursuant to a special procedure.

Services rendered within the country shall be deemed to be exports if they are effectively applied or economically utilised outside the country.

Exporters must file an export return with the tax authorities, reporting the VAT receivables related to their exports to be reimbursed on VAT paid in relation to the export operations. A report certified by a public accountant with respect to the value, registrations, and other characteristics related to the refund must be attached to the export return.

The tax credit related to exports and other taxable activities can only be refunded in proportion to the exports, and can be fully refunded to a cap of 21% of the freight on board (FOB) value of the exported products.

There is no specific method stated in the legislation for allocating the tax credit related to exports, but taxpayers are able to use any methods of calculation that would be suitable to their business model. This calculation has to be approved by the tax authorities.

Finally, it is important to highlight that the tax authorities have to approve the tax credit to be refunded.

VAT reimbursement on investments in infrastructure projects and acquisition of capital goods

The 2017 tax reform established an expedient VAT recovery mechanism for VAT credit balances on certain infrastructure and investments in capital goods, to the extent that companies have not been able to recover the VAT within six months.

Electronic invoicing

All VAT-registered taxpayers are compelled to use electronic invoices. In order to apply for this regime, an authorisation must be obtained from the tax authorities. As a result, the tax authorities will assign an Electronic Authorization Code (*Código de Autorización Electrónico* or CAE), which is included in every issued electronic invoice.

Import and export duties

The levels of import duty currently range between 0% and 35%, except in cases where a specific minimum duty is applied or that involve merchandise with a specific treatment. These percentages were established considering the individual competitive conditions prevailing in different production sectors and the relative advantages of contributing to the introduction of equipment and technology for local industry. In general, merchandise originating from Latin America Integration Association (LAIA) countries is entitled to preferential duty.

In the case of export transactions, goods are valued based on the FOB clause, and the approach is based on their theoretical value rather than a positive basis as in the case of imports.

Definitive exports of certain goods are subject to export duties. The rates vary from 5% to 45%, depending on the tariff code of the merchandise. No export duties are levied on exports of most agricultural and industrial products.

Excise taxes

Excise tax is assessable on a wide variety of items sold in Argentina (not on exports), principally on tobacco, wines, soft drinks, spirits, gasoline, lubricants, insurance premiums, automobile tyres, mobiles services, perfumes, jewellery, and precious stones. The bases of the assessment and tax rate of some items are as follows:

Products	Nominal rates (%)
Tobacco, cigars, and cigarettes	20/25/70
Alcoholic drinks	20/26
Beers	8/14
Soft drinks	4/8/10
Jewellery and precious stones	20
Automobiles, motor vehicles, motor vessels, motor homes, etc.	20

Stamp tax

Stamp tax is levied by each of the 24 jurisdictions into which Argentina is divided, and applies principally to contracts and agreements, deeds, mortgages, and other obligations, agreements, and discharges of a civil, financial, or commercial nature of which there is written evidence or, in certain instances, that are the subject of entries in books of account. The average tax rate is 1% applicable on the economic value of the contract.

In the city of Buenos Aires, the standard tax rate is 1% of the aggregate amount of the transactions, contracts, and deeds that are subject to the stamp tax. Special rates of 0.5%, 1.2%, 3%, and 3.6% are also established; and, in the case of transactions involving uncertain consideration, a fixed tax of 2,500 Argentine pesos (ARS) is applicable (on the fulfilment of certain conditions).

Turnover tax (gross income tax)

Each of the 24 jurisdictions into which Argentina is divided imposes a tax on gross revenues from the sale of goods and services. Exports of goods are exempt, and certain industries are subject to a reduced tax rate. Rates, rules, and assessment procedures are determined locally.

Information on tax rates of the economically largest jurisdictions is provided as follows:

Jurisdiction	General rate (%)	Commerce (%)	Services (%)	Industry (%)
Province of Buenos Aires	4.5	3 to 5	3.5 to 5.5	1.75 to 4
City of Buenos Aires	3 to 5	3 to 5	3 to 5	1 to 4
Córdoba	4	2 to 7.5	2 to 10.5	0.25 to 1.5
Mendoza	4	4 to 8	4 to 6	2/3 to 7

Jurisdiction	General rate (%)	Commerce (%)	Services (%)	Industry (%)
Santa Cruz	3	3 to 5	3	1.75
Santa Fe	3.5/3.8 to 4.5	3 to 4.5	1 to 4.5	1.75 to 4.5

Real estate tax

Similar to the turnover tax, real estate tax is imposed by each Argentine jurisdiction. It is levied on the ownership of real estate located in the territory of the jurisdiction.

Real estate tax is usually assessed by the local tax authority, considering the property's fiscal value and the tax rates established by the current year tax law.

Tax on financial transactions (on credits and debits on bank accounts)

Bank account movements (deposits and withdrawals) are subject to a national tax on financial transactions at the following rates:

- 0.6% of deposits and withdrawals in bank accounts opened in local financial entities.
- 1.2% of any transactions made in a bank without using a bank account.

33% of the tax on financial transactions effectively paid on bank account transactions (0.6%) and movement of funds (1.2%) is creditable against profits tax and minimum notional income tax and/or respective tax advances.

Wealth tax

An annual wealth tax is levied on the shares or holding in the capital of local companies owned by individuals or undivided estates domiciled in Argentina or abroad, and/or companies and/or any other type of legal person domiciled abroad. It shall be assessed and paid directly by the local company as a full and final payment on behalf of the shareholders (the issuing company has the right to recover from the shareholder the tax paid).

The applicable tax rate is 0.25% and is applicable on the value of the participation, which is generally calculated on the difference between assets and liabilities arising from the financial statements closed at 31 December or during the respective fiscal year.

Note that a Supreme Court decision has ruled on the non-applicability of this tax to Argentine branches of foreign companies.

Payroll taxes and social security contributions

Foreign and local nationals working for a local company must be included on the local payroll and will be considered as local employees for local labour, tax, and social security purposes. Both the local company and the employees will be subject to the corresponding regulations.

All the compensation paid in Argentina or abroad for work performed for the local company will be considered as local compensation and should be reported to the tax and social security authorities, as the case may be, and included in the salary slips and recorded in the local labour books.

The local employer must withhold income tax on an actual and monthly basis and make the corresponding payments to the tax authorities through monthly WHT returns. Individual tax rates range from 5% to 35%, and personal deductions are available.

The local entity must issue salary slips every month for each employee included on its payroll, considering the total compensation mentioned above.

Employer social security contributions add between 23% and 27% to payroll costs. There is a compulsory 13th-month salary. There is no restriction regarding the employment of foreigners, provided they hold working visas.

Workers' (Employees') Compensation: Argentine labour regulations determine different forms of compensation for employees. These include, but are not limited to, the following:

- Vacation compensation.
- Compensation in a case of termination of employment contract with employee (prior notice of dismissal and to a severance payment, both based on seniority).

Main social taxes and contributions assessable on salaries are as follows:

	Percentage of gross monthly earnings (%) (including 13th month salary)	
Social taxes and contributions	**Employer (2, 3)**	**Employee (1)**
Pension fund	17/21	11
National unemployment fund	-	-
Family allowances fund	-	-
Social services institute for pensioner	-	3
Social health care plan	6	3
Total	23/27	17

Notes

1. Social security charges borne by employees are applicable up to a monthly salary cap, which currently amounts to ARS 86,596.10 as of March 2018. This cap is updated in March and September of each year.
2. Argentine employers are exempt to pay social security contributions for the first ARS 12,000 per month per employee. The exemption will be implemented gradually over a five-year period (from ARS 2,400 in 2018 to ARS 12,000 in 2022 and thereafter).
3. Employers' contributions to the national unemployment fund, family allowances fund, and social services institute for pensioners is paid at a unified rate of 17%. The rate is increased to 21% for companies whose main activity consists of rendering services or commerce, provided the amount of their average total annual sales for the last three years exceeds ARS 48 million.

Branch income

The rate of profits tax on net taxable profits from Argentine sources and from activities performed abroad by the branch is currently 30% (for fiscal years beginning on or after 1 January 2018) and will be further reduced to 25% (for fiscal years beginning on or after 1 January 2020). Branches are also subject to minimum notional income tax.

Income determination

Inventory valuation

Inventory valuation is based on the latest purchase. Thus, the last in first out (LIFO) method may not be elected for tax purposes. Conformity between book and tax reporting is not required.

Capital gains/losses

Capital gains and losses attract normal profits tax treatment, except that losses from the sale of shares and other equity interests may be offset only against the same type of income.

Capital gains on equity

Gains derived from the transfer of shares, bonds, and other securities are subject to tax at the regular 30% rate (to be reduced to 25% as of fiscal years beginning on or after 2020).

Non-residents are subject to capital gains tax on the disposal of Argentine equities at a 13.5% effective tax rate on gross proceeds or, alternatively, a 15% income tax on the actual capital gain if the seller's tax cost basis can be duly documented for Argentine tax purposes. Disposal of equities listed in the local stock exchange and ADRs/Global Depository Receipts (GDRs) are tax exempt, provided certain conditions are met.

Capital gains on debts

Capital gains derived by foreign beneficiaries from the sale of corporate bonds placed by public offer (*obligaciones negociables*), notes issued by financial trusts (*títulos de deuda*), or government securities (except from LEBACs) should be exempt from profits tax, provided certain conditions are met.

Dividend income

Dividends, including stock dividends, are not included in the tax base by the recipient if distributed by an Argentine company (*see the Withholding taxes section for additional information*). However, tax is levied if the dividends are distributed by a foreign company.

Royalty income

Royalty income should be included as part of the taxpayer's taxable income and will be subject to the standard profits tax rate.

Foreign exchange gains/losses

The general rule is that foreign exchange results (gain or losses) have to be recognised on an accrual basis. However, in some cases, the cash basis is applicable.

Foreign exchange losses can only be offset against foreign-source taxable income.

Foreign income

Foreign income received or held undistributed abroad (in case of investments in non-stock companies) by resident corporations is subject to tax. Note that an Argentine taxpayer is immediately taxed on the passive income generated by a CFC that is directly or indirectly held by the Argentine taxpayer to the extent that more than 50% of that CFC's income is passive and is effectively subject to a tax that is lower than 75% of the applicable Argentine income tax rate. Tax losses from a foreign source can only be offset against income from a foreign source.

Deductions

Expenses necessary to generate, maintain, and preserve taxable income, and related to the company activity, are usually tax deductible, with a few exceptions, to the extent they are fair and reasonable.

Depreciation and depletion

Depreciation is generally computed on a straight-line basis over the technically estimated useful life of the assets or, alternatively, over the standard useful life (e.g. machinery and equipment: ten years; furniture: ten years). Depreciation of buildings and other construction of real estate is 2% *per annum* on cost (on a straight-line basis), unless it can be proved that useful life is less than 50 years.

Depreciation of automobiles whose original cost exceeds ARS 20,000 is not deductible. Related expenses (gasoline vouchers, insurance, rentals, repairs and maintenance, etc.) are deductible up to an amount of ARS 7,200 per automobile per year.

Conformity between book and tax depreciation is not required.

Profit or loss on the sale of depreciated property is determined with reference to cost less depreciation, and is included in ordinary taxable income.

Percentage depletion is available for natural resources (mines, quarries, woods).

Goodwill

The amortisation of goodwill cannot be deducted for profits tax purposes. At the moment of sale, the taxable gain will be calculated by deducting the cost expenses (purchase price).

With regards to self-developed goodwill, at the moment of sale the cost will be the amount of expenses incurred in obtaining it, provided it was not deducted for profits tax purposes before.

Research and development (R&D)

R&D expenditures (for the development of intangible assets) may be deducted when they are incurred or amortised over not more than five years, at the option of the taxpayer. Expenditures for R&D in connection with the creation of fixed assets form part of the assets’ cost and are amortised over their useful lives.

The amortisation of brands and licences acquired can be deducted if they have a limited term of duration.

Start-up expenses

Start-up expenses may be deducted when incurred or amortised over not more than five years, at the option of the taxpayer.

Interest expenses

The tax law establishes a restriction on the deductibility of interest and foreign exchange losses arising from debts of a financial nature contracted by taxpayers with controlling/related entities for profits tax purposes (*see Thin capitalisation in the Group taxation section*).

Bad debt

The deduction of accounting bad debts is not allowed for tax purposes. However, if the debts fulfil certain characteristics (i.e. bankruptcy, prescription, among others), and with the corresponding supporting documentation, they can be deducted.

Charitable contributions

When made to societies and associations expressly exempt from assessment of profits tax, donations are admissible deductions at up to a maximum of 5% of the donor's net taxable profits, provided certain requirements are fulfilled.

Representation expenses

If adequately documented, representation expenses are permissible deductions at up to 1.5% of the amount of salaries accrued during the fiscal year. According to the Regulatory Decree, representation expenses are payments made in order to represent the company in the market, to improve and maintain its relationship with suppliers and clients, etc.

Directors' fees

Amounts up to the greater of 25% of after-tax profit or ARS 12,500 per individual are deductible in the financial year to which they apply, provided they are approved and available for the director before the due date of the tax return or in a later year of payment.

Fines and penalties

In relation to deductibility of penalties to determine net taxable income, taxpayers are not allowed to deduct sums paid on their own account corresponding to penalties, litigation costs, penalty interest, and other costs derived from tax obligations.

Taxes

Except for profits tax and the tax on minimum notional income, all taxes are deductible.

Net operating losses

Net operating losses may be carried forward for five years. Loss carrybacks are not permitted. Furthermore, foreign-source losses must be offset against income from similar sources.

Losses on derivatives transactions with speculative purposes can only be used to offset income from the same types of transactions.

Payments to foreign affiliates

Transactions between related parties should be at arm's length (*see Transfer pricing in the Group taxation section for more information*). This principle is extended to transactions with companies that are not located in jurisdictions considered to be 'cooperative' for tax transparency purposes or located in a tax haven. Payments to foreign affiliates or related parties and companies located in a tax haven or a non-cooperative jurisdiction that represent income of Argentine source are tax deductible, provided they are paid before the due date for filing the tax return and the corresponding withholding is paid to the tax authorities. Otherwise, they would be deducted in the fiscal year in which they are paid.

Group taxation

Group taxation is not permitted in Argentina.

Transfer pricing

The transfer pricing regulations governing inter-company transactions adopt principles similar to those of the OECD, pursuant to which companies must comply with the arm's-length principle in order to determine the value of goods and services in their transactions with foreign-related companies.

The following taxpayers, among others, must generally file, together with their annual profits tax return, a supplementary return (transactions encompassed by regulations governing transfer prices) and transfer pricing study:

- Taxpayers carrying out transactions with related individuals or legal entities set up, domiciled, or located abroad. Two or more persons are considered to be related parties when one of them takes part, either directly or indirectly, in the administration, control, or capital of the other, or when a person or group of persons takes part, either directly or indirectly, in the administration, control, or capital of those persons.
- Taxpayers carrying out transactions with related individuals or legal entities not set up, domiciled, or located in countries considered to be cooperative for tax transparency purposes, whether related or not.
- Argentine residents carrying out transactions with PEs located abroad and owned by them.
- Argentine residents, owners of PEs located abroad, for transactions carried out by the latter with persons or other type of related entities domiciled, set up, or located abroad.

The Regulatory Decree provides specific rules to determine the fairness of the transfer pricing methodology. These rules are similar to those set by the OECD and contemplate six methods, including the following:

- Comparable uncontrolled price (CUP).
- Resale price method (RPM).
- Cost plus.
- Profit split method (PSM).
- Transactional net margin method (TNMM).
- Special method for export of goods with prices quoted in transparent markets.

There is no specific hierarchy, as each particular transaction must be analysed based on the assets, functions, and risks involved and on information available. Regulations establish that the most appropriate method is that which reflects the economic reality of the transactions.

Country-by-country (CbC) reporting

Through General Resolution (GR) 4130-E, the Federal Administration of Public Revenue (AFIP) established an annual information regime related to the submission of the CbC report and is aligned with Action 13 of the BEPS Action Plan regarding CbC reporting.

This obligation is applicable to those multinational enterprise (MNE) groups whose ultimate parent's total consolidated revenue is equal to or higher than 750 million euros (EUR), or its equivalent in the local currency converted to the exchange rate as of 31 January 2015, for the fiscal year prior to the one being reported. The CbC report will be filed annually, no later than the last business day of the 12th month following the end of the ultimate parent's reporting fiscal year.

Although mainly MNE groups whose ultimate parent is resident in Argentina have the obligation to submit the CbC report, other Argentine entities from MNE groups may also be required to file a CbC report if certain circumstances set forth in the aforementioned resolution take place (i.e. subrogated entities not designated, etc.).

In addition, and regardless of having the obligation or not to file the CbC report in Argentina, the provisions in Title II of said GR require all Argentine entities that are members of a MNE group to file with the AFIP information about the MNE group they belong to, including if the group is required to comply with the submission of the CbC report and, if so, which company will perform the filing on behalf of the group (i.e. the ultimate parent or a subrogate entity). The local entity must comply with this obligation no later than the last business day of the third month following the end of the ultimate parent's reporting fiscal year.

Thin capitalisation

Thin capitalisation rules apply as a restriction on the deductibility of interest and foreign exchange losses arising from debts of a financial nature that are contracted by taxpayers with related entities (whether local or foreign).

According to the 2017 tax reform, the former 2:1 debt-to-equity thin capitalisation rule was replaced with the BEPS-based rule. The deduction on interest expense and foreign exchange losses with local and foreign related parties now is limited to 30% of the taxpayer's taxable income before interest, foreign exchange losses, and depreciation. The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilised deduction capacity for three years.

Certain exceptions to the above limitation are also available.

Controlled foreign companies (CFCs)

Argentina does not have a CFC regime. However, an Argentine taxpayer would be required to immediately tax passive income generated by a CFC that is directly or indirectly held by the Argentine taxpayer to the extent that more than 50% of that CFC's income is passive and is effectively subject to a tax that is lower than 75% of the applicable Argentine income tax rate.

Tax credits and incentives

Foreign tax credit

National taxpayers are entitled to recognise a tax credit for any taxes actually paid in the countries where they have obtained foreign-source income, in respect of similar national taxes, up to a cap, which is the increase in their Argentine tax liability due to the inclusion of the foreign income. Any excess not offset in a given fiscal year may be carried forward to the next five fiscal years.

Province of Tierra del Fuego Regime

Companies set up in the province of Tierra del Fuego enjoy a general tax exemption and important benefits in customs matters. Tax exemption includes profits tax, tax on minimum notional income, tax on personal wealth, and excise tax. The VAT benefit consists of the release from payment of the technical balance of the tax (VAT debits less VAT credits). Also, a reduction of the prevailing rate for tax on financial transactions and an exemption from taxation on the transfer of fuels is contemplated.

Mining activity

An investment regime for mining activity is applicable to natural and legal persons. Mining ventures included within this regime enjoy fiscal stability (i.e. tax rates will remain basically the same) for a term of 30 years, except for VAT, which will adjust to the general regime. Furthermore, the regime grants incentives for profits tax, tax on assets, import duties, and any other tax for introduction of certain assets. Additionally, this mining investment law established an exploration recovery regime for the mining investors, which allows the reimbursement of the VAT credit balances originated in the mining exploration activity.

This regime allows the reimbursement of such VAT credits after a 12-month period since the expenditure was incurred, and only if it has been paid.

Through specifics regulations, the authorities established the requirements (e.g. filing a tax return, filing a report certified by a public accountant with respect to the VAT, a presentation to the Mining Secretary) to be followed by the taxpayers in order to apply for this benefit.

Forestry

There is an investment regime for plantation, protection, and maintenance of forests. It contains rules similar to those for mining activity tax incentives:

- Fiscal stability for a period of 30 years. The period may be extended to 50 years.
- Refund of VAT resulting from the purchase or final importation of goods, leases, or services effectively for forestry investment projects in a period of less than 365 days.

Export incentives

Exports of goods and services are exempt from VAT and excise taxes. The temporary importation of raw materials and intermediate and packaging goods for the manufacture of products for export is free from duties with the obligation of offering sufficient guarantees for the import. A reimbursement regime is in place for VAT credits paid to suppliers in relation to the export activity.

Biotechnology industry

A promotional tax regime for development and production of modern biotechnology has been introduced. Pursuant to this law, the beneficiaries of the projects that qualify for this regime are entitled to the following benefits:

- Profits tax: Accelerated depreciation of capital goods, special equipment, parts, or components of newly acquired goods destined for the promoted project.
- VAT: Early refund of the tax applicable to the assets acquired for the project.
- Social security contributions: The amount representing 50% of social security contributions actually paid on the payroll salaries involved in the project shall be converted into a tax credit bond that may be applied to payment of national taxes.

Software industry

Under a software promotion regime, taxpayers carrying out software-related activities as their main purpose may qualify for the following benefits:

- Fiscal stability for a ten-year period covering national taxes.
- Reduction of social security charges (70% of these charges may be credited against certain national taxes).
- Profits tax relief (up to 60% of the applicable tax).

While most of the software-related activities qualify for the fiscal stability benefit, the remaining incentives only apply to software R&D, quality control procedures, and software exports.

Some changes were introduced in 2011, and the period of application was extended until 31 December 2019. The possibility of using a bond tax credit, given as an amount equal to 70% of contributions to the social security system paid by the employer, as an 'advance payment' of the profits tax was provided. There is also an increase in the control mechanisms.

Energy generation through renewable sources

Through the enactment of Law 26,190, as amended by Law 27,191, and Regulatory Decree 562/2009 and 531/2016, the Argentine government launched and updated promotional measures for the energy sector with the aim of encouraging the use of renewable energy sources for the production of electricity.

According to this regime, certain tax benefits shall be granted upon request by filing the projects with the relevant authorities. Benefits include accelerated depreciation of project assets for profits tax purposes, a five-year extension on the loss carryforward, early recovery of VAT paid on the acquisition of new assets or infrastructure work, and a tax credit certificate to be applied against federal taxes.

Also, from a provincial tax perspective, Law 26,190 invites all Argentine provinces to adhere to the regime enacting local regulations with tax benefits aimed at promoting and encouraging the production of electric energy through renewable sources.

Province incentives on local taxes

Most of the provinces have legislation establishing incentives for the development of industries within their boundaries, especially industries that utilise or develop their natural resources and provide work for their residents. The incentives, in general, consist of exemptions from provincial and municipal taxes.

Various provinces have investment promotion regimes. Even when there are certain differences among these regimes, generally they include the following incentives:

- Exemption from provincial taxes, such as turnover tax, stamp duty, real estate tax.
- Reduced public utility rates.
- Support for infrastructure and equipment projects.
- Facilities for purchase, rental, or lease without charge of public property.

These regimes are not automatically applied, and a special procedure should be followed to be entitled to the respective benefits.

Free trade zones

The free trade zones offer exporters the possibility to import free from customs duties, statistics rate, and VAT all the necessary equipment for construction of a 'turnkey plant' within the zones. Furthermore, exporters manufacturing within the zones enjoy the benefit of buying supplies and raw materials from third countries, without having to pay duties or taxes that lead to increased prices.

Customs authority regulating these goods considers them as stored in a third country; consequently, incoming products are subject to inspection with the sole purpose of classifying quantity and type. In other words, goods enjoy a duty-free status until they enter the Argentine customs territory. Goods may remain in the free trade zone for a maximum period of five years.

Withholding taxes

WHT on dividend and profit distributions

As a result of the 2017 tax reform, a new WHT on dividend distributions and branch profit remittances has been introduced at a rate of 7% (while the applicable profits tax rate is at 30%) and 13% (when the profits tax rate lowers to 25%).

The tax reform also has abolished the so-called 'equalisation tax' for profits generated in taxable years starting on or after 1 January 2018. The equalisation tax was a WHT levied at a 35% rate on dividend distributions in excess of tax earnings. However, the equalisation tax still applies to dividend and branch profit distributions made out of earnings accumulated prior to 1 January 2018 that exceeded tax earnings as of the year-end prior to the relevant distribution.

Other payments

Other payments to residents and to non-residents are subject to WHT rates as follows:

	WHT (%)	
Recipient	**Interest (1)**	**Royalties (1, 2)**
Resident corporations	6/28 (3)	6 (4)
Resident individuals	6/28 (3)	6 (4)
Non-resident corporations and individuals:		
Non-treaty	15.05/35	21/28
Treaty:		
Australia	12	10/15
Belgium	0/12 (5)	3/5/10/15

Argentina

	WHT (%)	
Recipient	**Interest (1)**	**Royalties (1, 2)**
Bolivia	15.05/35	21/28
Brazil	15.05/35	21/28
Canada	12.5	3/5/10/15
Chile	4/12/15	3/10/15
Denmark	12 (5)	3/5/10/15
Finland	15	3/5/10/15
France	15.05/20 (6)	18
Germany	10/15 (7)	15
Italy	15.05/20 (5)	10/18
Mexico	12	10/15
Netherlands	12	3/5/10/15
Norway	12.5 (8)	3/5/10/15
Russia	15	15
Spain	12	3/5/10/15
Sweden	12.5	3/5/10/15
Switzerland	12	3/5/10/15
United Arab Emirates (9)	12	10
United Kingdom	12 (5)	3/5/10/15

Notes

1. Withholding from payments of interest and royalties to non-residents is based on a flat rate of 35% applied to an assumed percentage gross profit margin. This margin is not contestable, but the resultant rate may be limited by bilateral treaty. Under the 1998 tax reform, the general margin for interest paid for credits obtained abroad is 100%. However, a margin of 43% is applicable (i) if the debtor is a local bank; (ii) if the creditor is a foreign financial institution located in a country not considered as a low or no tax jurisdiction, or in countries that have signed an agreement with Argentina for exchange of information and have no bank secrecy laws, which are under the supervision of the respective central bank; (iii) if the interest is paid on a loan dedicated to the purchase of tangible assets other than cars; (iv) if the interest is paid on debt certificates (private bonds) issued by local companies and registered in certain countries that have signed an agreement with Argentina for the protection of investments; and (v) on interest paid on time deposits with local banks. 'Royalties' covers a variety of concepts. The rates given in this column relate specifically to services derived from agreements ruled by the Foreign Technology Law, as follows:
   - Technical assistance, technology, and engineering not obtainable in Argentina: 21% (35% on assumed profit of 60%).
   - Cessation of rights or licences for invention patents exploitation and technical assistance obtainable in Argentina: 28% (35% on assumed profit of 80%). On non-registered agreements, the rate is 31.5% (profit of 90% is assumed) or 35% (profit of 100% is assumed), depending on the case.

   Several other concepts of 'royalties' are subject to rates that, in turn, may be limited by treaty. A broad sample of these concepts and the non-treaty effective rates are set forth in Note 2.
2. Payments to non-residents (only) for 'royalties', rentals, fees, commissions, and so on, in respect of the following, are subject to withholding at the rates given below on the basis of assumed gross profit margins (Note 1) unless limited by treaty. The treaty concerned should be consulted to determine any limitation in each case.

Payment	**WHT (%)**
Freight and passenger bookings (other than those covered by special treaties), news and feature services, insurance underwriting	3.50
Containers	7.00
Copyright	12.25
Rental of movable assets	14.00
Motion picture, video, and sound tape rentals and royalties; radio, television, telex and telefax transmissions; any other means for projection, reproduction, transmission, or diffusion of image or sound; sale of assets located in Argentina	17.50

Payment	WHT (%)
Rental of real estate	21.00
Any other Argentine-source income (unless the non-resident is or was temporarily resident)	31.50

3. The higher tax rate is applicable on non-registered taxpayers. On interest paid to corporations by financial entities or stock exchange/open market brokers, income tax must be withheld at 3% (10% if not registered); individuals are tax exempt.
4. Resident corporations and individuals who are registered for tax purposes are subject to 6% withholding (28% if not registered).
5. Interest is exempt if paid on credit sales of machinery or other equipment, specific bank loans at preferential rate or loans by public entities.
6. The treaty limits taxation of interest to 20% (registered).
7. The 10% rate is applicable to interest on credit sales of capital equipment, any bank loan, or any financing of public works; otherwise, 15%.
8. Interest paid on loans with guarantee of the Norwegian Institute for Credit Guarantees or paid in relation to imports of industrial equipment is tax exempt.
9. The treaty was signed in December 2016 but is still pending ratification by both countries.

Tax administration

Taxable period

Tax is assessed on a fiscal-year, self-assessment basis, which may or may not match the calendar year.

Tax returns

The due date for filing the profits and the minimum notional income tax return is during the second week of the fifth month after the fiscal year-end. Tax returns are filed electronically.

Payment of tax

Instalment payments on account of both profits tax and minimum notional income tax must be made in the course of the tax year. The instalment payments must be made on a monthly basis, beginning in the first month after the due date of filing of the tax returns.

Penalties

Penalties derived from tax infractions may be applied by tax authorities, as follows:

- Failing to file the tax return: Fines range between ARS 200 and ARS 400.
- Tax omission: Fine of 100% of unpaid taxes.
- Tax avoidance: Fines range between two and six times the avoided tax.
- Certain tax infractions may be penalised by closing the business premises for two to six days. In addition, fines ranging between ARS 3,000 and ARS 100,000 may be imposed.
- Simple evasion: Entities or individuals evading payment of social security contributions or withholdings, or both, payable to the tax authorities under the social security regime, through deceitful declarations, malicious concealment, or any fraudulent or deceitful procedure, either through action or omission, in excess of ARS 200,000 per fiscal period, shall be punished with two to six years' imprisonment. Such amount will be ARS 1,500,000 in the case of taxes, it being applied by tax and by fiscal year.
- If the infringement qualifies as aggravated evasion: Imprisonment could be extended from three years and six months to nine years in certain situations.

Interest on late payments

Late payment of taxes is subject to a monthly 3% interest rate. Interest will start accruing on the day after the filing due date.

Tax audit process

The tax authorities are entitled to audit taxpayers within the statute of limitations period. Audits consist of revising the calculation of any national or provincial tax based on formal requirements. Where any assessment is issued by the tax authorities, the taxpayer is entitled to either accept it or file a claim. Assessments can be done under a real or estimated basis, depending on the specific case and the information that the taxpayers have on their transactions. In the case that the taxpayers do not accept the assessment during the administrative period, they can claim against Tax Courts before any judicial process.

There are no specific provisions about e-auditing.

Statute of limitations

The actions and powers of the tax authorities to determine and require payment of federal taxes, and to implement and enforce fines and closures planned, prescribe:

- five years in the case of registered taxpayers, as well as in the case of unregistered taxpayers who are not legally required to register with the AFIP; or that, having that obligation, had not fulfilled them and, spontaneously, regularise their situation, and
- ten years in the case of unregistered taxpayers.

Note that a one-year suspension of the statute of limitations has taken place for tax obligations related to fiscal year 2013 and preceding years.

The statute of limitations may be extended to ten years in certain provinces with respect to provincial taxes.

Topics of focus for tax authorities

Topics of focus for tax authorities include the following:

- Increasing cooperation: Tax information exchange.
- Tax treaty network still under review.
- Tax treaty benefits: Substance-over-form principle.
- High penalties and tax criminal law.
- Transfer pricing (inter-company charges and export of commodities to international intermediaries).
- Wealth tax: Applicability on branches.
- Corporate income tax: Application of inflationary adjustment.

Other issues

Legal entities

Foreign companies in Argentina, carrying out their business or activity in Argentina, must have a local legal vehicle, of which the most common legal entity types are the following:

- Branch.

- Corporation (*Sociedad Anónima* or SA).
- Local Limited Liability Company (*Sociedad de Responsabilidad Limitada* or SRL).

Argentine corporations and limited liability partnerships (LLPs), as Argentine residents, are subject to the Argentine tax system. Branches of foreign companies, whatever the nature of their activities, are taxed under the same rules as those applicable to corporations and LLPs.

Several documents are required to register an entity with the relevant authorities. Some of said documentation must be filed in the original language, duly translated and certified with the Apostille issued pursuant to The Hague Convention or legalised by the Argentine Consulate of the company's place of origin.

At present, the minimum capital requirement to incorporate an SA is ARS 100,000. There are no special requirements regarding the minimum amount of capital for SRLs.

A branch does not require capital contributions unless it is engaged in certain specific activities (e.g. banking and financing). The branch must carry its financial statements separately from those of the foreign company.

The three legal types are subject, in general terms, to the same legal, tax, and accounting regulations.

Information regimes

In the last few years, the AFIP has introduced several information regimes aimed principally to monitor transactions with local and foreign related parties.

By means of General Resolution (AFIP) 3572, a database in which local taxpayers must disclose their relationships with domestic and foreign related parties has been created. For purposes of this rule, the definition of 'related party' is broad and goes beyond economic or legal ownership.

Additionally, GR 3572 has introduced an information regime pursuant to which Argentine taxpayers are required to report, on a monthly basis, all their transactions with local related parties.

Intergovernmental agreements (IGAs)

Argentina has been very prolific in relation to the signature of tax information exchange agreements (TIEAs) over the past few years.

The authorities have signed around 24 TIEAs, including those with Andorra, Aruba, Azerbaijan, The Bahamas, Bermuda, Brazil, Cayman Islands, Chile, China, Costa Rica, Curaçao, Ecuador, Guernsey, India, Isle of Man, Italy, Jersey, Macedonia, Monaco, Peru, San Marino, South Africa, Spain, and Uruguay.

Argentina has also taken an active part in the OECD's BEPS initiatives and tax transparency discussions. During Berlin's global forum on transparency and exchange of information for tax purposes, Argentina joined the list of 54 countries that agreed to implement an automatic financial information exchange in accordance to OECD's Common Reporting Standard (CRS) as of 2016.

In this respect, several Argentine regulatory authorities (i.e. Central Bank, Securities Exchange Commission, and Superintendence of Insurance Companies) have already issued a set of regulations compelling local financial institutions to implement the necessary procedures to be in compliance with OECD's CRS. The regulation establishing the CRS was issued in December 2015 and is effective as of 1 January 2016.

Notwithstanding the above, a Foreign Account Tax Compliance Act (FATCA) IGA with the United States (US) has not yet been signed. In this regard, it is to be noted that Argentina has recently entered into a TIEA with the United States that is expected to set the basis for the signature of an IGA in the near future.

Armenia

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Significant developments

The new Tax Code of Armenia entered into force on 1 January 2018. Under the Tax Code, all separate tax laws are consolidated in the single Code alongside with major changes in tax rates, policies, and administration.

The most significant changes effective from 1 January 2018, including changes under the Tax Code, are as follows:

- The transfer pricing regulations entered into force (*see Transfer pricing in the Group taxation section*).
- Fixed and intangible assets should be depreciated using the straight-line method, replacing previously applicable depreciation by pools (*see Depreciation and amortisation in the Deductions section*).
- Some expense deductibility limits were changed or removed (*see Other significant items in the Deductions section*).
- The definition of permanent establishment (PE) of a non-resident entity is introduced under the Tax Code (*see Permanent establishment in the Corporate residence section*). Previously, there was no specific PE definition.
- The non-resident taxpayers conducting activity in Armenia through a PE should keep separate accounting books (it is no longer allowed to use an indirect taxation method while calculating Armenian corporate income tax [CIT]).
- The submission deadline of the annual CIT return is changed to 20 April (inclusive) following the reporting period (previously 15 April).
- The income received by a non-resident entity conducting activity in Armenia through a PE is considered income received by the PE if the income-supporting documents are issued in the name of that PE.
- The registered PEs may now carry forward tax losses (previously, only residents were allowed to carry forward tax losses, unless the appropriate double tax treaty [DTT] was applied).
- The withholding tax (WHT) on the income from the alienation of securities is 0% (previously 10%).
- Residents and non-resident entities conducting activity in Armenia through a PE should make quarterly CIT prepayments by the 20th day of the last month of the quarter of 20% of the CIT paid for the previous reporting period (previously 18.75%).
- Taxpayers engaged in agricultural production are exempt from CIT on that income until 31 December 2024 (previously there was no exemption period defined).
- Armenian resident companies implementing a business plan approved by the government may deduct the amount of the annual salaries for the newly created jobs from the CIT liability of that year, but not greater than 30% of the actual CIT

calculated. The incentive is applicable for five fiscal years, in addition to the year of the start of the business.
- Non-residents that do not have a registered PE in Armenia bear the responsibility to account and pay the value-added tax (VAT) for the transactions that result in Armenian VAT if the party to the transaction is not a VAT payer.
- Starting from 1 January 2018, all VAT payers should submit VAT returns on a monthly basis. Previously, the VAT payers should submit the VAT returns on a quarterly basis if they did not exceed the particular turnover threshold.
- The Law on Presumptive Tax is no longer in force as of 1 January 2018.
- Excise tax rates are changed for some products (i.e. whiskey, rum, and other alcoholic liquors) (*see Excise tax in the Other taxes section*).
- Turnover tax for income on notary activities is decreased from 20% to 10%.
- Turnover tax for income on lottery organising activities is 25% (previously lottery activities were taxed under presumptive tax with a fixed tax based on total value of lotteries sold during the month).
- Turnover tax for income on sales of newspapers by publishing companies is 1.5% (previously taxed as general trading activity at 5%).
- The customs relations in Eurasian Economic Union (EEU) member states are now regulated by The Customs Code of EEU that entered into force on 1 January 2018.

Taxes on corporate income

Armenian-resident entities, and non-resident entities doing business in Armenia through a PE, are liable for CIT. Armenia taxes residents on their worldwide income; non-residents are subject to CIT only on their Armenian-source income.

The standard CIT rate is 20%.

Taxable income is defined to be the difference between a taxpayer's gross income and deductible expenses:

- Gross income encompasses all revenues received by a taxpayer from all economic activities unless the revenues are expressly exempted under the law.
- Deductible expenses encompass all necessary and documented expenses that are directly related to conducting business unless a specific provision in the law restricts the deduction.

Note that resident entities, registered PEs, and individual entrepreneurs are required to withhold income tax at source on payments to non-residents not having a registered PE in Armenia (*see the Withholding taxes section*).

The tax base for investment funds (excluding pension funds and warranty funds), which are registered in the Republic of Armenia, and for securitisation foundations, which are established based on the Law on Asset Securitisation and Asset-backed Securities, is the sum of net assets.

The dividends paid to the shareholder of investment funds or other similar allocations provided in a different manner shall not be deducted from the net assets of the investment funds.

The CIT rate for investment funds (excluding pension funds and warranty funds) registered in the Republic of Armenia, as well as for securitisation foundations, is 0.01% of the tax base.

The turnover tax generally replaces the CIT and VAT obligations for small and medium enterprises (SMEs). The tax rate is differentiated in accordance to the income type (*see Turnover tax in the Other taxes section*).

Licence payments

Individuals (individual entrepreneurs) and legal entities engaged in certain activities should make licence payments, which replace CIT and/or VAT. Under this system, the taxpayer pays a fixed tax based on the location and the business activity base data. Licence payment rates for some activities are mentioned below.

		Monthly rate of licence payment for one unit (thousand AMD*)				
Type of activities	**Base**	**Yerevan**	**Regional centres**	**Other cities**	**Other location**	**Bordering villages**
Transportation of passengers with passenger cars	Number of cars	9.5	5.6	5.6	2.8	1.4
Organisation of billiard game	Game table	40.0	20.0	20.0	10.0	5.0
Organisation of table tennis	Game table	10.0	7.0	6.0	5.0	1.0
Barber's shops	Workplace	15.0	12.0	9.0	4.5	2.25
Technical maintenance and repairs of vehicles	Workplace	15.0	12.0	12.0	6.0	3.0

* Armenian dram

Local income taxes

Armenia does not have any provincial or local government taxes on income.

Corporate residence

Resident entities are legal and business entities whose existence is established under Armenian law. Non-resident entities are those whose existence is established under foreign law (including subdivisions of foreign entities in Armenia).

Permanent establishment (PE)

The domestic definition for a PE essentially adopts the definition for PE found in the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention.

Mainly, the non-resident's PE in Armenia is defined as the place of business in Armenia registered at the tax authorities as a taxpayer through which the non-resident performs business activity in Armenia, regardless of the period of the activity.

In particular, this will include the following:

- The place of production, processing, sorting, packaging, and/or delivery of goods.
- Any place of management.
- The place of geological research, preparatory works for mineral extraction, and/or related supervisory services.
- The place of activity in relation to installation, adjustment, and deployment of playing machines, computer and communication networks, amusement rides, transportation, or other infrastructures.
- The place of sales of goods in the territory of Armenia.
- The place of construction, montage, or assembly works, as well as the place of supervision services of those works.
- In case a joint activity agreement is signed with a non-resident to perform activity in the territory of Armenia, the PE will be the place of the entity that is responsible to report on that activity under the contract.

In addition, a non-resident's activities will create a PE if the non-resident provides services in Armenia through its employees or other hired personnel for 183 or more days in any tax year starting from the day of activities within the framework of one project or more than one related projects.

Other taxes

Value-added tax (VAT)

Armenia's current VAT law is based loosely on the principles of the European Union (EU) VAT Directive. Armenia operates the input-output model of VAT. VAT-registered persons may deduct the VAT on their inputs from the VAT charged on their sales and account for the difference to the tax authorities.

The VAT recoverable amount is the negative difference between the output and input VAT. The taxpayer may receive the VAT recoverable amount from the State Budget on a semi-annual basis, after it is substantiated by examination by the tax authorities.

The standard rate of VAT on domestic sales of goods and services and the importation of goods is 20%. Exported goods and related services are zero-rated. Advertising, consulting, marketing, design, engineering, legal, accounting, audit, data processing, and other related services provided to non-residents are zero-rated if the non-resident's place of business is outside Armenia. Various supplies, including most financial and education services, are VAT-exempt.

Import of goods from EEU non-member states by a taxpayer with the status of authorised economic operator according to Armenian tax legislation, or by a group of resident CIT payers implementing a project approved by the Armenian government, is exempt from VAT under certain condition (namely, if imported goods or goods produced as a result of processing of the imported goods are exported [including to EEU member states] within 180 days from their importation).

Services supplied in Armenia to VAT payers by non-residents that do not have a registered PE in Armenia are subject to application of a VAT reverse charge.

Non-residents that do not have a registered PE in Armenia bear the responsibility to account and pay the VAT for the transactions that result in Armenian VAT if the party to contractual relations is not a VAT payer.

The turnover tax (*see below*) generally replaces VAT obligations for SMEs. To be allowed to register for turnover tax, the taxpayer should meet the revenue threshold of the previous year.

The taxpayer may register for turnover tax for 2018 if the revenue for 2017 does not exceed AMD 115 million. If the taxpayer's revenue during 2018 exceeds AMD 115 million, the taxpayer may not be considered as a turnover taxpayer and should account for VAT on the excess sales. Taxpayers whose revenues are below the threshold may voluntarily elect to account for VAT.

The VAT registration threshold will be reduced to AMD 58.3 million starting from 1 January 2019. However, for 2019, the threshold of 2018 is AMD 115 million. If during 2019 the revenue exceeds AMD 58.3 million, the taxpayer may not be considered as a turnover taxpayer and should account for VAT on the excess sales.

Certain ownership and inter-relation thresholds and restrictions on types of business activities are also applicable for entities to be considered as turnover taxpayers.

VAT payers should file unified return of VAT and excise tax on a monthly basis before the 20th day of the month following the reporting period (inclusive).

Customs duties

Armenia is a member of the Eurasian Economic Union (EEU) along with Russia, Kazakhstan, Kyrgyzstan, and Belarus. The EEU's aim is to create a common market for the member states to raise the competitiveness of the national economies and to cooperate for sustainable growth. The EEU introduces the free movement of goods, services, capital, and people, creating a platform for common transport and reduced economic isolation.

The customs relations in EEU member states are regulated by The Customs Code of EEU that entered into force on 1 January 2018.

Customs levies are payable by persons whose goods cross the customs border of Armenia. Customs levies consist of customs duties, taxes, duties, and other mandatory charges. Customs duty is collected on the customs value of the imported goods. Importers must take into account specific EEU rules to determine the customs value on which the import tax will be applied. The general rule is that the customs value will be the price actually paid or payable for the goods when sold for export to Armenia.

Under the EEU regulations, goods imported from member countries are free of custom duties. The unified custom tariffs are applicable for the goods imported from non-member states.

VAT for the goods imported from the EEU member countries is not calculated by the customs authorities. Instead, taxpayers should calculate and pay VAT by the 20th day of the month following the month of the importation. In the meantime, within this timeframe, the taxpayer should submit the tax declaration and the statement on imported goods to tax authorities.

Excise tax

Excise tax is payable on alcoholic beverages, tobacco products, and petroleum products, whether imported or produced domestically, as follows:

Armenia

Goods	Unit of measure	Tax rate
Beer	Price excluding VAT and excise tax or customs value or purchase price or 1 litre	30%, but not less than AMD 105 for 1 litre
Grape wines and wines made of fruits and berries	Price excluding VAT and excise tax or customs value or purchase price or 1 litre	10%, but not less than AMD 100 for 1 litre
Vermouth and other grape wines	Price excluding VAT and excise tax or customs value or purchase price or 1 litre (by recalculation of 100% spirit)	50%, but not less than AMD 750 for 1 litre
Vodka made of fruits and/or berries	1 litre	AMD 800 for 1 litre
Cognac, brandy, and other spirits	Price excluding VAT and excise tax or customs value or purchase price or 1 litre (by recalculation of 100% spirit)	50%, but not less than: • AMD 3,000 for 1 litre (1 to 3 years old spirit) • AMD 3,500 for 1 litre (4 to 5 years old spirit) • AMD 6,000 for 1 litre (6 to 10 years old spirit) • AMD 8,500 for 1 litre (11 to 15 years old spirit) • AMD 14,000 for 1 litre (16 to 19 years old spirit) • AMD 22,000 for 1 litre (more than 20 years old spirit)
Other brewed drinks (apple cider, pear cider, honey-drinks)	Price excluding VAT and excise tax or customs value or purchase price or 1 litre	25%, but not less than AMD 270 for 1 litre
Ethyl spirit	Price excluding VAT and excise tax or customs value or purchase price or 1 litre (by recalculation of 100% spirit)	50%, but not less than AMD 900 for 1 litre
Spirituous liquors	Price excluding VAT and excise tax or customs value or purchase price or 1 litre	• From 1 January 2018, 73% but not less than AMD 725 for 1 litre • From 1 January 2019, 84% but not less than AMD 835 for 1 litre • From 1 January 2020, 96% but not less than AMD 960 for 1 litre • From 1 January 2021, 110% but not less than AMD 1,100 for 1 litre
Whisky and rum and other spirits	Price excluding VAT and excise tax or customs value or purchase price or 1 litre	• From 1 January 2018, 66% but not less than AMD 3,970 for 1 litre • From 1 January 2019, 76% but not less than AMD 4,560 for 1 litre • From 1 January 2020, 87% but not less than AMD 5,250 for 1 litre • From 1 January 2021, 100% but not less than AMD 6,035 for 1 litre
Tobacco products	Minimum retail price of tobacco set by the government of Armenia, excluding VAT and excise tax, or 1,000 units	• From 1 January 2018, 15% but not less than AMD 7,275 for 1,000 units • From 1 January 2019, 15% but not less than AMD 8,370 for 1,000 units • From 1 January 2020, 15% but not less than AMD 9,625 fro 1,000 units • From 1 January 2021, 15% but not less than AMD 11,070 for 1,000 units
Cigars	1,000 units	AMD 605,000
Cigarillos	1,000 units	AMD 16,500

Goods	Unit of measure	Tax rate
Lubricating oil	Price excluding VAT and excise tax or customs value or purchase price or 1 kg	50%, but not less than AMD 400 for 1 kg
Tobacco substitutes	1 kilogram	AMD 1,500
Raw oil and oil materials	1 ton	AMD 27,000
Gases produced from oil and other hydro-carbons (except compressed natural gas)	1 ton	AMD 1,000
Compressed natural gas	1,000 m^3	AMD 25,000
Petrol *	1 ton	AMD 40,000
Diesel fuel	1 ton	AMD 13,000

* If the sum of excise tax and VAT calculated for 1 ton of petrol is less than AMD 135,000, the amount of excise tax should be increased to reach the sum of excise tax and VAT equal to AMD 135,000.

Taxpayers producing excisable goods in Armenia should submit monthly VAT and excise tax unified returns and make excise tax payments by the 20th day of each month following the reporting period.

Land tax

Land tax is assessed and collected at the municipal level and is paid biannually by landowners and the permanent users of state-owned land. Tax on rented land is levied on the lessor. The land cadastre (valuation system) is used to determine the value of the land. Land tax for agricultural land is calculated at 15% of the net income determined by the cadastral evaluation. For non-agricultural land, the rate is 0.5% to 1.0% of the cadastral value of the land.

Property tax

Property tax is assessed and collected at the municipal level on buildings, motor vehicles, and means of water transport. The tax rate on buildings is 0.3%, which is paid on the cadastral value.

Property tax for motor vehicles with up to ten seats is calculated as follows:

Capacity (horsepower)	Tax rate (per horsepower)
Up to 120	AMD 200
121 to 150	AMD 300
151 to 250	AMD 300 + AMD 1,000 per horsepower in excess of 150
251 and over	AMD 500 + AMD 1,000 per horsepower in excess of 150

Property tax for motor vehicles with more than ten seats is calculated as follows:

Capacity (horsepower)	Tax rate (per horsepower)
Up to 200	AMD 100
201 and over	AMD 200

The annual property tax on motorcycles is calculated at the rate of AMD 40 for each horsepower of tax base. The annual rate of property tax on watercraft is calculated at AMD 150 for each horsepower of tax base.

Beginning from the fourth year after the year of production, the tax base for motor vehicles and means of water transport is reduced by 10% per year, up to a maximum reduction of 50%.

Legal entities should calculate property tax and pay this to the municipal budget on a semi-annual basis. The semi-annual property tax calculations should be submitted to the state bodies where the property is registered not later than the 20th day following the reporting half-year.

The Law on property tax and land tax will be replaced by the immovable property tax and vehicle property tax under the Tax Code starting from 1 January 2019.

Transfer taxes

Armenia does not have any transfer taxes.

Stamp taxes

Armenia does not have any stamp taxes.

Turnover tax

The turnover tax is payable by commercial organisations and individuals (individual entrepreneurs). The turnover tax replaces VAT and (or) CIT obligations for SMEs, with the exception of individual entrepreneurs and notaries for whom it replaces only VAT.

There are certain revenue thresholds that taxpayers should not exceed to be considered as turnover taxpayers (*see description of Value added-tax [VAT] above*).

Businesses producing/importing excisable goods are required to account for VAT on their sales.

Certain ownership and inter-relation thresholds are also applicable for entities to be considered as turnover taxpayers.

The taxpayer should file an application to the tax authorities before 20 February of the calendar year to become a turnover taxpayer. Note that there are also some other requirements that the taxpayer should meet to become a turnover taxpayer. Subdivisions of foreign companies in Armenia (i.e. PEs) cannot become turnover taxpayers.

The turnover tax is imposed on the reporting period income (revenue) as follows:

Type of income	Tax rate (%)
Trading activities *	5.0
Production activities	3.5
Newspaper sales by publishing companies	1.5
Rental income, interest, royalties, and assets' disposal (including estate property)	10.0
Income on notary activities	10.0
Organising lottery activities	25.0
Income on other type of activities	5.0

* The tax rate on the sale of secondary raw materials is 1.5%. Turnover taxpayers engaged in trade activities may deduct 4% of cost of the goods for sale (including imported goods) purchased during the reporting period from the turnover tax payable for that period, provided such purchases are properly documented. However, the final tax payable for the trading activities, after the deductions, should not be less than 1.5% of the taxable turnover for the reporting period. The purchases not deducted in the reporting period because of the limitations above may be deducted in the future periods.

Turnover taxpayers are required to submit tax calculation on a quarterly basis and make tax payment within 20 days following the end of the reporting period.

Taxation of a family business

Entities and/or individual entrepreneurs that qualify as a family business enjoy exemption from all state taxes. Family businesses pay only monthly income tax in the amount of AMD 5,000 per individual engaged in the business and receiving income.

The business activity is considered a family business if the annual turnover (net of VAT) of an entity does not exceed AMD 18 million for the previous year and if at least two family members (parent, spouse, child, sister, brother) are engaged in that business. Note that there are also some other limitations for entities to become qualified as a family business.

Payroll taxes

Payroll income paid by the employer (tax agent) is subject to final withholding on a monthly basis.

Dividends received by foreigners are subject to 10% income tax (i.e. dividends resulted from the activities after 1 January 2017), and dividends received by Armenian citizens are subject to 5% income tax (i.e. dividends resulted from the activities after 1 January 2018).

The tax withheld from the dividends is subject to refund if the dividend received from a resident entity is invested in the capital of the same resident entity during the same tax year.

Social security contributions

Mandatory contributions to pension funds are applicable for both Armenian and foreign citizens who were born after 1 January 1974 (inclusive). However, some employees could have suspended the payment of social contributions until 1 July 2018 by submitting an appropriate application.

Employers should automatically enrol all workers (except those who submitted an application by 25 December 2014 to suspend the social payments) into a pension scheme and withhold contributions in accordance to the following rates:

- If the monthly gross income is up to AMD 500,000, the employer should withhold monthly social payment at a rate of 5%.
- If the monthly gross income is above AMD 500,000, the employer should withhold a contribution in the amount of the difference of 10% of the income and AMD 25,000.

The maximum amount of monthly social payment is capped at AMD 25,000 by 1 July 2020.

The state contributes another 5% per month to the pension fund from its side, capped at AMD 25,000.

Branch income

When a non-resident company conducts business in Armenia through a subdivision (i.e. a branch or a representative office) and maintains separate accounting records for that subdivision, taxable income generally should be determined on the same basis as for resident entities. Note that a subdivision is taxable on dividends received from Armenian companies.

The non-resident taxpayers conducting activity in Armenia through subdivision (i.e. PE) should keep separate accounting books.

The income received by a non-resident entity conducting activity in Armenia through a PE is considered income received by the PE if the supporting documents of income received are issued in the name of the PE.

Armenia has no special tax rules for non-commercial representative offices established to engage in liaison-type activities. Such offices are subject to the normal CIT, but an exemption from CIT may be available under a relevant tax treaty if the activities of the representative office are not sufficient to constitute a PE for the foreign entity.

See the Withholding taxes section for a list of countries with which Armenia has a tax treaty.

Income determination

Taxable profits are defined as a positive difference between a taxpayer's gross income and deductible expenses. Gross income encompasses all revenues received by a taxpayer from all economic activities, unless the revenues are expressly exempt from inclusion under the law. Deductible expenses encompass all necessary and documented expenses that are directly related to conducting business, unless a specific provision in the law restricts the deduction.

Inventory valuation

Inventories are stated at their cost. First in first out (FIFO) or average cost methods of valuation are generally used for tax purposes.

The assets' revaluation is not considered for CIT purposes, unless the revaluation of certain assets is prescribed under the law.

Capital gains

Capital gains are included in taxable income. Non-residents are taxable on the realised capital gains from the increase of the value of the assets located in Armenia. Capital gains received by non-residents on sale of securities are taxed at 0% WHT.

Dividend income

Dividends derived by an Armenian entity from another Armenian entity are exempt from tax. Dividends derived by non-residents from Armenian entities are subject to 10% WHT unless relief is available under a relevant tax treaty (*see the Withholding taxes section*).

The dividend income should be considered received on the day of the decision by the shareholders to distribute dividends.

Interest income

Interest income attracts normal CIT treatment.

Royalty income

Royalty income attracts normal CIT treatment.

Foreign income

Resident entities are liable to Armenian tax on their worldwide income. Foreign taxes should be available for credit against Armenian tax liabilities, up to the amount of Armenian tax payable on the foreign income.

There are no provisions in the Tax Code allowing any tax deferral on income earned abroad.

Deductions

Expenses incurred in the furtherance of a taxpayer's business activities generally are deductible, unless a specific provision in the Tax Code provides otherwise. Expenses that are not supported by relevant documentation are not deductible.

Depreciation and amortisation

Fixed assets owned (leased) by the taxpayer and ready for use should be depreciated using the straight-line method. The minimum periods for depreciation (to be applied on the initial value) for depreciating fixed assets are:

Asset	Minimum depreciation period (years)
Industrial and commercial buildings, engineering constructions, and transmission devices	20
Hotels, resorts, rest houses, educational institutions	10
Robot equipment and assembly lines	3
Calculating devices and computers	1
Fixed assets with value up to AMD 50,000	1
Production equipment	5
Other fixed assets (including labour livestock, perennial plantings, and capital investments for land improvement)	8

Intangible assets may be amortised using the straight-line method over the lesser of the asset's useful economic life or ten years.

Land may not be depreciated. Capital investments for land improvement are depreciated over eight years.

Goodwill

Payments with respect to goodwill and impairment losses of goodwill are not deductible in Armenia.

Start-up expenses

Start-up expenses are fully deductible, provided they are properly documented.

Interest expenses

As a general rule, interest is deductible if the related debt is used to fund business activities of the taxpayer. However, the following items are not deductible from gross income:

- Part of interest on loan and credits (including interest amounts calculated within the framework of financial lease contracts) exceeding the amount of twice the settlement rate set by the Central Bank of Armenia on 31 December of the tax year. Currently, the deductible interest rate is capped at 24%.
- Part of yearly interest on loans attracted from non-bank and non-credit entities that, according to fiscal year results, is above:
  - the two-fold positive amount of the equity of the taxpayer (excluding banks and credit organisations) on the last day of the fiscal year, and
  - the nine-fold positive amount of the equity of the taxpayer, which is a bank or credit organisation, on the last day of the fiscal year.

  Equity is the difference between assets and liabilities calculated for tax purposes.

  In the event of a negative amount of equity on the last day of the fiscal year, interest on loans attracted from non-bank and non-credit organisations should not be deducted from the gross income.

  The above provisions do not apply to interest on loans received from international development institutions included in the list specified by the Armenian government, as well as on interest on borrowing attracted from placement of debt securities through public offerings.

- Interest on loans received by non-bank and non-credit organisations if the amounts of these loans are provided to other taxpayers on an interest-free basis.
- The part of interest on loans received by non-bank and non-credit organisations that is above interest received on sub-lending of those loans to other taxpayers.

Lease payments

Lease payments are generally deductible, except for the following cases:

- Lease payments on fixed assets and/or intangible assets leased by the taxpayer are not deductible if they are provided to other taxpayers for free use.
- The part of lease payments on fixed assets and/or intangible assets leased by the taxpayer that is above lease payments received on sub-lease on those assets to other taxpayers.

Bad debt

A taxpayer is entitled to deduct bad debts if the taxpayer creates a reserve and allocates the amount of bad debt in the following proportions:

- Up to 90 days from the due date: 0%.
- From 91 to 180 days from the due date: 25%.
- From 181 to 270 days from the due date: 50%.
- From 271 to 365 days from the due date: 75%.

Beyond 365 days, bad debts of less than AMD 100,000 may be deducted. For larger debts, the company would need to have pursued the debt through the courts before a deduction may be taken.

Charitable contributions

Expenses on aid, food organisation for individuals, as well as organisation of social-cultural events for them, are deductible in amounts of up to 0.25% of gross income.

Cost of assets, works, and services provided to non-commercial organisations, libraries, museums, public schools, boarding-houses, nursing homes, orphanages, and hospitals are deductible in amounts of up to 0.25% of gross income.

Fines and penalties

Commercial fines and penalty expenses are deductible for CIT purposes. Fines and penalties paid to the state or municipal budgets are not deductible.

Taxes

Non-refundable (non-credited) taxes (e.g. property tax, land tax, expensed VAT), duties, and other obligatory payments are deductible for CIT purposes.

Other significant items

The deductibility of the following common items is limited for CIT purposes:

- Expenses for business trips outside Armenia are limited to 5% of the gross income of the reporting year (for the tax year that includes the date of the registration of the taxpayer, the deductibility limit is not applied). However, up to 80% of sales turnover for execution of works and/or delivery of services indicated in the contract signed with the customer or provided separately in the settlement document endorsed by the customer can be deducted in the event of execution of works and/or delivery of services outside the territory of Armenia.
- Representative expenses are limited to the lesser of 0.5% of the gross income of the reporting year or AMD 5 million.
- Expenses on management services received from non-resident companies or individuals are limited to 2% of the gross income of the reporting year. For the management services incurred during the tax year of the state registration, if 2% of the gross income is less than AMD 2 million, it is allowed to deduct the management service expenses up to AMD 2 million.
- Funded contributions made within the framework of the voluntary funded pension scheme are limited to 7.5% of the salary of the employee.

Net operating losses

Companies are entitled to carry forward losses to the five subsequent income years. Armenian law does not allow the carryback of losses.

Payments to foreign affiliates

Payments to foreign affiliates are deductible if they meet the normal tests for deductibility.

Group taxation

There are no group taxation provisions available in Armenia.

Transfer pricing

The transfer pricing regulations entered into force on 1 January 2018 under the Tax Code. This will have a significant impact on many taxpayers, as previously there was no transfer pricing legislation in Armenia.

The new regulations define the scope of transfer pricing control, introduce the arm's-length principle and transfer pricing methods, define sources of information for analysing transfer pricing, determine transfer pricing documentation requirements, and establish other important provisions.

Overview of the transfer pricing regulations

The new rules are aimed at transactions between related parties and transactions with tax havens. They will apply to the taxpayers whose sum of controlled transactions exceed AMD 200 million in any reporting year.

For application of the transfer pricing rules, Armenian tax authorities will focus on completeness of calculation and payment of the following taxes:

- CIT.
- VAT.
- Mineral royalty tax (for the use of metal mineral resources).

Thin capitalisation

Armenia does not have thin capitalisation rules. However, there are certain limitations on deductibility of interest expenses (*see Interest expenses in the Deductions section*).

Controlled foreign companies (CFCs)

There are no CFC rules in Armenia.

Tax credits and incentives

The Tax Code provides additional tax incentives to Armenian resident entities meeting several criteria under the government's export promotion-oriented program. The group of entities involved in the program approved by the government enjoy CIT rates reduced up to tenfold from the general 20% CIT rate. Mainly, the group of companies exclusively engaged in exports of goods and services with an annual group turnover of at least AMD 50 billion will enjoy a 2% reduced CIT rate. For the group of companies whose total annual export turnover is at least AMD 40 billion, the CIT rate will be reduced to 5%. Note that there are several other conditions the companies should meet to be eligible for the program.

The CIT for the resident companies implementing special construction projects exclusively outside Armenia and approved by the government is reduced to a 5% rate.

Taxpayers engaged in agricultural production are exempt from CIT on that income until 31 December 2024.

Taxpayers engaged in production of hand-made carpets are exempt from CIT on the income received from the sale of hand-made carpets.

Taxpayers operating in free economic zones are exempt from CIT in respect of income received from activities performed in free economic zones in Armenia. Armenian resident companies implementing a business plan approved by the government may deduct the amount of the annual salaries for the new jobs created from the CIT liability of that year, but not greater than 30% of the actual CIT calculated. The incentive is applicable for five fiscal years, in addition to the year of the start of the business.

Foreign tax credit

Tax residents are allowed to credit foreign taxes paid on income received abroad against their Armenian tax liabilities. The amount of foreign tax credit is limited to the amount of Armenian tax that would arise from the equivalent income in Armenia.

Withholding taxes

Payments to non-residents are subject to the following WHT rates:

- Payments for insurance, reinsurance, and transportation are subject to WHT at the rate of 5%.
- Dividends, interests, royalties, income from the lease of property, and capital gains (except capital gains from the sale of securities) are subject to WHT at the rate of 10%.
- Capital gains from the sale of securities are subject to WHT at the rate of 0%.
- Other income (from services) received from Armenian sources is subject to WHT at the rate of 20%.

WHT is required to be transferred to the budget not later than the 20th day following the quarter that includes the date of the income payment. A WHT return should be submitted by the 20th day following the reporting quarter.

WHT rates for non-residents may be reduced under a relevant tax treaty.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	10	10	10
Treaty:			
Austria	5/15 (1)	0/10 (2)	5
Belarus	10/15 (19)	10	10
Belgium	5/15 (1)	0/10 (2)	8
Bulgaria	5/10 (3)	5/10 (14)	5/10 (11)
Canada	5/15 (4)	10	10
China, People's Republic of	5/10 (5)	10	10
Croatia	0/10 (6)	10	5
Cyprus	0/5 (16)	5	5
Czech Republic	10	0/5/10 (10)	5/10 (11)
Estonia	5/15 (7)	10	10
Finland	5/15 (7)	5	5/10 (8)
France	5/15 (9)	0/10 (12)	5/10 (13)
Georgia	5/10 (5)	10	5
Germany	7/10 (18)	5	6
Greece	10	10	5
Hungary	5/10 (5)	5/10 (14)	5

Armenia

Recipient	WHT (%) Dividends	Interest	Royalties
India	10	10	10
Indonesia	10/15 (20)	10	5
Iran	10/15 (20)	10	5
Ireland	0/5/15 (21)	0/5/10 (10)	5
Italy	5/10 (22)	10	7
Kazakhstan	10	10	10
Kuwait	5	5	10
Latvia	5/15 (7)	10	10
Lebanon	5/10 (5)	8	5
Lithuania	5/15 (7)	10	10
Luxembourg	5/15 (1)	0/10 (15)	5
Moldova	5/15 (7)	10	10
Netherlands	0/5/15 (24)	5	5
Poland	10	5	10
Qatar	5/10 (23)	5	5
Romania	5/10 (5)	10	10
Russia	5/10 (17)	10	0
Serbia	8	8	8
Slovakia	5/10 (28)	0/10 (29)	5
Slovenia	5/10 (5)	10	5
Spain	0/10 (25)	5	5/10 (11)
Sweden	0/5/15 (30)	5	5
Switzerland	5/15 (26)	10	5
Syria	10	10	12
Tajikistan	10	10	10
Thailand	10	10	15
Turkmenistan	5/15 (7)	10	10
Ukraine	5/15 (7)	10	0
United Arab Emirates	3	0	5
United Kingdom and Northern Ireland	5/10/15 (27)	5	5

Notes

1. The direct ownership threshold for the 5% rate is 10%. The 15% rate applies in other cases.
2. The 0% rate applies to the sale on credit of industrial, commercial, and scientific equipment, and capital goods, and to interest on loans granted by banks. The 10% rate applies in other cases.
3. The 5% rate applies if the recipient company directly holds at least 100,000 United States dollars (USD) of the capital of the company paying dividends. The 10% rate applies in other cases.
4. The 5% rate applies if the recipient company directly owns at least 25% of the capital of the company paying dividends and the capital invested exceeds USD 100,000. The 15% rate applies in other cases.
5. The 5% rate applies if the beneficial owner is a company that directly owns at least 25% of the capital of the company paying dividends. The 10% rate applies in other cases.
6. The 0% rate applies if the recipient company directly or indirectly owns at least 25% of the capital of the company (during the latest two calendar years) paying dividends, provided that such dividends are tax exempt in the recipient company country. The 10% rate applies in other cases.
7. The 5% rate applies if the beneficial owner is a company that directly owns at least 25% of the capital of the company paying dividends. The 15% rate applies in other cases.
8. The 5% rate applies to royalties on copyright on software, trademark, model or project, industrial, commercial, scientific information (know-how) etc. The 10% rate applies to copyright royalties, including films, etc.
9. The 5% rate applies if the recipient company directly or indirectly holds at least 10% of the capital of the company paying dividends. The 15% rate applies in other cases.
10. The 0% rate applies to government debt and government-assisted debt. The 5% rate applies to interest on loans or credit granted by banks. The 10% rate applies in other cases.

11. The 5% rate applies to literary, artistic, or scientific work copyright royalties and to film and broadcasting royalties. The 10% rate applies in other cases.
12. The 0% rate applies to the credit sale of industrial, commercial, or scientific equipment, to the credit sale of merchandise or services, and to loans granted by a bank. The 10% rate applies in other cases.
13. The 5% rate applies to copyright royalties. The 10% rate applies in other cases.
14. The 5% rate applies to interest on loans or credit granted by banks. The 10% rate applies in other cases.
15. The 0% rate applies to interest on loans granted by banks. The 10% rate applies in other cases.
16. The 0% rate applies if the beneficial owner has invested at least 150,000 euros (EUR) in equity. The 5% rate applies in other cases.
17. The 5% rate applies if the recipient company directly holds at least 25% of the capital of the paying company. The 10% rate applies in other cases.
18. The 7% rate applies if the beneficial owner is a company (not partnership) that directly owns at least 25% of the capital of the company paying dividends. The 10% rate applies in other cases.
19. The ownership threshold for the 10% rate is 30%. The 15% rate applies in other cases.
20. The 10% rate applies if the beneficial owner is a company that directly owns at least 25% of the capital of the company paying dividends. The 15% rate applies in other cases.
21. The ownership threshold for the 0% rate is 25% (during the latest two calendar years), provided that such dividends are tax exempt in the recipient company country. The direct ownership threshold for the 5% rate is 10%. The 15% rate applies in other cases.
22. The 5% rate applies if the company receiving dividends has directly owned at least 10% of the capital (representing at least USD 100,000) of the company paying dividends for at least 12 months. The 10% rate applies in other cases.
23. The 5% rate applies if the capital invested by the company receiving the dividends exceeds USD 100,000. The 10% rate applies in other cases.
24. The ownership threshold for the 5% non-portfolio rate is 10%. The 0% rate applies if the dividends out of which the profits are paid have been effectively taxed at the normal rate for profits tax and the dividends are exempt income to the Dutch recipient. The 15% rate applies in other cases.
25. The ownership threshold for the 0% rate is 25% (during the latest two calendar years), provided that such dividends are tax exempt in the recipient company country. The 10% rate applies in other cases.
26. The 5% rate applies if the recipient company directly holds at least 25% of the capital of the paying company and the capital invested exceeds 200,000 Swiss francs (CHF). The 15% rate applies in other cases.
27. The 5% rate applies if the recipient company directly or indirectly owns at least 25% of the capital of the company paying dividends and the capital invested is at least 1 million pound sterling (GBP). The 15% rate applies to the income derived directly or indirectly from immovable property by an investment that distributes most of this income annually and income from such immovable property is exempted from tax. The 10% rate applies in other cases.
28. The 5% rate applies if the beneficial owner is a company (not partnership) that directly owns at least 10% of the capital of the company paying dividends. The 10% rate applies in other cases.
29. The 0% rate applies to government debt and government-assisted debt. The 10% rate applies in other cases.
30. The ownership threshold for the 0% rate is 25% (during the latest two calendar years), provided that such dividends are tax exempt in the recipient company country. The ownership threshold for the 5% rate is 10%. The 15% rate applies in other cases.

Tax administration

Taxable period

In Armenia, the taxable period is the calendar year.

Tax returns

The annual CIT return for resident entities must be filed by 20 April.

Payment of tax

The tax corresponding to the CIT return for resident entities is payable by 20 April.

Taxpayers should make advance CIT payments by the 20th day of the last month of each quarter (unless they applied for the alternative method of advance payments, *see below*). Each advance payment is equal to 20% of the CIT of the previous year. For payments before the previous year's tax is calculated (e.g. January to March), tax is paid based on the last filed tax return, and an adjustment is made in the first advance tax payment made after the previous year's tax is calculated to correct the amount paid. If advance payments exceed the CIT liability for the year, the excess may be refunded.

Taxpayers are not required to make advance CIT payments during the year of registration as long as they did not submit an application for the alternative method of advance payments.

Alternative method of advance payments

Companies and PEs are allowed to make quarterly CIT advance payments equal to 2% of the revenue generated from the sales of goods and services provided in the previous quarter, provided they submitted an application of selecting the alternative CIT prepayment method by 20 March of the corresponding year. Quarterly payment should be made by the 20th day of the last month of each quarter.

Tax audit process

Risk based audits

For the purposes of planning audits, the authorities develop risk criteria that are approved by the Armenian government. Based on the risk criteria, entities are classified into the following three categories:

- High risk entities.
- Medium risk entities.
- Low risk entities.

The authorities should approve the audit plan (list of audit targets) before 1 June of the preceding year for the 12-month period beginning on 1 July. The list of audit targets is published during three days after the audit plan has been approved.

Tax audits

The tax authorities may carry out scheduled audits a maximum of once each year for high risk taxpayers, once each three years for medium risk taxpayers, and once each five years for low risk taxpayers.

Business entities must be notified of the audit in writing at least three days before the scheduled audit.

The tax inspector must present a written order to the taxpayer outlining the scope and period of the tax audit before starting the audit. The written order specifies the names of the officials who may participate in the audit.

For normal business entities, the scheduled audit should be carried out within 15 business days, although the period may be extended by up to ten days. For companies whose annual revenue exceeds AMD 3 billion, the period may be extended by up to 75 business days.

Statute of limitations

The statute of limitations is four years.

Topics of focus for tax authorities

There are no specific topics of focus for the tax authorities. In practice, the tax authorities perform a comprehensive audit of the taxpayer's books, covering all taxes and mandatory payments.

Other issues

Intergovernmental agreements (IGAs)

A Model 2 IGA is treated as 'in effect' by the US Treasury as of 8 May 2014.

On 12 February 2018, Armenia signed a Model 2 IGA with the United States of America to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA).

Australia

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Significant developments

The corporate tax rate of 27.5% is extended from the 2017/18 income year to those small business corporate tax entities with an aggregated turnover of less than 25 million Australian dollars (AUD), and from the 2018/19 income year to those with an aggregated turnover of less than AUD 50 million. After the end of the 2023/24 income year, the 27.5% rate for these entities will reduce progressively to 25% by the 2026/27 income year. Under currently enacted law, the corporate tax rate for all other corporate tax entities will remain at 30% (however, there is a proposal to progressively reduce the corporate tax rate for all entities, not just those noted above). *See the Taxes on corporate income section*.

Accelerated depreciation applies to certain depreciating assets with a cost of up to AUD 20,000 acquired and installed ready for use between 12 May 2015 and 30 June 2018 for small business entities. The government has introduced law into Parliament that will extend the measure for a further 12 months, until 30 June 2019. See *the Deductions section for more information*.

From 1 July 2018, the Australian goods and services tax (GST) is payable on certain supplies of low value goods (valued at AUD 1,000 or less) that are purchased and imported by Australian consumers.

The Australian government is seeking to implement the Organisation for Economic Co-operation and Development (OECD) hybrid mismatch rules, which will generally apply to income years commencing on or after 1 January 2019. *See the Group taxation section for more information*.

The Junior Minerals Exploration Incentive (JMEI) replaced the exploration development incentive (EDI) (which ceased to apply on 30 June 2017) and enables eligible minerals exploration companies to generate tax credits for new shareholders by giving up a portion of their tax losses from greenfield mineral exploration expenditure, which can then be distributed to shareholders. The scheme applies from 1 July 2017 until 30 June 2021, with total credits limited to AUD 100 million.

The non-final withholding tax (WHT) rate that applies to foreign residents that dispose of certain taxable Australian property increased to 12.5% from 1 July 2017. *See Capital gains in the Income determination section for more information*.

On 7 June 2017, Australia signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS). *See the Other issues section for more information*.

Australia has implemented a levy (known as the Major Bank Levy) on Australian authorised deposit-taking institutions with total liabilities of greater than AUD 100 billion, with effect from 1 July 2017. *See the Other taxes section for more information.*

Taxes on corporate income

Companies that are residents of Australia are subject to Australian income tax on their worldwide income. Generally, non-resident companies are subject to Australian income tax on Australian-sourced income only. However, where a company is resident in a country with which Australia has concluded a double taxation agreement (DTA), Australia's right to tax business profits is generally limited to profits attributable to a permanent establishment (PE) in Australia.

Under currently enacted law, all companies are subject to a federal tax rate of 30% on their taxable income, except for 'small business' companies, which are subject to a reduced tax rate of 27.5% up to and including the 2023/24 income year, after which the rate will progressively reduce to 25% for the 2026/27 and later income years. The reduced tax rate applies only to those companies who carry on business and who, together with certain 'connected' entities, fall below certain aggregated turnover thresholds. For the 2017/18 year, the aggregated turnover threshold is AUD 25 million, and for the 2018/19 and later income years, it is AUD 50 million. The 27.5% rate for 'small business' entities subsequently will be reduced to:

- 27% for the 2024/25 income year
- 26% for the 2025/26 income year, and
- 25% for the 2026/27 and later income years.

Integrity measures are currently before Parliament to ensure that, from 1 July 2017, a company will not qualify for the reduced rate unless the passive income (including interest, rents, and net capital gains) that it derives represents no more than 80% of its total assessable income for the year.

There is a proposal to progressively reduce the corporate tax rate to 25% for all entities, not just those noted above, by the 2026/27 income year.

Local income taxes

There are no state or municipal taxes on income in Australia.

Corporate residence

A company is a resident of Australia for income tax purposes if it is incorporated in Australia or, if not incorporated in Australia, it carries on business in Australia and either (i) its central management and control are in Australia or (ii) its voting power is controlled by shareholders who are residents of Australia.

Permanent establishment (PE)

The concept of a PE is established in both domestic law and various DTAs that have been concluded with Australia. Where a company is resident in a country with which Australia has a DTA, it is important to have regard to the definition of PE contained therein as this will generally apply in priority to the domestic law.

Broadly, under Australia's domestic law, a PE is a place at or through which a person carries on any business, and includes:

- A place where the person is carrying on business through an agent (except where the agent does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person).
- A place where the person has, is using, or is installing substantial equipment or substantial machinery.
- A place where the person is engaged in a construction contract.
- Where the person is engaged in selling goods manufactured, assembled, processed, packed, or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control, or capital of the other person or another person participates in the management, control, or capital of both of those persons, the place where the goods are manufactured, assembled, processed, packed, or distributed.

Most DTAs contain a definition of PE that is similar, though not identical, to the definition under domestic law.

Other taxes

Goods and services tax (GST)

The federal government levies GST at a rate of 10% and distributes the revenue to state governments. The GST is a value-added tax (VAT) applied at each level in the manufacturing and marketing chain and applies to most goods and services, with registered suppliers getting credits for GST on inputs acquired to make taxable supplies.

Food, with some significant exceptions; exports; most health, medical, and educational supplies; and some other supplies are 'GST-free' (the equivalent of 'zero-rated' in other VAT jurisdictions) and so not subject to GST. A registered supplier of a GST-free supply can recover relevant input tax credits, although the supply is not taxable.

Residential rents, the second or later supply of residential premises, most financial supplies, and some other supplies are 'input-taxed' ('exempt' in other VAT jurisdictions) and are not subject to GST. However, the supplier cannot recover relevant input tax credits, except that financial suppliers may obtain a reduced input tax credit of 75% of the GST on the acquisition of certain services.

Health insurance is GST-free. Life insurance is input-taxed. General insurance is taxed. Reverse charges may apply to services or rights supplied from offshore, where the recipient is registered or required to be registered, and uses the supply solely or partly for a non-creditable supply.

GST is applicable to cross-border supplies of digital products and services imported by Australian consumers from 1 July 2017. This measure ensures that digital products and other imported services supplied to Australian consumers by foreign entities are subject to the GST. Non-resident suppliers are required to register, collect, and remit GST on the digital products and services that they provide to Australian consumers.

The way Australia's GST rules apply to all cross-border supplies that involve non-resident entities operate to ensure that non-resident businesses do not have to engage in Australia's GST system unnecessarily. This includes switching off the GST liability for certain supplies between non-residents and extending the GST-free rules to certain supplies made to non-residents.

Since 1 July 2017, there is no double taxation of digital currencies by ensuring that supplies of digital currency receive equivalent GST treatment to supplies of money.

From 1 July 2018, GST is payable on certain supplies of low-value goods (valued at AUD 1,000 or less) that are purchased by consumers and are imported into Australia.

Wine equalisation tax (WET)

The federal government levies WET at the wholesale level at a rate of 29%, in addition to 10% GST, which is calculated on the price including the WET, and it applies to wine from grapes, fruit and certain vegetables, mead, and sake. Retailers do not receive an input tax credit for WET. A rebate is available to a wine producer of 29% of the wholesale price (excluding WET or GST) for wholesale sales, and of 29% of the notional wholesale selling price for retail sales and applications for own use (up to a maximum rebate of AUD 500,000 before 1 July 2018, and AUD 350,000 from 1 July 2018).

Luxury car tax

The luxury car tax is levied by the federal government at the rate of 33% of the value of the car that exceeds the luxury car tax threshold (AUD 75,526 for fuel-efficient vehicles and AUD 66,331 for other vehicles in the 2018/19 financial year) and is payable on the GST-exclusive value above the threshold. No input tax credit is available for luxury car tax, regardless of whether the car is used for business or private purposes.

Customs duties

Imports into Australia are subject to duties under the Australian Customs Tariff. The top duty rate is 5%.

Australia currently has comprehensive free trade agreements with Chile, China, Japan, Korea, Malaysia, New Zealand, Singapore, Thailand, and the United States. In addition, a regional free trade agreement between Australia, New Zealand, and Southeast Asian nations progressively eliminates all barriers to trade in goods, services, and investments. Australia has also concluded negotiations on a Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, and Vietnam, and a separate free trade agreement with Peru.

Excise duties

Excise duties are imposed at high levels on beer, spirits, liqueurs, tobacco, cigarettes, and petroleum products. Excise rates for tobacco, alcohol, and fuel are indexed bi-annually based on movements in the consumer price index (CPI). Some examples of current excise rates include:

- Beer not exceeding 3% by volume of alcohol packaged in an individual container not exceeding 48 litres: AUD 42.50 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15.
- Tobacco in stick form not exceeding in weight 0.8 grams per stick of actual tobacco content: AUD 0.71046 per stick.
- Petroleum condensate, crude petroleum oil, and diesel: AUD 0.409 per litre.

- Liquefied petroleum gas (LPG), other than LPG exempted from excise duty: AUD 0.133 per litre.

A fuel tax credit system provides a credit for fuel tax (excise or customs duty) that is included in the price of taxable fuel. Broadly, credits are available to entities using fuel in their business and to households using fuel for domestic electricity generation and heating.

Land tax

All states and territories (except the Northern Territory) impose a tax based on the unimproved capital value of land. In general, the principal place of residence and land used for primary production is exempt from land tax.

Stamp duty

All states and territories impose a stamp duty on a wide variety of transactions at different rates. All jurisdictions impose a stamp duty on real estate conveyances, but most exempt conveyances of goods (not associated with other property) from stamp duty. The imposition of duty on share transfers involving unlisted entities differs from state to state. Corporate reconstruction exemptions are available. Advice from a stamp duty specialist should usually be obtained where substantial stamp duty may be imposed because the amount of duty may depend on the form of the transaction.

Fringe benefits tax (FBT)

The federal government levies FBT on employers at the rate of 47% on the 'grossed-up value' of non-salary and wages fringe benefits provided to employees (and/or the employee's associates) by the employer or associates. The grossing-up of the value ensures tax neutrality between providing benefits and cash remuneration. FBT generally is deductible for income tax purposes. There are some exemptions from FBT, including some minor benefits, remote area housing in certain circumstances, and specified relocation costs. In addition, there are some concessional valuation rules, in particular for motor vehicles and certain living-away-from-home benefits.

Payroll tax

States and territories impose a tax on employers' payroll (broadly defined). The various jurisdictions have harmonised their payroll tax legislation, but some differences remain, particularly tax rates and the thresholds for exempting employers whose annual payroll is below a certain level, after taking into account grouping rules. For example, in New South Wales, the rate for the year ended 30 June 2018 is 5.45% with an annual exemption threshold of AUD 750,000. In Victoria, the general rate for the year ended 30 June 2018 is 4.85% (except for regional Victorian employers, where it is 3.65%), and the annual exemption threshold is AUD 625,000. A variety of rates and thresholds apply in other state and territory jurisdictions.

Superannuation guarantee levy

Legislation requires employers to contribute a certain percentage of an employee's earnings base, subject to limited exceptions, to a registered superannuation fund or retirement savings account on behalf of the employee. Failure to make these contributions will result in the employer being liable for a non-deductible superannuation guarantee charge.

The current superannuation guarantee percentage is 9.5% and will remain so until 30 June 2021. From 1 July 2021, the rate will increase to 10% and will progressively increase up to 12% from 1 July 2025.

No level of Australian government imposes a social security levy.

Major Bank Levy

Australia has implemented a levy (known as the Major Bank Levy) on Australian authorised deposit-taking institutions (ADIs) with total liabilities of greater than AUD 100 billion, with effect from 1 July 2017. The levy is imposed at a rate of 0.015% on certain liabilities of the ADI that are reported to the regulator on a quarterly basis under a reporting standard.

Insurance tax

States impose taxes on insurance premiums, which may be substantial.

Petroleum Resource Rent Tax (PRRT)

PRRT currently applies to all petroleum projects in Australian offshore areas (or Commonwealth adjacent areas) other than production licences derived from the Joint Petroleum Development Area in the Timor Sea. It also applies to all Australian onshore and offshore oil and gas projects, other than the Joint Petroleum Development Area in the Timor Sea.

PRRT is applied to a ‘project’ or ‘production licence area’ at a rate of 40% of the taxable profits derived from the recovery of all petroleum in the project, including:

- crude oil
- shale oil
- condensate
- sales gas
- natural gas
- LPG, and
- ethane.

The taxable profit of a project is calculated as follows:

Taxable profit = Assessable receipts - Deductible expenditure

Deductible expenditure broadly includes exploration expenditure, all project development, and operating expenditures.

PRRT is self-assessed by the relevant taxpayer. The taxpayer is, in most cases, required to give the Commissioner of Taxation a PRRT return for each PRRT year. PRRT is generally payable by quarterly instalments.

PRRT applies in addition to normal income tax. PRRT payments (including instalments) are, however, deductible for income tax purposes.

Local municipal taxes

Local taxes, including water, sewerage, and drainage charges, are levied based on the unimproved capital value of land and include a charge for usage (e.g. water usage).

Branch income

Branch profits are subject to ordinary corporate rates of taxation, and there is no withholding on repatriated profits.

Income determination

Inventory valuation

Inventory generally may be valued at cost (full absorption cost), market selling value, or replacement price. Where, because of obsolescence or other special circumstances, inventory should be valued at a lower amount, the lower valuation generally may be chosen, provided it is a reasonable valuation. Special rules apply, however, regarding the valuation of trading stock for certain companies joining a consolidated group. Last in first out (LIFO) is not an acceptable basis of determining cost, nor is direct costing in respect of manufactured goods and work-in-progress.

Conformity is not required between book and tax reporting. For tax purposes, inventory may be valued at cost, market selling value, or replacement price, regardless of how inventory is valued for book purposes. Those who choose to come within the small-business entity measures (broadly defined as taxpayers who carry on business and who, together with certain 'connected' entities, have an aggregated turnover of less than AUD 10 million may ignore the difference between the opening and closing value of inventory if, on a reasonable estimate, this is not more than AUD 5,000.

Capital gains

A capital gains tax (CGT) applies to assets acquired on or after 20 September 1985. Capital gains realised on the disposal of such assets are included in assessable income and are subject to tax at the corporate tax rate. In order to determine the quantum of any gain for any assets acquired before 21 September 1999, the cost base is indexed according to price movements since acquisition, as measured by the official CPI until 30 September 1999. There is no indexation of the cost base for price movements from 1 October 1999. Disposals of plant and equipment are subject to general rules rather than the CGT rules. Capital losses are allowable as deductions only against capital gains and cannot be offset against other income. In calculating capital losses, there is no indexation of the cost base.

Companies that are residents in Australia generally are liable for the tax on gains on the disposal of assets wherever situated, subject to relief from double taxation if the gain is derived and taxed in another country. However, the capital gain or capital loss incurred by a company from a CGT event in relation to shares in a foreign company is reduced by a percentage reflecting the degree to which the foreign company's assets are used in an active business if the company holds a direct voting percentage of 10% or more in the foreign company for a certain period before the CGT event. Attributable income from CGT events happening to shares owned by a controlled foreign company (CFC) are reduced in the same way. Capital gains and capital losses made by a resident company in respect of CGT events happening in respect of 'non-tainted' assets used to produce foreign income in carrying on business through a PE in a foreign country are disregarded in certain circumstances.

Non-resident companies are subject to Australian CGT only where the assets are taxable Australian property (i.e. Australian real property, or the business assets of Australian branches of a non-resident). Australian CGT also applies to indirect Australian real property interests, being non-portfolio interests in interposed entities (including foreign interposed entities), where the value of such an interest is wholly or principally attributable to Australian real property. ‘Real property’ for these purposes is consistent with Australian treaty practice, extending to other Australian assets with a physical connection with Australia, such as mining rights and other interests related to Australian real property. A ‘non-portfolio interest’ is an interest held alone or with associates of 10% or more in the interposed entity.

Proceeds from the sale of certain taxable Australian property by a non-resident are subject to a non-final WHT of 12.5% of the proceeds.

Dividend income

A ‘gross-up and credit’ mechanism applies to franked dividends (dividends paid out of profits that have been subject to Australian tax) received by Australian companies. The corporate shareholder grosses up the dividend received for tax paid by the paying company (i.e. franking credits attaching to the dividend) and is then entitled to a tax offset (i.e. a reduction of tax) equal to the gross-up amount. A company with an excess tax offset entitlement converts the excess into a carryforward tax loss using a special formula.

Dividends paid to another resident company that are unfranked (because they are paid out of profits not subject to Australian tax) are taxable, unless they are paid within a group that has chosen to be consolidated for tax purposes. Dividends paid between companies within a tax consolidated group are ignored for the purposes of determining the taxable income of the group.

Franked dividends paid to non-residents are exempt from dividend WHT.

An exemption from WHT is also available for dividends received by non-resident shareholders (or unitholders) in an Australian corporate tax entity (CTE) to the extent that they are ‘unfranked’ and are declared to be conduit foreign income (CFI). These rules may also treat the CFI component of an unfranked dividend received by an Australian CTE from another Australian CTE as not taxable to the recipient, provided it is on-paid within a specified timeframe. Broadly, income will qualify as CFI if it is foreign income, including certain dividends, or foreign gains, which are not assessable for Australian income tax purposes or for which a foreign income tax offset has been claimed in Australia.

Non-portfolio dividends repatriated to an Australian resident company from a company resident in a foreign country will be non-assessable, non-exempt income, but only if it is a distribution paid on an equity interest as determined under Australian tax law.

Income of a non-resident entity in which Australian residents hold interests is not assessable when repatriated to Australia where the income has been previously attributed to those residents and taxed in Australia (*see Controlled foreign companies [CFCs] in the Group taxation section for more information*).

Stock dividends

Stock dividends, or the issue of bonus shares, as they are known under Australian law, are, in general, not taxed as a dividend, and the tax treatment is the spreading of the cost base of the original shares across the original shares and the bonus shares.

However, if a company credits its share capital account with profits when issuing bonus shares, this will taint the share capital account (if it is not already a tainted share capital account), causing the bonus share issue to be a dividend. Certain other rules may apply to bonus share issues, depending on the facts.

Financial arrangements

Special rules apply to the taxation of financial arrangements (TOFA). 'Financial arrangement' is widely defined to cover arrangements that involve a cash settlable legal or equitable right to receive, or obligation to provide, something of economic value in the future.

These measures provide six tax-timing methods for determining gains or losses in respect of financial arrangements, along with revenue account treatment of the resulting gains or losses to the extent that the gain or loss is made in earning assessable income or carrying on a business for that purpose. The default methods are the accruals method and the realisation method, one or other of which will apply depending on the relevant facts and circumstances of a particular financial arrangement. In broad terms, the accruals method will apply to spread an overall gain or loss over the life of the financial arrangement where there is sufficient certainty that the expected gain or loss will actually occur. A gain or loss that is not sufficiently certain is dealt with under the realisation method.

Alternatively, a taxpayer may irrevocably choose one or more of four elective methods (i.e. fair value, retranslation, financial reports, and hedging) to determine the tax treatment of financial arrangements covered by the election. Qualification criteria must be met before the elective methods may be used. Generally, these criteria require that the taxpayer prepare a financial report in accordance with Australian (or comparable) accounting standards and be audited in accordance with Australian (or comparable) auditing standards.

Exemptions from this regime may be available having regard to the duration of the arrangement or the nature of the relevant taxpayer and the annual turnover or value of assets of that taxpayer. Certain types of financial arrangements are excluded from these rules, including leasing and hire purchase arrangements. Foreign residents are taxable on gains from financial arrangements under these measures to the extent that the gains have an Australian source.

Royalty income

Royalties are generally subject to taxation as ordinary income.

However, royalties paid to a non-resident (other than where it is received in respect of a PE in Australia of a resident of a treaty country) are subject to a final WHT applied to the gross amount of the royalty. Royalties for WHT purposes covers payments that fall within the ordinary meaning of the term as well as certain specified payments (e.g. payments for the use of, or the right to use, copyright, patent, design or model, plan, secret formula or process, trademark, or any industrial, commercial, or scientific equipment; the supply of scientific, technical, industrial, or commercial knowledge or information; the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of any of the aforementioned rights, equipment, or information; and the use of, or the right to use, visual images and/or sounds in connection with television or radio broadcasting that are transmitted by satellite, cable, optic fibre, or similar technology), subject to the application of any DTA. Generally, payments for services will not constitute the payment of a royalty. *See the Withholding taxes section for further information*.

Foreign exchange gains and losses

Foreign currency gains and losses are recognised when realised, regardless of whether there is a conversion into Australian dollars, and are included in or deducted from assessable income, subject to limited exceptions. There are exceptions to the timing and characterisation aspects of the realisation approach where the foreign currency gain or loss is closely linked to a capital asset. To reduce compliance costs with foreign currency denominated bank accounts, some taxpayers may elect to disregard gains or losses on certain low balance transaction accounts that satisfy a *de minimis* exemption or may elect for retranslation by annually restating the balance of the account by reference to deposits, withdrawals, and the exchange rates at the beginning and end of each year (or by reference to amounts reported in accordance with applicable accounting standards).

For foreign exchange gains and losses associated with financial arrangements subject to the TOFA measures (*as discussed above*), the compliance impact of the foreign exchange rules will be reduced for those taxpayers who are eligible to and elect the TOFA retranslation or financial reports tax-timing methods.

Entities or parts of entities, satisfying certain requirements, are able to choose to account for their activities in a currency other than Australian dollars for income tax purposes as an intermediate step to translating the result into Australian dollars (known as the 'functional currency' choice).

Foreign income

The current basis upon which the foreign income of corporations resident in Australia is taxed is set out below.

- Foreign dividends or distributions paid on equity interests as defined for Australian income tax purposes (i.e. the exemption does not apply to dividends paid on legal form shares that are treated as debt interests) are exempt from tax when received by a resident corporate tax entity that holds at least a 10% participation interest in the foreign company. The exemption also applies to distributions received indirectly (e.g. via a trust) by resident companies. However, hybrid mismatch rules, which are currently proposed to apply to income years commencing on or after 1 January 2019, may operate to limit the exemption (*see the Group taxation section for more information*).
- Active foreign branch profits of a resident company from carrying on business through a PE in a foreign country and capital gains made by a resident company from the disposal of non-tainted assets used in deriving foreign branch income (except income and capital gains from the operation of ships or aircraft in international traffic) are not assessable for tax.
- Other foreign income of Australian resident corporations is subject to tax; however, in most cases, an offset for foreign income tax paid is allowed to the extent of Australian tax payable on such income.
- Generally, limited partnerships are treated as companies for Australian tax purposes. In certain circumstances, foreign limited partnerships, foreign limited liability partnerships, United States (US) limited liability companies, and United Kingdom (UK) limited liability partnerships will be treated as partnerships (i.e. as a flow-

through entity) rather than as a company for the purposes of Australia's income tax laws.
- Australia also has a comprehensive CFC regime. *See Controlled foreign companies (CFCs) in the Group taxation section for more information*.

Deductions

Depreciation and depletion

A capital allowances regime allows a deduction for the decline in value of depreciating assets held by a taxpayer. The holder of the asset is entitled to the deduction and may be the economic, rather than the legal, owner. A 'depreciating asset' is an asset that has a limited effective life and can reasonably be expected to decline in value over the time it is used, but does not include land, trading stock, or, subject to certain exceptions, intangible assets. Deductions are available for certain other capital expenditure.

Intangible assets that are depreciating assets (if they are not trading stock) are:

- Certain mining, quarrying, or prospecting rights and information.
- Items of intellectual property (IP).
- In-house software.
- Indefeasible rights to use a telecommunications cable system.
- Spectrum licences under radio communications legislation.
- Datacasting transmitter licences.
- Telecommunications site access rights.

Taxpayers that do not qualify as a small business must depreciate the asset over its useful life (known as 'effective life') using either the straight-line (known as the 'prime cost' method) or diminishing-value method (straight-line rate multiplied by 200% for depreciating assets acquired on or after 10 May 2006).

Taxpayers may self-determine the effective life of a unit or plant or may choose the effective life contained in a published determination of the Commissioner of Taxation.

Non-small-business taxpayers are able to choose to write off all items costing less than AUD 1,000 through a low-value pool at a diminishing-value rate of 37.5% *per annum*.

For those who satisfy the small business entity threshold (broadly, those taxpayers who are carrying on business and who, together with certain connected entities, have an aggregated turnover of less than AUD 10 million for the year, a simplified depreciation system applies by taxpayer choice and with more attractive depreciation rates, including an immediate write off for depreciating assets with a cost of less than AUD 20,000 that are first acquired on or after 7.30pm, by legal time in the Australian Capital Territory, on 12 May 2015, and first used or installed ready for use on or before 30 June 2018. The government has introduced law into Parliament that will extend the measure until 30 June 2019.

'Project pool' rules allow expenditures that do not form part of the cost of a depreciating asset to be deductible over the life of a project that is carried on for a taxable purpose. Amongst other things, items that fall within the rules include the following:

- Amounts paid to create or upgrade community infrastructure for a community associated with the project.
- Site preparation costs for depreciating assets (except horticultural plants in certain circumstances).
- Amounts incurred for feasibility studies for a project.
- Environmental assessment costs applicable to the project.
- Amounts incurred to obtain information associated with the project.
- Amounts incurred in seeking to obtain a right to IP.
- Costs of ornamental trees or shrubs.

The so-called 'blackhole' expenditure provisions allow a five-year straight-line write-off for capital expenditure in relation to a past, present, or prospective business, to the extent that the business is, was, or is proposed to be carried on for a taxable purpose. The expenditure is deductible to the extent that it is not elsewhere taken into account (e.g. by inclusion in the cost base of an asset for CGT purposes) and that it is not denied deductibility for the purposes of the income tax law (e.g. by the rules against deducting entertainment expenditure).

Special rules apply for primary producer assets, such as horticultural plants, water and land care assets, and the treatment of expenditure on research and development (R&D) (*see the Tax credits and incentives section for more information*) and expenditure on certain Australian films.

A luxury car cost limit applies for depreciating the cost of certain passenger motor vehicles (AUD 57,581 cost limit for the 2018/19 income year).

Expenditure on the development of in-house software may be allocated to a 'software development pool' and written off over five years (30% in years two, three, and four, and 10% in year five). Amounts spent on acquiring computer software or the right to use it (except where the acquisition is for developing in-house software) generally are treated as incurred on acquiring a depreciating asset, deductible over five years commencing in the year it is first used or installed ready for use.

A loss arising on the sale of a depreciating asset (depreciated value of the asset less sale consideration) is generally an allowable deduction. A gain on the sale of a depreciating asset, to the extent of depreciation recaptured, generally is taxed as ordinary income. Gains exceeding the amount of depreciation recaptured are also taxed as ordinary income.

Subject to exceptions referred to below, capital expenditure incurred after 15 September 1987 in the construction or improvement of non-residential buildings used for producing assessable income is amortised over 40 years at an annual 2.5% rate. Capital expenditure on the construction of buildings used for short-term traveller accommodation (e.g. hotels, motels) and industrial buildings (typically factories) is amortised over 25 years at an annual 4% rate where construction commenced after 26 February 1992. The cost of eligible building construction that commenced after 21 August 1984 and before 16 September 1987 (or construction contracted before 16 September 1987) is amortised over 25 years at an annual 4% rate. There is no recapture of the amortised amount upon disposal of the building, except where the expenditure is incurred after 13 May 1997, in which case recapture will apply, subject to certain transitional rules.

Similar provisions apply in relation to income-producing residential buildings on which construction commenced after 17 July 1985.

The cost of income-producing structural improvements, the construction of which started after 26 February 1992, is eligible for write-off for tax purposes on the same basis as that of income-producing buildings, that is, at a rate of 2.5% *per annum*.

The cost of consumables may be either written off immediately or as used.

The following expenditure attracts an immediate 100% deduction: environmental protection activities, dealing with pollution and waste; landcare operations; exploring or prospecting for minerals, including the cost of mining rights and information acquired from an Australian government agency or government entity; mine site rehabilitation; and capital expenditure incurred by primary producers on fencing and water facilities.

Tax depreciation is not required to conform to book depreciation.

Percentage depletion based on gross income or other non-cost criteria is not available.

Goodwill

Goodwill and trademarks are not depreciating assets, and tax amortisation is not available.

Start-up expenses

Certain start-up expenses, such as costs of company incorporation or costs to raise equity, may qualify for a five-year straight-line write-off to the extent that it is capital expenditure in relation to a current or prospective business that is, or is proposed to be, carried on for a taxable purpose. An immediate deduction is available to a small business entity for a range of professional expenses (e.g. legal and accounting advice) and taxes or charges to an Australian government agency associated with starting a new business.

Interest expenses

Special rules classify financial arrangements as either debt or equity interests. These rules focus on economic substance rather than legal form and take into account related schemes, and extend beyond shares. In this situation, interest expense on non-share equity would be treated as a dividend, which is potentially frankable, and would be non-deductible for the paying company/group.

The law allows companies to claim a deduction for interest expenses incurred in relation to offshore investments that generate non-assessable, non-exempt dividend income.

Thin capitalisation measures apply to the total debt of the Australian operations of multinational groups (including branches of those groups). *See Thin capitalisation in the Group taxation section for more information*.

Bad debts

A deduction may be available for bad debts written off as bad before the end of an income year. Generally, a deduction will only be available where the amount of the debt was previously included in assessable income, or the debt is in respect of money lent in the ordinary course of a money lending business. The ability to claim a deduction for a bad debt is also subject to other integrity measures.

The amount of a commercial debt forgiven (other than an intra-group debt within a tax consolidated group) that is not otherwise assessable or does not otherwise reduce an allowable deduction is applied to reduce the debtor's carryforward tax deductions for revenue tax losses, carryforward capital losses, undeducted capital expenditure, and other capital cost bases in that order. Any amount not so applied, generally, is not assessable to the debtor. Forgiveness includes the release, waiver, or extinguishment of a debt (other than by full payment in cash) and the lapsing of the creditor's recovery right by reason of a statute of limitations.

Charitable contributions

Charitable contributions are generally deductible where they are made to entities that are specifically named in the tax law or endorsed by the Commissioner of Taxation as 'deductible gift recipients'. However, deductions for such gifts cannot generate tax losses. That is, generally the deduction is limited to the amount of assessable income remaining after deducting from the assessable income for the year all other deductions.

Entertainment

Subject to limited exceptions, deductions are denied for expenditure on 'entertainment', which broadly is defined as entertainment by way of food, drink, or recreation, and accommodation or travel to do with providing such entertainment.

Fines and penalties

Fines and penalties imposed under any Australian and foreign law are generally not deductible. This includes fines and penalties imposed in relation to both civil and criminal matters.

The General Interest Charge (GIC) and Shortfall Interest Charge (SIC), which are imposed for failure to pay an outstanding tax debt within the required timeframe or where a tax shortfall arises under an amended assessment, are deductible for Australian tax purposes.

Taxes

In general, GST input tax credits, GST, and adjustments under the GST law are disregarded for income tax purposes. Other taxes, including property, payroll, PRRT, and FBT, as well as other business taxes (excluding income tax and the Diverted Profits Tax [DPT]) are deductible to the extent they are incurred in producing assessable income or necessarily incurred in carrying on a business for this purpose, and are not of a capital or private nature.

Other significant items

Where expenditure for services is incurred in advance, deductibility of that expenditure generally will be prorated over the period during which the services will be provided, up to a maximum of ten years.

General value shifting rules apply to shifts of value, direct or indirect, in respect of loan and equity interests in companies or trusts. Circumstances in which these rules may apply include where there is a direct value shift under a scheme involving equity or loan interests, or where value is shifted out of an asset by the creation of rights in respect of the asset, or where there is a transfer of assets or the provision of services for a consideration other than at market value. The value shifting rules may apply to the head company of a tax consolidated group or multiple entry consolidated (MEC) group for value shifts also involving entities outside the group, but not to value shifting between group members, which the tax consolidation rules address (*see the Group taxation section for more information*).

Net operating losses

Losses may be carried forward indefinitely, subject to compliance with tests of continuity of more than 50% of ultimate voting, dividends, and capital rights or compliance with a same business test. For consolidated group companies, the ability to utilise these losses may be subject to additional rules (*see the Group taxation section for more information*).

Losses may not be carried back.

Payments to foreign affiliates

A corporation can deduct royalties, management service fees, and interest charges paid to non-residents, provided the amounts are referable to activities aimed at producing assessable income, and also having regard to Australia's transfer pricing rules. In the case of royalties and interest payable to non-residents, there is also a requirement that any applicable WHTs are remitted to the Commissioner of Taxation before the deduction can be taken.

Certain payments made to a foreign entity that is an associate of a significant global entity (SGE), broadly an entity that is part of a group with global revenue of AUD 1 billion or more, may be subject to DPT. The DPT aims to ensure that the tax paid by SGEs properly reflects the economic substance of their activities in Australia and aims to prevent the diversion of profits offshore through arrangements involving related parties. Specifically, the DPT applies at a rate of 40% on the Australian tax benefit obtained in connection with a scheme involving a foreign entity that is an associate of the Australian taxpayer where the principal purpose, or one of the principal purposes, of the scheme is to obtain an Australian tax benefit or to obtain both an Australian tax benefit and reduce foreign tax liabilities, subject to certain exceptions (e.g. a 'sufficient economic substance test').

Group taxation

A tax consolidation regime applies for income tax and CGT purposes for companies, partnerships, and trusts ultimately 100% owned by a single head company (or certain entities taxed like a company) resident in Australia. Australian resident companies that are 100% owned (either directly or indirectly) by the same foreign company and have no common Australian head company between them and the non-resident parent are also allowed to consolidate as a multiple entry consolidated (MEC) group. The group that is consolidated for income tax purposes may differ from the group that is consolidated for accounts or for GST purposes.

Groups that choose to consolidate must include all 100%-owned entities under an all-in rule, and the choice to consolidate is irrevocable. However, eligible tier-1 companies (being Australian resident companies that have a non-resident shareholder) that are members of a potential MEC group are not all required to join an MEC group when it forms, but may form two or more separate MEC or consolidated groups, if they so choose, of which the same foreign top company is the 100% owner. If an eligible tier-1 company joins a particular MEC group, all 100% subsidiaries of the company must also join the group. While the rules for forming and joining MEC groups allow more flexibility than with consolidated groups, the ongoing rules for MEC groups are more complex, particularly for tax losses and on the disposal of interests in eligible tier-1 companies, which are subject to cost pooling rules, although for practical purposes these rules are relevant only if the non-resident's interest is (or will become) an indirect Australian real property interest (*see Capital gains in the Income determination section for more information*).

A single entity rule applies to members of a consolidated or MEC group so that for income tax purposes the subsidiary members are taken to be part of the head company, while they continue to be members of the group and intra-group transactions are not recognised. In general, no group relief is available where related companies are not members of the same consolidated or MEC group. Rollover relief from CGT is available on the transfer of unrealised gains on assets, which are taxable Australian property, between companies sharing 100% common ownership where the transfer is between non-resident companies, or between a non-resident company and a member of a consolidated group or MEC group, or between a non-resident company and a resident company that is not able to be a member of a consolidated group.

Consolidated groups file a single tax return and calculate their taxable income or loss ignoring all intra-group transactions.

When a consolidated group acquires 100% of an Australian resident entity, so that it becomes a subsidiary member, the cost base of certain assets (in general, those that are non-monetary) of the joining member are reset for all tax purposes, based on the purchase price plus the entity's liabilities, subject to certain adjustments. In this way, an acquisition of 100% of an Australian resident entity by a consolidated group is broadly the tax equivalent of acquiring its assets. Subject to certain tests being passed, tax losses of the joining member may be transferred to the head company and may be utilised subject to a loss factor, which is broadly the market value of the joining member divided by the market value of the group (including the joining member). The value of the loss factor (referred to as 'the available fraction') that applies for transferred losses may be reduced by capital injections (or the equivalent) into the member before it joined, or into the group after the loss is transferred.

Franking credits and tax losses remain with the group when a member exits, and the cost base of shares in the exiting member is calculated based on the tax value of its assets at the time of exit, less liabilities subject to certain adjustments.

Generally, members of the group are jointly and severally liable for group income tax debts on the default of the head company, unless the group liability is covered by a tax sharing agreement (TSA) that satisfies certain legislative requirements. A member who enters into a TSA generally can achieve a clean exit from the group where a payment is made to the head company in accordance with the TSA.

Transfer pricing

Australia has a comprehensive transfer pricing regime aimed at protecting the tax base by ensuring that dealings between related, international parties are conducted at arm's length. The arm's-length principle, which underpins the transfer pricing regime, uses the behaviour of independent parties as a benchmark for determining the allocation of income and expenses between international related parties. Australia's transfer pricing regime is in line with international best practice as set out by the OECD.

Transfer pricing adjustments operate on a self-assessment basis and apply in respect of certain cross-border dealings between entities and to the allocation of actual income and expenses of an entity between the entity and its PE, using the internationally accepted arm's-length principle, which is to be determined consistently with the relevant OECD Guidance material (and applied to both treaty and non-treaty cases). In addition, companies are required to have transfer pricing documentation in place to support their self-assessed positions before the lodgement of the tax return.

Australia implemented the OECD's transfer pricing documentation standards for those companies with global revenue of AUD 1 billion or more. Under these documentation standards, the Australian Taxation Office (ATO) receives the following information on large companies operating in Australia:

- A country-by-country (CbC) report that shows information on the global activities of a multinational, including the location of its income and taxes paid.
- A master file containing an overview of the multinational's global business, its organisational structure, and its transfer pricing policies.
- A local file that provides detail about the local taxpayer's inter-company transactions.

Thin capitalisation

Thin capitalisation measures apply to the total debt of the Australian operations of multinational groups (including branches of those groups). The measures cover investment into Australia of foreign multinationals and outward investment of Australian-based multinationals, and include a safe-harbour debt-to-equity ratio of 1.5:1. Interest deductions are denied to the extent that borrowing exceeds the applicable safe-harbour ratio. Where borrowing exceeds the safe-harbour ratio, multinationals are not affected by the rules if they can satisfy the arm's-length test (that the borrowing could have been borne by an independent entity). A further alternative test is available for certain inward or outward investing entities based on 100% of their worldwide gearing.

As mentioned above, the thin capitalisation rules apply to inward investment into Australia. In particular, they will apply where a foreign entity carries on business through an Australian PE or to an Australian entity in which five or fewer non-residents have at least a 50% control interest, or a single non-resident has at least a 40% control interest, or the Australian entity is controlled by no more than five foreign entities. Separate rules apply to financial institutions. To facilitate their inclusion in the rules, branches are required to prepare financial accounts.

International Financial Reporting Standards (IFRS), equivalents of which currently apply in Australia, make it more difficult for some entities to satisfy thin capitalisation rules because of, for example, the removal of internally generated intangible assets from the balance sheets. Accordingly, thin capitalisation law allows departure from the Australian equivalents to IFRS to exclude deferred tax assets and liabilities and surpluses and deficits in defined benefit superannuation funds from applicable calculations. The law will be amended to require entities to align the value of their assets for thin capitalisation purposes with the value included in their financial statements for income years commencing on or after 1 July 2019. However, a transitional rule will ensure that, in the interim period, only valuations that were made prior to 8 May 2018 may be relied on (this will generally be applicable to the valuation of internally generated intangible assets).

Controlled foreign companies (CFCs)

Under Australia's CFC regime, non-active income of foreign companies controlled by Australian residents (determined by reference to voting rights and dividend and capital entitlements) may be attributed to those residents under rules that distinguish between companies resident in 'listed countries' (e.g. Canada, France, Germany, Japan, New Zealand, the United Kingdom, and the United States) and in other 'unlisted' countries. In general, if the CFC is resident in an unlisted country and it fails the active income test (typically because it earns 5% or more of its income from passive or tainted sources), the CFC's tainted income (very broadly, passive income and gains, and sales and services income that has a connection with Australia) is attributable. If a CFC is resident in a listed country, a narrower range of tainted income is attributed even if the CFC fails the active income test.

When income previously taxed on attribution is repatriated, it is not assessable for tax.

Integrity measures for large multinationals

The following integrity measures seek to address multinational tax avoidance by 'significant global entities' (broadly an entity that is part of a group with global revenue of AUD 1 billion or more):

- Transfer pricing documentation standards (*see above for more information*).
- The doubling of the maximum administrative penalties that can be applied to entities that enter into tax avoidance and profit shifting schemes.
- A targeted anti-avoidance rule aimed at multinationals that enter into arrangements that artificially avoid having a taxable presence in Australia. Specifically, this measure will ensure that profits from Australian sales are taxed in Australia where the activities of an Australian associated entity support the making of those sales, and the profit from the Australian sales is booked overseas and is not attributable to a PE of the foreign entity in Australia. A principal purpose of entering into the arrangement must be to create a tax benefit.
- A requirement to lodge general purpose financial statements with the ATO where such accounts are not already lodged with the Australian Securities and Investment Commission for each income year starting on or after 1 July 2016.
- A Diverted Profits Tax (DPT) that is imposed at a penalty rate of 40% in circumstances where the amount of Australian tax paid is reduced by diverting profits offshore through contrived related-party arrangements. The DPT is extremely broad (for example, both financing and non-financing arrangements are in scope) and applies with respect to tax benefits arising in income years starting on or after 1 July 2017.
- Significantly increased penalties (as great as AUD 525,000) that can be applied for failing to lodge a tax return (or other tax-related document) on time (applicable to documents required to be lodged on or after 1 July 2017).
- Doubling of penalties that can be applied for making a false or misleading statement (applicable to statements made from 1 July 2017).

Hybrid mismatch rules

The government has introduced law into Parliament that seeks to implement the OECD's recommended hybrid mismatch rules. Hybrid mismatches are differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions. If a mismatch arises, the proposed law operates to neutralise the mismatch in Australia by:

- Preventing entities that are liable to income tax in Australia from being able to avoid income taxation, or obtain a double non-taxation benefit, by exploiting differences between the tax treatment of entities and instruments across different countries by disallowing a deduction or including an amount in assessable income.
- Limiting the scope of the exemption for foreign branch income and preventing a deduction from arising for payments made by an Australian branch of a foreign bank to its head office in some circumstances.
- Denying imputation benefits on franked distributions made by an Australian corporate tax entity if all or part of the distribution gives rise to a foreign income tax deduction; and preventing certain foreign equity distributions received, directly or indirectly, by an Australian corporate tax entity from being exempt if all or part of the distribution gives rise to a foreign income tax deduction.

In addition, there is an integrity rule that has the potential to impose additional Australian tax on interest and derivative payments to foreign interposed zero or low-rate entities, irrespective of whether the arrangement involves a hybrid element.

The proposed law will generally apply to assessments for income years starting on or after 1 January 2019.

Tax credits and incentives

Foreign income tax offsets (FITOs)

FITOs are available to avoid double taxation in respect of foreign tax paid on income that is assessable in Australia. Generally, a corporation will be entitled to claim a FITO where it has paid, or is deemed to have paid, an amount of foreign income tax and the income or gain on which the foreign income tax was paid is included in assessable income for Australian tax purposes.

The amount of the FITO available is limited to the greater of AUD 1,000 and the amount of the 'FITO limit'. The FITO limit is broadly calculated as the difference between the corporation's actual tax liability and its tax liability if certain foreign taxed and foreign-sourced income and related deductions were disregarded. Excess FITOs are not able to be carried forward and claimed in later income years.

Inward investment incentives

Depending on the nature and size of the investment project, state governments may give rebates from payroll, stamp, and land taxes on an *ad hoc* basis and for limited periods.

Capital investment incentives

Incentives for capital investment are as follows:

- Accelerated deductions are available for capital expenditures on the exploration for and extraction of petroleum and minerals (other than mining rights and information acquired from a non-government third party that start to be held after 7.30pm [AEST] 14 May 2013, which are claimed over the shorter of 15 years and the life of the asset), the rehabilitation of former mineral extraction sites, certain environmental protection activities, the establishment of certain 'carbon sink' forests, certain expenditure of primary producers, and for certain low cost depreciating assets held by small business entities.

- There are a number of tax concessions aimed at encouraging investments in the venture capital sector. Non-resident pension funds that are tax-exempt in their home jurisdiction and satisfy certain Australian registration requirements are exempt from income tax on the disposal of investments in certain Australian venture capital equity held at risk for at least 12 months. A similar exemption is extended to other tax-exempt non-resident investors, including managed funds and venture capital fund-of-funds vehicles and taxable non-residents holding less than 10% of a venture capital limited partnership. These investors are able to invest in eligible venture capital investments through an Australian resident venture capital limited partnership or through a non-resident venture capital limited partnership. Eligible venture capital investments are limited to specified interests in companies and trusts. Detailed rules in the legislation prescribe the nature of such investments and the characteristics, which such companies and trusts, and their investments, must possess.
- Investors in an Australian Early Stage Innovation Company (ESIC), broadly a company that is at an early stage of establishment to develop new or significantly improved innovations with the purpose of commercialisation to generate an economic return, are provided with a non-refundable carry forward tax offset equal to 20% of the amount paid for the investment, subject to a cap, and a capital gains tax exemption for shares that have been held for between one and ten years.
- There is a venture capital tax concession applicable to an 'early stage venture capital limited partnership' (ESVCLP). The thresholds for qualification include requirements that, amongst other things, the committed capital of the ESVCLP must be at least AUD 10 million but not exceed AUD 200 million, the investments made must fall within prescribed parameters as to size and proportion of total capital, and the ESVCLP must have an investment plan approved by Innovation Australia. Where the thresholds for their application are met, the ESVCLP provisions provide flow-through tax treatment to domestic and foreign partners, with the income and capital received by the partners exempt from taxation. As the income is tax exempt, the investor is not able to deduct investment losses.
- The taxable income derived from offshore banking transactions by an authorised offshore banking unit in Australia is taxed at the rate of 10%.
- Refundable tax offsets are available to companies for certain expenditure incurred in Australia in producing specified classes of film or undertaking specified post, digital, or special effects production activities in respect of specified classes of films. The concessions are only available to a company that is either an Australian resident or a non-resident carrying on business through an Australian PE and which has been issued with an Australian Business Number (ABN). The availability of the offsets is subject to a number of conditions, including meeting registration and minimum spend requirements. The rate of the offset varies from 16.5% to 40%, depending upon the nature of the relevant film and activities undertaken.
- The Junior Minerals Exploration Incentive (JMEI), which replaced the exploration development incentive (EDI) (which ceased to apply on 30 June 2017), enables eligible minerals exploration companies to generate tax credits for new shareholders by giving up a portion of their tax losses from greenfield mineral exploration expenditure, which can then be distributed to shareholders. The scheme applies from 1 July 2017 until 30 June 2021, with total credits limited to AUD 100 million.

R&D tax credit

For income years commencing before 1 July 2018, companies with an annual turnover of less than AUD 20 million can access a 43.5% refundable R&D tax credit. Companies with a turnover of at least AUD 20 million have access to a non-refundable 38.5% tax credit.

Changes are currently proposed to the R&D incentive for income years commencing on or after 1 July 2018. For companies with aggregated annual turnover below AUD 20 million, the refundable R&D offset will be a premium of 13.5% above a claimant's company tax rate. Cash refunds from the refundable R&D tax offset will be capped at AUD 4 million *per annum*, with any R&D tax offsets that cannot be refunded to be carried forward as non-refundable tax offsets to future income years. For companies with aggregated annual turnover of at least AUD 20 million, the government will introduce an R&D premium that ties the rates of the non-refundable R&D tax offset to the incremental intensity of R&D expenditure as a proportion of total expenditure for the year. The marginal R&D premium will be the claimant's company tax rate plus:

- 4% for R&D expenditure between 0% and 2% R&D intensity.
- 6.5% for R&D expenditure above 2% to 5% R&D intensity.
- 9% for R&D expenditure above 5% to 10% R&D intensity.
- 12.5% for R&D expenditure above 10% R&D intensity.

Generally, only genuine R&D activities undertaken in Australia qualify for the R&D tax incentive. However, R&D activities conducted overseas also qualify in limited circumstances where the activities cannot be undertaken in Australia. Special grant programmes also may be available to assist corporations in the conduct of certain R&D in Australia. These grants are awarded on a discretionary basis.

Other incentives

Cash grants for export-market development expenditure are available to eligible businesses seeking to export Australian-source goods and services.

Withholding taxes

WHT rates are shown in the following table.

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (3)**
Resident corporations or individuals (35)	0	0	0
Non-resident corporations or individuals:			
Non-treaty	30	10	30
Treaty:			
Argentina	10/15 (4)	12	10/15 (4)
Austria (5)	15	10	10
Belgium	15	10	10
Canada	5/15 (6)	10	10
Chile (7)	5/15 (7)	5/10/15 (7)	5/10 (7)
China, People's Republic of (8)	15	10	10
Czech Republic	5/15 (9)	10	10
Denmark	15	10	10
East Timor (Timor Sea Treaty) (10)	15	10	10

Australia

Recipient	WHT (%) Dividends (1)	Interest (2)	Royalties (3)
Fiji	20	10	15
Finland	0/5/15 (11)	0/10 (11)	5 (11)
France	0/5/15 (12)	0/10 (12)	5 (12)
Germany (34)	5/15 (34)	0/10 (34)	5
Hungary	15	10	10
India	15	15	10/15 (13)
Indonesia	15	10	10/15 (14)
Ireland, Republic of	15	10	10
Italy	15	10	10
Japan	0/5/10/15 (15)	0/10 (15)	5 (15)
Kiribati	20	10	15
Korea, Republic of	15	15	15
Malaysia	0/15 (16)	15	15
Malta	15 (17)	15	10
Mexico	0/15 (18)	10/15 (18)	10
Netherlands	15	10	10
New Zealand	0/5/15 (19)	0/10 (19)	5
Norway	0/5/15 (20)	0/10 (20)	5
Papua New Guinea	15/20 (21)	10	10
Philippines	15/25 (22)	10/15 (22)	15/25 (22)
Poland	15	10	10
Romania	5/15 (23)	10	10
Russian Federation	5/15 (24)	10	10
Singapore	0/15	10	10
Slovak Republic	15	10	10
South Africa	5/15 (25)	0/10 (25)	5
Spain	15	10	10
Sri Lanka	15	10	10
Sweden	15	10	10
Switzerland (26)	0/5/15 (26)	0/10 (26)	5/10 (26)
Taipei/Taiwan	10/15 (27)	10	12.5
Thailand	15/20 (28)	10/25 (28)	15
Turkey (29)	5/15 (29)	0/10 (29)	10
United Kingdom (30)	0/5/15 (31)	0/10 (31)	5
United States	0/5/15/30 (32)	0/10/15 (32)	5 (32)
Vietnam	10/15 (33)	10	10

Notes

1. Dividends paid to non-residents are exempt from dividend WHT except when paid out of profits of a company that have not borne Australian tax (i.e. unfranked dividends). Dividends include those stock dividends that are taxable. The rates shown apply to dividends on both portfolio investments and substantial holdings other than dividends paid in connection with an Australian PE of the non-resident. Unfranked dividends paid to non-residents are exempt from dividend WHT to the extent that the dividends are declared by the company to be conduit foreign income. There is also a deduction in certain cases to compensate for the company tax on inter-entity distributions where these are on-paid by holding companies to a 100% parent that is a non-resident (*see Dividend income in the Income determination section*). Dividends paid to a non-resident in connection with an Australian PE are taxable to the non-resident on a net assessment basis (i.e. the dividend and associated deductions will need to be included in the determination of the non-resident's taxable income, the dividend is not subject to dividend WHT), and a franking tax offset is allowable to the non-resident company for franked dividends received.

2. Australia's interest WHT rate is limited to 10% of gross interest, although the treaty may allow for a higher maximum limit. An exemption from Australian WHT can be obtained for interest on certain public issues or widely held issues of debentures. Provisions exist to ensure that discounts and other pecuniary benefits derived by non-residents on various forms of financings are subject to interest WHT. Interest paid to non-residents by offshore banking units is exempt from interest WHT where offshore borrowings are used in offshore banking activities (including lending to non-residents). An offshore borrowing is defined as a borrowing from (i) an unrelated non-resident in any currency or (ii) a resident or a related person in a currency other than Australian currency. The interest WHT rates listed above for residents in a treaty country are those that generally apply. It is common for Australia's tax treaties to include a reduced limit for interest derived by certain government entities and/or financial institutions. One should refer to the relevant treaty for these limits.
3. Royalties paid to non-residents (except in respect of a PE in Australia of a resident of a treaty country) are subject to 30% WHT (on the gross amount of the royalty), unless a DTA provides for a lesser rate. Tax is generally limited to the indicated percentage of the gross royalty.
4. For Australian-sourced dividends that are franked under Australia's dividend imputation provisions and paid to a person who directly holds at least 10% of the voting power of the company, the limit is 10% (although note that Australia does not impose WHT on franked dividends). For Argentinean-sourced dividends paid to a person who holds at least 25% of the capital in the company, the limit is 10%. A 15% limit applies to other dividends. Source-country tax is limited to 10% of the gross amount of royalties in relation to copyright of literary, dramatic, musical, or other artistic work; the use of industrial or scientific equipment; the supply of scientific, technical, or industrial knowledge; assistance ancillary to the above; or certain forbearances in respect of the above. Source-country tax is limited to 10% of the net amount of royalties for certain technical assistance. In all other cases, it is limited to 15% of the gross amount of royalties.
5. The government announced on 4 February 2010 that negotiations to update Australia's tax treaty with Austria would take place in March 2010. No further announcements have been made in relation to the progress of treaty negotiations.
6. A 5% dividend WHT rate applies to franked dividends paid by an Australian resident company and, in the case of dividends paid by a Canadian resident company (other than a non-resident owned investment corporation), to a company that directly holds at least 10% of the voting power in the dividend company (although note that Australia does not impose WHT on franked dividends). Otherwise, the maximum WHT rate on dividends is 15%.
7. A 5% dividend WHT rate applies to dividends paid to a company that directly holds at least 10% of the voting power in the company paying the dividends. Otherwise, the maximum WHT rate on dividends is 15%. In respect of interest, a 5% WHT rate applies to interest derived by a financial institution that is unrelated to and dealing wholly independently with the payer. Where the 5% rate does not apply, a 15% WHT rate applies to interest arising in Chile, and a 10% WHT rate applies to interest in all other cases. A 5% royalty WHT rate applies to royalties for the use of, or right to use, any industrial, commercial, or scientific equipment, and a 10% royalty WHT rate applies in all other cases.
8. Except Hong Kong and Macau.
9. The treaty between Australia and the Czech Republic allows Australia to impose a 5% WHT on the franked part of a dividend in certain circumstances (although note that Australia does not impose WHT on franked dividends). In the Czech Republic, a rate of 15% applies to the gross amount of dividends if the dividends are paid to a company that directly holds at least 20% of the capital of the company paying the dividend.
10. East Timor does not have a comprehensive DTA with Australia. However, the Timor Sea Treaty governs the taxation rights between the two countries for petroleum-related activities conducted in the Joint Petroleum Development Area of the Timor Sea by any person or entity, irrespective of the residency status of that person or entity. Where the Timor Sea Treaty applies to third-country resident payees, only 10% of the total gross interest, dividend, or royalty payment is subject to Australian WHT, as follows:
    - Interest: 10% of total gross interest paid is subject to WHT at a rate of 10%.
    - Dividends: 10% of total gross unfranked dividends paid are subject to WHT at a rate of 15%, or at the relevant DTA rate of the recipient.
    - Royalties: 10% of total gross royalties paid is subject to WHT at a rate of 10%, or at the relevant DTA rate of the recipient. However, the other 90% of each such amount is subject to East Timorese WHT at the same rates.
11. A zero WHT rate applies to inter-corporate dividends where the recipient directly holds 80% or more of the voting power of the company paying the dividend. A 5% rate limit applies on all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A 15% rate applies to all other dividends. A rate limit of 10% applies to interest, except no tax is chargeable in the source country on interest derived by a financial institution resident in the other country or a government or political or administrative subdivision or local authority or central bank of the other country. Amounts derived from equipment leasing (including certain container leasing) are excluded from the royalty definition and treated either as international transport operations or business profits.
12. The source country exempts inter-corporate non-portfolio (i.e. minimum 10% shareholding) dividends paid out of profits that have borne the normal rate of company tax. There is a 5% rate limit for all other non-portfolio dividends. A rate limit of 15% applies for all other dividends. A rate limit of 10% applies to interest, except no tax is chargeable in the source country on interest derived by a financial institution resident in the other country or a government or political or administrative subdivision or local authority or central bank of the other country. Amounts derived from equipment leasing (including

certain container leasing) are excluded from the royalty definition and treated either as international transport operations or business profits.

13. The source-country limit under the Indian agreement is 10% for royalties paid in respect of the use of or rights to use industrial, commercial, or scientific equipment or for the provision of consulting services related to such equipment. In other cases, the limit is 15%.
14. The source-country limit under the Indonesian agreement is 10% for royalties paid in respect of the use of or the right to use any industrial, commercial, or scientific equipment or for the supply of scientific, technical, industrial, or commercial knowledge or information, and it is 15% in other cases.
15. The source country exempts inter-corporate dividends where the recipient directly holds 80% or more of the voting power of the company paying the dividend and certain limitation of benefit thresholds are met. A 5% rate limit applies on all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A rate limit of 10% otherwise applies for dividends. However, where the dividends are paid by a company that is a resident of Japan, which is entitled to a deduction for the dividends in Japan, the rate limit is 15% where more than 50% of the assets of the paying company consist, directly or indirectly, of real property situated in Japan and 10% in all other cases. Special rules apply to distributions to Japanese residents by real estate investment trusts (REITs). A rate limit of 10% applies to interest, except no tax is chargeable in the source country on interest derived by a financial institution resident in the other country or a government or political subdivision or local authority or central bank or other specified entity of the other country. Amounts derived from equipment leasing (including certain container leasing) are excluded from the royalty definition and treated either as international transport operations or business profits.
16. A zero dividend WHT rate applies to franked dividends paid by an Australian resident company to an entity that directly holds at least 10% of the voting power in the dividend paying company'; otherwise, a 15% WHT rate applies. In relation to dividends paid by a company resident of Malaysia, no WHT applies.
17. Source-country tax in Malta is limited to the tax chargeable on the profits out of which the dividends are paid.
18. A zero dividend WHT rate applies to franked dividends paid (in Mexico, those dividends that have been paid from the net profit account) to a company that directly holds at least 10% of the voting power in the dividend paying company. In all other cases, a 15% WHT rate will apply to dividends. Source-country tax is limited to 10% when interest is paid to a bank or an insurance company, derived from bonds and securities that are regularly and substantially traded on a recognised securities market, paid by banks (except where the prior two criteria apply), or paid by the purchaser to the seller of machinery and equipment in connection with a sale on credit. It is 15% in all other cases.
19. A zero WHT rate applies in certain cases to inter-corporate dividends where the recipient directly holds at least 80% of the voting power in the dividend paying company. A rate of 5% applies on all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A general limit of 15% applies for all other dividends. Source-country tax on interest is limited to 10%. However, no tax is chargeable in the source country on interest derived by a government or a political subdivision or local authority of the other country (including a government investment fund or a bank performing central banking functions) or on interest derived by a financial institution that is unrelated to and dealing wholly independently of the payer (excluding interest paid as part of a back-to-back loan arrangement and, for New Zealand payers, where that person has not paid approved issuer levy).
20. A zero WHT rate applies in certain cases to inter-corporate dividends where the recipient directly holds at least 80% of the voting power in the dividend paying company for the 12-month period prior to payment. A rate of 5% applies to all other inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A general limit of 15% applies to all other dividends. A general rate limit of 10% applies to interest. However, no tax is chargeable in the source country on interest derived by a government of the other country (including its money institutions or a bank performing central banking functions) from the investment of official reserve assets and on interest derived by a financial institution resident in the other country (excluding interest paid as part of a back-to-back loan arrangement).
21. For Australian-source dividends, the limit is 15%. Where dividends are sourced in Papua New Guinea, the limit is 20%.
22. Source-country tax is limited to 15% where relief by way of rebate or credit is given to the beneficial owner of the dividend. In any other case, source-country tax is limited to 25%. Source-country tax generally is limited to 15% of gross royalties if paid by an approved Philippines enterprise. In all other cases, the rate is limited to 25% of the gross royalties.
23. Source-country tax (Australia) is limited to 5% where a dividend is paid to a Romanian resident company that directly holds at least 10% of the capital of the Australian company paying the dividend to the extent that the dividend is fully franked. Source-country tax (Romania) is limited to 5% where a dividend is paid to an Australian resident company that directly holds at least 10% of the capital of the Romanian company paying the dividend if the dividend is paid out of profits that have been subject to Romanian profits tax. In other cases, it is limited to 15%.
24. Source-country tax generally is limited to 15%. However, a rate of 5% applies where the dividends have been fully taxed at the corporate level, the recipient is a company that has a minimum direct holding in the paying company, and the recipient has invested a minimum of AUD 700,000 or the Russian ruble equivalent in the paying company. Where the dividends are paid by a company that is a resident in Russia, the dividends are exempt from Australian tax.

25. A 5% rate limit applies on all inter-corporate dividends where the recipient directly holds 10% or more of the voting power of the company paying the dividend. A rate limit of 15% otherwise applies for dividends. A general rate limit of 10% applies to interest. However, no tax is chargeable in the source country on interest derived by a government of the other country (including a bank performing central banking functions) and on interest derived by a financial institution resident in the other country (excluding interest paid as part of a back-to-back loan arrangement).
26. The DTA applies a 5% WHT rate to dividends paid to companies that hold directly 10% or more of the voting power of the paying company. Dividends paid to publicly listed companies, or subsidiaries thereof, or to unlisted companies in certain circumstances, that hold 80% or more of the voting power of the paying company will be exempt from dividend WHT. Dividends paid to government or a political subdivision or local authority (including a government investment fund), a central bank, complying Australian superannuation funds, and tax exempt Swiss pension schemes will also be exempt from dividend WHT. In all other cases, a 15% WHT rate will apply. A general rate limit of 10% applies to interest. However, interest paid to bodies exercising governmental functions, banks performing central banking functions, banks that are unrelated to and dealing independently with the payer, complying Australian superannuation funds, and tax exempt Swiss pension schemes are exempt from interest WHT. The DTA applies a 5% WHT on royalties.
27. Source-country tax (Taiwan) is limited to 10% of the gross amount of the dividends paid to a company that holds at least 25% of the capital of the company paying the dividends. A rate of 15% applies in all other cases. To the extent that dividends are franked because they are paid out of profits that have borne Australian tax, they are exempt from dividend WHT (*See Note 1 above*). The treaty allows Australia to impose a 10% WHT on the franked part of a dividend.
28. The source-country limit on dividends where the recipient has a minimum 25% direct holding in the paying company is 15% if the paying company engages in an industrial undertaking; 20% in other cases. The source-country limit on interest is 10% when interest is paid to a financial institution.
29. A 5% WHT rate applies to inter-corporate dividends where the recipient directly owns 10% of the voting power of an Australian resident company or directly owns 25% of the capital of a Turkish resident company where the profits out of which the dividend is paid has been subject to the full rate of corporation tax in Turkey. In all other cases, a 15% WHT rate will apply. The DTA applies a general limit of 10% WHT on interest. However, interest derived from the investment of official reserve assets by the either the Australian or Turkish government, the Australian or Turkish central bank, or a bank performing central banking functions in either Australia or Turkey shall be exempt from interest WHT.
30. On 28 October 2008, it was announced that the Australian and the United Kingdom governments would commence negotiations on a revised tax treaty. No further announcements have been made in relation to the progress of treaty negotiations.
31. Source-country tax on dividends is generally limited to 15%. However, an exemption applies for dividends paid to a listed company that satisfies certain public listing requirements and controls 80% or more of the voting power in the company paying the dividend, and a 5% limit applies to dividends paid to other companies with voting power of 10% or greater in the dividend paying company. Source-country tax on interest is generally limited to 10%. However, generally zero interest WHT is payable where interest is paid to a financial institution or a government body exercising governmental functions.
32. Source-country tax on dividends is generally limited to 15%. No source country tax is chargeable on dividends to a beneficially entitled company that satisfies certain public listing requirements and holds 80% or more of the voting power in the company paying the dividend. A 5% limit applies to dividends paid to other companies with voting power of 10% or greater in the dividend paying company. No limit applies to US tax on dividends paid on certain substantial holdings of Australian residents in US REITs. In practical terms, US tax on these dividends is increased from 15% to the current US domestic law rate of 30%. The 15% rate applies to REIT investments made by certain listed Australian property trusts subject to the underlying ownership requirements not exceeding certain levels. Investments in REITs by listed Australian property trusts acquired before 26 March 2001 are protected from the increased rate. Source-country tax on interest generally is limited to 10%. However, generally zero interest WHT is payable where interest is paid to a financial institution or a government body exercising governmental functions. Rules consistent with US tax treaty policy and practice will allow interest to be taxed at a higher 15% rate (the rate that generally applies to dividends) and for tax to be charged on intra-entity interest payments between a branch and its head office. Amounts derived from equipment leasing (including container leasing) are excluded from the royalty definition.
33. Source-country tax is limited to 15% (Australia) and 10% (Vietnam).
34. Germany and Australia signed a new tax treaty, which took effect in relation to WHTs from 1 January 2017. Source-country tax on dividends will be generally limited to 15%, subject to an exemption for dividends paid to a beneficially entitled company that satisfies certain public listing requirements and holds 80% or more of the voting power in the company paying the dividend and a 5% limit that will apply to dividends paid to companies with voting power of 10% or greater in the dividend paying company. Source-country tax on interest is generally limited to 10%. However, zero interest WHT will be payable where interest is paid to a financial institution or a government body exercising governmental functions.
35. Where the recipient does not quote a Tax File Number (or Australian Business Number), the payer is obligated to withhold tax at the rate of 47% from 1 July 2017 (previously 49%) under the Pay-As-You-Go (PAYG) withholding regime. No withholding is required in relation to franked dividends.

Other payments

A PAYG withholding regime applies to require the deduction and remittance of taxes on behalf of foreign resident individuals and entities that are in receipt of the following types of payments:

Type of payment	Rate of withholding (%)
Payments for promoting or organising casino gaming junket arrangements	3
Payments for performing artists and sportspersons, including payments to support staff such as art directors, bodyguards, coaches, hairdressers, and personal trainers:	
if recipient is a company	30
if recipient is an individual	the applicable non-resident marginal tax rate
Payments under contracts entered into for the construction, installation, and upgrading of buildings, plant, and fixtures, and for associated activities	5

Managed investment trust (MIT) distributions

For MIT fund payments to a non-resident investor, a WHT regime applies, with divergent outcomes, depending upon whether or not the recipient of such fund payments is resident of a country identified as being one with which Australia has an effective exchange of information (EEOI) arrangement and which is regulated as such for purposes of these rules. For a resident of a regulated EEOI country, a final WHT at a 15% rate applies for distributions. For residents of non-EEOI regulated countries, a final WHT at a 30% rate applies.

There are also proposals to limit access to tax concessions for foreign investors by increasing the MIT withholding rate on income attributable to a trading business or amounts from certain cross-staple arrangements to a rate equal to the top corporate tax rate (currently 30%), rather than 15%. This is proposed to apply to a fund payment made by an MIT on or after 1 July 2019, subject to transitional relief for certain pre-existing arrangements held immediately before 27 March 2018.

Distributions from an MIT that holds only certified ‘clean buildings’ is eligible for a reduced rate of WHT of 10% where the recipient of the fund payment is a resident of a regulated EEOI country.

EEOI countries that have been identified by regulation are Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Macau, Mauritius, Monaco, the Netherlands Antilles, San Marino, St. Christopher and Nevis, St. Vincent and the Grenadines, and the Turks and Caicos Islands, as well as countries with which Australia has concluded DTAs, other than Austria, Chile, Greece, the Philippines, Switzerland, and Turkey. Australia has entered into EEOI agreements with Andorra, Bahrain, Brunei (not yet in force), Chile, Costa Rica, Dominica, Grenada, Guatemala (not yet in force), Liberia, Liechtenstein, the Marshall Islands, Montserrat, Saint Lucia, Samoa, Switzerland, Turkey, Uruguay, and Vanuatu; however, these countries have not yet been identified in regulations to be EEOI countries.

Australia has an attribution tax regime that certain MITs (known as attribution managed investment trusts or AMITs) can choose to adopt to apply. The allocation of trust components to the members of an AMIT will be based on an 'attribution' rather than based on present entitlement to distributable income. Members of an AMIT will be taxed on the parts of the AMIT's trust components that are attributed to them as if they derived those amounts in their own right and in the same circumstances as the AMIT.

Tax administration

Taxable period

The Australian tax year runs from 1 July to 30 June. However, a corporation may apply to adopt a substitute year of income, for example, 1 January to 31 December.

Tax returns

A corporation (including the head company of a tax consolidated group) lodges/files a tax return under a self-assessment system that allows the ATO to rely on the information stated on the return. Where a corporation is in doubt as to its tax liability regarding a specific item, it can ask the ATO to consider the matter and obtain a binding private ruling.

Generally, the tax return for a corporation is due to be lodged/filed with the ATO by the 15th day of the seventh month following the end of the relevant income year or such later date as the Commissioner of Taxation allows. Additional time may apply where the tax return is lodged/filed by a registered tax agent.

Payment of tax

A PAYG instalment system applies to companies other than those whose annual tax is less than AUD 8,000 that are not registered for GST. Most companies are obligated to pay instalments of tax for their current income year on a monthly or quarterly basis. All companies with turnover of AUD 20 million or more pay instalments on a monthly basis.

Instalments are calculated by applying an instalment rate to the amount of the company's actual ordinary income (ignoring deductions) for the previous quarter. The instalment rate is notified to the taxpayer by the ATO and determined by reference to the tax payable for the most recent assessment. The ATO may notify a new rate during the year on which subsequent instalments must be based. Taxpayers can determine their own instalment rate, but there may be penalty tax if the taxpayer's rate is less than 85% of the rate that should have been selected.

Final assessed tax is payable on the first day of the sixth month following the end of that income year or such later date as the Commissioner of Taxation allows by a published notice.

Tax audit process

The Australian tax system for companies is based on self-assessment; however, the ATO undertakes ongoing compliance activity to ensure corporations are meeting their tax obligations. The ATO takes a risk-based approach to compliance and audit activities, with efforts generally focused on taxpayers with a higher likelihood of non-compliance and/or higher consequences (generally in dollar terms) of non-compliance. Compliance activities take various forms, including general risk reviews, questionnaires, reviews of specific issues, and audits.

Statute of limitations

Generally, the Commissioner of Taxation may amend an assessment within four years after the day of which an assessment is given to a company. Under the self-assessment system, an assessment is deemed to have been given to the company on the day on which it lodges its tax return. The four-year time limit does not apply where the Commissioner is of the opinion there has been fraud or evasion, or to give effect to a decision on a review or appeal, or as a result of an objection made by the company, or pending a review or appeal. An unlimited period of review of an assessment to give effect to a transfer pricing adjustment was changed to a seven-year period of review in respect of assessments raised for an income year commencing on or after 29 June 2013.

Topics of focus for tax authorities

The ATO periodically releases during the year its compliance focus areas that are attracting its attention. The following are current areas of focus by the ATO for large and multinational businesses:

- A strong focus on shifting of profits to lower tax jurisdictions and the cessation of Australian operations, including a focus on cross-border transactions (in particular, related-party financing).
- Structuring and business events, such as mergers and acquisitions, divestment of major assets and demergers, share buy backs, capital raisings and returns of capital, private equity entries and exits, and initial public offerings.
- Capital gains tax, losses (capital and revenue), tax consolidation, infrastructure investments, and financial arrangements.
- GST and property transactions, cross-border issues, and financial supply transactions.
- Sharing data and intelligence on risks and opportunities, sharing capabilities and strategies, and joint compliance action with other jurisdictions.
- R&D tax incentive.

Other issues

Intergovernmental agreement (IGA) on the Foreign Account Tax Compliance Act (FATCA)

In April 2014, the Australian government signed an IGA with the United States in relation to the implementation of FATCA. The agreement is intended to establish a framework to assist Australian financial institutions in meeting their obligations under FATCA.

Australia has enacted legislation to give effect to the IGA requiring Australian financial institutions to collect information about their customers that are likely to be taxpayers in the United States, and report that information to the ATO. The Australian Commissioner of Taxation will then pass this information on to the US Internal Revenue Service (IRS). Australia's obligations under the agreement apply to FATCA 'reportable accounts' maintained on or after 1 July 2014.

OECD Multilateral Convention

Australia signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS on 7 June 2017. The Multilateral Instrument (MLI) provides participating jurisdictions with a means to swiftly modify its bilateral treaties to implement measures developed as part of the OECD/G20 BEPS Project without having to negotiate changes on a treaty-by-treaty basis. The government has introduced law into Parliament to give effect to the Convention.

Transparency

The Commissioner of Taxation is required to publish limited information about the tax affairs of public and foreign-owned companies with 'total income' of AUD 100 million or more for an income year, and Australian-owned private companies with total income of at least AUD 200 million for an income year, as reported in the entity's tax return, and those with a liability to pay the PRRT. The published information discloses the entity's name, Australian Business Number, total income, taxable income, and tax payable.

The Australian government has encouraged all companies (annual turnover of AUD 100 million or more) to adopt a Voluntary Tax Transparency Code (TTC) for increased public disclosure of their tax information.

Australia has also adopted the OECD's Common Reporting Standard (CRS), which applies to financial institutions in Australia from 1 July 2017, with a first reporting deadline of 31 July 2018. Financial Institutions, including banks and other deposit-taking institutions, custodial institutions, or entities that hold financial assets for the account of others, are required to report information in the form of a statement to the Commissioner of Taxation about financial accounts held by foreign tax residents. In turn, the Commissioner of Taxation will provide this information to the foreign residents' tax authorities and will receive information on Australian tax residents with financial accounts held overseas.

Foreign investment tax conditions

Foreign investors that invest in Australia are now subject to additional criteria as part of the clearance process for proposed foreign investment in Australia. Tax conditions are now formally applied and will be considered in making an assessment of Australia's national interest, a key criterion in the foreign investment clearance process. These tax conditions may include requirements relating to the settlement of outstanding debts, ongoing compliance with tax laws, and annual reporting to the ATO.

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Significant developments

On 12 April 2017, the *'Deregulierungsgesetz 2017'* was published in the Austrian Federal Law Gazette. This act includes a simplified application for registration of a limited liability corporation (GmbH), but does not result in changes in the field of corporate income taxation. *See Choice of business entity in the Other issues section for more information*.

On 14 July 2017, a new Section 108c of the *'Einkommensteuergesetz'* concerning an increase of the research and development (R&D) premium from 12% to 14% was published in the Austrian Federal Law Gazette. *See Research and development (R&D) incentives in the Tax credits and incentives section for more information*.

On 17 July 2017, the amended *'KMU-Förderungsgesetz'* was published in the Austrian Federal Law Gazette. *See Employment incentives in the Tax credits and incentives section for more information*.

On 9 April 2018, the Austrian Ministry of Finance published a draft bill for the Annual Tax Act 2018 (*'Jahressteuergesetz 2018'*). The main purpose of the bill is to implement the Anti-Tax-Avoidance Directive (ATAD) of the European Union (EU). *See Controlled foreign companies (CFCs) in the Group taxation section, Capital gains/exit taxation/inbound transfer in the Income determination section, and Horizontal Monitoring in the Tax administration section for more information*.

Taxes on corporate income

Basis of corporate income tax (Körperschaftsteuer)

Corporations (i.e. GmbH, stock corporation [AG]) are subject to unlimited taxation in Austria of their entire (domestic and foreign) income if they have their legal seat or place of effective management in Austria. A non-Austrian corporate tax resident (with neither a legal seat nor place of effective management in Austria) is subject to limited taxation on certain sources of income in Austria.

Rates of corporate income tax (Körperschaftsteuer)

Due to the qualification of corporations as independent tax subjects, a distinction must always be made between tax ramifications at the level of the company and those at the shareholder level. At the level of the company, profits are taxed at the standard corporate income tax (CIT) rate of 25%, regardless of whether profits are retained or distributed. At the shareholder level, the profit distributions are usually subject to withholding tax (WHT) of 25% for corporations and 27.5% for other recipients.

There is also a minimum CIT, payable by companies in a tax-loss position. The minimum CIT can be carried forward without time limitation and can be credited against future CIT burdens of the company.

The minimum CIT amounts to 875 euros (EUR) for an AG for each full quarter of a year.

The minimum CIT for a GmbH is EUR 437.50 for each full quarter of a year. However, for GmbHs founded after 30 June 2013, the minimum CIT amounts to EUR 125 for each full quarter of the first five years and EUR 250 for the next five years.

Local income taxes

There is no additional state or local income tax levied at the company level.

Corporate residence

A corporation is resident in Austria for tax purposes if either it is registered in Austria (legal seat) or its place of effective management is located in Austria. The 'place of effective management' is located where the day-to-day management of the company is actually carried out and not where singular board decisions are formally made. However, the definition of place of effective management under Austrian tax law does not significantly deviate from its definition under the Organisation for Economic Co-operation and Development (OECD) guidelines.

Permanent establishment (PE)

An Austrian PE is defined under Austrian tax law as a fixed establishment where a business is carried out, in particular:

- the place where the management is carried out
- plants, warehouses, purchase and sales establishments, and other establishments where an entrepreneur or one's permanent representative carries out one's business, or
- construction sites, which last for more than six months.

However, the definition of PE is different in some tax treaties. The Austrian tax authorities generally follow the commentary to the OECD model convention regarding the PE concept.

Other taxes

Value-added tax (VAT) (Mehrwertsteuer)

Generally, the Austrian VAT law is based on the 6th EU VAT Directive. Under the Austrian VAT law, companies and individuals carrying out an active business on a permanent basis are qualified as entrepreneurs for VAT purposes. As entrepreneurs, they have to charge the supply of goods or services provided to their customers with Austrian VAT at a rate of 20%. A certain limited range of goods and services is taxed at the reduced rate of 10% (e.g. books, food, restaurants, passenger transportation, medicine) or 13% (e.g. animals, seeds and plants, cultural services, museums, zoos, film screenings, wood, ex-vineyard sales of wines, domestic air travel, public pools, youth care, guest accommodation, athletic events). Certain other transactions are exempted from Austrian VAT (e.g. export transactions).

Input VAT

Entrepreneurs are entitled to deduct Austrian input VAT insofar as the input VAT does not result from goods/services purchased that are directly linked to certain VAT-exempt sales (e.g. interest income, insurance premium). However, certain transactions are exempt from Austrian VAT (e.g. export transactions) without limiting the ability of the entrepreneur to deduct the related input VAT. To be entitled to deduct input VAT, the entrepreneur must obtain an invoice from one's supplier that fulfils certain formal requirements.

VAT filing and payment

Entrepreneurs have to file monthly or quarterly VAT returns by the 15th day of the second month following the month concerned or by the 15th day of the second month following the quarter concerned. The balance of the VAT due and the input VAT deducted has to be paid to the tax office (if VAT burden) or is refunded by the tax office (if in a net input VAT position) to the electronic tax account of the entrepreneur. A separate report has to be filed by the entrepreneur at the tax office showing the cross-border, intra-EU transactions made.

Customs duties

Certain cross-border inbound movements of goods from non-EU countries trigger Austrian customs duty. The duty is levied according to the Austrian customs duty scheme, which is based on the EU customs duty scheme. It defines the customs duty tariffs, dependent on the nature of the good.

Excise taxes

Excise taxes are imposed on certain products, including petroleum (approximately EUR 40 to EUR 600 per 1,000 litres), tobacco products (13% to 47% of price), and alcoholic beverages (tax rate depends on type of alcohol).

Stability fee for banks

A stability fee for financial institutions is charged at 0.024% based on balance sheet totals of over EUR 300 million to EUR 20 billion and 0.029% on balance sheet totals over EUR 20 billion. In addition to the stability fee, a special payment based on the balance sheet totals of the financial year ending in 2015 has to be made in instalments from 2017 to 2020 (payment of one quarter per year). The special payment amounts to 0.211% of the balance sheet totals of over EUR 300 million to EUR 20 billion and 0.258% on balance sheet totals over EUR 20 billion. These contributions are deemed to be used for stability measures regarding the capital market.

On 17 October 2017, the Austrian Administrative Court (VwGH, case EU 2017/0008) referred a question to the European Court of Justice (ECJ) for a preliminary ruling with respect to the compatibility of the stability fee with the fundamental freedoms of the European Union, especially the freedom of movement of services and capital.

Real estate tax

Local authorities annually levy real estate tax on all Austrian real estate property, whether developed or not. The tax is levied on the assessed standard ratable value (*Einheitswert*) of immovable property. The assessed value is usually substantially lower than the market value. The effective tax rate depends on the intended use of the real estate and is calculated using a special multiplier.

Tax rates:

- Agricultural area and forestry:
  - 0.16% for the first EUR 3,650 of the assessed standard ratable value.
  - 0.2% for the amount of the assessed standard ratable value exceeding EUR 3,650.
- Buildings and property are taxed at 0.2% of the assessed standard ratable value. This multiplier is reduced for:
  - Single family houses:
    - to 0.05% for the first EUR 3,650 of the assessed standard ratable value and
    - to 0.1% for the next EUR 7,300.
  - Leasehold and shared property:
    - to 0.1% for the first EUR 3,650 of the assessed standard ratable value and
    - to 0.15% for the next EUR 3,650.
  - All other property:
    - to 0.1% for the first EUR 3,650 of the assessed standard ratable value.

After the assessed standard ratable value is multiplied by the relevant multiplier, the real estate tax is calculated by using a special municipal rate fixed by each municipality (maximum 500%). Finally, the tax amount is reduced by a general reduction of 25% as stated by law and increased by a 35% inflation adjustment.

Real estate transfer tax

Tax is generally levied at 3.5% on transactions that cause a change in the ownership of Austrian real estate or in the person empowered to dispose of such property (e.g. direct owner). Real estate transfer tax is generally calculated on the basis of the acquisition price. However, the taxable base has to be at least the property value (*Grundstückswert*). This value will be calculated either on the basis of the sum of the projected *pro rata* three-fold land value (*Bodenwert*) and the *pro rata* value of the building or derived from a proper real estate price index. Further, in case the taxpayer is able to prove that the fair market value is lower than the property value, the fair market value represents the taxable base.

In the case of real estate transfers within the closer family circle, the three-fold assessed ratable value (capped at 30% of the fair market value) is taken as the tax base, and a tax rate of 2% applies. For transfers in connection with corporate restructuring under the Reorganisation Tax Act, the two-fold assessed standard ratable value is taken as the tax base, and the standard tax rate applies.

The taxable base for free-of-charge transfers (i.e. family and non-family transfers) is the property value. The rate for transfers without compensation is subject to different levels. It is 0.5% for a property value of below EUR 250,000, 2% up to EUR 400,000, and 3.5% over EUR 400,000. In case of business transfers, the tax is capped at 0.5% of the property value. For transfers in connection with corporate restructuring under the Reorganisation Tax Act and the consolidation of shares, the tax rate amounts to 0.5% of the property value.

Real estate transactions with a tax base of EUR 1,100 or below are exempt.

Note that an additional 1.1% registration fee becomes due upon incorporation of the ownership change in the land register. The registration fee is assessed on the basis of the market value. There is a preferential taxation (three-fold ratable value capped at 30% of the fair market value) in case of family transactions or corporate restructuring qualifying for the application of the Reorganisation Tax Act.

Share transfers

Real estate transfer tax in the amount of 0.5% is also triggered in situations where the shares of companies and shares of partnerships owning Austrian real estate are transferred. The following transactions trigger real estate transfer tax:

- The transfer of at least 95% of the shares in a real estate owning partnership to new shareholders within a period of five years.
- The transfer of at least 95% of the shares of a corporation to unify them in the hands of a single acquiring shareholder or in the hands of several shareholders forming a tax group (according to Section 9 of the Austrian Corporate Income Tax Law).

Shares held by a trustee for tax purposes will be attributed to the trustor and are therefore part of the calculation of the shareholding limit. Real estate transfer tax is triggered only in scenarios where the shares of real estate owning corporations or partnerships are transferred by their direct shareholder or partners (no indirect transfer). The tax base for share transfers is the property value.

Stamp duty

Stamp duty is imposed in connection with certain legally predefined transactions for which a written contract has been established (e.g. lease contracts, bills of exchange, assignments of receivables). The Austrian administration's understanding of a 'written contract' is very broad and covers not only paper contracts but also contracts concluded by electronic means (e.g. electronically signed emails).

The stamp duty is triggered upon the establishment of a legal relationship if at least one Austrian party is contractually involved or, even if a contract is concluded between non-Austrian parties only, if the subject of the contract relates to Austria (e.g. lease contract on Austrian real estate). However, various possibilities are available for most legal transactions subject to stamp duty to structure them in a way without triggering stamp duties (e.g. setting up of contracts abroad, offer-acceptance procedure, usage of audio-tapes).

Loan and credit agreements are not subject to stamp duty.

The stamp duty rates for the most common legal transactions are as follows:

Legal transactions	Stamp duty (%)
Lease agreements (1)	1.00
Certificates of bonds/pledges	1.00
Bill of exchange	0.13
Assignment of receivables	0.80

Notes

1. Lease agreements concerning living space concluded as of 11 November 2017 are no longer subject to a stamp duty.

Payroll taxes

Payroll taxes are income taxes levied on employment income that are withheld by the employer. A progressive tax rate is applied to the tax base, being the salary after deduction of allowances and various expenditures (e.g. social security contribution).

The employer is legally obligated to withhold the payroll tax and liable to do so *vis-a-vis* the Austrian tax authority.

Social security contributions

Monthly rates of compulsory (pre-tax) social security contributions are shown below for sickness, unemployment, pensions, accident insurance, and certain minor contributions:

Social security categories	Employer (%)	Employee (%)	Total (%)
Sickness	3.78	3.87	7.65
Unemployment	3.00	3.00	6.00
Pension	12.55	10.25	22.80
Accident	1.30	0.00	1.30
Miscellaneous	0.85	1.00	1.85
Total	21.48*	18.12*	39.60*

* On a maximum assessment basis (gross salary) of EUR 5,130 (EUR 4,980 prior to 1 January 2018) per month for current payments. Special payments receive a tax favoured treatment (employer at 20.98%, employee at 17.12%, for a total of 38.10%). The maximum assessment basis (gross) amounts to EUR 10,260 (EUR 9,960 prior to 1 January 2018) per year.

In addition, the employer is liable to the Family Burdens Equalisation Levy at the rate of 3.9%, the municipal tax on payroll at the rate of 3% of monthly gross salaries and wages, and a public transportation levy of EUR 2 per week per employee in the city of Vienna. In addition, a contribution to the Chamber of Commerce is levied at a rate of approximately 0.40% (between 0.36% and 0.44%) of monthly gross salaries paid (depending on the province). Moreover, a contribution to the mandatory employee pension fund at the rate of 1.53% on monthly gross salaries is payable for employments subject to Austrian employment law.

Branch income

Austrian branches of foreign corporations are taxed in the same way as Austrian corporations, except that inter-company dividends received by Austrian branches of non-EU corporations are not tax exempt (*see the Income determination section*) and Austrian tax losses can be carried forward only if they exceed non-Austrian profits. Books and records generally can be kept abroad but must be brought to Austria in case of a tax audit (upon official request).

Income determination

Taxable income is determined based on statutory accounts under Austrian generally accepted accounting principles (GAAP) adjusted for certain deductions and additions prescribed by the tax law.

Inventory valuation

In general, inventories are valued at the lower of cost or market. If specific identification during stock movements is not possible, other methods, such as last in first out (LIFO) and first in first out (FIFO), are permitted when shown to be appropriate. Conformity between financial book keeping and tax reporting is required.

Capital gains/exit taxation/inbound transfer

Generally, capital gains (short and long-term) are part of the normal annual result of a corporation and are taxed at the ordinary CIT rate (25%).

A special tax treatment applies to capital gains with respect to the exit of taxable assets. In the case of a transfer of assets that formed part of a business from Austria to a foreign country (e.g. allocation of assets to a foreign branch), latent capital gains generally are taxed at the time of the transfer. In case these assets are transferred to an EU/EEA member state, it is possible to apply for a payment by instalments (i.e. seven years for non-current assets and two years for currents assets). Asset transfers for which the taxation has been postponed in the past (i.e. transfer after 1 January 2006) will be subsequently recaptured (e.g. when the assets are sold or transferred outside the European Union).

According to the draft bill of the Annual Tax Act 2018, the exit tax rules are amended. The current period for the payment of equal instalments for non-current assets is reduced from seven to five years.

In case of an inbound transfer, generally, the fair market value of the assets is considered for Austrian income tax purposes (step up). Therefore, any hidden reserves accumulated abroad are not taxed in Austria.

Dividend income

Dividends received from an Austrian company at the corporate shareholder level are generally excluded from the tax base (no minimum stake, no minimum holding period). This tax exemption refers to domestic dividends only, not to capital gains or losses.

Additionally, dividends received from companies located within the European Union or from countries within the European Economy Area (EEA) with which Austria has concluded a comprehensive agreement on mutual assistance regarding the exchange of information are also tax exempt if the foreign company is subject to a tax similar to the Austrian CIT and if the foreign CIT rate is not below 15%.

In cases where the dividends from foreign investments are taxable, foreign CIT can be credited against the Austrian CIT.

Portfolio dividends

Portfolio dividends (i.e. dividends from an investment below 10%) received from corporations located in member states of the European Union, as well as dividends from corporations that are located in those EEA and third countries with which Austria has concluded a comprehensive agreement on mutual assistance regarding the exchange of information, are generally exempt from CIT. However, under special circumstances, a switch-over to the credit method, as outlined under *International participation exemption for dividends and capital gains below*, has to be considered. Moreover, the dividend must not be deductible for tax purposes in the source state in order to be tax exempt at the level of the Austrian recipient (valid for substantial investments and portfolio dividends).

Stock dividends

A conversion from revenue reserves (retained earnings) to capital by a company does not lead to taxable income for the shareholder. However, capital reductions are treated as taxable income if within ten years prior to the capital reduction the above-mentioned increase in capital was repaid to the shareholder. Otherwise, they are tax exempt.

International participation exemption for dividends and capital gains

Dividends received from a foreign company are also tax exempt at the corporate shareholder level if the Austrian company holds at least 10% of the issued share capital for a minimum holding period of one year (international participation exemption). Furthermore, both capital gains and capital losses derived from shares qualifying for the international participation exemption are tax neutral. This means a deduction of capital losses is no longer available. However, the parent company (in the tax return of the year of acquisition) can exercise an (irrevocable) option for each single participation acquired to treat both capital gains and capital losses as taxable (spread of losses and depreciations over a period of seven years). The option refers to capital gains (losses) only and does not affect the tax treatment of ongoing dividend distributions.

Switch-over-clause

In the case of presumed tax abuse, the participation exemption for dividends and capital gains is replaced by a tax credit (switch-over-clause). The credit system is applied if the foreign subsidiary does not meet an active-trade-or-business test (i.e. passive income from royalties, interest, etc. is greater than 50% of total income of subsidiary) and, at the same time, is regularly subject to a foreign income tax burden of 15% or below. The domestic and foreign participation exemptions are available to Austrian resident corporations and to Austrian branches of EU corporations only, but not to Austrian branches of non-EU corporations.

Interest income

Interest income is taxed at the general CIT rate of 25%.

Royalty income

Royalty income is taxed at the general CIT rate of 25%.

Rental income

Rental income is treated as normal business income.

Foreign income

Austrian resident corporations are taxed on their worldwide income. If a double taxation treaty (DTT) is in force, double taxation is mitigated either through an exemption or by granting a tax credit equal to the foreign WHT at the maximum (capped with the Austrian CIT incurred on the foreign-source income). If foreign WHT cannot be credited at the level of the Austrian corporation (e.g. due to a loss position), Austrian tax law does not allow one to carry forward the foreign WHT to future assessment periods. However, if the source of the income is a non-treaty country, exemption or a tax credit shall be available based on unilateral relief (representing a discretionary decision of the Austrian Ministry of Finance only but no legal entitlement for the applicant). Austrian tax law does not provide for a deferral of taxes on foreign income. Special rules for taxing undistributed income of foreign subsidiaries are applicable only to foreign investment funds.

Please note that a CFC rule will enter into force for financial years beginning after 30 September 2018. *For further details, see Controlled foreign companies (CFCs) in the Group taxation section*.

Deductions

Depreciation and amortisation

Only the straight-line method is accepted for tax purposes, whereby the cost is evenly spread over the useful life of an asset. For certain assets, depreciation rates relevant for tax purposes are prescribed by the tax law and shown in the following chart:

Assets	Depreciation rate (%)
Buildings	2.5
Buildings for living space	1.5
Automobiles	12.5

Buildings used as business assets are depreciated at a rate of 2.5%, irrespective of the use of the building. The exception is buildings for residential use, which are depreciated at a rate of 1.5%.

Tax depreciation is not required to conform to financial depreciation under Austrian GAAP. If depreciated property is sold, the difference between tax value and sale proceeds is taxed as a profit or loss in the year of sale.

Trademarks are usually amortised over 15 years. Other intangibles have to be amortised over their useful lives.

Goodwill

Goodwill arising in the course of an asset deal for tax purposes must be amortised over 15 years. Goodwill that arose in the course of a share deal can be amortised only if the acquired company is included in a tax group and if the share deal was effected until 28 February 2014 (*see the Group taxation section*). Goodwill arising as a result of a corporate merger cannot be amortised.

Organisational and start-up expenses

Generally, organisational and start-up expenses are tax deductible.

Interest expenses

Interest payments (also inter-company) are generally tax deductible if they meet the general arm's-length requirements. *See Thin capitalisation in the Group taxation section and Payments to foreign affiliates below for more information*.

Financing costs

According to current tax law, interest expenses resulting from the debt-financed acquisition of shares are usually tax deductible. This is so even if the Austrian participation exemption regime applies (*see the Income determination section*).

However, interest expenses relating to the debt-financed acquisition of shares from related parties or (directly or indirectly) controlling shareholders are generally non-deductible. This disallowance of interest also applies in circumstances where the shareholder acquiring the shares has been funded by a debt-financed equity contribution (insofar as the equity contribution was made in direct connection with the share acquisition). The deductibility of interest expenses incurred in connection with the debt-financed acquisition of shares from a third party is not covered by this rule.

All financing costs (e.g. fees, foreign exchange expenses, legal advice) that relate to tax-exempted international participations are non-deductible.

Interest expenses to foreign affiliates that are effectively taxed below 10% are not deductible (*see Payments to foreign affiliates below*).

Accrued expenses

Certain accruals (such as provisions for liabilities and impending losses) running for more than 12 months as of the closing date of the accounts have to be discounted, depending on their actual duration. The discount rate to be used is 3.5%. Exempted from this reduction are provisions for personnel benefits (severance payments, pensions, vacations, and anniversary awards) for which specific reduction and computation methods have been provided and provisions that were already calculated by discounting a future obligation.

In general, lump-sum accruals and accruals for deferred repairs and maintenance are not allowed for tax purposes.

Bad debt

Valuation allowances for bad debts are, in principle, deductible for tax purposes, unless they are calculated on a lump-sum basis. In case of inter-company receivables, appropriate documentation regarding the compliance with the arm's-length principle is required.

Charitable contributions

Donations to certain charitable institutions are generally tax deductible, up to a limit of 10% of the current year's profit.

Furthermore, donations to certain public Austrian institutions, such as universities, art colleges, or the academy of science, and to non-profit organisations performing research and educational activities mainly for the benefit of the Austrian science or economy may also be deducted as operating expenses, up to the limit of 10% of the current year's profit. The same is valid for donations granted to foreign institutions with residence in the EU/EEA or third countries with which Austria has concluded an agreement on mutual assistance regarding the exchange of information. The requirement for deductibility is that the activities of the organisation are carried out mainly for the benefit of Austrian science or the Austrian economy.

Meals and entertainment

The deductibility of costs for business lunches generally is limited to 50% of actual expenses incurred (provided the business lunch had the purpose of acquiring new business).

The deductibility of entertainment expenses is restricted to advertising expenses.

Salary payments

Payments to a member of the supervisory board (*Aufsichtsrat*) are tax deductible up to a limit of 50%. Salaries (including all payments in cash and in kind, excluding privileged severance payments) exceeding EUR 500,000 per person and per year are not tax deductible. This rule also covers bonus payments and pension schemes. However, for pension schemes there is a EUR 500,000 *per annum* threshold to be considered separately from the other salary payments.

This rule also covers costs on-charged in relation with employees for foreign (group) companies that are an active part of the organisation of the Austrian company (e.g. foreign group staff acting as managing director for an Austrian group company).

Severance payments granted by companies to employees that go beyond statutory obligations (voluntary severance payments) at the level of the employer represent non-deductible expenses insofar as they are taxed at the reduced income tax rate of 6% at the employee's level.

Fines and penalties

Fines and penalties are generally not tax deductible.

Taxes

Austrian and foreign taxes on income and other personal taxes, as well as VAT insofar as it relates to non-deductible expenditures, are non-deductible. Other taxes, such as payroll taxes, are deductible.

Net operating losses

Tax losses can be carried forward without any time limit. However, tax loss carryforwards generally can be offset against taxable income only up to a maximum of 75% of the taxable income for any given year. Some exceptions apply (i.e. in connection with tax groups, in the case of liquidations or the recapture taxation of foreign losses), allowing a company to charge tax loss carryforwards available against 100% of annual taxable income.

The Austrian tax law does not provide for a carryback of tax losses.

Loss-trafficking (Mantelkauf)

Tax loss carryforwards may be lost in the case of a share deal being classified as loss-trafficking (so-called '*Mantelkauf*') or in the course of a legal restructuring leading to similar results.

Under Austrian tax law, a share deal against compensation is classified as a *Mantelkauf* if, from a substance-over-form perspective, the 'economic identity' of a company is changed due to the transaction. The change of economic identity of a company is realised if all of the following structural changes are made to the acquired Austrian company having the tax loss carryforwards available:

- Change of shareholder structure.
- Change of the organisational structure.
- Change of the business structure.

All three conditions cumulatively have to be met. There is no exact time period defined within which they have to be met; however, meeting them within one year after the share transfer usually is regarded as a strong indication for a *Mantelkauf*.

Payments to foreign affiliates

Generally, there are no restrictions on the deductibility of royalties, interest, and service fees paid to foreign affiliates, provided they are at arm's length (which should be appropriately documented by agreements, contracts, calculation sheets, etc.). Payments to affiliated companies exceeding the arm's-length threshold are treated as a hidden distribution of earnings (i.e. they are not tax deductible, and WHT is usually triggered at source). *See Transfer pricing in the Group taxation section for more information*.

In addition, interest and royalty payments made by an Austrian company to affiliated companies (beneficial owner) located in low-tax jurisdictions (effectively taxed below 10%) are non-deductible as well. Special attention in this context has to be drawn to the fact that the low-taxation test has to be passed at the level of the beneficial owner of the income (interest income, royalties).

Note that the domestic implementation of the EU Interest Royalty Directive, which abolishes WHT on cross-border payments of interest and licence fees (regardless of whether taken out by deduction or by assessment) between affiliated companies in the member states, should be considered.

Group taxation

Two or more companies can form a tax group, provided the parent company directly or indirectly owns more than 50% of the shares in the subsidiaries. The tax group also can include foreign group members. However, the scope of foreign tax group members is limited to corporations being resident in EU member states and in states that have entered into a comprehensive administrative assistance arrangement with Austria. If a group member withdraws from the group within a minimum commitment-period of three years, all tax effects derived from its group membership must be reversed.

Within a tax group, all of the taxable results (profit and loss) of the domestic group members are attributed to their respective group parent. From foreign tax group members, tax losses in the proportion of the shareholding quota are attributed to the tax group parent. The foreign tax loss has to be calculated in accordance with Austrian tax law. However, it is capped with the amount actually suffered based on foreign tax law. Starting in 2015, ongoing tax losses from foreign group members can only be recognised to the extent of 75% of the profit of all domestic group members (including the group leader). The remaining loss surplus may be carried forward by the group parent. In addition, foreign tax losses utilised by the Austrian tax group parent are subject to recapture taxation at the time they are utilised by the tax group member in the source state, or in the moment the group member withdraws from the Austrian tax group. Under the recapture taxation scheme, the Austrian tax group has to increase its Austrian tax base by the amount of foreign tax losses used in prior periods.

For the purpose of the application of the recapture taxation scheme, a withdrawal from the tax group is also assumed if the foreign group member significantly reduces the size of its business (compared to the size of the business at the time the losses arose). Reduction of size is measured on the basis of business parameters such as turnover, assets, balance sheet totals, and employees, while the importance of the respective criteria depends on the nature of the particular business.

Under the previous tax group regime, goodwill that arose in the course of a share deal (acquisition of an Austrian active business company from a third party contractor) had to be amortised over 15 years, provided that the acquired company was included in a tax group. Goodwill amortisations have now been abolished and are applicable only for share deals effected until 28 February 2014. Existing goodwill amortisations are grandfathered, provided the goodwill amortisation potentially impacted the share purchase price.

Note that the ECJ in 2015 qualified the limitation of the goodwill amortisation to Austrian target companies as not being in line with EU law (case C-66/14, Finanzamt Linz). The VwGH followed the decision of the ECJ with its decision of 10 February 2016 (case 2015/15/0001).

Consequently, the acquisition of non-Austrian EU target companies basically qualifies for goodwill amortisation. However, the decision of the VwGH has only an impact on share deals that were made before 1 March 2014.

Write-downs of participations in tax group members are not tax deductible.

Transfer pricing

Under Austrian Tax Law, there are no explicit transfer pricing regulations available defining, in detail, the local requirements with regards to arm's length, the documentation standards required, penalties, etc. In general, Austria applies the OECD transfer pricing guidelines referring to the OECD model tax convention. Furthermore, Austrian transfer pricing guidelines have been issued by Austrian tax authorities. The guidelines represent the Austrian authority's understanding of inter-company business relationships with regards to their arm's-length classification and are based on the OECD transfer pricing guidelines.

According to these guidelines, all business transactions between affiliated companies must be carried out under consideration of the arm's-length principle. Where a legal transaction is deemed not to correspond to arm's-length principles, the transaction price is adjusted for CIT purposes. Such an adjustment constitutes either a constructive dividend or a capital contribution. Currently, there is the option of applying for a non-binding ruling of the tax authorities. Additionally, there is an advanced ruling opportunity available. Under this regulation, binding information in the fields of transfer pricing, group taxation, and mergers and acquisitions (M&A) can be requested from the Austrian tax authorities against payment of an administrative fee (the fee rate depends on the size of the applicant's business).

On 14 July 2016, the Austrian Parliament enacted the European Union Tax Amendment Act 2016 ('EU-*Abgabenänderungsgesetz* 2016'), including new mandatory transfer pricing documentation requirements ('*Verrechnungspreisdokumentationsgesetz*' [VPDG]) as defined in Action 13 of the OECD's Action Plan on Base Erosion and Profit Shifting. The European Union Tax Amendment Act 2016 was announced in the Austrian Federal Law Gazette on 1 August 2016.

The VPDG follows a three-tiered documentation approach, requiring the preparation of a Master File, a Local File, and a Country-by-Country (CbC) Report, and is effective for fiscal years starting from 1 January 2016 onwards. The entire documentation is to be prepared in either German or English.

Austrian companies with a turnover above EUR 50 million in the two preceding fiscal years are subject to transfer pricing documentation requirements under the Master File/Local File concept. In case the consolidated group revenue of a multinational enterprise (MNE) group amounted to at least EUR 750 million in the preceding fiscal year, the ultimate parent entity, if resident in Austria, is obligated to file a CbC Report for the reporting year 2016 with the Austrian tax authorities by 31 December 2017.

Further, it is possible that any Austrian business unit (i.e. basically legal entities or PEs preparing financial statements) of a qualifying foreign MNE may take over its parent's duty to report, for fiscal years beginning from 2017 onwards, in case the ultimate parent entity is not obligated to file a CbC Report in its jurisdiction of tax residence or in case no (functioning) qualifying competent authority agreement is in place with the tax jurisdiction of the ultimate parent entity that provides a basis for the exchange of the CbC Report.

Thin capitalisation

There are no explicit tax regulations available under Austrian tax law stipulating the minimum equity required by a company ('thin capitalisation rules'). Basically, group financing has to comply with general arm's-length requirements. Therefore, an Austrian group entity being financed by an affiliated entity must be able to document that it would have been able to obtain funds from third-party creditors under the same conditions as from an affiliated financing entity. Therefore, the appropriate ratio between an Austrian company's equity and debt will mainly depend on the individual situation of the company (profit expectations, market conditions, etc.) and its industry. Nonetheless, the fiscal authorities in administrative practice (i.e. no 'safe-harbour' rule) tend to accept a debt-to-equity ratio of approximately 3:1 to 4:1. However, the debt-to-equity ratio accepted by tax authorities also strongly depends on the average ratio relevant for the respective industry sector. If an inter-company loan is not accepted as debt for tax purposes, it is reclassified into hidden equity and related interest payments into (non-deductible) dividend distributions.

Furthermore, under Austrian commercial law, a minimum equity ratio of 8% is claimed. If the equity ratio of the company falls below 8% and its earning power (virtual period for debt redemption) at the same time does not meet certain requirements, a formal and public reorganisation process will have to be initiated.

Controlled foreign companies (CFCs)

On 9 April 2018, the Austrian Ministry of Finance published a draft of the Annual Tax Act 2018 that aims to implement the Anti-Tax-Avoidance-Directive (ATAD). The draft will be adopted before summer 2018 and includes the introduction of a CFC rule. The CFC rule will be applied for financial years beginning after 30 September 2018.

Generally, the scheme of the proposed CFC rule widely follows the wording of the ATAD. The rule covers foreign CFCs directly or indirectly owned by the Austrian corporate shareholder. Austria follows the categorical/entity approach and covers all passive income items mentioned in the directive (interest income, royalty income, dividend income, finance lease income, etc.). The CFC rule will apply if the effective tax burden regarding the passive income of the foreign CFC does not exceed 12.5% (meaning that even subsidiaries in EU-countries like Cyprus, Ireland, Hungary, and

Bulgaria are targeted by the rule). The scheme results in a tax-wise allocation of the low-taxed passive income item to the Austrian corporate shareholder (allowing a credit of the foreign tax levied at the level of the CFC).

With respect to the member state options included in the ATAD, Austria plans to apply the safeguard clause ('bona-fide clause') also to CFCs resident or situated in third countries. Furthermore, the draft also foresees a *de-minimis* exception in case the passive income of the foreign CFC is below one-third of its overall income.

Tax credits and incentives

Foreign tax credit (matching credit)

Generally, foreign WHT can be credited against Austrian CIT (*see Foreign income in the Income determination section*). In special cases (e.g. Brazil, China, Korea), the DTT provides for a matching credit, which allows the credit of a pre-defined amount that exceeds the actually paid foreign WHT.

Research and development (R&D) incentives

R&D costs are fully deductible at the time they accrue. An R&D premium of 14% (i.e. R&D expenses x 14% = R&D premium) may be claimed for R&D activities performed in Austria.

In order to receive the current R&D premium of 14%, an expert report (issued by the Austrian research promotion organisation [FFG]) is required that confirms the nature of the expenses in question as R&D expenses. The definition of privileged R&D expenses is taken from the Frascati Manual.

The R&D premium is also available in case of contract R&D; however, R&D incentives cannot be claimed by both principal and agent (the agent is just able to apply for the premium if the principal does not). In case of contract R&D, the privileged R&D costs are capped at EUR 1 million per year.

Austria has no 'patent box regime'.

Withholding taxes

Dividend WHT

Under Austrian domestic law, there is generally a 25% WHT for corporations and 27.5% WHT for other recipients on dividends (profit distributions) paid to a foreign parent company. The WHT has to be deducted and forwarded by the Austrian subsidiary to the tax office.

To end up with the reduced WHT rate as defined under the DTT applicable, Austrian tax law provides for the following alternative methods of WHT relief: refund method or exemption at source method.

Refund method

The Austrian subsidiary generally has to withhold 25% WHT (for corporations) or 27.5% WHT (for other recipients) on profit distributions to the foreign parent company, and the parent company has to apply for a refund (of the difference between 25% or

27.5% WHT and the lower DTT rate). In the course of the refund process, the Austrian tax administration analyses whether the foreign shareholder can be qualified as beneficial owner of the dividends paid. If the refund is approved by the Austrian tax authority, dividend distributions within the following three years can be done without deduction of WHT (for distributions of a comparable size and provided the foreign holding structure did not change in the meantime).

Exemption at source method

Relief at the source is available only if the direct parent company issues a written declaration confirming that it is an 'active' company carrying out an active business that goes beyond the level of pure asset management (holding activities, group financing, etc.) and has its own employees and office space at its disposal (substance requirements).

WHT on dividends paid to EU companies

With regard to dividends paid to EU resident corporate shareholders, Austria has implemented the EU Parent/Subsidiary Directive according to which domestic WHT is reduced to zero. The requirements for the reduction are that the EU resident parent company, which also has to meet the substance requirements mentioned above (*see Exemption at source method*) at the moment of the dividend distribution, must directly own at least 10% of the share capital of the Austrian subsidiary for a period of at least one year. In case of foreign EU shareholders being qualified as pure holding companies, the Austrian tax administration does not allow an exemption at source but claims the application of the refund method.

Provided the requirements according to the EU Parent/Subsidiary Directive are not met, Austrian WHT has to be deducted. If an EU parent company cannot credit the Austrian WHT deducted against the CIT of its resident state (e.g. because the foreign dividend income is exempted from the CIT or due to a loss position of the shareholder), it is entitled to apply for a refund of the Austrian WHT. This application has to include a confirmation/documentation that the Austrian WHT could (fully or partly) not be credited at the level of the parent company.

Repayment of equity

The tax-wise equity of a company has to be annually reported to the Austrian tax authority as part of the CIT return (equity account, so-called *'Evidenzkonto'*). This equity can be repaid to the domestic or foreign shareholders without triggering Austrian WHT. However, the tax-wise classification of a dividend as 'capital repayment' has to be shown in the company's equity account and be reported in a separate tax return.

For repayments and dividend distributions that are decided after 31 December 2015, the taxpayer has the possibility to opt whether a dividend for tax purposes should be treated either as dividend distribution or as repayment of equity. The execution of the option for treating dividends as dividend distribution requires a sufficient level of retained earnings while a classification as equity payment requires a positive level of tax-wise 'disposable' equity (in addition to the formal requirements outlined above).

Interest WHT

Interest payments to non-resident companies are currently not subject to WHT (provided no Austrian real estate property is used as security).

Interest on Austrian bank deposits received by individuals resident in the European Union is not subject to WHT. The background of this law is that Austria agreed on the automatic exchange of information (according to directive 2014/107/EU).

Interest (accrued) on Austrian bank deposits or Austrian bonds received by non-resident individuals, where the paying/depositary agent is located in Austria, is subject to 25% WHT (27.5% WHT for Austrian bonds). A tax exemption applies if an automatic system regarding the exchange of information is available and WHT has to be withheld.

Royalties WHT

On royalties paid to a non-resident company, Austrian WHT at a rate of 20% has to be deducted. This tax rate can be reduced under an applicable DTT or under the application of the EU Interest Royalty Directive, which was implemented in Austrian Tax Law.

Tax treaties

The following table lists the countries with which Austria has signed a DTT and provides details of the amount of Austrian WHT.

	WHT (%)		
Recipient	**Dividends (1, 2)**	**Interest (3)**	**Royalties, licences (4)**
Resident corporations	0/25 (5)	0/25	0
Resident individuals	27.5 (6)	0/25/27.5 (43)	0
Non-residents:			
Non-treaty:			
Corporations and business enterprises	25/27.5 (44)	0	20
Individuals	27.5	0/25/27.5/35 (42)	20
Treaty:			
Albania	5*/15	0	5
Algeria	5+/15	0	10
Argentina (7) (DTT was recalled by Argentina in 2009)			
Armenia	5+/15	0	5
Australia	15	0	10
Azerbaijan	5/10/15 (8)	0	5/10 (9)
Bahrain	0	0	0
Barbados	5+/15	0	0
Belarus (White Russia)	5*/15	0	5
Belgium	15	0	0/10**
Belize	5*/15	0	0
Bosnia and Herzegovina	5*/10	0	5
Brazil	15	0	10/15/25 (10)
Bulgaria	0	0	5
Canada	5+/15	0	10
Chile	15	0	5/10 (35)
China	7*/10	0	6/10 (11)
Croatia	0+/15	0	0
Cuba	5*/15	0	0/5 (13)

Austria

	WHT (%)		
Recipient	Dividends (1, 2)	Interest (3)	Royalties, licences (4)
Cyprus	10	0	0
Czech Republic	0+/10	0	5 (12)
Denmark	0+/15	0	0
Egypt	10	0	0/20 (14)
Estonia	5*/15	0	5/10 (15)
Finland	0+/10	0	5
France	0+/15	0	0
Georgia	0**/5+/10 (16)	0	0
Germany	5+/15	0	0
Greece	5*/15	0	7
Hong Kong	0+/10	0	3
Hungary	10	0	0
Iceland (45)	5+/15	0	5
India	10	0	10
Indonesia	10*/15	0	10
Iran	5*/10	0	5
Ireland	10	0	0/10**
Israel (47)	0+/10	0	0
Italy	15	0	0/10**
Japan (46)	10**/20	0	10
Kazakhstan	5+/15	0	10
Korea	5*/15	0	2/10 (17)
Kuwait	0	0	10
Kyrgyzstan	5*/15	0	10
Latvia	10/15*	0	5/10 (18)
Libya (19)			
Liechtenstein	0+/15 (37)	0	5/10 (20)
Lithuania	5*/15	0	5/10 (21)
Luxembourg	5*/15	0	0/10**
Macedonia	0+/15	0	0
Malaysia	5*/10	0	10/15 (22)
Malta	15	0	0/10 (23)
Mexico	5+/10	0	10
Moldova	5*/15	0	5
Mongolia	5+/10	0	5/10 (24)
Montenegro (38)	5 (39)/10	0	5/10 (40)
Morocco	5*/10	0	10
Nepal	5*/10+/15	0	15
Netherlands	5*/15	0	0/10**
New Zealand	15	0	10
Norway	5*/15	0	0
Pakistan	10+++/15	0	10
Philippines	10+/25	0	15
Poland	5+/15	0	5
Portugal	15	0	5/10 (25)
Qatar	0	0	5
Romania	0*/5	0	3
Russia	5*/15 (26)	0	0
San Marino	0+/15	0	0

Recipient	WHT (%) Dividends (1, 2)	Interest (3)	Royalties, licences (4)
Saudi Arabia	5	0	10
Serbia	5*/15	0	5/10 (28)
Singapore	0+/10	0	5
Slovakia (29)	10	0	5
Slovenia	5*/15	0	5
South Africa	5*/15	0	0
Spain	10**/15	0	5
Sweden	5*/10	0	0/10**
Switzerland	0+++/15 (30)	0	0
Syria (31)	5*/10	0	12
Taiwan (41)	10	0	10
Tajikistan	5++/10	0	8
Thailand	10*/25	0	15
Tunisia	10*/20	0	10/15 (32)
Turkey	5*/15	0	10
Turkmenistan (27)	0*/15	0	10
Ukraine	5+/10	0	5
United Arab Emirates	0	0	0
United Kingdom	5*/15	0	0/10**
United States (36)	5+/15	0	0/10 (33)
Uzbekistan	5+/15	0	5
Venezuela	5++/15	0	5
Vietnam	5***/10*/15	0	7.5/10 (34)

Notes

1. Dividend distributions attributable to a prior release of paid-in surplus or other shareholder contributions (classified as capital reserves) are deemed to be a repayment of capital, i.e. no WHT is incurred. At the shareholder's level, dividends received and those classified as contribution refund will reduce the tax basis assessment for investments. To the extent to which the tax basis would become negative, such dividends are treated as taxable income (unless taxation is eliminated by a tax treaty).
2. Under certain treaties, the amount of the WHT is dependent on the extent of the proportion of issued share capital held by the recipient. Where this is the case, all rates are given. Those marked with + refer to an investment of 10%, ++ to 15%, +++ to 20%, * to 25%, ** to 50%, and *** to 70%.
3. Interest on cash deposits in euro or foreign currency in bank accounts, on fixed interest bearing securities in foreign currency (issued after 31 December 1988), and on fixed interest bearing securities denominated in Austrian schillings or euro (issued after 31 December 1983) are subject to a 25%/27.5% WHT. If the recipient is an individual, this WHT is final (no further income taxation and inheritance taxation). Companies receiving interest payments may obtain an exemption from WHT if they provide the bank or other custodial agent with a written confirmation from the recipient that such interest payments constitute a part of the recipient's operating revenues (exemption statement). Interest payments to non-residents without a PE in Austria are generally not subject to WHT (provided the loan is not secured via Austrian land property). At interest payments between affiliated companies, the regulations stipulated by the EU Interest Directive have to be taken into consideration.
4. In case of payments to countries marked with **, the rate is 0% unless more than 50% of the issued share capital of the company paying the royalties is held by the recipient, in which case the rate given applies. At royalty payments between affiliated companies, the regulations stipulated by the EU Interest Directive have to be taken into consideration.
5. If the recipient holds a participation of less than 10% in the distributing company, the dividends are subject to a 25% WHT. Since dividends distributed by an Austrian corporation to another Austrian corporation are generally not subject to taxation, the WHT is credited against CIT upon assessment of the recipient corporation for the respective tax year.
6. WHT on dividends from Austrian companies is final, i.e. no further income tax is collected from the recipient (provided it is an individual).
7. The treaty was recalled by Argentina in 2009. Austrian tax citizens are protected by section (§) 48 BAO (*Bundesabgabenordnung* [Austrian Fiscal Federal Code]) against double taxation.
8. 5% for shares of at least 25% and worth at a minimum of 250,000 United States dollars (USD); 10% for shares of at least 25% and worth at least USD 100,000; 15% in all other cases.

9. 5% for industrial licences and know-how not more than three years old; 10% in all other cases.
10. 10% for copyright licence fees in connection with literature, science, and art; 25% for trademarks licence fees; 15% in all other cases.
11. 6% for industrial, commercial, or scientific equipment; 10% in all other cases.
12. 5% for licence income from copyrights, brands, plans, secret formulas or procedures, computer software, industrial, commercial or scientific use of equipment, and information.
13. 0% for copyright royalties in connection with the production of literary, dramatic, musical, or artistic work; 5% in all other cases.
14. 20% for films.
15. 5% for leasing of mobile goods, and 10% for other licences.
16. 0% for shares of at least 50% and worth at a minimum of EUR 2 million; 5% for shares of at least 10% and worth at least EUR 100,000; 10% for shares in all other cases. The treaty was updated on 4 July 2012, but it has not yet been decided when the amendments will enter into force (0% if a company directly holds at least 10% of the capital of the company paying the dividends, 10% for shares in all other cases).
17. 2% for licence income from industrial, commercial, or scientific use, and 10% for other licences.
18. 5% for the use of commercial or scientific equipment; 10% in all other cases.
19. The treaty was signed on 16 September 2010. It has not yet been decided when it will enter into force.
20. 5% in case of direct (or indirect over a patent-realisation-company) payments of royalties by companies of the other member state (with an industrial establishment in the other member state), and 10% for other licences.
21. 5% in case of licence income from industrial, commercial, or scientific use, and 10% for other licences.
22. 15% for films.
23. 0% for copyright licence fees in connection with literature, art, and scientific use, and 10% for other licences.
24. 10% for the right of use of copyrights to artistic, scientific, or literary as well as cinematographic works, and 5% for other licences.
25. For Portugal, the rate of WHT is 5%, but 10% if more than 50% of the issued share capital is owned by the recipient.
26. 5% if capital share amounts to at least 10% and worth at least USD 100,000; 15% in all other cases.
27. The treaty was signed on 12 March 2015 and entered into force on 1 February 2016. It is applicable as of the beginning of fiscal year (FY) 2017.
28. 5% for copyright licence fees; 10% for other licences.
29. Until a new treaty will be established, the treaty with Czechoslovakia remains applicable.
30. For dividend distributions retroactive as of 1 January 2000.
31. The treaty was signed on 3 March 2009. It has not yet been decided when it will enter into force.
32. 15% for films.
33. 10% for films.
34. 7.5% for fees for technical services; 10% for royalties.
35. 5% for the use of, or the right to use, any industrial, commercial, or scientific equipment; 10% in all other cases.
36. Austria and the United States created a draft for an amendment protocol to the existing DTT, but it has not yet been decided when it will be signed.
37. 0% for a direct participation of at least 10% and a holding period of at least 12 months; 15% in all other cases.
38. The treaty was signed on 16 June 2014 and entered into force on 21 April 2015. It is applicable as of the beginning of FY 2016.
39. 5% if the recipient holds a qualifying participation of at least 5%; 10% in all other cases.
40. 5% for licence fees for the use of any copyright of literary, artistic, or scientific work; 10% for licence fees for the use of patents, trademarks, and information concerning industrial, commercial, or scientific experience.
41. The treaty entered into force on 1 January 2015 and is applicable in respect of taxes withheld at source for amounts paid on or after 1 January 2016 and in the case of other taxes for periods beginning on or after 1 January 2016.
42. Interest on Austrian bank deposits received by individuals resident in the European Union is subject to 35% EU WHT on the basis of the Austrian EU Withholding Tax Act. However, the EU Withholding Tax Act will be abolished as of 1 January 2017 (for new bank accounts as of 1 October 2016). Subsequently, interest on Austrian bank deposits received by individuals resident in the European Union are no longer subject to WHT. The background of this law amendment is that Austria agreed on the automatic exchange of information (according to directive 2014/107/EU).

    Interest (accrued) on Austrian bank deposits or Austrian bonds received by non-resident individuals, where the paying/depositary agent is located in Austria, is subject to 25% WHT (27.5% WHT for Austrian bonds).
43. Interest on Austrian bank deposits (or Austrian bonds), where the paying/depositary agent is located in Austria, is subject to 25% WHT (27.5% WHT on Austrian bonds).
44. 25% WHT for corporations and 27.5% WHT for other recipients.
45. The treaty was signed on 30 June 2016 and entered into force on 1 March 2017. It is applicable as of the beginning of FY 2017.

46. In January 2017, Austria concluded a new DTT with Japan that includes some base erosion and profit shifting (BEPS) compliant regulations. The DTT shall enter into force in 2018 after exchange of the diplomatic notes.
47. The treaty was signed on 28 November 2016 and entered into force on 1 March 2018. It is applicable as of the beginning of FY 2019.

Currently, new DTTs or revisions with Iran, Kosovo, Russia, and the United Kingdom are under negotiation.

On 10 October 2017, the Council of the European Union adopted new rules on tax dispute resolution (Directive [EU] 2017/1852). This Directive lays down the rules for a mechanism to resolve disputes between member states when those disputes arise from the interpretation and application of agreements on the elimination of double taxation. The Directive applies to complaints submitted after 30 June 2019 on questions relating to tax years from 2018. The Directive is not implemented locally yet.

Tax administration

Taxable period

The standard tax assessment period in Austria is the calendar year. However, a company's financial year may deviate. When the tax and financial years deviate, the tax assessments for a year are based on the profits derived in the financial year(s) ending in the respective calendar year (e.g. if tax year is 1 June 2018 to 31 May 2019, then assessment is financial year 2019).

Tax returns

Generally, the CIT return has to be submitted electronically by 30 June of the calendar year following the year in which the fiscal year of the company ends. However, if the company is represented by an Austrian certified tax advisor, the tax return can be submitted by 31 March of the second following year at the latest (if the company will not be formally requested by the tax office to file it earlier). If the end of a tax year is 31 May 2018 for example, the filing deadline is 30 June 2019 (without tax advisor) or 31 March 2020 (with tax advisor).

Electronic filing of annual CIT returns

The annual CIT return (as well as the annual VAT return) has to be filed by electronic means. In the case of a company that cannot reasonably be expected to file tax returns electronically due to the lack of technical prerequisites, filing of the tax return is allowed to be done via pre-printed forms.

Payment of tax

CIT is prepaid in quarterly instalments during the calendar year, with a final settlement subsequent to the annual assessment (payment falls due one month after assessment). Prepayments of CIT generally are based on the most recently assessed tax year's tax burden (unless the taxpayer can show that its tax charge for the current year will be lower).

The difference between CIT as per the final assessment and the prepayments made is interest bearing from 1 October of the year subsequent to the year when the tax claim arose up to the date when the assessment is released (late payment interest). Interest at a rate of currently 1.38% is applied to underpayments (as well as overpayments) of tax.

Tax audit process

Tax audits usually cover CIT, VAT, and WHT. Separate audits are carried out in connection with payroll taxes and social security contributions.

In general, companies are audited every three to four years. The audit period usually covers three to four fiscal years, so, generally, each fiscal year is audited.

The duration of a tax audit depends on the number of years covered and on the complexity of topics (usually between 0.5 and 1.5 years). These topics usually cover ongoing compliance, such as tax returns. Specific topics vary from company to company and can involve, for instance:

- Business restructurings (applicability of Austrian reorganisation tax act, transfer of intangibles, etc.).
- Tax groups (all group members are audited together).
- WHT on dividends, licences, etc.
- Compliance with arm's-length principle in case of group transactions (tax auditors recently tend to focus on transfer pricing issues).

Horizontal Monitoring

According to the draft bill of the Annual Tax Act 2018, horizontal monitoring will be established as an alternative to tax audits for larger companies (turnover > EUR 40 million) that satisfy certain procedural requirements (e.g. comprehensive Internal Control System required).

Under the concept of horizontal monitoring, companies are in regular contact and cooperate with the tax authorities. It is based on mutual trust and transparency between the taxpayers and the tax authorities.

Advance rulings

The Austrian tax offices can issue binding rulings in respect of a planned transaction. A binding advance ruling can be obtained on issues of business restructurings, group taxation, and transfer pricing.

According to the draft bill of the Annual Tax Act 2018, the scope of binding rulings is expanded and shall apply to international tax questions, VAT issues, and the application of anti-abuse regulations.

The fee claimed by the Austrian tax offices for the ruling varies between EUR 1,500 and EUR 20,000, depending on the turnover of the company.

Statute of limitations

The right to assess CIT is subject to a general limitation period of five years after the end of the calendar year in which the fiscal year ends. Additionally, the limitation period can be extended in cases where certain interruptive events (e.g. tax audit, tax assessment) take place within the general limitation period. The maximum limitation period is generally ten years.

The limitation period in case of tax evasion is also ten years.

In certain cases, the maximum limitation period can be extended to 15 years.

For the limitation period for collecting CIT, generally the same rules apply.

Other issues

Choice of business entity

The most important types of companies in Austria are the limited liability corporation (GmbH) and the joint stock corporation (AG). Foreign investors generally choose the GmbH since it provides a higher degree of corporate law control and allows for lower equity provision.

As a legal entity, the GmbH exists upon registration with the Companies' Register. The conventional application for registration must contain the notarised signatures of all managing directors. The articles of association must be drawn up in the form of a notarial deed (written document executed by a public notary) and must, as minimum requirements, include the name of the company as well as its seat, the business purpose, the amount of registered capital, and the capital contribution of each of the various owners.

The application for registration for a GmbH with only one shareholder is possible without notarised signature as of 1 January 2018 via the Internet (based on the '*Deregulierungsgesetz* 2017').

The minimum share capital for a GmbH amounts to EUR 35,000. Formation costs and fees are linked with the amount of the minimum share capital.

The minimum share capital for companies founded after 30 June 2013 is EUR 10,000 for the first ten years after foundation. In the case a company intends to claim this foundation privilege, an amendment of the articles of association is required. After the first ten years upon incorporation, the minimum share capital will be automatically increased to EUR 35,000.

Generally, one half of the registered capital must be raised in cash while the remainder may be contributed in the form of assets (contributions in kind). Of the original capital contribution, 25%, or at least EUR 17,500 (EUR 5,000 in case of a start-up), must actually be paid in upon incorporation. Under certain conditions, the capital can be provided exclusively in the form of assets (incorporation in kind, in this case the contribution is subject to an audit verifying the market value of the assets contributed). The articles of association may provide for additional capital contributions payable by the owners on the basis of a resolution adopted by the shareholder meeting.

The minimum share capital of an AG is EUR 70,000. For an AG, the same payment regulations apply as for a GmbH, but the owners can agree upon a further capital contribution going beyond the nominal value of the shares (premium). The premium is shown on the company's balance sheet as a capital reserve.

Since 2004, the company type *Societas Europaea* (SE) can be chosen in Austria. The SE is a stock corporation based on community law. The advantages of this legal form are the simplification of organisational structures (in particular for international groups) and the possibility of cross-border transfers of corporation seats without loss of the legal identity. The SE allows the choice of a business location under an economic point of view as well as the choice of the most favourable legislation. The minimum share capital required for the incorporation of a SE is EUR 120,000 while the statutory seat of the corporation must be located in the same country where the place of management is located in.

EU state aid investigations and base erosion and profit shifting (BEPS)

BEPS

Austria is involved in the BEPS-development process at an EU/OECD level. The recommendations of the OECD have been implemented to local law in individual areas (*see the limitation of the deductibility of interest under Payments to foreign affiliates in the Deductions section*).

The main changes in local tax law due to the BEPS project are probably the introduction of local rules on the transfer pricing documentation. On 1 August 2016, the Austrian government published the new mandatory transfer pricing documentation requirements (VPDG). *For more details, see Transfer Pricing in the Group taxation section*.

On 7 June 2017, Austria was one of the jurisdictions signing the MLI (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) in Paris. Austria has concluded approximately 90 DTTs, and a modification by the MLI is currently intended for 38 DTTs (e.g. Germany, Italy, Switzerland). The changes of the Austrian treaty network were already ratified by the Parliament and filed with the OECD.

EU state aid investigations

Currently, there are no investigations on the part of the European Commission with regard to Austrian tax law.

However, the BFG Linz (case RE/5100001/2014) referred three questions to the ECJ for a preliminary ruling with respect to the compatibility of the reform of the rules on energy tax rebates from 2011 (as envisaged by the legislator, exclusion of service providers from the refund of energy taxes) with the General Block Exemption Regulation. Based on the decision of the ECJ of 21 July 2016 (C-493/14), the BFG Linz concluded that the exclusion of service providers from energy tax rebates had not entered into force yet. The tax administration challenged this court decision at the VwGH, which in September 2017 referred several questions with respect to the classification of the Austrian scheme as state aid to the ECJ (C-585/17).

International exchange of information

The Republic of Austria signed a Model 2 Intergovernmental Agreement (IGA) with the United States (US) on 29 April 2014. The IGA came into force on 30 June 2014. The approval of the Austrian Parliament took place on 23 October 2014. This agreement has been enacted in order to support the implementation of the Foreign Account Tax Compliance Act (FATCA) in Austria. The Model 2 IGA includes the obligation of Austrian financial institutions to forward summarised information (collected data) regarding the accounts of US customers (recalcitrant account holders) to the US Internal Revenue Service (IRS). Due to the conclusion of this agreement, the US tax authorities will not withhold a 30% WHT on capital income in Austria.

Common Reporting Standard (CRS)

On 29 October 2014, the Republic of Austria signed a multilateral administrative agreement on the automatic exchange of information, which required Austria to apply the Standard for the Automatic Exchange of Financial Account Information (Common Reporting Standard). EU Directive 2014/107/EU amending Directive 2011/16/EU on Administrative Assistance implements this Common Reporting Standard at the EU level. The EU Directive was implemented in Austrian national law ('Austrian Common Reporting Standard Act' or *'Gemeinsames Meldestandardgesetz'*) by 31 December 2015.

Based on this domestic law, financial service companies must comply with certain administrative obligations and report information on foreign account holders to the Austrian tax authorities.

Restructuring measures (M&A from a business perspective)

Transfers of assets and undertakings can be realised with retroactive effect and be tax neutral within the framework of the Austrian Reorganisation Tax Act (so-called *'UmgrStG'*).

The legislation administers the following areas (Article I-VI):

- Mergers (within EU, also cross-border) of corporations.
- Special conversion (from corporations to partnerships).
- Contribution of businesses and exchange of shares.
- Merger of partnerships.
- Demerger of partnerships.
- Demerger of corporations.

If the reorganisation qualifies for the application of the Austrian Reorganisation Tax Act, the reorganisation steps are realised tax neutrally and with a retroactive effect as of the reorganisation due date. Existing tax loss carryforwards can be transferred under certain conditions as well. Furthermore, several other tax privileges are granted under the Reorganisation Tax Act for stamp duties, etc. However, the application of the Austrian Reorganisation Tax Act requires the transaction to be classified as a non-abusive transaction; consequently, it must be based on plausible non-tax reasons.

Azerbaijan

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Significant developments

New rules on administration of double tax treaties (DTTs) are effective as of 1 July 2017. By repealing the old rules, the new rules introduced administration of advance tax relief, DTT application, etc. *See the Withholdings taxes section for more information*.

According to several amendments regarding cashless operations introduced to the Tax Code, taxpayers are subject to financial sanctions for failure to conduct certain operations cashless (i.e. for receiving in cash). *See the Other issues section for more information*.

Taxes on corporate income

In general, Azerbaijan resident entities are subject to a profit tax on their worldwide income. A non-resident enterprise operating in Azerbaijan through a permanent establishment (PE) must pay tax on the gross income generated from Azerbaijan sources, less any related deductions attributable to the PE. Gross income of a non-resident enterprise generated from Azerbaijan sources and not connected with a PE is taxed at the source of payment without any deductions allowed for expenses.

Domestic enterprises and PEs of non-residents are subject to profit tax at the flat rate of 20%.

Taxable profits are defined to be the difference between a taxpayer's gross income and deductible expenses.

Gross income encompasses all revenues received by a taxpayer from all economic activities, unless the revenues are expressly exempted under the law.

Deductible expenses encompass all expenses that are incurred in the furtherance of a taxpayer's business activities, except for those determined as non-deductible under the Tax Code. *See the Deductions section for more information.*

Simplified tax system

The Tax Code stipulates payment of taxes based on a simplified system for enterprises or sole entrepreneurs not registered as value-added tax (VAT) payers and whose cumulative gross revenue during any consecutive 12-month period is not more than 200,000 Azerbaijani manats (AZN), except for enterprises producing excisable goods, credit and insurance organisations, and investment funds and professional participants in the securities market. Enterprises rendering trade and catering services with taxable transactions exceeding AZN 200,000 during any consecutive 12-month period may choose to be simplified taxpayers.

The simplified tax is imposed on gross revenue at a rate of 4% in Baku and at a rate of 2% in other regions of Azerbaijan, whereas the simplified tax rate for enterprises rendering trade and catering services with taxable transactions exceeding AZN 200,000 shall be at 6% and 8%, respectively.

A special rate of simplified tax is set:

- for taxpayers involved in construction at a fixed amount of AZN 45 per square metre multiplied by an applied co-efficient, and
- for taxpayers selling residential and non-residential premises (except for premises of individuals where one has been residing for at least five years) at a fixed amount of AZN 15 per square metre multiplied by an applied co-efficient.

The above applied coefficient is determined by regional executive authorities.

A special rate of simplified tax is set for operators of gambling games at a rate of 6% from gross receipts from game participants and for sellers of such games at a rate of 4% from gross commission paid to them by the operator.

Simplified tax is calculated at 1% for cash withdrawals by legal entities and sole traders.

Other special corporate tax regimes

There are other tax regimes applicable under special agreements concluded between the Azerbaijan government and foreign oil companies: production sharing agreements (PSAs) and host government agreements (HGAs). The PSA and HGA regimes apply to all enterprises involved in these agreements, including foreign oil companies functioning as contractors and foreign service companies providing services to the contractor or the operating company.

There are 24 signed and ratified PSAs and two HGAs, each with its own separate tax regime. Each PSA and HGA is in force, published on the official website of the Ministry of Taxes (*www.taxes.gov.az*), and contains a tax article that outlines the tax regime for that particular agreement. While there are several similarities with respect to tax terms in the various PSAs, there are some differences, other than merely differing tax rates (e.g. taxation of foreign subcontractors) or reporting requirements. Additionally, tax protocols for each PSA and HGA, which provide specific guidance regarding the procedures for payment of taxes and filing of reports, are negotiated with the Ministry of Taxes and other executive authorities.

Under PSAs, PSA contractor parties and foreign subcontractors are subject to tax only on their corporate income. Contractor parties pay profit tax on income derived from hydrocarbon activities, and foreign subcontractors are subject to tax only on income from services and mark-up on goods supplied in Azerbaijan. Local subcontractors are subject to the statutory tax regime.

No corporate tax is applicable to HGA subcontractors. HGA participants pay tax only on their transportation income.

See the Tax credits and incentives section for a description of other tax incentives.

Local income taxes

Local income taxes are paid only by companies and organisations that are in the property of municipalities. Tax rates do not exceed 20% for profit taxpayers and 4% to 8% for simplified taxpayers.

Corporate residence

A resident enterprise is any legal entity established in accordance with the legislation of Azerbaijan and performing entrepreneurial activity or any entity that is effectively managed in Azerbaijan.

Permanent establishment (PE)

A PE of a foreign legal entity is subject to taxation with respect to the income attributable to such PE. A PE is an establishment of a foreign legal entity, through which it fully or partially performs commercial activities (for these purposes, a PE may be considered a management unit, office bureau, agency, construction site, etc.) for 90 cumulative days or more within any 12-month period. Activities of an auxiliary or preparatory nature (e.g. exclusively storing or exhibiting goods or products belonging to a non-resident, purchasing goods, collecting data by a non-resident enterprise for its own purposes) do not create a PE.

Other taxes

Value-added tax (VAT)

VAT is levied on the supply of goods and services in Azerbaijan, and on the import of goods.

VAT rates

The standard rate of VAT is 18%.

Zero rating applies to the following:

- Exportation of goods and services.
- Importation under the PSA and HGA regimes if the taxpayer obtains a VAT exemption certificate.
- Importation of goods, the supply of goods, and the implementation of works and provision of services to grant recipients on the expense of financial aid (grants) received from abroad.
- International and transit cargo and passenger transportation, as well as the supply of works and services directly connected with international and transit flights.
- The supply of gold and other valuables to the National Bank of Azerbaijan.

Taxable persons

Any person who is registered or is liable to register as a VAT payer is regarded as a taxable person.

Taxpayers are required to register for VAT if:

- their cumulative taxable income exceeds AZN 200,000 for a consecutive 12-month period, or

- the value of one taxable transaction exceeds AZN 200,000.

Payments to a non-resident person, who is not registered as a VAT payer, for e-commerce services and works are subject to VAT.

If a person, who is not registered for tax purposes, makes payment to a non-resident for such services (excluding hotel and air ticket arrangement services), the local bank executing the payment should pay the VAT from funds of the buyer. Such paid VAT is not creditable.

Taxable amount

The taxable base is established by starting with the value of the goods and services without adding the VAT amount, but including any customs duty and excise duty, if applicable.

The value of taxable imports consists of the value of the goods determined in accordance with the customs legislation and taxes and duties (other than VAT) to be paid upon importation to Azerbaijan.

The amount of VAT to be paid is the difference between the amount of VAT received on taxable supplies of goods and services (output VAT) and VAT paid on the purchase of goods and services necessary to generate taxable supplies of goods and services (input VAT).

The Cabinet of Ministers can grant exemptions for the import of goods and equipment used for production purposes or to provide advanced technology know-how. Such exemptions are granted for a specific period and in a specific area, and can only be granted if it is impossible to satisfy the respective needs from local resources.

Customs duties

The Customs Code sets out the rules governing all aspects of the regime, including:

- The establishment of bonded warehouses and duty-free zones.
- Temporary imports and the processing of foreign goods in Azerbaijan.
- The procedures for the re-import and re-export of goods.

Azerbaijan has adopted the internationally accepted classification system for goods. The valuation procedures for customs purposes are determined in line with the general principles of the World Trade Organization (WTO).

The rates of customs duties are contained in the list of customs duties for the goods to be imported to Azerbaijan. These *ad valorem* customs duty rates vary between 0% and 15%, depending on the type of goods.

Full or partial relief from the duty on temporary imports (generally, for a period of up to one year) is also available.

Under the PSA regime, contractors, their agents, and subcontractors are entitled to import and re-export from Azerbaijan, free from any import duties and restrictions, goods used for hydrocarbon activities.

Excise duties

Excise duties are imposed on tobacco products; alcoholic beverages; light vehicles; leisure and sports yachts; petroleum; lubricants; imported platinum, gold, jewellery, and other items made thereof; processed, sorted, framed, and fixed diamonds; and imported fur and leather goods.

Taxable persons

Excise duties are paid by individuals, companies, and organisations, including companies with foreign investment, as well as branches, divisions, and other independent subdivisions of companies in Azerbaijan that render services and sell self-produced goods.

Taxable operations

The following operations are subject to excise duties:

- Release of excise goods produced in Azerbaijan outside the premises of the building in which they were produced.
- Import of excise goods pursuant to the customs legislation of Azerbaijan.

Tax rates

The relevant executive authority shall determine rates of excise tax for excise goods imported into Azerbaijan (with the exception of light vehicles, leisure and sports yachts, and other floating transports stipulated for these purposes; platinum, gold, jewellery, and other items made thereof; and processed, sorted, framed, and fixed diamonds).

The following excise rates apply for the following items produced in Azerbaijan:

- Food alcohol (including ethyl alcohol non-denatured with alcohol content of not less than 80%; ethyl alcohol non-denatured with alcohol content of less than 80%): AZN 2 per litre.
- Vodka, strong drinks and strong beverage materials, liqueurs, and liqueur products: AZN 2 per litre.
- Cognac and cognac products: AZN 6 per litre.
- Sparkling wines: AZN 2.5 per litre.
- Wine and vineyard materials: AZN 0.1 per litre.
- Beer (with the exception of non-alcoholic beer) and other beverages containing beer: AZN 0.2 per litre.
- Cigars, cigarillos: AZN 10 per 1,000 items.
- Cigarettes made of tobacco and their substitutes: AZN 4 per 1,000 items.

Excise rates on petroleum materials, light vehicles, leisure and sports yachts, and other floating transports stipulated for these purposes produced in the Azerbaijan Republic are established by the Cabinet of Ministers. Excise rates for petroleum materials vary from 3% to 72% of the ex-factory price, depending on the product.

Excise rates for automobiles, yachts for rest and sport purposes, and other floating means serving the mentioned purposes and imported into the Azerbaijan Republic constitute AZN 0.20 to AZN 40, depending mostly on the volume of engines.

Property tax

Property tax is levied on both movable and immovable property owned by individuals and companies.

Property tax rates

Property tax of legal entities is imposed on the average annual book value of the taxable property at the rate of 1%.

Property tax of physical persons is calculated based on the area of the building, and property tax rates will vary between AZN 0.1 and AZN 0.4 per square metre, depending on the location of the building (e.g. in Baku, the rate is AZN 0.4 per square metre).

In the residential areas, property tax is applied only to the area of the property exceeding 30 square metres. If the building is located in Baku, tax will be calculated applying coefficients (minimum 0.7 and maximum 1.5).

Taxable persons

Taxable persons are comprised of the following:

- Resident companies, including companies with foreign investment that are treated as residents under Azerbaijani law; international organisations engaged in economic activities; and other enterprises.
- Branches and affiliated companies of such taxpayers.
- Agencies and representative offices of foreign legal entities located in Azerbaijan.
- Non-resident companies performing activities through a PE in the territory of Azerbaijan.

Enterprises can combine their assets and cooperate as joint owners. Joint owners are liable to pay tax according to their interest in the property concerned.

Tax base

The property tax base varies according to the residency status of the taxpayer. Resident companies are subject to property tax on their tangible assets recorded on their balance sheet. Non-resident companies carrying out a business activity through a PE in Azerbaijan are only subject to property tax on their tangible assets connected with the PE.

The following assets are exempt:

- Facilities used for the purposes of the environment, fire protection, and civil defence.
- Product lines, railways and motorways, communication and power lines, melioration and watering facilities, and satellites and other space objects.
- Mechanical transport means.
- Facilities of companies involved in education, health, culture, and sports that are used only for the purposes of such areas of activity.
- Exemption of 25% of the property tax payable for water transportation means in the balance of enterprises, which are used in the carriage of passengers and cargoes.

Administration

Companies are required to report the average annual value of taxable property by 31 March of the year following the reporting year and pay property tax on a quarterly basis, subject to any necessary recalculations at the end of the year. Tax payments are due within 15 days of the second month of each quarter. The payment should be 20% of the previous year property tax amount.

The tax on water and air transport means is estimated on 1 January each year by the tax offices based on data provided by the organisations responsible for registration of means of transport. The tax is assessed on the person named in the registration document.

When an asset changes ownership during the tax year, the tax liability is defined as the liability of the new owner.

Land tax

Land tax is levied on Azerbaijan's land resources that are in the possession of or used by individuals or companies.

Land tax rates

Land tax is AZN 0.06 per unit for agricultural land used for intended purposes or not available for the intended purposes of irrigation, reclamation, and other farming reasons based on conventional units per hectare.

AZN 2 is calculated per 100 square metres of land considered for agricultural use but not used for that purpose.

The rate of land tax for industrial, construction, transport, telecommunications, trade and housing servicing, and other dedicated land varies from AZN 0.1 to AZN 20 per 100 square metres, depending on the city or region.

Taxable base

Land plots that are in ownership or used are subject to land tax. Exemptions apply to various types of land owned or used for public purposes by the state or other public authorities. The government may grant further tax exemptions and reliefs.

Assessment and procedure of payment

Companies must compute the exact amount of the land tax each year on the basis of documents evidencing the title of ownership, possession, and use. The computation must be submitted to the tax authorities by 15 May of each year. The tax must be paid by 15 August and 15 November in equal amounts.

Transfer taxes

No specific transfer taxes are levied upon the transfer of immovable property. However, certain notary fees and other sale duties applicable to transfer of property may apply.

Stamp duties

There are no stamp duties. State notary fees are payable upon notarisation of certain transactions.

Payroll taxes

Employers are liable for correct calculation, withholding, payment, and reporting of personal income tax (14% or 25%) from employee's monthly gross salaries.

Social security contributions

Social security contributions at the rate of 22% are payable by the employer from the gross income of the employees. In addition, a 3% social security contribution is withheld from employees.

Road tax

Instead of payment of road tax by owners of auto-transportation means (excluding road tax on transit), such owners will indirectly pay the road tax within the price of fuel.

Wholesalers: Road tax rate for automobile petrol, diesel fuel, and liquid gas manufactured in Azerbaijan and directed to the national consumption (wholesale) is AZN 0.02 on wholesale price (including VAT and excise) for each litre of these mentioned items.

Importers: For automobile petrol, diesel fuel, and liquid gas imported into Azerbaijan, road tax is calculated at AZN 0.02 on the customs value, but not lower than wholesale market price (including VAT and excise), of each litre of the mentioned items.

Road tax will not be included into the taxable base for VAT and excise tax.

Mining tax

Legal entities and individuals involved in the recovery of minerals in Azerbaijan are obligated to pay the mining tax. The rate depends on the type of mineral extracted and varies from 3% to 26% of its total wholesale price.

Branch income

In addition to profit tax paid by a PE of a non-resident, the amount repatriated from the net profit of such PE to the non-resident is taxed at the source of payment at a rate of 10%.

Income determination

Capital gains

There is no separate capital gains taxation in Azerbaijan. Proceeds from the disposal of capital assets are included in ordinary taxable income.

Dividend income

Dividends distributed to residents and non-residents are subject to withholding tax (WHT) at 10% (taxable at source upon payment). Consequently, the received dividend amounts of legal entities and physical persons are not taxable for profit tax purposes.

Interest income

Azerbaijani source interests paid by a resident or a non-resident's PE, or on behalf of such establishment, shall be taxed at the source of payment at a rate of 10%.

Interest amounts received by local legal entities are subject to profit tax, and any tax withheld could be credited against due profit tax.

Royalty income

Royalty received by non-residents from an Azerbaijani resident and PE of a non-resident in Azerbaijan is taxed at the source of payment at the rate of 14%.

Royalty income received by Azerbaijan tax resident legal entities is subject to profit tax.

Foreign income

If a resident of Azerbaijan directly or indirectly holds more than 20% of shareholders' equity or possesses more than 20% of the voting shares of a foreign legal entity that, in turn, receives income from a state with favourable taxation, then such income shall be included in the resident's taxable income.

A state with favourable taxation is considered a country in which the tax rate is two or more times lower than that determined under the Tax Code of Azerbaijan, or a country in which the laws on confidentiality of information about companies exist (which allow secrecy to be maintained concerning financial information, as well as the actual owner of property or receiver of income).

A list of countries and territories with a favourable tax regime was approved. Please access the list (only in Azerbaijani) at: *http://az.president.az/articles/24547*

Any payment made to a low-tax jurisdiction is subject to WHT at 10%.

Deductions

All expenses connected with generating income, except for non-deductible expenses and expenses with limited deductibility, specifically defined by the law, are deductible from income.

Depreciation

Depreciation can be calculated up to the following annual rates:

- Buildings and premises: up to 7%.
- Machines and equipment: up to 20%.
- Computing technology (high tech): up to 25%.
- Means of transportation: up to 25%.
- Working cattle: up to 20%.
- Expenses incurred for geological and exploration works, as well as for preparatory works for the production of natural resources: 25%.
- Intangible assets with an undetermined period of use: up to 10%. For those with a determined period of use: pro-rata amount as per the useful life, in years.
- Other fixed assets: up to 20%.

Goodwill

Azerbaijani tax legislation does not specify the definition of goodwill.

Tax basis of assets

The tax basis of assets include expenses for their acquisition, production, construction, assembly, and installation, as well as other expenses that increase their value, with the exception of expenses for which the taxpayer is entitled to a deduction.

Interest expenses

Interest on loans received from overseas and/or from related parties may be deducted, limited to the interest rate on loans with similar currency and maturity at the interbank credit auction. In absence of such an auction, deductions for interest may not exceed rates of 125% of the interbank auction credit rates published by the Central Bank of Azerbaijan.

Bad debt

A taxpayer shall be entitled to a deduction for doubtful debts connected with goods, work, and services that have been realised where income from them was previously included in the gross income received from entrepreneurial activity. Doubtful debt deduction shall be allowed only if the debt is written off as worthless in the taxpayer's books.

Charitable contributions

Charitable contributions are non-deductible expenses in Azerbaijan.

Fines and penalties

No deduction is allowed for financial sanctions or interest calculated for delayed payment of taxes.

Taxes

Property, land, and mining taxes are deductible.

Other expenses deductible within certain limits

- The amount of repair expenses deductible each year is limited to the amount of the tax written down value of each category of fixed assets as of the end of the previous year. For buildings and premises, the limit is 2%; for machinery and equipment, the limit is 5%; and for other fixed assets, the limit is 3%. An amount exceeding these limits shall be taken as an increase of the residual balance value of the fixed assets in the appropriate category.
- Actual business trip expenses are deductible from income within the limits established by the Cabinet of Ministers.
- A legal entity engaged in insurance activities is entitled to deduct allocations to reserve insurance funds within the standards established by the legislation of Azerbaijan.
- Banks and credit entities engaged in certain types of banking activities shall be entitled to deduct from income the amounts assigned for establishment of special reserve funds, depending on the classification of assets in compliance with legislation and in accordance with procedures established by the relevant executive authority.

Non-deductible expenses

The following expenses are non-deductible:

- Capital expenses.
- Expenses connected with non-commercial activity.
- Entertainment and meal expenses, accommodation, and other expenses of a social nature incurred for employees.

Net operating losses

Taxable losses incurred by legal entities may be carried forward for five years to offset future taxable profit, without limitations. Carryback of losses is not possible.

Payments to foreign affiliates

Payment to charter capital in order to create an affiliate in a foreign country is not tax deductible and is instead treated as investment to subsidiary on the balance sheet.

Under local transfer pricing rules, payment for goods and services supplied by foreign affiliates is deductible up to the fair market price of such supplies.

Group taxation

Each taxpayer is liable to fulfil one's own tax liabilities. Azerbaijani tax legislation does not have the concept of 'group taxation'.

Transfer pricing

The Tax Code provides that relations between associated (interrelated) entities must be based on the arm's-length principle.

Interrelated persons, for the purposes of taxation, are natural and/or legal persons, relations between which might have direct effect on economic results of their activities or the activities of persons they represent.

According to the regulations approved by the Ministry of Taxes, transfer pricing is only applied for the purposes of corporate/personal income tax and to so-called controlled transactions exceeding AZN 500,000 per controlled party/*per annum*.

The following transactions are controlled:

- A resident and a non-resident in a related-party relationship.
- A PE of a non-resident and such non-resident or any representative office, branch office, or other unit of such non-resident in other countries.
- A resident and/or a PE of a non-resident and persons established (registered) in a country with a favourable tax regime.

For the purposes of comparability analysis, transfer price is determined based on one of the three transactional transfer pricing methods and two profit methods:

- Comparable uncontrolled price method.
- Resale price method.
- Cost plus method.
- Comparable profit method.
- Profit split method.

Where the value of the transactions per controlled party does not exceed AZN 500,000 and no filing requirement is applicable, the taxpayer is still required to follow the regulations in computing tax liability.

In determining transfer prices, the following databases may be used:

- International or local exchange quotations.

- Foreign trade statistics of the customs authorities.
- Reports placed in reliable sources.
- Databases of specialised agencies to which the tax office is subscribed, etc.

The regulations also set out provisions on transfer pricing dispute resolution and avoidance of double taxation, as well as provide relevant examples of each of the transfer pricing methods.

Thin capitalisation

There is no concept of thin capitalisation in Azerbaijani tax law. However, the Tax Code provides that interest on loans received from overseas and/or from related parties may be deducted, limited to the interest rate on loans with similar currency and maturity at the interbank credit auction. In absence of such an auction, deductions for interest may not exceed rates of 125% of the interbank auction credit rates published by the Central Bank of Azerbaijan.

Controlled foreign companies (CFCs)

See the description of Foreign income in the Income determination section.

Tax credits and incentives

Foreign tax credit

Azerbaijani legal entities are taxed on worldwide profit; however, any tax paid overseas, up to the tax amount that would be calculated under Azerbaijani law, will be allowed to offset the Azerbaijani profit tax. The tax credit may not exceed the tax that would be imposed on such income in Azerbaijan. This credit applies only to residents of Azerbaijan.

Incentives for agricultural producers

Taxpayers producing agriculture products are exempt from profit tax, VAT, and property tax until the end of 2018.

Only mark-ups applied in the retail sale of agricultural products produced in Azerbaijan are subject to VAT.

The following transactions are not subject to VAT for three years from 1 January 2017:

- Import and sale of wheat, as well as production and sale of flour and bread.
- Sale of non-performing assets as part of restructuring and rehabilitation of insolvent banks.
- Sale of poultry meat.

Incentives for residents of industrial and technology parks

Businesses operating in industrial and technology parks are eligible for certain privileges and exemptions. The privileges include the following:

- Exemption for seven years from the date of registration in these parks from profit/income, land, and property tax for resident legal entities and private entrepreneurs.
- VAT exemption for import of equipment for construction, scientific research works, and other activities in these parks for seven years or an indefinite period, depending on the nature of these activities.

The Law on the Special Economic Regime for Export-Oriented Oil and Gas Activities

The Law on the Special Economic Regime for Export-Oriented Oil and Gas Activities was adopted in April 2009 and will remain effective for 15 years. This law avails the following tax incentives to contractors and subcontractors (excluding foreign subcontractors without PE in Azerbaijan):

- Local companies are permitted to choose between (i) profit tax at a rate of 20% or (ii) 5% WHT on gross revenues.
- Foreign subcontractors are taxable only by a 5% WHT.
- 0% VAT rate.
- Exemption from dividend WHT and taxation on branch's net profits.
- Exemption from customs duties and taxes.
- Exemptions from property tax and land tax.

In order to derive these benefits, the relevant taxpayer should obtain a special confirmation certificate from the Ministry of Industry and Energy.

The Law on Special Economic Zones (SEZs)

The companies operating in SEZs shall have the following tax benefits:

- A 0.5% tax levied on overall turnover from supplied goods, performed services, or works.
- A 0% VAT rate.
- Customs exemptions.

In order to operate in an SEZ, a special residency certificate is necessary. However, the following companies may not apply for this certificate:

- Companies producing or processing oil and gas.
- Companies producing alcoholic beverages and tobacco.
- Television or radio broadcasting companies.

As of March 2018, no SEZs have yet been established in Azerbaijan.

Incentive for the employment of disabled persons

The rate of profit tax levied on production enterprises belonging to community organisations for disabled persons, and involving at least 50% of disabled persons, shall be reduced by 50%.

In determining eligibility for these privileges, disabled persons substituting for permanent employees, contractors (i.e. who work under contractor agreements, civil legal contracts), or disabled persons till the age of 18 are not included in the average number of employees.

Withholding taxes

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

- Dividends paid by resident enterprises: 10%.

- Interest paid by residents, PEs of non-residents, or on behalf of such PEs (except for interest paid to resident banks or to PEs of non-resident banks): 10%.
- Rental fees for movable and immovable property: 14%.
- Royalties: 14%.
- Risk insurance or reinsurance payments: 4%.
- Telecommunications or international transport services: 6%.
- Other Azerbaijani-source income: 10%.
- Payments to low-tax jurisdictions: 10%.

If a resident enterprise or a PE of a non-resident receives interest, royalties, or rental fees taxable at the source of payment in Azerbaijan, it is entitled to consider the tax deducted from the source of payment, provided that the documents supporting the tax deduction are in place.

Direct or indirect payments to a person in a country with a favourable tax regime are considered income from an Azerbaijani source and subject to 10% WHT. The list of countries concerned is determined annually (*see Foreign income in the Income determination section for a link to the list*).

Banks and the national operator of the postal service must deduct 10% WHT from funds transferred by residents to digital wallets, which refer to software to carry out electronic payments.

Tax treaties

The following chart contains the WHT rates that are applicable to dividend, interest, and royalty payments by Azerbaijan residents to non-residents under the tax treaties in force as of 1 January 2018. If the treaty rate is higher than the domestic rate, the latter is applicable.

	WHT (%)			
	Dividends			
Recipient	Individual companies	Qualifying companies (1)	Interest (2)	Royalties (3)
Non-treaty	10	10	10	14
Treaty:				
Austria	15	5/10	10	5/10
Belarus	15	15	10	10
Belgium	15	5/10	10	5/10
Bosnia and Herzegovina	10	10	0/10	10
Bulgaria	8	8	0/7	5/10
Canada	15	10	0/10	5/10
China (People’s Republic)	10	10	10	10
Croatia	10	5	10	10
Czech Republic	8	8	5/10	10
Denmark	15	5	8	5/10
Estonia	10	5	10	10
Finland	10	5	0/10	5/10
France	10	10	10	5/10
Georgia	10	10	10	10
Germany	15	5	10	5/10
Greece	8	8	8	8
Hungary	8	8	0/8	8

	WHT (%)			
	Dividends			
Recipient	Individual companies	Qualifying companies (1)	Interest (2)	Royalties (3)
Iran	10	10	10	10
Israel	15	15	10	5/10
Italy	10	10	10	5/10
Japan	15	15	10	10
Kazakhstan	10	10	10	10
Korea	7	7	10	5/10
Kuwait	10	5	7	10
Latvia	10	5	10	5/10
Lithuania	10	5	10	10
Luxembourg	10	5	10	5/10
Macedonia	8	8	0/8	8
Malta	8	8	8	8
Moldova	15	8	10	10
Montenegro	10	10	0/10	10
Netherlands	10	5	0/10	5/10
Norway	15	10	10	10
Pakistan	10	10	10	10
Poland	10	10	10	10
Qatar	7	7	7	5
Romania	10	5	8	10
Russia	10	10	10	10
San Marino	10	5	10	5/10
Saudi Arabia	7	5	7	10
Serbia	10	10	10	10
Slovenia	8	8	8	5/10
Sweden	10	5	8	5/10
Switzerland	15	5	5/10	5/10
Tajikistan	10	10	10	10
Turkey	12	12	10	10
Ukraine	10	10	10	10
United Arab Emirates	10	10	7	5/10
United Kingdom	15	10	10	5/10
Uzbekistan	10	10	10	10
Vietnam	10	10	10	10

Notes

1. The lower dividend rate applies if the qualifying company meets certain criteria (e.g. participation and capital holding criteria).
2. The lower interest rate applies, *inter alia*, to interest paid by public bodies or to bank loans.
3. The lower royalty rate applies to royalties for patents, designs or models, plans, secret formulas or processes, computer software, know-how, etc.

New rules on administration of DTTs are effective as of 1 July 2017. The following amendments are established:

- Advance tax relief may be obtained for all type of income, including business (active income) if such income is not attributable to a PE in Azerbaijan. Previously, such

relief might only be obtained for dividends, interest, royalties, and income from international shipments.
- Applications may also be filed electronically along with a hard-copy submission. Previously, only hard-copy submission was possible.
- No requirement to get respective DTT application approved by the overseas tax authorities. Only a tax residency certificate is required to be approved by the foreign tax authorities.
- Tax office may also return the approved applications to the income payer (tax agents) in the online regime.

More detailed information about applicability of lower rates may be found in respective DTTs.

Tax administration

Taxable period

The tax year in Azerbaijan is the calendar year.

Tax returns

Resident enterprises and PEs of non-residents must file profit tax returns for a calendar year by 31 March of the following year. During liquidation of a legal entity or a PE of a non-resident, the tax return should be submitted within 30 days after the adoption of a decree on liquidation.

A non-resident that has no PE in Azerbaijan and receives income subject to WHT (except for dividends and interest) may file a tax return with respect to such income and expenses, connected with the generation of the income, for purposes of reassessment of profit tax at the rate of 20%.

If a taxpayer applies for an extension of time to file the profit tax return prior to the expiration of the filing deadline and at the same time settles the full tax amount due, the filing deadline may be prolonged for up to three months. The prolongation of the terms for filing the return will not modify the terms of tax payment.

Legal entities and entrepreneurs that withhold tax at the source of payment are obligated to file the WHT report with the tax authorities within 20 days following the end of the quarter.

Advance tax ruling

The Tax Code introduces the concept of advance tax ruling, which allows a taxpayer to apply to the tax office for determination of its tax liabilities and legal consequences in advance for taxable operations. A tax ruling can be obtained for a particular transaction of at least AZN 10 million. The state duty for such application is AZN 500.

Voluntary tax disclosure

Voluntary tax disclosure refers to situations where notification of a tax liability, not discovered during a field tax audit, is made by the taxpayer to the tax authorities after the audit. In this case, the taxpayer pays only the tax due (i.e. without payment of a financial sanction).

Payment of tax

Taxpayers must make advance quarterly tax payments of profit tax by the 15th day of the month following the end of the calendar quarter. Payments are determined either (i) as 25% of tax for the past fiscal year or (ii) by multiplying the amount of actual income through the quarter by a ratio of tax to gross income for the previous year.

The final payment of profit tax coincides with submission of the declaration of profit tax (i.e. 31 March).

Tax audit process

The ordinary on-site tax audit shall be conducted not more than once in a year.

Off-site tax inspection shall be conducted within 30 days from the date when a tax return is provided by the taxpayer to the tax office. After the mentioned term expires, off-site tax inspection is not allowed for the tax return.

An extraordinary tax audit may be performed at any time under the following conditions:

- If tax return documents that are necessary for tax calculation and payment are not submitted in time or not submitted at all upon the warning of the tax authorities.
- If incorrect information is found in the report made on the results of tax inspection.
- When overpaid amount of VAT, interest, and financial sanction is assigned for the payment of other taxes, interests, and financial sanctions or assigned as payments on future liabilities. In such cases, the scope of the extraordinary tax audit is limited only to the taxable VAT operations of the taxpayer.
- When application is submitted by the taxpayer to return overpaid amounts of tax, interests, and financial sanctions.
- When the tax authorities obtain information from a known source on hiding (decreasing) of incomes or object of taxation by the taxpayer.
- When, in accordance with criminal legislation, there is a decision of the court or law-enforcement agency on implementation of a tax audit.
- In case of failure to provide the documents specified in the Tax Code.
- In the event of application for liquidation, reorganisation of the taxpayer legal entity, or seizure of business operations of the natural person operating without formation of a legal entity.

Statute of limitations

Tax authorities are entitled to calculate and recalculate taxes, penalties, and financial sanctions of the taxpayer within three years after termination of the taxable reporting period and to impose calculated (recalculated) sums of taxes, penalties, and financial sanctions within five years after termination of the taxable reporting period.

Topics of focus for tax authorities

The main issues challenged by the tax authorities during a tax audit include, but are not limited to, the following:

- Application of the 20% profit tax on 'deemed profit'.
- Application of benchmarking principle for income of foreign employees subject to tax in Azerbaijan.
- Correctness of claim of input VAT from budget and identification of operations taxable to VAT.

- Taxes withheld on payments to non-resident suppliers in cases where income of non-residents is considered as Azerbaijani-source income.
- Application of VAT on market price of assets that were written off, disposed free of charge, or at a discount rate.
- Challenging the transfer pricing.
- Grossed-up WHT paid at cost of the buyer disallowed for deduction.
- Deductibility of the head office costs.

Other issues

Compliance requirements for financial institutions

Provisions on tax monitoring by financial institutions were introduced to the Tax Code in December 2016. In accordance with international treaties on exchange of information, financial institutions must submit information about financial transactions in Azerbaijan to the competent authorities of foreign countries by submitting e-reports.

Non-cash settlement

According to new changes to the law on non-cash settlements, taxpayers are subject to financial sanctions for failure to conduct the below-listed operations cashless (i.e. for receiving in cash):

- Receipt of money by leasing providers and loan issuers.
- Payment of insurance payments and receipt of insurance premiums by insurer or reinsurer.
- Receipt of service fees and other levies by state authorities, state entities, budgetary organisations, and public entities.
- Receipt of stationary phone charges and utilities.
- Receipt of tuition fees.
- Receipt of fees for tourism agency services.

Furthermore, taxpayers are also subject to financial sanctions for failure to conduct the below-listed operations cashless (i.e. for paying in cash):

- Up to AZN 30,000 per calendar month for VAT-registered taxpayers and taxpayers engaged in trade and/or public catering services whose taxable supplies exceed AZN 200,000 in any 12-month period.
- Up to AZN 15,000 per calendar month for other taxpayers.
- Any payments over AZN 15,000 per calendar month by other taxpayers.
- Payment of salary and other relevant compensations to employees (not applicable to those engaged in retail trading, public catering, and service industry whose taxable supply are below AZN 200,000 in any month [months] of a consecutive 12-month period).
- Any payments out of funds earned from state procurement contracts.

Bahrain

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Significant developments

Saudi Arabia and the United Arab Emirates implemented value-added tax (VAT) on 1 January 2018. Bahrain and other Cooperation Council for the Arab states of the Gulf (GCC) member states have until 1 January 2019, at the latest, to implement VAT. The Excise Tax Law has been ratified by Bahrain and was implemented on 30 December 2017.

Taxes on corporate income

There are no taxes in Bahrain on income, sales, capital gains, or estates, with the exception, in limited circumstances, to businesses (local and foreign) that operate in the oil and gas sector or derive profits from the extraction or refinement of fossil fuels (defined as hydrocarbons) in Bahrain. For such companies, a tax rate of 46% is levied on net profits for each tax accounting period, irrespective of the residence of the taxpayer.

Corporate residence

Income Tax Law No. 22 of 1979 (which only applies to oil and gas businesses) does not define residence.

Other taxes

Value-added tax (VAT) and excise duty

Under the Unified Agreement for Value Added Tax of the Cooperation Council for the Arab States of the Gulf (the Framework), Bahrain has until 1 January 2019 to implement VAT. No implementation date for VAT has yet been published, and there are no VAT laws or implementation regulations in place. The Framework specified a uniform VAT standard rate of 5%, with some limited exceptions.

Bahrain signed the Common Excise Tax Agreement of the States of the Gulf Cooperation Council on 1 February 2017. The Bahrain cabinet ratified the Excise Tax Law, which entered into force on 30 December 2017. Tobacco products and energy drinks are subject to excise tax at 100%, while soft drinks are subject to excise tax at 50%. Other goods may also become subject to excise tax in the future.

Customs duty

The general rate of customs duty is 5% of the value in cost, insurance, and freight (CIF), except for alcoholic beverages, which is 225%, and cigarettes, which is 200%.

Certain categories of goods, such as paper and aluminium products, are subject to 20% duty rate.

Stamp duty

Stamp duty applies to the transfer and/or registration of real estate only and is levied at a rate of 2%. In case of payment of the stamp duty within the two months following the transaction date, the rate of the stamp duty is reduced to 1.7%.

Registration and licence fees

Companies are subject to registration and licence fees ranging from 25 Bahraini dinar (BHD) to BHD 1,000, which vary depending on the nature of their activity.

Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

Social security contributions

Employer's social security contribution is 12% for Bahraini workers and 3% for non-Bahraini workers, calculated on their monthly salaries and capped at an income ceiling of BHD 4,000.

Municipality taxes

There is a 10% municipality tax levied on the rental of commercial and residential property to expatriates.

Branch income

Profit from branch income is taxable in Bahrain at 46% if it is derived from activities in the oil and gas sector.

Income determination

There are no specific rules in Bahrain with respect to the calculation of specific items of income, such as inventory valuation, capital gains, dividend income, interest income, or foreign income. However, the income tax law requires that taxable profits be calculated using generally accepted accounting principles (GAAP).

Deductions

The law generally allows deductions for all costs associated with taxable activities in Bahrain, such as the cost of production, refinement, remuneration of employees associated with these taxable activities (including social insurance and pensions paid for the benefit of these employees), and other operational losses.

All reasonable and justifiable costs of production and exploration of products sold during the current taxable year are deductible for tax purposes, provided that these expenses have not been deducted elsewhere in calculating net taxable income.

Depreciation and depletion

Tax deductions may be claimed with respect to reasonable amounts for depreciation, obsolescence, exhaustion, and depletion incurred during the taxable year for properties used by the taxpayer in a trade or business from which income, taxable under the income tax law, is derived. Generally, such amounts may be claimed on a straight-line basis over the estimated remaining useful life of the properties, unless otherwise approved by the Minister of Finance.

Taxes

All taxes and duties not imposed by the Bahrain income tax law, including customs duties, may be deducted from taxable income as stipulated in Bahrain's income tax law.

Net operating losses

Unutilised losses may be carried forward and deducted up to an amount equivalent to the net income in future years as defined by the Bahrain income tax law. Carryback of losses is not permitted.

Payments to foreign affiliates

There are no specific restrictions in the income tax law pertaining to payments made to foreign affiliates.

Group taxation

There is no legislation or mechanism for group relief or the taxation of group activities in Bahrain. Additionally, there is currently no specific legislation regarding transfer pricing or thin capitalisation in Bahrain.

Tax credits and incentives

There are no tax incentives in Bahrain. There is also currently no legislation regarding foreign tax relief in Bahrain.

Withholding taxes

There are no withholding taxes (WHTs) on the payment of dividends, interest, or royalties in Bahrain.

Tax treaties

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

Tax administration

Taxable period

A company's accounting period should normally follow the (Gregorian) calendar year (i.e. 1 January to 31 December).

Tax returns

The law is silent on the due date for the filing of the final income tax statement. However, an estimated income tax statement must be submitted on or before the 15th day of the third month of the taxable year. Where applicable, a taxpayer may also be required to file an amended estimated income tax statement quarterly thereafter, unless a final income tax statement has been provided.

Approved accountants must prepare a certified tax return for the return to be acceptable to the authorities.

Payment of tax

Taxes (based on the initial estimated tax statement filed) are payable in 12 equal monthly instalments. Payments are due starting on the 15th day of the fourth month of the taxable year. Income tax as per the subsequent amended estimated income tax statements or the final income tax statement will form the basis of tax payments for the remainder of the 12 monthly instalments that are yet to be paid. The final payment is due on the 15th day of the third month after the end of the taxable year or the date the final income tax statement is filed, whichever is later.

Any excess income tax paid will be credited and used in the first invoice for income tax following the establishment of the credit by the Minister.

Statute of limitations

The Income Tax Law No. 22 of 1979 does not specify any statute of limitations.

Other issues

Intergovernmental agreements (IGAs)

On 23 January 2017, the United States and Bahrain entered into a Model 1 Foreign Account Tax Compliance Act (FATCA) IGA. The United States and Bahrain had previously agreed in substance to an FATCA IGA with effect as of 30 June 2014.

On 29 June 2017, Bahrain signed the Common Reporting Standard (CRS) Multilateral Competent Authority Agreement (MCAA) and has committed to make its first exchange of information for CRS purposes by September 2018.

Barbados

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Significant developments

On 4 July 2017, Barbados joined the Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS), becoming the 101st jurisdiction to do so. By joining the IF, Barbados will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues.

Effective 1 July 2017, the National Social Responsibility Levy rate was increased from 2% to 10%. The levy is applied on the customs value of all imports and domestic output, with the exception of goods for use in the manufacturing, agriculture, and tourism sectors.

Effective 1 July 2017, a foreign exchange fee of 2% was imposed on the sales of all foreign currency. This rate extends to all wire transfers, credit card transactions, and over-the-counter sales of foreign currencies.

Taxes on corporate income

Companies resident in Barbados are taxed on income earned from all sources, whether generated within or outside of Barbados, less expenses incurred for the purpose of producing assessable income in a fiscal period not to exceed 53 weeks. Non-resident companies are generally only taxed on income derived from sources and operations conducted within Barbados.

Corporate income tax (CIT) rates

The following rates apply to taxes on corporate income:

Type of entity	CIT rate (%)
Regular companies	25
Small companies (1)	15
Manufacturing companies (2)	15
Approved developers in special development areas	15
International business companies, international banks, and international societies with restricted liability	0.25 to 2.5
Life insurance companies (computed on gross investment income)	5
Companies engaged in the construction of houses (3)	15
Exempt insurance companies (4)	0

Type of entity	CIT rate (%)
Residential rent	15

Notes

1. This concessionary tax rate is available to any small company as defined in the Small Business Development Act.
2. This concessionary tax rate is available only to companies registered as manufacturers with the Barbados Customs & Excise Department.
3. Selling price of the houses must be less than 400,000 Barbados dollars (BBD), including the house and land.
4. The exemption is available for a period of 15 years.

Corporate residence

A corporation is deemed to be resident in Barbados if its management and control is exercised in Barbados.

Permanent establishment (PE)

The concept of a PE is described within a number of Barbados's double taxation agreements (DTAs). A PE is, in general, created in line with the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Under domestic legislation, a non-resident person is deemed to have been carrying on business in Barbados, and hence required to file a CIT return, where in an income year such a non-resident person:

- produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved, or constructed, in whole or in part, anything in Barbados, whether or not they exported that thing without settling it prior to exportation, or
- solicited orders or offered anything for sale in Barbados through a factor, agent, or servant, whether the contract or transaction was to be completed inside or outside Barbados or partly in and outside Barbados.

In either of the circumstances mentioned above, the non-resident shall be deemed to have been carrying on business in Barbados in that income year and the income of that business shall be deemed to be income derived from Barbados for that income year.

Other taxes

Value-added tax (VAT)

VAT is levied at the rate of 17.5% on the value of a wide range of goods and services imported or supplied in Barbados by VAT-registered persons.

A number of services, including financial services, real estate, medical services, and education, are exempt. Intergroup transactions are taxable.

Persons operating under Barbados' VAT regime must be registered for VAT. The threshold for VAT registration is BBD 200,000, but voluntary registration is permitted for persons whose annual turnover is less than BBD 200,000.

Certain supplies are zero-rated, including exports, basic food items, prescription drugs, crude oil, and the supply of certain items to the international financial services sector (e.g. legal and accounting fees). There is a concessionary rate of 7.5% applicable to the supply of accommodation by guest houses, hotels, inns, or any similar place, including a dwelling house normally let or rented for use as a vacation or holiday home. This rate also applies to supplies of certain goods and services related to tourism, provided that the registrant satisfies certain criteria.

Registered persons may deduct input tax from their output tax in calculating the tax payable for that VAT accounting period. Where input tax exceeds output tax, the registrant will be entitled to a refund of VAT.

Customs duties

Customs duty is levied on a wide range of imported goods at rates specified in Part 1 of the First Schedule of the Customs Act. Barbados' Customs Tariff is based on the Common External Tariff of the Caribbean Common Market (CARICOM), with special derogations for certain items (e.g. spirituous beverages). Customs duty is calculated on either an *ad valorem* basis or at specific quantitative rates. The *ad valorem* rates for most items vary between 0% and 20%, but certain goods regarded as luxury items are subject to higher rates (e.g. jewellery 60%). In addition, a select group of items that are produced within Barbados and CARICOM (including some agricultural products) are subject to a duty rate of 60% when imported from outside the region.

Manufacturers and agriculturists, including persons involved in fishing and horticulture, are exempt from the payment of duty on inputs (including packaging materials, machinery, equipment, and spares) imported for use in their businesses.

The various departments and institutions, international bodies, and organisations listed in Part II-B of the Customs Tariff are exempt from the payment of customs duty. Specific goods (e.g. computers), also mentioned in Part II-B, are exempt from customs duty.

Excise taxes

Four categories of goods (both locally manufactured, as well as imported) are subject to excise taxes. These are motor vehicles, spirituous beverages, tobacco products, and petroleum products. Most excisable goods are subject to the tax at a specific rate, with the exception of motor vehicles, which are subject to *ad valorem* rates. A 10% excise tax before VAT is levied on sweetened beverages.

A few persons and goods are exempt from excise taxes. These include motor vehicles imported by the diplomatic corps and other organisations exempt from customs duty under Part II-B of the Customs Tariff, goods imported for temporary use or for a temporary purpose that will be re-exported within three months, and goods (other than spirits) intended to be used as raw materials for the manufacture or production in Barbados of other taxable goods.

National Social Responsibility Levy

National Social Responsibility Levy is applied at 10% on the customs value of all imports and domestic output, with the exception of goods for use in the manufacturing, agriculture, and tourism sectors.

Land tax

The following land tax rates are in effect as of tax year 2017/18:

Land	Land tax rate
On the improved value of each parcel of land on which there is a dwelling house that is used exclusively for residential purposes:	
On first BBD 150,000	0
On amounts between BBD 150,000 and BBD 450,000	0.10% of the improved value
On amounts between BBD 450,000 and BBD 1,000,000	0.45% of the improved value
On amounts exceeding BBD 1,000,000	0.75% of the improved value
On the improved value of each parcel of land on which there is a building other than a residence	0.70% of the improved value
On the site value of each parcel of unimproved land	0.80% of the site value

The following concessions have been granted for land taxes:

- A tax cap of BBD 60,000 has been placed on residential property.
- For villas, as defined by the Tourism Development Act, a rebate of 25% is granted on production of a certificate from the Barbados Tourism Authority.
- For hotels, as defined by the Tourism Development Act, land tax is calculated and payable on only 50% of the tax demanded.
- For pensioners exclusively occupying their own homes, land tax is calculated and payable on only 40% of the tax demanded.
- A 10% discount is granted if the land tax is paid within 30 days from the date of the tax demand notice or 5% if paid within 60 days. Hotels and restaurants are allowed to pay their land tax bills during January to March without losing access to the discount granted.
- Any person certified by the Minister Responsible for Energy to be engaged in the production of solar energy and/or the manufacture of goods to be used in the production of solar energy will be entitled to a rebate of no more than 50% of the tax demanded for that year. Such persons are required to have settled all outstanding liabilities with the Comptroller of Customs and the Commissioner of Inland Revenue to access the rebates.

Property transfer taxes

Property transfer taxes are levied as set out in the following table:

Property	Transfer tax rate
Shares of companies listed on the Barbados Stock Exchange	Exempt
Shares of private companies *	2.5% of value or amount of gross consideration above BBD 50,000
Land with a building	2.5% of value or amount of gross consideration above BBD 150,000
Land with no building	2.5% of value or amount of gross consideration
Leases of 25 years or more or short-term leases that are continuously renewed for a period equal to 25 years or more	2.5% of value or amount of gross consideration

* Any transfer of shares to a person who is resident outside of Barbados, whether or not the transferor is resident in Barbados, where the assets of the company concerned consists of foreign assets and its income is derived solely from sources outside Barbados, will not be subject to transfer taxes in Barbados.

Land development duty

Where a person disposes of property situated in a specially designated development area within 15 years of the date specified by statute, duty may be charged. This may be at rates of up to 50% on the excess of the value of the consideration over the improved value at the specified base date, plus certain other expenses and an amount representing capital appreciation of the property.

Stamp duty

Barbados imposes a stamp duty on various instruments, including written documents. The rates imposed vary depending on the document. Stamp duties applicable to documents for the transfer of shares, real estate, and mortgages are set out below:

Instruments	Stamp duty rate
On sale of shares of companies listed on the Barbados Stock Exchange	Exempt
On sale of real estate, leases, and shares in private companies *	BBD 10 per BBD 1,000 or part thereof
On mortgages	BBD 3 on each BBD 500 or part thereof

* Any transfer of shares to a person who is resident outside of Barbados, whether or not the transferor is resident in Barbados, where the assets of the company concerned consists of foreign assets and its income is derived solely from sources outside Barbados, will not be subject to transfer taxes in Barbados.

Payroll taxes

Other than employers' National Insurance contributions (*see below*), there are no other payroll taxes, the burden of which falls on the employer. Employers are, however, responsible for deducting the employees' income tax liability at source, through the pay-as-you-earn (PAYE) system.

National Insurance contributions

Every individual between the ages of 16 and 65, who is gainfully employed in Barbados under a contract of service, must be insured under the National Insurance and Social Security Act.

Contributions are determined as a percentage of insurable earnings, up to a maximum of insurable earnings of BBD 4,650 per month or BBD 1,073 per week. Employers must remit National Insurance contributions by the 15th day of the following month. The employee's share is 10.1%, with the employer paying 11.25%.

Foreign exchange fee

A foreign exchange fee of 2% is charged on the sales of all foreign currencies. This includes all wire transfers, credit card transactions, and over-the-counter sales of foreign currencies.

Tax on assets

A tax is imposed on the assets of:

- a deposit taking licensee under Part III of the Financial Institutions Act, Cap 324A
- a credit union, or
- an insurance company.

It is charged on the average domestic assets at a rate of 0.35% *per annum* and pro-rated and paid every three months.

Banks tax on assets

A tax is charged on the average domestic assets of a bank at a rate of 0.35% *per annum* and pro-rated and paid every three months.

Life insurance premium tax

In addition to the CIT computed on the gross investment income of life insurance companies, a life insurance premium tax is levied on gross direct premium income earned by resident and foreign life insurance companies as set out in the following table:

	Resident life insurance companies (%)	Foreign life insurance companies (%)
New business written for the income year	6	6
Renewal business	3	5

General insurance premium tax

In addition to the CIT computed on the taxable profits of general insurance companies, a general insurance premium tax is levied on gross direct premium income at a rate of 4.75% in respect of property insurance business and 4% for other general insurance business.

Branch income

Branches are taxed on the same basis as corporations. In addition, a 10% withholding tax (WHT) is imposed on the transfer or deemed transfer to the head office of the after-tax profits that are not reinvested in Barbados, unless a DTA overrides this.

Income determination

Inventory valuation

Inventory is generally stated at the lower of cost and net realisable value. First in first out (FIFO) or average values are generally used for book and tax purposes. Last in first out (LIFO) is not acceptable for tax purposes. The Barbados Revenue Authority will normally accept a method of valuation that conforms to standard accounting practice in the trade. Conformity between book and tax values is expected.

Capital gains

Capital gains are not taxed in Barbados.

Dividend income

Dividends between two companies resident in Barbados are not taxed in the hands of the recipient. Dividends received by a resident Barbados company from a non-resident entity where the equity interest owned is at least 10% of the non-resident company and the shareholding is not held solely for the purpose of portfolio investments are not subject to tax.

Dividends paid by a regular business company to a non-resident shareholder are no longer subject to WHT when the amount paid as dividends is derived from income earned from sources outside of Barbados.

Interest income

Amounts received on account of, in lieu of, or in satisfaction of interest are included in the calculation of assessable income. In certain instances (to the extent specified by regulation), certain types of interest may be exempt from inclusion into the calculation of assessable income, including interest on bonds, debentures, or stock of the government of Barbados that is beneficially owned by a non-resident; interest on tax reserve and tax refund certificates; and interest on holdings (within certain limits) of National Development Bonds, National Housing Bonds, Savings Bonds, and Sugar Industry Bonds classified as non-taxable bonds, as well as interest income from some CARICOM countries.

Royalty income

Royalties received by a corporation are taxable as income from a business or property. Royalties earned from CARICOM sources are normally exempt from the payment of CIT.

Partnership income

Amounts received from a partnership or syndicate for the income year, regardless of whether or not these amounts were withdrawn during the income year, are included in the calculation of assessable income.

Foreign income

A Barbados corporation is taxed on foreign branch income as earned. Double taxation is avoided by means of foreign tax credits or an exemption where DTAs exist.

Deductions

Business expenses that are reasonable and incurred for the purpose of producing assessable income are deductible for tax purposes unless disallowed by a specific provision of the Income Tax Act. Deduction of capital expenditures is specifically prohibited, but special provisions may allow tax depreciation on these expenditures.

Depreciation

Depreciation for tax purposes is computed on a straight-line basis at prescribed rates. The process is accelerated by additional initial allowances in the year of acquisition. Conformity between book and tax depreciation is not required. Gains on sales of depreciable assets are taxable as ordinary income up to the amount of tax depreciation recaptured, and losses on sales below depreciated value are deductible.

Capital allowance

Capital allowance	**Rate**
Initial allowance:	
Plant and machinery	20%
Industrial buildings	40%
Annual allowance:	
Plant and machinery	Various rates
Industrial buildings	4%
Intellectual property	10% of 50% of the amount expended

Capital allowance	Rate
Investment allowance * (an incentive allowance limited by statute to entities operating in certain industries, claimed in lieu of initial allowances):	
Basic industry **	20%
Businesses or persons entitled to export allowance for exports outside of CARICOM countries	40%
Businesses engaged in the manufacture and refining of sugar	40%
Businesses engaged in the manufacture of clay and limestone products	40%

* This allowance is not deducted from the cost of the asset in calculating tax written down value.

** As prescribed by the regulations to the Barbados Income Tax Act.

Manufacturing allowance

Companies involved in the manufacturing sector are granted an additional 50% of the annual allowance claimed in an income year. Such companies are also often able to claim investment allowances.

Renewable energy allowance

Companies that have had an energy audit, retrofitted a building, or installed a system to provide electricity from sources other than fossil fuels are granted an additional 50% of the annual allowance claimed in an income year.

Commercial building allowance

A deduction is available in respect of a commercial building. For each income year, the available allowance is calculated at 1% of the land tax improved value, or 10% of the land tax improved value if the building is registered with the National Trust.

Depletion

For oil and gas companies, depending on certain circumstances, a depletion allowance of 20% or 10% is given in addition to annual depreciation on prescribed types of capital expenditure.

Goodwill

Goodwill is not a depreciating asset, and tax amortisation is not available.

Start-up expenses

There are no specific provisions in relation to deductions for start-up expenses. However, some of these are treated as costs incurred on account of capital expenditure. Such costs are therefore not allowable deductions for tax purposes.

Interest expenses

A Barbados corporation can claim a deduction for interest expenses. However, where interest claimed as a deduction has not been paid within two years of being accrued (one year if on a loan from a related party), it should be added back to assessable income.

Bad debts

Amounts representing debts owed that have been established as bad debts during the income year and have been previously included in calculating assessable income for that income year or a previous income year are deductible in calculating assessable income.

Charitable contributions

Charitable contributions are generally deductible where they are made to entities that are specifically registered as charities or not-for-profit organisations with the Corporate Affairs and Intellectual Property Office.

Pension expenses

Contributions made by companies under registered pension schemes are deductible in calculating assessable income.

Fines and penalties

Fines and penalties imposed are generally not deductible.

Taxes

Taxes on income are not deductible.

Net operating losses

From income year 2015, losses can generally be carried forward for seven years (previously nine years) after the income year in which they are incurred and may be applied in full against future taxable profits. Notwithstanding this, a tax loss incurred by a person in respect of residential property can only be deducted against assessable income earned by that person in respect of residential property.

Losses of general insurance companies can only be carried forward for five years, and losses of life insurance companies cannot be carried forward at all.

No carryback is allowed for CIT losses.

Payments to foreign affiliates

A Barbados corporation can claim a deduction for royalties, management fees, and interest charges paid to foreign affiliates, provided that payments are no greater than what it would pay to an unrelated party.

Group taxation

There are no group taxation provisions in Barbados.

Transfer pricing

Although Barbados has no specific transfer pricing legislation or regulations in place, the Income Tax Act contains a section dealing with artificial transactions. This enables the revenue authorities to amend the assessable income of a person where they believe the main purpose of a non-arm's-length transaction is to artificially reduce that person's assessable income.

In such circumstances, the transaction is disregarded or modified to achieve the effect that no longer results in the artificial reduction of that person's assessable income.

Thin capitalisation

Barbados does not have tax provisions relevant to thin capitalisation.

Controlled foreign companies (CFCs)

Barbados does not have tax provisions relevant to CFCs.

Tax credits and incentives

Foreign tax credit

Barbados allows a credit for foreign taxes (taxes paid in jurisdictions outside Barbados). The credit should not exceed the Barbados tax attributable to the income derived outside Barbados.

Agricultural cash rebate

The following rebates may be claimed on agricultural or agro-processing machinery or plants that are new or imported onto the island for the first time:

- Sugar cane harvesters: 10% or 15%.
- Other: 18%.

Export allowance

There is a rebate of tax under the Income Tax Act in respect of income from export sales outside CARICOM. The maximum tax credit on eligible sales is 93%, which is available where eligible sales exceed 81% of total sales.

Exempt Insurance Act

The Exempt Insurance Act is applicable to companies in Barbados that insure risks and earn premiums outside the island and for companies that own or manage the former. Under the Act, all three types of companies are exempt from exchange control regulations.

In lieu of standard CIT rates, exempt insurance companies are subject to tax at the rate of 0% for the first 15 years; thereafter, the rate is 8% on the first BBD 250,000 of taxable income and 0% on taxable income in excess of BBD 250,000. No WHT is levied on remittances of dividends or interest.

Exempt insurance companies are subject to an annual licence fee of BBD 20,000 for the first 15 years.

Fiscal Incentives Act

The Fiscal Incentives Act provides to manufacturers of an ‘approved product’ a full exemption from taxes and duties for varying periods, up to a maximum of 15 years.

Foreign currency earnings credit

Persons carrying on business in Barbados may claim a tax credit of up to 93% of CIT on net profits from foreign currency earnings derived from construction projects or professional services undertaken outside of CARICOM, international insurance business, or services provided to the international business sector.

Employment tax credit

Where a person carries on business in an income year and during that income year or any of the following two consecutive income years:

- there is an increase in profits directly attributable to the business
- there is an increase in the number of employees who are employed directly in the operations of the business by an amount of at least 10% of the total workforce employed during the previous year, and
- the increase in the number of employees referred to is maintained for a period of three years,

that person is entitled to a tax credit of 10% of the actual amount of the expenditure incurred in respect of wages for the increase in employees.

The credit is applied in the year in which persons meet the above-mentioned criteria. Any unused credit can be carried forward for three years from the end of the income year in which the credit was obtained, and no cash refund shall be allowed.

Productivity and innovation tax credit

Entities incurring expenditure that is innovative in nature and leading to the development of a new manufacturing process, product, service, or organisational procedure will be granted a tax credit of 25% of the amount expended in that income year. The credit will only be granted if the innovation was successfully introduced to the market as evidenced by increases in sales, productivity, or organisational efficiency.

Any unused tax credit shall be carried forward for a maximum of three years from the end of the income year in which the credit was obtained, but no cash refund will be allowed. Certification from the Executive Director of the National Productivity Council is required.

Renewable energy

A number of tax concessions have been enacted with respect to the conservation of energy. These measures include a 150% deduction of actual expenditure, not exceeding BBD 25,000, for each year for five years in respect of the following:

- Energy audits.
- 50% of the cost of retrofitting premises or installing systems to produce electricity from sources other than fossil fuels.

The business must be current in the payment of its CIT, VAT, land tax, and National Insurance contributions, or, where not current, has entered into an agreement with the respective authorities to settle outstanding arrears.

Further tax concessions have been enacted with respect to the generation and sale of electricity from renewable energy sources and installation and sale of renewable energy electricity systems or energy efficient products, including:

- An income tax holiday of ten years granted on the certificate of the Minister Responsible for Energy to a developer, manufacturer, or installer of renewable energy systems and energy efficient products.
- 150% deduction of interest on a loan in respect of the construction of a new or the upgrading of an existing property to generate, supply, or sell electricity from

renewable energy or for the installation or supply of renewable energy systems or energy efficient products.
- 150% deduction for a period of ten years commencing from income year 2012 of the amount expended on staff training relating to generation and sale of electricity from a renewable energy source or installation and servicing of renewable energy electricity systems or energy efficient products.
- 150% deduction of expenditure on the marketing of products for the generation and sale of electricity from a renewable energy source or products related to the installation and servicing of renewable energy electricity systems or energy efficient products.
- 150% deduction of expenditure on product development and research related to the generation and sale of electricity from a renewable energy source or the installation and servicing of renewable energy electricity systems or energy efficient products.
- Exemption from the payment of CIT by a venture capital fund invested in the renewable energy and energy efficient sectors for a period of ten years commencing from income year 2012.
- Deduction of contributions to a venture capital fund invested in the renewable energy and energy efficient sectors for a period of ten years commencing from income year 2012.
- Exemption from the payment of WHT on dividends earned by shareholders of companies solely engaged in the installation or supply of renewable energy electricity systems or energy efficient products for a period of ten years commencing from income year 2012.
- Exemption from the payment of tax on interest earned by financial institutions for financing the development, manufacturing, and installation of renewable energy systems and energy efficient products for a period of ten years commencing from income year 2012.

Housing Incentives Act

The Housing Incentives Act provides CIT, import duty, WHT, and other concessions to developers who undertake low income housing projects. Approved developers are subject to CIT at a rate of 15%.

International Business Companies (IBCs) Act

IBCs resident in Barbados but deriving income solely from sources outside Barbados are taxed at the following rates:

Taxable income (BBD)	Rate (%)
Up to 10 million	2.50
10 million to 20 million	2.00
20 million to 30 million	1.50
In excess of 30 million	0.25

Freedom from exchange controls is granted to IBCs, as well as duty-free concessions on certain imports. No WHT is levied on remittances of dividends, royalties, interest, management fees, fees, or other income paid by IBCs to persons outside Barbados. IBCs may also claim a credit for taxes paid outside Barbados, provided that this does not reduce the company's rate of CIT in Barbados to less than 0.25%.

IBCs are subject to an annual licence fee of BBD 850.

International Financial Services Act (IFSA)

The IFSA provides for the establishment of international banking, trust administration, and other related or ancillary services by eligible companies incorporated in Barbados or branches of qualified foreign banks. An annual licence fee of BBD 100,000 is payable by IFSA licensees who are in the business of receiving foreign money deposits, while IFSA licensees who are not involved in deposit taking financial services are required to pay BBD 50,000.

International financial service entities are exempt from exchange controls and are granted duty-free concessions on certain imports.

Profits and gains are taxed at the same rates as for IBCs. No WHTs are levied on remittances of dividends, interest, or fees. International financial service entities may also claim a credit for taxes paid outside Barbados, provided that this does not reduce the entity's rate of CIT in Barbados to less than 0.25%.

International Trusts Act

The International Trusts Act is aimed at facilitating the use of Barbados trusts for purposes previously made possible in many tax-free financial centres. An international trust is taxed in Barbados as an individual that is resident but not domiciled in Barbados. This allows the trust to take advantage of a network of tax treaties while not subjecting its foreign earnings to Barbados tax unless they are remitted there. The Act exempts trusts from exchange control and WHT requirements. No registration is required.

Shipping (Incentives) Act

The Shipping (Incentives) Act was enacted to encourage the development of Barbados' shipping activities by granting CIT, import duty, WHT, and other concessions to approved shipping companies for a period of ten years.

Small Business Development Act

Companies incorporated under the Companies Act with at least 75% of their shares owned locally and having share capital of not more than BBD 1 million, annual sales not in excess of BBD 2 million, and not more than 25 employees may obtain approval as a small business. Such companies pay CIT at a reduced rate of 15% and are exempt from the payment of import duties on equipment imported for use in the business and from stamp duty in some instances. In addition, 120% of certain expenditures directly related to the development of the business are deductible for tax purposes. Investors in such businesses are exempt from WHT on interest and dividends earned on their investment.

Societies with Restricted Liability (SRL) Act

An SRL is a hybrid entity that can be recognised as a corporation or partnership in certain jurisdictions, depending on the nature of its organisational documents. The entity has limited liability, and membership units are known as quotas. Societies qualifying under this Act may apply for a licence to operate as international SRLs and, as such, are taxed at the same rates as IBCs. No WHT is levied on any distributions, interest, or other income paid by an international SRL to non-residents. International SRLs are granted duty-free concessions on certain imports, and no exchange control requirements are applicable. Entity mobility is also a prominent feature of this legislation. Qualifying societies organised overseas can be continued into Barbados under the Act.

Special Development Areas Act

The Special Development Areas Act provides relief for approved developers constructing or improving a building or structure in certain defined locations in Barbados and to persons financing such work (other than a commercial bank). Persons financing such work are exempt from income tax on interest received. Approved developers are exempt from import duties and VAT on inputs for the construction or renovation of buildings, WHTs on repatriation of interest (for a period of 15 years), land tax, and property transfer tax payable by vendors on the initial purchase of the company. An approved developer pays CIT at the rate of 15% and is granted initial and annual allowances on industrial buildings of 40% and 6%, respectively, and on commercial buildings of 20% and 4%, respectively.

Qualifying insurance companies

Companies registered under the Insurance Act that derive at least 90% of their premiums from sources outside of CARICOM and at least 90% of whose risks originate outside of CARICOM may obtain a certificate of qualification. Such companies are entitled to the same exemptions from WHTs and exchange controls as exempt insurance companies. They are also entitled to the foreign currency earnings credit, which may reduce their CIT rate from 25% to 1.75% for general insurance business. The foreign currency earnings credit can also reduce the rate of tax on gross investment income applicable to life insurers from 5% to 0.35%.

Tourism Development Act

The Tourism Development Act provides that a qualifying owner of a tourism project or of a completed tourism product may offset expenditures on construction or the provision of certain amenities against its profits.

A tourism project includes the following:

- The construction of a new hotel.
- The alteration or renovation of an existing hotel.
- The conversion of an existing building or buildings into a hotel by reconstruction, extension, alteration, renovation, or remodelling.
- The furnishing and equipping of a building to be utilised as a hotel.
- The provision of tourist recreational facilities and tourism related services.
- The construction and equipping of a new restaurant.
- The alteration or renovation of an existing restaurant.
- The construction of a new attraction or the alteration or renovation of an existing attraction.
- The restoration, preservation, and conservation of natural sites.
- The establishment, restoration, preservation, and conservation of monuments, museums, and other historical structures and sites.
- The construction and furnishing of villas.
- The construction and furnishing of timeshare properties.
- The addition to a tourism product of any facilities or services intended to increase or improve the amenities that the tourism product provides.

Concessions extend to the following:

- The importation of building materials and supplies without payment of customs duty and an exemption from the payment of customs duties on specified supplies to be used for equipping the project.
- A refund of customs duty (including VAT) where the holder of a permit can satisfy the Comptroller of Customs that the building materials and supplies purchased for a tourism product have been purchased in Barbados, or in the case of importation that the customs duty was paid by the holder of the permit.
- Income tax concessions with respect to the write-off of interest, accelerated deduction of expenditure, interest rate subsidy, equity financing, training, and marketing.
- The set off of approved capital expenditures against revenues for a period of 15 years by the owner of a qualifying tourism project (except restaurants), which has a project with a value of up to BBD 200 million. Hotels with capital expenditure over BBD 200 million are allowed one additional year to write off expenditure for each additional BBD 20 million expended, up to a maximum of 20 years.

Withholding taxes

WHTs are levied as follows:

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Management fees**
Residents	12.5	12.5 (1)	-	-
Non-residents:				
Non-treaty	0/15 (2)	15	15	15
Treaty:				
Austria	5/15 (3)	0 (4)	0 (4)	-
Bahrain	0	0	0	-
Botswana *	5/12 (5)	10	10	-
Canada	15	15 (6)	10 (7)	5
CARICOM	0	15	15	15
China, People’s Republic of	5/10 (8)	10	10	-
Cuba	5/15 (9)	10	5	-
Cyprus	0 (4)	0 (4)	0 (4)	
Czech Republic	5/15 (9)	5	5/10 (10)	-
Finland	5/15 (3)	5	5	5
Ghana *	5/7.5 (11)	5/7.5 (12)	7.5	-
Iceland	5/15 (3)	10	5	-
Italy	5/15 (3)	5	5	-
Luxembourg	0/15 (13)	0 (4)	0 (4)	-
Malta	5/15 (14)	5	5	-
Mauritius	5	5	5	-
Mexico	5/10 (15)	10	10	-
Netherlands	0/15 (16)	5	0/5 (17)	-
Norway	5/15 (3)	5	5	5
Panama	5 (18)	5/7.5 (12)	7.5	-
Portugal	5/15 (9)	10	5	-
Qatar	0 (4)	0 (4)	5	-
Rwanda *	7.5	10	10	15
San Marino	0/5 (19)	5	0 (4)	-
Seychelles	5	5	5	-

Barbados

Recipient	WHT (%) Dividends	Interest	Royalties	Management fees
Singapore	0 (4)	12	8	-
Slovakia *	0/5 (20)	10	0/5 (21)	-
Spain	0/5 (22)	0 (4)	0 (4)	-
Sweden	5/15 (2)	5	5	5
Switzerland (23)	0	0	0	-
United Arab Emirates	0 (4)	0 (4)	0 (4)	-
United Kingdom	0/15 (24)	0 (4)	0 (4)	-
United States	5/15 (25)	5	5	-
Venezuela	5/10 (26)	5/15 (27)	10	-
IBCs, ISRLs, QICs, & EICs (28)				

* Treaty not yet in force; protocol or treaty awaiting ratification.

Notes

1. The rate is 0% for pensioners aged 60 years and over.
2. The rate is 0% if dividends are paid out of income earned from sources outside of Barbados.
3. The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
4. Taxable only in the state in which the beneficial owner is resident.
5. The rate is 12% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
6. The rate applies provided that the interest is subject to tax in the other territory.
7. The rate applies provided that the royalties are subject to tax in the other territory.
8. The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
9. The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
10. 5% on any literary, artistic, or scientific work, including films or television broadcasting, and 10% on any patent, trademark, commercial, or scientific equipment, among others.
11. The rate is 7.5% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
12. The rate is 7.5% of the gross amount; 5% if the beneficial owner is a bank.
13. The rate is 15% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10% for an uninterrupted period of at least 12 months prior to the decision to distribute the dividend.
14. The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 5%.
15. The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
16. The rate is 15% for portfolio dividends; 0% if the beneficial owner is a company (subject to certain restrictions) holding at least 10%, a regulated bank or insurance company, a pension fund that is regulated and whose income is generally tax exempt.
17. The rate is 0% for royalties in respect of literary, artistic, scientific work, cinematographic films, and films, discs, or tapes for radio or television broadcasting.
18. The rate is 75% of the statutory nominal rate at the time of distribution; 5% if the beneficial owner is a company holding at least 25%.
19. The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10% for an uninterrupted period of at least 12 months prior to the decision to distribute the dividend.
20. The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10%.
21. 0% on any literary, artistic, or scientific work, including films or television broadcasting, and 5% on any patent, trademark, commercial, or scientific equipment, among others.
22. The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 25%.
23. Agreement extended to Barbados by virtue of the agreement between Switzerland and the United Kingdom, on payments to non-residents from Barbados.
24. Dividends are only taxable in the state in which the beneficial owner is resident. The rate of 15% applies to dividends paid out of income from immovable property by an investment vehicle that distributes most of this income annually and whose income is exempt from tax, other than where the beneficial owner is a pension scheme.
25. The rate is 15% for portfolio dividends; 5% for holdings of at least 10%. Dividends paid by a regulated investment company will bear WHT at a rate of 15%, regardless of the percentage of shares held by the recipient. Dividends paid by a real estate investment trust (REIT) will qualify for the 5% WHT rate only if the beneficial owner is an individual holding less than 10% of the shares in the REIT, otherwise, a 30% WHT rate will apply.
26. The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 5%.
27. The rate is 15% generally; 5% if the recipient is a bank.
28. International business companies (IBCs), international societies with restricted liability (ISRLs), exempt insurance companies (EICs), and qualifying insurance companies (QICs) are exempt from WHTs on payments to non-resident persons or international business entities. Specific legislation applies.

Tax administration

Taxable period

CIT returns are prepared on a fiscal-year basis.

Tax returns

Companies with fiscal years ending between 1 January and 30 September (both dates inclusive) are required to file a CIT return on or before 15 March in the year following the end of the fiscal period. Companies with fiscal years ending any time between 1 October and 31 December (both dates inclusive) are required to file a CIT return on or before 15 June in the year following the end of the fiscal period.

The Department of Inland Revenue has instituted an online filing system, which is optional.

Payment of tax

Companies with fiscal years ending between 1 January and 30 September (both dates inclusive) are required to make an instalment of CIT for the income year in which the fiscal period ends on or before 15 September of that year. The instalment is 50% of the net CIT payable for the preceding income year. The remainder of CIT due (if any) must be paid on filing of the CIT return by 15 March of the following year.

Companies with fiscal years ending between 1 October and 31 December (both dates inclusive) are required to make two instalments of CIT for the income year in which the fiscal period ends on or before 15 December of that year and 15 March of the following year. The instalments are each 50% of the net CIT payable for the preceding income year. The remainder of CIT due (if any) must be paid on filing of the CIT return by 15 June of the following year.

It is possible to apply for a reduction or waiver in the instalments if lower profits are anticipated in the current year when compared with those of the preceding year.

Penalties

The penalties and interest for failing to file a return on time and pay the CIT due are as follows:

- Penalty for failing to file a CIT return by the due date is BBD 500 plus 5% of the tax assessed at the due date.
- Penalty for failing to pay CIT by the due date is 5% of the tax assessed and unpaid at the due date.
- Interest charge of 1% per month on the tax and penalties calculated for each month during which any amount of tax and penalties remain unpaid on the largest amount of tax and penalties that were due and unpaid at any time during that month.

The penalty for failing to make an instalment of CIT by the due date is 10% of the CIT instalment due, plus interest at 0.5% per month on the CIT instalment and penalty outstanding.

Tax audit process

A person authorised by the Commissioner may, at any reasonable time, audit the books and records, or other documents that may relate to the information that should be in the books or records, examine property, request reasonable assistance from the owner, or, as necessary, seize or retain any documents that may be relevant.

Statute of limitations

Every person required to deliver a return of assessable income for an income year shall keep adequate records and shall retain every such record or voucher for a period of up to five years after the end of the relevant income year, unless the Commissioner otherwise directs, before the disposal of such records. Every person carrying on a business must obtain written permission from the Commissioner of Inland Revenue before disposing of books or records.

Topics of focus for tax authorities

The Barbados tax authorities have been focussed on the efficient collection of taxes and voluntary compliance.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 27 May 2014, the US Treasury announced that an intergovernmental agreement (IGA) was 'in effect', and, on 17 November 2014, the US Treasury and Barbados signed and released the IGA. The regulations to the Income Tax Act to allow for automatic exchange of information were enacted on 3 September 2015, and the IGA entered into force on 25 September 2015.

Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Barbados has signed and ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which entered into force, in respect of Barbados, on 1 November 2016 and for taxable periods beginning after 2017. Under the convention, Barbados will exchange tax information based on OECD standards, but is not required to collect taxes on behalf of another country or provide assistance in the service of related documents.

Common Reporting Standard (CRS)

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the OECD. Under the CRS, foreign tax authorities will provide information to the Barbados Revenue Authority relating to financial accounts in their jurisdictions held by Barbadian residents. The Barbados Revenue Authority will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Barbados.

The CRS in Barbados is effective from 1 January 2017. However, due to a delay in finalising the logistics in order to successfully fulfil their reporting obligations, the Barbados Revenue Authority has decided to commence exchanging information by September 2018. As of 31 December 2017, Barbadian financial institutions must have procedures to identify accounts held by residents of any country other than Barbados and to report the required information to the Barbados Revenue Authority.

Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS)

On 4 July 2017, Barbados joined the IF on BEPS, becoming the 101st jurisdiction to do so. By joining the IF, Barbados will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues. As a signatory to the IF, Barbados has committed to implementing minimum standards related to:

- preferential regimes, including exchange of tax rulings (Action 5)
- treaty abuse (Action 6)
- country-by-country (CbC) reporting to tax authorities allied to wider transfer pricing documentation in Action 13, and
- improved mutual agreement procedures (MAP) for resolving disputes (Action 14).

Tax information exchange agreements (TIEAs)

TIEAs provide for the exchange of information on tax matters. TIEAs with Denmark, the Faroe Islands, Greenland, South Africa, and the United States are in force. The TIEA with Colombia is awaiting ratification; and TIEAs with France and Germany have been initialled and are awaiting signature.

Bilateral investment treaties (BITs)

Barbados has entered into BITs with Canada, China, Cuba, Germany, Italy, Mauritius, Switzerland, the United Kingdom, and Venezuela. BITs with Ghana and the Belgium/Luxembourg Economic Union (BLEU) await ratification.

BITs typically cover the following:

- Investments of every kind.
- National and most favoured nation (MFN) treatment.
- Compensation for losses owing to war, revolution, state of national emergency, revolt, riot, etc. to be no less favourable than that for residents.
- Expropriation, providing for compensation equal to market value.
- Unrestricted transfer of investments and returns.
- Subrogation.
- Settlement of disputes, either between one state and nationals or companies of the other state, or between the two states themselves.

Belarus

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Significant developments

On 1 January 2018, Belarus introduced value-added tax (VAT) on e-services provided to Belarusian individuals (including individual entrepreneurs) by foreign companies. Foreign companies rendering e-services are obligated to register with the Belarusian tax authorities, file VAT returns/e-services VAT information forms (when applicable), and pay VAT directly to them.

The period open for tax audits was limited. It shall not exceed five years plus the period from current year to date. Scheduled audits are replaced with random ones.

On 1 January 2018, a five-year statute of limitations to tax charges was introduced.

Taxes on corporate income

The standard corporate income tax (CIT), also known in Belarus as profits tax, rate is 18%. The CIT rate for banks and insurance companies is 25%.

All resident companies are obligated to recognise revenue derived from the supply of goods, works, services, and property rights as of the date when it was recorded in accounting in line with the accrual method, notwithstanding the date of settlement for goods, works, services, and property rights supplied.

CIT is charged on taxable income (net profits). Taxable income is generally determined as revenues from sales of goods, works, and services, excluding VAT, less production and business-related costs, less other deductible expenses, plus net results of non-operating income and expenses.

Resident companies are taxed on their worldwide income. The amount of tax paid by a Belarusian company to the foreign tax authorities with regard to the income received from its activity abroad is deducted from the amount of CIT reported with regard to the worldwide income.

Non-resident companies are taxed on Belarus-sourced income derived through a permanent establishment (PE) with CIT (at the rate of 18%). Income of non-resident companies sourced in Belarus that is not related to the activities of a PE is subject to withholding tax (WHT) (at rates varying from 6% to 15%).

Local income taxes

There are no provincial or local taxes due on net profits.

Corporate residence

A company is resident in Belarus if it is incorporated in Belarus.

Permanent establishment (PE)

According to local legislation, a non-resident company is deemed to have a PE in Belarus in cases where:

- it permanently carries out commercial activities in Belarus, in whole or in part
- it carries out its activities through a dependent agent
- it uses a building site or construction, assembly, or equipment objects, or
- it provides services or performs works within a period of 90 days, continuously or in the aggregate, in any 12-month period starting or ending in the respective tax period.

Double taxation treaties (DTTs) may establish different rules of PE recognition. According to domestic law, where there is a DTT, the provisions of the treaty shall prevail.

Notwithstanding the activities that create a PE in Belarus, a non-resident company must be registered with the local tax authorities controlling the territory where activities are carried out before starting a business in Belarus.

Other taxes

Value-added tax (VAT)

All taxpayers shall recognise revenue for VAT purposes on an accrual basis. The only exception is set out for taxpayers using the simplified taxation system and keeping simplified tax records without accounting records. Such taxpayers shall recognise revenue on a cash basis.

The standard VAT rate is 20%, whereas the preferential rate is 10%. All telecommunication services are subject to VAT at the rate of 25%.

The 10% preferential rate applies on:

- local supplies of crop products (excluding floriculture, cultivation of ornamental plants), wild-growing, beekeeping, livestock (except for fur production), and fisheries locally produced, and
- import and/or local supplies of certain food products and goods for children.

In general, local supplies of goods, works, and services made by a taxpayer performing its economic activities in Belarus, as well as the importation of goods, are subject to VAT.

Place of supply rules established by the Tax Code of Belarus should be followed to determine whether goods, works, and services are supplied locally, and therefore subject to tax in Belarus.

When a non-resident company, which does not have a PE registered in Belarus, sells goods or provides works and services that are considered local supplies according to the place of supply rules, the VAT due on such supplies is paid by the purchaser registered with the local tax authorities from its own funds. This VAT can be deducted against output VAT, if any, or refunded by the tax authorities in the established order.

Some exceptions apply to provision of construction and other similar works.

Exemptions with credit (zero-rated) include, but are not limited to, the following:

- Supply of goods exported outside of Belarus.
- Provision of works and services involving maintenance, loading, reloading, and any other similar works and services related to supply of exported goods.
- Transportation and any directly linked ancillary services related to the export or import of goods, including transit forwarding, as well as exported works for goods processing.
- Bunker fuel for fuelling aircraft of foreign companies carrying out international flights and/or international carriages by air.
- Works and services related to repair (modernisation, conversion) of aircraft (including engines and railway vehicles) and provided to non-resident companies or individuals.
- Works (services) on repair and technical maintenance of Belarusian non-resident's trucks performed by authorised service centres.

For VAT offset purposes, an electronic VAT invoice should be issued by all VAT payers in accordance with the legislative requirements.

In order to apply zero-rated VAT on goods carried out from Belarus, VAT payers must hold supporting documents as evidence that these goods were actually exported from Belarus to another country. Application of zero-rated VAT on respective works and services must be supported by the appropriate documents, which have to be provided to the local tax authorities where the taxpayer is registered for tax purposes.

Exemptions without credit include, but are not limited to, the following:

- Supply of material rights for certain industrial property objects (e.g. inventions, utility models, industrial designs, breeding achievements, integrated circuits, know-how).
- Supply of securities, derivatives, and other similar financial instruments; certain limitations apply.
- Provision of all types of insurance and re-insurance (co-insurance) services rendered by insurance and re-insurance agents.
- Supply of medicines, medical equipment, instruments, medical products, as well as drugs, devices, equipment, under certain conditions.
- Personal or public health care services, under certain conditions.
- Social services supplied by institutions for children and young people care, nursing homes for the elderly and/or by care/guardianship institutions for disabled or by other non-profit entities.
- Supply of services in the field of culture and art, under certain conditions.
- Public services (services of barbers, baths, and showers; laundry and dry cleaning services; watch repairing; manufacturing and repair of clothing and footwear; repair and maintenance of household appliances; repair of personal and household goods).
- Services provided by religious organisations, provided these services correspond to the purposes set out in their canons, statutes, and other documents.

- Funeral services, maintenance of the graves, tombstones, fences, and other objects associated with burial, as well as works on their production, under certain conditions.
- Supply of postage stamps, postcards, and envelopes marked, excise and control (identification) stamps for marking of goods at their nominal value, and stamps that can be used as a confirmation of fees and charges payable in accordance with the legislation.
- Supplies of jewels, as well as related services, under certain conditions.
- Retail trade of goods in duty-free shops, under certain conditions.
- Research and development (R&D), design, and technological works and services, under certain conditions.
- Education and training services.
- Lotteries and gambling, under certain conditions.
- Financial services supplied by the banks, under certain conditions.
- Goods and equipment imported into Belarus, under certain conditions.
- Transactions related to provision of loans.
- Remuneration of lessee and its investments expenditures not compensated in the value object of leasing on transfer of the object of a financial leasing arrangement to individuals (lessees) if the relevant leasing contracts contain a provision on the buyout of the leasing object.

In order to apply exemptions, taxpayers should ensure that the services and goods supplied meet the appropriate VAT exemption requirements.

VAT returns shall be submitted on either a monthly or quarterly basis, by the 20th day of the month following the reporting period. VAT shall be paid on either a monthly or quarterly basis, no later than the 22nd day of the month following the reporting period.

VAT on e-services

On 1 January 2018, Belarus introduced VAT on e-services provided to Belarusian individuals (including individual entrepreneurs) by foreign companies.

The e-services falling within the scope of e-services VAT cover licensing of software (including computer games), databases, electronic books, information materials, graphic images, music, audio-visual works via the Internet; advertising services via Internet; placing sales offers via the Internet; automated data search, selection, sorting, and provision to users via the Internet; providing domain names and hosting services, etc.

The e-services VAT base is the amount of funds received by a foreign company from providing e-services to Belarusian individuals. The e-services VAT rate is 20%.

E-services VAT is a special tax that is paid by e-services VAT registered foreign companies directly to the Belarusian tax authorities. Such companies shall be registered for e-services VAT in the quarter when they started to provide e-services to Belarusian individuals.

Submission of e-services VAT returns/e-services VAT information forms (when applicable), as well as e-services VAT payment, shall be carried out quarterly.

Customs payments

Belarus, Kazakhstan, and Russia have continued their integration process, and, since 1 January 2015, have launched the Eurasian Economic Union (EAEU) on the basis of Agreement on the EAEU, which is considered as a further step of integration after the Customs Union of these countries. Armenia and Kyrgyzstan entered into the EAEU on 2 January 2015 and on 12 August 2015, respectively. The unified trade regulations and the EAEU Customs Code, entered into force on 1 January 2018, have become a part of the EAEU legislation. Within the EAEU, single markets of goods, services, labour, and capital, with certain limitations, are introduced.

Indirect taxation issues within the EAEU shall be administered in compliance with the Agreement on the EAEU and Annex 18 to the Agreement that is the 'Protocol on the procedure of collection of indirect taxes and the mechanism of control over their payment for export and import of goods, works, services'.

The following charges are considered customs payments:

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

Rates of import duties as well as descriptions of goods subject to them are established by the Single Nomenclature of Goods of the EAEU (HS Nomenclature) and Single Customs Tariff of the EAEU.

Export duties are not levied on exported goods, with the following exceptions: certain soft oil; light and medium distillates; fuels and gasoline; wasted petroleum products; propane, butane, ethylene, propylene, and other liquefied gases; petroleum coke; petroleum bitumen, benzol, toluene, xylenes, potash fertilisers; rape or colza seeds; timber; rough skin; and tannage. According to the EAEU regulations, rates of export duties in regards to mentioned goods shall be established by the Belarusian government and shall be equal to the rates applied in Russia.

Import and export duties are calculated on the customs value of the goods. The EAEU customs valuation legislation is based on rules and principles of the World Trade Organization (WTO). There are six methods of the customs valuation applied in sequential order:

- The transaction value method (Method 1).
- The method on the transaction value of identical goods (Method 2).
- The method on the transaction value of similar goods (Method 3).
- The deductive value method (Method 4).
- The computed value method (Method 5).
- The fallback method (Method 6).

The main customs valuation method is the transaction value method. Generally, the following components are considered when calculating the customs value of imported goods:

- Contract price of the goods.
- Rebates and discounts provided by a supplier, under certain conditions.

- Transportation-related expenses to the border of the Customs Union (i.e. Belarusian border).
- Insurance premiums.
- Cost of containers and other packaging.
- Part of direct or indirect income to be derived by the seller from future resale, transfer, or other use of imported goods.
- Licence and other similar payments.

Special, anti-dumping, and countervailing duties could be imposed as a measure to protect economic interests of Belarus.

The tax base for VAT calculation due on imported goods includes the total amount of customs value, import duty, and excise tax paid, if any.

Generally, the taxpayer is required to pay customs duties before the customs clearance of the appropriate goods; however, under certain conditions, a taxpayer may be provided with an extension of payment deadlines or allowed to pay only part of customs duties. It is also possible to pay customs duties in advance.

Electronic customs declaration is currently available for customs clearance of the goods declared in customs procedures of temporary exports, re-exports (exports) as well as re-imports, free circulation (imports), and free customs zones.

Excise taxes

Rules on determination of moment of actual supply of excisable goods are adjusted as consistent with the obligation of taxpayers to record revenue on an accrual basis. From 1 January 2015 to 31 December 2018, Belarussian companies producing alcoholic drinks and/or beer have the right to determine the date of the actual sale (transfer) of excisable goods either on an accrual or cash basis.

The goods that are subject to excise tax and the tax rates applicable in 2018 are represented in the table below.

Description of tax object	Taxable item	Tax rate per taxable item (BYN*)
Rectified ethyl alcohol and alcoholic drinks, including beer and wine	1 litre of 100% alcohol, or 1 litre of complete product	From 0 to 19.61
Tobacco (excluding raw tobacco), including cigarettes, cigars, cigarillos, and smoking tobacco	1 kg of pipe and smoking tobacco, or 1 cigar or 1,000 cigarettes, cigarillos	From 4.38 to 80.27
Energetic products (petrol, kerosene, diesel and biodiesel, gasoline, fuel, marine fuel, oils for diesel engines and engines with a carburettor and an injector)	1 ton	From 0 to 580.11
Liquefied hydro carbonated gas and compressed natural gas used as motor fuel	1,000 litres and 1,000 cbm	From 27.77 to 54.21
Diesel and/or carburettor (jet) oil	1 ton	From 1 January till 30 June: 338.96; from 1 July till 31 December: 350.43

* Belarusian rubles

The tax rate depends on the type of goods. Rates of excise taxes are stipulated by the Appendix to the Tax Code of Belarus. The rates of excise tax are increased over the course of the year by establishing different rates effective during each following half a year proportionally to inflation processes in Belarus.

The excise tax rate for cigarettes with filters is defined on the basis of (i) maximum retail price per pack of cigarettes of certain brands declared by a taxpayer and (ii) reference of certain brands of cigarettes to one of three price groups defined in the Tax Code.

Excise taxes paid on the purchasing/importation of excisable goods to be used in manufacturing of goods or provision of works and services in Belarus are considered as deductible for CIT purposes, with certain exceptions.

Excise taxes are reported and paid on a monthly basis. The tax return should be submitted no later than the 20th day of the month following the reporting period, while the payment should be made no later than the 22nd day of the month following the reporting period.

Real estate tax (immovable property tax)

Real estate tax is levied at the annual rate of 1% on the residual value of buildings, installations, including separated premises, and car-parking spaces owned by legal entities. The increased annual tax rate of 2% applies to late construction in progress (if construction works take longer than the deadline established in technical documentation). The tax rate is increased (decreased) by the coefficient determined by the local state authorities (up to 2.3) depending on the location of the object subject to real estate tax. The tax rate can be increased by ten times (as a maximum) by the local state authorities with regard to constructions, installations, and car-parking spaces not exploited (exploited ineffectively) that are included in the list of not exploited (exploited ineffectively) property.

The tax base of buildings and other taxable objects located in the territory of Belarus and leased by individuals to legal entities will be the contract value of the leased real estate not less than its value established by the evaluation. Evaluation can be made in the order approved by the President of Belarus as well as by a certified appraiser or local authority responsible for state registration of real estate.

When the real estate subject to taxation is located in Belarus and leased by a foreign company that is not considered as having a PE in Belarus to a resident company, the lessee is considered a real estate taxpayer.

The amount of tax, except the tax due on late construction in progress (if construction works take longer than the deadline established in technical documentation), is deductible for CIT purposes.

The tax reporting obligation must be fulfilled by a taxpayer not later than 20 March of the reporting year. Taxpayers are entitled to choose whether to pay tax on a quarterly basis by equal parts, not later than the 22nd day of the third month of each quarter, or once a year, not later than 22 March of a current tax period (tax year).

Land tax

Belarusian and foreign entities are subject to land tax collected by the local tax authorities with respect to land that they own or use in Belarus. Land plots assigned for temporary use and not transferred back to the state by the due date, land plots occupied without permission, and land plots used contrary to the intended purpose are also a part of the land tax base. Such land plots are taxed at the rate increased by coefficient 10. The determined land tax rates are increased by coefficient 2 in respect of the land plots where the objects of late construction in progress are located.

The tax base depends on plot location and purpose and is normally determined pursuant to cadastral value of a land plot.

The Tax Code provides for a number of land plot categories that are exempt from, or not subject to, land tax in Belarus.

The tax is payable on an annual basis at the rates established by the Appendices to the Tax Code of Belarus. Tax rates for agricultural plots vary from BYN 0.05 to BYN 27.86 per hectare. Tax rates on the land plots located in towns and rural areas can be determined in absolute amount or as a percentage depending on the cadastral value of a land plot. The range from 0.025% to 3% payable on the cadastral value is applied. Local state authorities are authorised to increase (decrease) the land tax rates by a coefficient that should not exceed 2.3.

Land tax is deductible, with some exceptions, for CIT purposes.

Land tax is reported annually, no later than 20 February of the current reporting year.

Taxpayers are entitled to choose whether to pay tax on a quarterly basis, by equal parts not later than the 22nd day of the second month of each quarter, or once a year, not later than 22 February of a current year on plots other that agricultural and not later than 15 April with regard to agricultural plots.

State dues

State dues are payable by legal entities that apply to the state institutions for the issuance of documents having legal force or other deeds, bring the cases before the courts for consideration, use bills of exchange in their activities, etc.

State dues include the following payments and duties:

- State fees (payable on suits, applications, appeals, and other documents that are submitted to or claimed from the courts or prosecution authorities, payable on applications for state registration of a legal entity, notary public services, real estate registration services, etc.).
- Patent fees (payable for registration and use of intellectual property).
- Stamp fees (payable on activities with bills of exchange).
- Consular fees (payable on the activities of state consular and diplomatic departments performed under the request of any applicant).

State dues for state registration of a business entity are not charged if registration-related documents are filed with the registration authorities electronically via the official web-portal. State dues paid are refunded if proceedings in the economic court are terminated due to the parties consent to resort to mediation.

Social insurance contributions (SICs) and other similar payments

All payments to employees are subject to SICs at the total rate of 35%. SICs at a rate of 34% (28% pension insurance and 6% social insurance) are paid by an employer and deducted for CIT purposes. SICs at a rate of 1% are withheld from employee's salary and paid by the employer.

In addition to SICs, an employer is liable for payments under mandatory insurance against accidents at work and professional diseases to the state insurance company '*Belgosstrakh*' on behalf of all its individuals employed. These payments are charged at a flat rate of 0.6%. For employees engaged in certain sectors of the economy, special coefficients of up to 1.5 are applied; consequently, the amount of payments under mandatory insurance against accidents at work and professional diseases could increase.

Such payments as dismissal allowances, compensations for moral damages, legally provided compensations (with some exceptions), insurance premiums payable under certain personal mandatory and voluntary insurance, dividends and interests from participation in legal entities, and others, are exempt from SICs and from mandatory insurance against accidents at work and professional diseases.

Offshore charge

An offshore charge is levied upon the following activities of domestic entities:

- Any transfer of funds to an entity registered in an 'offshore jurisdiction', to a third party who is a creditor of that entity in discharge of an obligation before the latter, or to the bank account of an offshore jurisdiction.
- In kind performance of obligation to an offshore entity, with some exceptions.
- Any transfer of material rights and obligations as a result of changes in commitment (cession or transfer of debt) between a domestic entity and an offshore entity.

The following transactions are excluded from the scope of offshore charge:

- Performance of the obligations in kind to a non-resident as a result of transfer of responsibilities due to substitution of parties in an obligation, the parties of which are a resident of Belarus and a non-resident registered in the offshore zone, under the conditions when transfer of monetary funds is not subject to offshore charge.

According to Belarusian laws, an offshore jurisdiction is a territory that is included in the list of offshore territories established by the President, has a preferential tax treatment, and/or does not disclose the information related to financial transactions made by resident entities.

A list of 52 offshore territories has been published. With certain exceptions specified in the law, all payments to offshore companies or their branches for any kind of work or services, commodities, interest on loans, insurance premiums, guarantees, etc. are subject to an offshore charge, which is deductible for CIT purposes.

Tax relief is granted to: (i) repayment of loans, including interests on them, borrowed from entities located in offshore territories, (ii) payments due under international marine cargoes and forwarding services, and (iii) payments made by banks due to the fact of performing banking operations, under certain conditions.

An offshore charge is paid at a 15% rate and is deductible for CIT purposes.

The tax is reported and paid on a monthly basis, no later than the 20th day of the month following the reporting period.

Ecological (environmental) tax

Ecological (environmental) tax is imposed on pollutants discharged into the environment, storage and disposal of industrial wastes, and wastewater discharges.

The amount of tax due is decreased by the amount of disbursed capital investments in renewable energy plants and facilities for removing pollutants.

Importation of ozone-depleting substances is excluded from the tax.

Emissions of pollutants into the atmospheric air are subject to ecological tax, provided the total volume of emissions regarding all the groups of substances amounts to three or more tons a year.

Emissions of pollutants of the 1st hazard rating and pollutants having no hazard rating are not subject to ecological tax. The tax base of ecological tax is the actual quantity of respective pollutants used/discharged. Tax rates of ecological tax are stipulated by the Tax Code of Belarus.

Ecological tax paid, with certain exceptions, is treated as deductible for CIT purposes.

The tax is reported on a quarterly basis, by the 20th day of the month following the reporting quarter. Taxpayers who pay tax on the basis of established annual limits are entitled to choose whether to pay tax on a quarterly basis, by the 22nd day of the month following the reporting quarter, or once a year, not later than 22 April of a current year. Other legal entities pay the tax on a quarterly basis.

Tax on natural resources

A tax on natural resources is payable on the actual value of extracted natural resources. It depends on the kind and quantity of extracted resources.

The amount of tax on natural resources is fully deducted (regardless of being over the limit of natural resources extraction) for CIT purposes.

In general, the tax is reported and paid on a quarterly basis. If taxpayers calculate the tax on the basis of volumes of extraction specified in documents being the ground of extraction, the tax is reported and paid as follows:

- The initial tax return is submitted to the tax authority not later than 20 April of the reporting year based on the planned volumes of resources to be extracted, and the tax is paid on a quarterly basis.
- The final tax return is submitted not later than 20 February of the year following the reporting year based on the volumes actually extracted, and the additional tax, if any, is paid not later than 22 February of the year following the reporting year. The amounts of tax overpaid as a result are to be offset (refunded) in accordance with the legislation.

Local tax on providers (suppliers)

The local tax on providers is levied on legal entities engaged in gathering/purchasing of wild plants (or parts thereof), mushrooms, and technical and medical raw materials of floral origin for their further industrial processing or resale.

The tax base is the cost of gathered items defined on the basis of procurement (purchasing) prices.

The tax rates do not exceed 5%. Tax on providers is treated as deductible for CIT purposes.

The tax is reported and paid on a quarterly basis.

Branch income

Non-resident legal entities pay tax on profits attributable to a PE (18%).

Taxation of a PE

If a non-resident company is deemed to have a PE in Belarus, it will have to register with a local tax authority and declare related profit. Profit related to a PE is taxed by CIT at a rate of 18%.

A PE's profits are computed on substantially the same basis as Belarusian legal entities, including the composition of tax-deductible expenses. The Tax Code provides for the deductibility of expenses incurred abroad by a head office with respect to its PE in Belarus (including a reasonable allocation of administration costs).

To calculate a PE's taxable income, a non-resident company is required to provide a tax authority with financial documents (i.e. accounting records, income statement, general ledger accounts, invoices, statements of services/works fulfilment, etc.) supporting the amount of revenue earned and expenses incurred. Generally, a PE's taxable income is defined on a revenue less costs basis. Documentary support of each revenue and/or cost item is required.

When it is not possible to calculate a profit attributable to a PE, this profit can be calculated by the tax authority using one of the following methods:

- A profit-sharing method (i.e. gross foreign profit is allocated to PE by using one of the following coefficients related to a PE: working time costs, expenses incurred, services/works performed).
- Benchmarking method (tax authority performs benchmarking study by collecting the respective ratios/indexes of other entities engaged in similar activities).

Head office expenses related to a PE are considered for calculation of taxable income in Belarus and require confirmation of an independent foreign auditor. Splitting of expenses is highly recommended in the audited financial statements of the parent company (head office).

Non-resident legal entities operating in Belarus through a PE are required to follow the filing and payment schedules established for Belarusian legal entities.

Representative office

Non-resident legal entities are also allowed to operate in Belarus via a representative office or to set up a resident legal entity.

A representative office of a non-resident company is defined as the structural subunit registered with the Ministry of Foreign Affairs, which is entitled to protect and represent the interests of a non-resident company.

The representative office is not considered a legal person.

Non-resident legal entities are permitted to open representative offices in Belarus only for the purposes of carrying out activity of preparatory and auxiliary character. The scope of such permitted non-commercial activities includes the following:

- Contribution to the implementation of international treaties of Belarus in areas of trade, economy, finances, science, technologies, and transport; improving co-operation in these areas; and encouraging a larger amount of data on economic, commercial, and scientific issues.
- Research for investment opportunities in Belarus.
- Establishment of legal entities, including joint ventures.
- Ticket sale and seats booking of aviation, railway, automobile, and maritime transports.
- Other socially useful and non-commercial activity.

The copy of documents confirming state registration of a non-resident legal entity with competent authorities of its country of incorporation (to be filed along with the set of other documents required to open a representative office in Belarus) shall be issued no later than three months prior to the submission of the respective set of documents to the Ministry of Foreign Affairs of Belarus.

The permitted number of foreigners working in a representative office shall not exceed five individuals.

A representative office pays taxes due on its primary and auxiliary activities, such as real estate tax (with some exceptions), customs duties, input VAT, personal income tax (PIT), SICs due on employment of individuals, etc.

Income determination

Inventory valuation

Under domestic accounting legislation, stock used in the production and included in the cost of produced goods may be generally valued by the following methods:

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

The inventory valuation method used for CIT purposes must be the same method established by the taxpayer’s accounting policy.

Capital gains

Capital gains from disposal of shares/stocks in a Belarusian entity by another Belarusian entity are taxed as part of the latter's profits and are subject to an 18% tax. No tax exemptions are provided by the Tax Code for the taxation of capital gains.

Dividend income

Dividends distributed by a resident company to another resident company are subject to 12% CIT, which is withheld by a paying company.

Dividends distributed by a foreign entity represent non-operating income of a receiving Belarus entity and are subject to 12% CIT payable by the receiving entity in Belarus, irrespective of the fact that the foreign entity has paid the WHT on dividends distributed.

Dividends received by venture companies are exempt from CIT.

Dividends received by taxpayers from Belarusian companies are exempt from CIT in the hands of such taxpayers since CIT on dividend income is withheld by a respective dividend-distributing entity.

Inter-company dividends

The Tax Code provides no exemptions for taxation of inter-company dividends.

Interest income

Interest on most types of bonds, including state, municipal, bank, and corporate bonds issued during the period from 1 April 2008 till 1 January 2015 as well as from 1 July 2015 till 31 December 2017, is exempt from Belarusian CIT under certain conditions provided for in the Tax Code.

CIT at the standard rate of 18% is charged on interest income derived by a Belarus entity from another resident company.

Interest income derived by a Belarus entity from a foreign entity represents non-operating income of a receiving Belarus entity and is subject to 18% CIT payable by the receiving entity in Belarus, irrespective of the fact that the foreign entity has paid the WHT on interest income.

Royalty income

Income from sale of property rights by a Belarusian entity is subject to CIT at the standard rate of 18%.

Property rights to research findings that are registered in the state register of property rights to the research findings are exempt from CIT.

Other significant items

The following types of income are, *inter alia*, exempt from CIT:

- 'Target financing' received from the state or municipal authorities. The taxpayer is required to hold separate accounting records of income and expenses derived and incurred within 'target financing'.
- Goods (works, services), material rights, and monetary means granted:
  - to the successors by a legal entity in case of its restructuring

- as an inter-company transfer pursuant to corporate decision
- to taxpayers engaged in crop production, animal husbandry, fish farming, and beekeeping, provided that this income is spent for the appropriate activities, or
- as a foreign gratuitous help on conditions stipulated by the President.

Foreign income

Foreign income of Belarusian resident legal entities is taxed, except for dividends, as ordinary business income at the standard 18% CIT rate. Dividends are taxed at a 12% CIT rate.

There are no provisions in the tax legislation that allow tax deferral with regard to foreign income.

Deductions

Deductible expenses include all the usual costs that an entity actually incurs for the purpose of earning income or receiving economic benefit, unless the Tax Code of Belarus or presidential regulations provide otherwise.

Depreciation

Assets may be depreciated using the directly proportional (straight-line) depreciation method, indirect disproportionate depreciation methods, and productive depreciation methods. Depreciation may not exceed maximum rates established by the law.

Almost all types of fixed assets (buildings, premises, equipment, vehicles) are depreciated for tax purposes in accordance with the established procedures. Land plots are not depreciated. There are many different depreciation rates established for different types of fixed assets. Generally, fixed assets may be divided into five basic groups, as follows:

Group of assets	Description of the assets	Annual depreciation rate (%)
1	Buildings and constructions, premises	1 and 2
2	Vehicles and equipment	10
3	Cars and vehicles	12.5
4	Inventories (furniture, tools, etc.)	10
5	Computers and other related devices	20

Application of an investment deduction under the tax rules is possible in addition to the depreciation deduction provided by the accounting legislation, i.e. taxpayers are entitled to classify/record part of the initial value of fixed assets, as well as investment in reconstruction, as costs of production and supply of goods (works, services) for CIT purposes. The amount of the investment deduction is limited to 10% of the initial value or value of investment in reconstruction with regard to buildings and constructions and to 20% of the initial value with regard to machines, equipment, and vehicles.

An investment deduction is applied in a month starting from which:

- depreciation charges are calculated for accounting purposes and
- the value of investment in reconstruction increased the initial value of fixed assets in accounting records.

An investment deduction cannot be applied with regard to fixed assets received by a taxpayer free of charge.

Annual re-evaluation of fixed assets is required only with regard to buildings, constructions, and transfer units, provided the inflation rate in November of the current year has reached 100% for the period from the date of the prior mandatory re-evaluation. A particular company is entitled to re-evaluate fixed assets on its own initiative as of 1 January of the year following the reporting one.

Goodwill

Goodwill and personnel experience cannot be recognised as intangible assets for CIT purposes.

Start-up expenses

Deduction of start-up expenses is not possible.

Interest expenses

Interest expenses are generally deducted for CIT purposes unless interest is accrued on past-due loans. Thin capitalisation restrictions must also be considered (*see Thin capitalisation in the Group taxation section*).

Bad debt

Bad debts are deductible only if proved and specific criteria are met.

Charitable contributions

Amounts not exceeding 10% of an entity's gross profit granted to health, education, social welfare, culture, and sports state institutions; religious organisations; social services institutions; and public associations (i.e. 'Belarusian Society of Disabled Persons', 'Belarusian Society of Deaf Persons', 'Belarusian Fellowship of Visually Impaired Persons', 'Belarusian Children's Fund', and 'Belarusian Children's Hospice'), or spent for acquisition of goods, works, or services for the benefit of the named institutions, are exempt from CIT.

Taxes

Generally, the following taxes, dues, and other compulsory charges to the state authorities are deductible for CIT purposes:

- Excise taxes paid at purchasing/importation of excisable goods to be used in manufacturing of goods or provision of works and services in Belarus, with some exceptions.
- Ecological tax.
- Real estate tax, except for the tax due on late construction in progress.
- Land tax, with some exceptions.
- Tax on natural resources.
- State dues.
- Offshore charge.
- Tax on providers.
- Payments for social and other mandatory security.

The following taxes shall not be deducted for CIT purposes:

- VAT paid, with certain exceptions (*see below*).
- CIT.

VAT can be treated as deductible for CIT purposes only if acquired goods, works, or services are used for production or sale of goods, works, or services that are VAT exempt.

Other significant items

Limited deductible expenses also include the following:

- Modernisation and reconstruction of fixed assets. The value of modernisation or reconstruction is included in the acquisition costs.
- Business trips.
- Premiums on certain types of voluntary insurance, with restrictions.
- Natural losses, with certain exceptions.
- Cost of fuel and energy resources, with restrictions established for certain entities.
- Membership fees, contributions, and premiums, with restrictions.

Non-deductible expenses also include the following:

- Expenses on provision or acquisition of works and services not related to the taxpayer's business activities.
- Construction, maintenance, and other works, including all types of repair of assets that are not used for the purpose of earning income or receiving economic benefit.
- Default interest (forfeit), fines, and other sanctions paid to the state authorities.
- Dividends paid and similar type of payments.
- Contributions made to the authorised share capital.
- Expenses incurred on purchase and/or creation of depreciable assets.
- Depreciation for tangible and intangible assets not used in business, as well as for tangible assets that are not in operation.
- Cost of assets or material rights transferred as advance or a pledge to a third party.
- Expenses covered by reserves for future expenses created by a taxpayer in the prescribed manner.
- Interest on overdue loans.
- Remunerations to the members of the board of directors (supervisory board).
- Foreign exchange differences arisen as a result of revaluation of most obligations the expenses on which are not deductible for CIT purposes.
- Other expenses not related to the deriving of income and not attributed to operating activities of the entity as well as expenses that are not considered as allowable deductions under the Tax Code of Belarus.

To be deductible, expenses must be economically justified. The expenses that cannot be economically justified are as follows: (i) expenses for goods, works, services, and property rights actually not received by a taxpayer, (ii) expenses for services/works of the individual entrepreneur who is an employee of the taxpayer in case such services/works are related to one's working duties, and (iii) expenses for services/works of a taxpayer's parent company or subsidiary in case such services/works are related to working duties of the taxpayer's employees.

Net operating losses

Belarusian companies are given the possibility to recognise in the current tax period the tax losses incurred in the previous tax periods. Taxpayers are entitled to carry forward losses incurred in 2011 and subsequent tax periods. Losses can be carried forward only for ten years after the tax period when the losses have occurred.

However, tax loss carryforward is not applied to losses:

- incurred as a result of activities outside Belarus if a company is registered as a taxpayer in a foreign state with regard to such activities, or
- incurred in a tax period when a company was entitled to apply CIT relief (tax exemption) established for several tax periods.

Tax losses cannot be carried forward if, following the results of a relevant previous tax period (calendar year), a taxpayer received book income (profits), notwithstanding the fact that losses available to be carried forward in line with the Tax Code were actually suffered or not.

Tax losses cannot be carried back in Belarus.

Payments to foreign affiliates

Payments to foreign affiliates of a Belarusian resident legal entity in amounts of financing aimed to cover ongoing costs thereof are deductible for CIT purposes in Belarus.

Group taxation

Currently, group taxation legislation and regimes are not available in Belarus. Each Belarusian entity is regarded as a separate taxpayer and may not deduct tax losses of any other group entity. The Belarus Tax Code does not allow the deduction of foreign losses from domestic taxable income or domestic losses from foreign taxable income.

Transfer pricing

The Tax Code empowers tax authorities to carry out transfer pricing control. Though Belarusian transfer pricing legislation is not as thorough as it is in the European Union (EU) member states, taxpayers should be aware of the following:

- The tax authorities of Belarus are entitled to apply the market price of the transaction for tax purposes in case of:
  - Selling or acquisition of immovable property/real estate as well as housing bonds to/from a resident of Belarus and/or non-resident of Belarus when the price of the transaction deviates by more than 20% of the market price on the dates of recognition of income from sale and expenses incurred in the acquisition in tax accounting, respectively.
  - Entering into foreign trade transactions with a related party or a party located in an offshore zone, including the transactions performed with the participation of an intermediary under certain conditions, as well as entering into a transaction with an interdependent Belarusian tax resident, including transactions performed with the participation of an intermediary under certain conditions, who is allowed not to calculate and pay CIT (is exempt from CIT) in the tax period, when the transaction is performed, due to the fact that such party relates to special types of taxpayers, and/or applies special tax regimes, and/or performs its activity in the areas specified with the legislation, when the transaction price (price of a number of transactions with one person during the period of a calendar year) exceeds BYN 100,000 on the date of sale/purchase

of goods (works, services) or property rights and the price of such transaction (transactions) deviates by more than 20% of the market price for goods (works, services) or property rights.
- Entering into foreign trade transactions on purchasing/acquisition of (i) goods included into the list of strategic goods determined by the Belarusian government or (ii) other goods (works, services) or property rights by the entity included into the list of largest taxpayers, when the transaction price (price of a number of transactions with one person during the period of a calendar year) exceeds BYN 1 million on the date of:
  - Sale of goods (works, services) or property rights and the price of such transaction (transactions) deviates by more than 20% of the market price for goods (works, services) or property rights on the date of recognition of income from sale in tax accounting.
  - Purchase of goods (works, services) or property rights and the price of such transaction (transactions) deviates by more than 20% of the market price for goods (works, services) or property rights on the date of recognition of expenses incurred in the purchase in tax accounting.

- The following transactions do not fall upon transfer pricing rules:
  - Transactions on sale or purchase of goods (works, services) or property rights if the price of the transaction is determined in an international treaty signed by the Republic of Belarus.
  - Banking operations according to the list determined in the Bank Code of the Republic of Belarus.
  - Operations with securities and financial future instruments that are traded on the organised stock market.
- Revenue derived from the sale of goods (works, services), as well as expenses for production and sale of goods (works, services), is to be defined for the purposes of the application of transfer pricing rules.
- Taxpayers are obligated to:
  - inform the tax authorities, by means of electronic VAT invoices, of the transactions that fall under the transfer pricing control
  - submit the economic justification of the price applied and/or the documentation supporting economic feasibility of the price applied with regard to (i) foreign trade transactions on purchasing/acquisition of goods included into the list of strategic goods determined by the Belarusian government, and (ii) the transactions performed by the entities included into the list of largest taxpayers, when the transaction price (price of a number of transactions with one person during the period of a calendar year) exceeds BYN 1 million, and
  - upon the request of the tax authorities, submit the electronic justification of the price applied with regard to other operations falling under the transfer pricing control and not listed as (i) and (ii) above.
- To determine the CIT base on the basis of a market price, the tax authorities are entitled to apply the following methods:
  - Comparable uncontrolled price (CUP) method.
  - Resale price method.
  - Cost plus method.
  - Transactional net margin method.
  - Profit split method.
- Before the tax audit has been carried out, a taxpayer who applied transaction prices not corresponding to market prices is entitled to independently adjust the CIT base according to market prices and pay the remaining CIT.

Moreover, there is a mechanism to control transfer pricing provided by the DTTs applicable for Belarus. When interests under the loan agreement between related parties exceeds the arm's-length rate/basis (the amount which will be agreed upon between independent parties under normal business circumstances), a 5% rate of WHT (provided by the DTT) will be charged on the arm's-length interest charge. Excess amounts, if any, will be taxed by WHT at a 10% rate.

Thin capitalisation

Subject to thin capitalisation rules, deductibility of controlled debt may be, in certain circumstances, restricted for Belarusian CIT purposes if:

- it arises under the contract with a foreign shareholder (who directly or indirectly owns more than 20% of the Belarusian company), its related party, or other entity where the foreign shareholder or the related party is the guarantor with regard to the controlled debt, and
- the amount of the controlled debt exceeds:
  - the difference between the Belarusian taxpayer's assets and liabilities for taxpayers producing excisable goods, or
  - the difference between the Belarusian taxpayer's assets and liabilities by three or more times for other taxpayers.

The following expenses are regarded for thin capitalisation rules as controlled debt:

- Borrowing expenses (i.e. interests).
- Expenses for engineering services, marketing services, consulting services, information services, management services, intermediary services, and services involving searching for and employment of staff, as well as the fee for the transfer of property rights to objects of industrial property rights.
- Expenses for penalties (fines) and the amount payable as a result of other sanctions, including as a result of damages for breach of contractual obligations.

The thin capitalisation rules are not applied by (i) banks, (ii) insurance companies, and (iii) companies (lessors and finance lessors) as a result of receiving rent remuneration that does not exceed 50% of total income from sale of goods (works, services) or property rights and income from rent (finance rent) as of 31 December of the reporting tax period.

Controlled foreign companies (CFCs)

There are no provisions in relation to CFCs in Belarus.

Tax credits and incentives

Foreign tax credit

If a Belarusian legal entity derives income subject to taxation abroad, the tax paid abroad may be deducted from the calculated CIT. In accordance with the Tax Code, the amount deducted from CIT may not exceed that part of the tax calculated in Belarus that is attributed to the income received in a foreign jurisdiction. If there is a valid DTT with the country in question, the provisions of the treaty regarding avoidance of double taxation shall apply.

Special tax treatments

The Belarusian Tax Code provides a more favourable tax environment for particular resident legal entities. Special tax treatments are available for certain taxpayers depending on their location, amount of revenue, number of individuals employed, types of business, etc. Special tax treatments include, but are not limited to, the following:

- Simplified taxation.
- Tax on farmers and other producers of agricultural products.
- Tax on gambling business.
- Tax on lotteries.
- Tax on electronic interactive games.
- Single tax on imputed income, with regard to companies conducting maintenance and servicing of cars and other motor vehicles.
- Free economic zones.

In cases where activities fulfil the criteria of a special tax treatment, the taxpayer is not permitted to use the general taxation regime with regard to income deriving from those activities, with certain exceptions. Concerning simplified taxation, tax on farmers, and taxation of a free economic zone resident, the taxpayer is entitled to determine whether to apply such treatment or not.

Incentive for employing disabled persons

Entities employing disabled persons, if their average number equals or exceeds 50% of the average number of employees for the reporting period, are exempt from CIT due on taxable profit derived from production activity.

Exemption of CIT on profits derived from various activities

- Profits of entities engaged in baby food production are exempt from CIT.
- Profits derived by insurance companies from investments of insurance reserves under the contracts of voluntary life insurance are exempt from CIT.
- Entities engaged in manufacturing of prosthetic and orthopaedic devices (including dental prostheses), provision of rehabilitation, and disability services are exempt from CIT due on profits derived from sales of these items.

Incentives for the production of innovative, high-technology goods and laser-optical equipment

Income derived from selling goods of one’s own production included in the list of innovative goods approved by the Council of Ministers is exempt from CIT.

Income from selling goods of one’s own production that are included in the list of high-technology goods approved by the Council of Ministers is exempt from CIT, provided revenue from selling of such goods comprises at least 50% of total revenue of a taxpayer. If revenue from selling high-technology goods is less than 50% of total revenue, such income is taxable at a reduced CIT rate of 10%.

Free economic zones

Entities that are registered in Belarusian free economic zones are exempt from CIT as follows. Those who are registered as free economic zone residents till 1 January 2012 are entitled to apply CIT exemption during the period from 1 January 2017 till 31 December 2021, even if they used their right for a five-years CIT exemption before with regard to profits received from export of goods, works, and services of their own production. Free economic zone residents who are registered during the period from 1 January 2012 are entitled to apply CIT exemption with regard to profits received from own production during ten calendar years starting from the date when the profits were declared in relation to goods, works, and services of their own production that are exported. After expiration of the terms above, the CIT rate is 9%.

Land plots within the borders of free economic zones are exempt from land tax during the period from 1 January 2017 till 1 January 2022, regardless of the land plots designed purpose.

Moreover, residents of free economic zones are granted, under certain conditions, a relief from real estate tax on buildings and constructions located in free economic zones.

High Technologies Park (HTP)

The following tax privileges are granted to residents of the HTP:

- Full exemption from CIT.
- Full exemption from VAT when selling goods, works, services, or property rights in the territory of Belarus.
- Full exemption from VAT and customs duties when importing certain goods for the purpose of using them in activities connected with high technology.
- No land tax is applicable to land plots situated in the HTP on which a construction project is being carried out; however, this exemption will last no longer than three years.
- Full exemption from real estate tax on buildings and installations, including late constructions in progress but excluding the objects rented, that are situated in the territory of the HTP.
- 9% PIT for employees of residents of the HTP.
- No SICs on the part of employees' income exceeding the average salary in Belarus.

Taxation of holding companies

A holding company is a group of companies where one company of the group is considered to be a management company by virtue of influence over decisions passed by other group companies (i.e. the subsidiaries) as a result of holding 25% and more of their ordinary stock (shares).

A management company is entitled to create a centralised fund by means of contributions of subsidiaries from net income thereof. Subject to certain conditions, monetary means received by a management company (Belarusian tax resident) from subsidiaries (Belarusian tax residents) for the purpose of a centralised fund formation as well as monetary means transferred from a centralised fund to subsidiaries are not considered taxable income for CIT purposes.

Free of charge transfer of assets within a qualifying holding group is exempted from CIT in Belarus, conditional on certain terms, in particular:

- Participants of a holding group receiving or transferring assets are not (i) participating in another holding; (ii) registered as residents of free economic zones, the Special Tourist and Recreational Park 'Avgustovski Canal', HTP, or China-Belarusian Industrial Park; (iii) professional participants of the securities

market and do not manufacture alcoholic and tobacco products; (iv) banks, non-bank financial intermediaries, or insurance companies; and (iv) engaged in realtor activity, lottery activity, activity on organising and conducting electronic interactive games, or activity in the sphere of gambling business.
- Received assets are used to manufacture products, to perform works, and to render services.

Withholding taxes

The following income of a non-resident entity in Belarus that is not derived through a PE is deemed to be Belarusian-source income and is subject to WHT at the rates provided:

Income	WHT (%)
Freight charges (including demurrage) and freight-forwarding services (excluding freight charges for marine transportation and forwarding services)	6
Interest on any type of debt obligations, including securities	10
Royalties	15
Dividends and other similar income	12
Penalties, fines, and other sanctions received for breach of contractual liabilities	15
Income derived from the sale of goods in Belarus under a commission, mandate, or other similar contract.	15
Income derived from performing and/or participation in cultural events and shows, as well as from operation of attractions and wild beast shows in Belarus.	15
Income derived from sports, entertainment activities, or performers' activities	15
Income derived from innovative, design, and R&D activities, design of technological documentation engineering design, and other similar works and services	15
Income from provision of guarantees	15
Income from provision of disk space and/or communication channel for placing information on the server and services for its maintenance	15
Proceeds from the sale, transfer (with title), or lease of immovable property located in Belarus	15
Income derived by a foreign entity from the sale of an enterprise as a complex of assets located in Belarus	15
Capital gains (income from the sale of shares/stocks) in local companies	12
Income from the sale of securities (except shares)	15
Income derived from provision of the range of works and services	15

In calculation of WHT due on certain types of income, a taxpayer is permitted to deduct related expenses following the rules specified by the Tax Code.

Generally, the tax is withheld and paid to the tax authorities by a local entity, an individual entrepreneur, a branch, a PE of a foreign company, or an individual. When certain types of Belarusian-source income are received under the agreement between two non-resident entities (e.g. capital gains, sale, transfer of title of ownership or lease of immovable property, provision of licences for software, and other copyright objects), a WHT shall be withheld by the foreign entity that is the income payer.

Currently, Belarus has 69 DTTs in force with foreign countries. Where a treaty for the avoidance of double taxation with the country in question contradicts the local tax regulations, the treaty provisions prevail.

Reduction of or an exemption from WHT under a DTT may be obtained if a special residence certificate is completed and provided to the tax authorities before the payment is made.

If the payment that is covered by the DTT has already been made and WHT at the local rate was withheld, it is possible to obtain an appropriate refund (reduction) by completing a special claim for a refund. The claim for a refund must be filed with additional documents, such as a residence certificate, copies of the contract, and other documents related to the payment.

The following table indicates WHT rates stipulated in DTTs Belarus is a party to:

	WHT (%)			Construction site duration before creation of a PE
Recipient	**Dividends (3)**	**Interest (4)**	**Royalties**	**(months)**
Non-treaty	12	10	15	
Treaty:				
Armenia	10/15	0/10 (1)	10	12
Austria	5/15	0/5 (1)	5	12
Azerbaijan	15	0/10 (1)	10	12
Bahrain	5	0/5 (1)	5	12
Bangladesh	10/12	0/7.5	10	6
Belgium	5/15	0/10	5	12
Bulgaria	10	0/10 (1)	10	12
China	10	0/10 (1)	10	18
Croatia	5/15	10	10	12
Cyprus	5/10/15	5	5	12
Czech Republic	5/10	0/5	5	12
Democratic People's Republic of Korea	10	0/10	10	12
Denmark (2)	15	0	0	24
Ecuador	5/10	10	10	9
Egypt, Arab Republic of	15	10	15	12
Estonia	10	0/10	10	6
Finland	5/15	0/5	5	12
France (2)	15	0/10	0	24
Georgia	5/10	0/5	5	12
Germany	5/15	0/5	3/5 (5)	12
Hong Kong	5	5	3/5 (6)	12
Hungary	5/15	5	5	12
India	10/15	0/10	15	6
Iran, Islamic Republic of	10/15	0/5 (1)	5	12
Ireland	0/5/10	0/5	5	12
Israel	10	0/5/10	5/10 (7)	12
Italy	5/15	0/8 (1)	6	12
Japan (2)	15	0/10	0/10 (8)	12
Kazakhstan	15	0/10 (1)	15	12
Korea, Republic of	5/15	0/10 (1)	5	12
Kuwait	0/5 (1)	0/5 (1)	10	6
Kyrgyz Republic	15	0/10 (1)	15	12
Laos	5/10	0/8 (1)	5	9

Recipient	WHT (%) Dividends (3)	Interest (4)	Royalties	Construction site duration before creation of a PE (months)
Latvia	10	0/10 (1)	10	6
Lebanon	7.5	0/5 (1)	5	an aggregated period of more than 9 months in any 12-month period
Lithuania	10	0/10 (1)	10	12
Macedonia, Former Yugoslav Republic of	5/15	10	10	12
Malaysia (2)	15	0/15 (1)	10/15 (9)	12 months for construction site; 6 months for assembling object
Moldova	15	0/10	15	12
Mongolia	10	0/10 (1)	10	12
Netherlands	0/5/15	0/5	3/5/10 (10)	12
Oman	0/5 (1)	0/5 (1)	10	6
Pakistan	10/15	0/10 (1)	15	6
Poland	10/15	0/10	0	12
Qatar	5	0/5 (1)	5	6
Romania	10	0/10 (1)	15	12
Russia	15	0/10 (1)	10	no special provisions in the relevant DTT, local tax legislation provisions should apply
Saudi Arabia	5	5	10	6
Serbia (2)	5/15	8	10	12
Singapore	0/5 (1)	0/5 (1)	5	12
Slovakia	10/15	0/10 (1)	5/10 (11)	12
Slovenia	5	0/5	5	12
South Africa Republic	5/15	0/5/10	5/10	12
Spain (2)	18	0	0/5	12
Sri Lanka	7.5/10	0/10 (1)	10	an aggregated period of more than 183 days in any 12-month period
Sweden	5/10	0/5 (1)	3/5/10 (12)	12
Switzerland	5/15	0/5/8 (1)	3/5/10 (12)	12
Syria	15	10	18	6
Tajikistan	15	0/10 (1)	15	12
Thailand	10	0/10 (1)	15	6
Turkey	10/15	0/10 (1)	10	12
Turkmenistan	15	0/10 (1)	15	6
Ukraine	15	10	15	12
United Arab Emirates	5/10	0/5 (1)	5/10 (13)	12
United Kingdom of Great Britain and Northern Ireland (2)	0	0	0	24
United States of America (2)	0 (15)	0 (1)	0	36
Uzbekistan	15	0/10 (1)	15	12
Venezuela	5/15	0/5 (1)	5/10 (14)	9

Recipient	WHT (%) Dividends (3)	Interest (4)	Royalties	Construction site duration before creation of a PE (months)
Vietnam	15	0/10 (1)	15	6

Notes

1. In general, a 0% tax rate applies to interest payments to the governments of contracting states and to payments guaranteed by the governments of contracting states.
2. The DTT with this country is in force since Belarus is a successor of the former USSR.
3. In the case of two rates, the lowest rate is applicable with regard to those companies or physical persons who are the beneficial owners of dividends distributed by a company in which they hold 25% or more shares. In the case of three rates, these terms apply to the middle rate whereas application of the lowest rate requires compliance with more strict criteria with regard to participation share and amount of contribution.
4. In the case of multiple rates, the lowest rate is applicable with regard to all kinds of loans provided by a government or national bank.
5. 3% applies to patents and trademarks; 5% applies to copyrights.
6. 3% applies to aircraft; 5% applies to all other royalties.
7. 5% applies to equipment; 10% applies to all other royalties.
8. 0% applies to copyrights; 10% applies to all other royalties.
9. 10% applies to patents, trademarks, and equipment; 15% applies to all other royalties.
10. 3% applies to patents and trademarks; 5% applies to equipment; 10% applies to copyrights.
11. 5% applies to copyrights; 10% applies to patents and trademarks.
12. 3% applies to patents; 5% applies to equipment; 10% applies to all other royalties.
13. 5% applies to copyrights; 10% applies to patents and trademarks.
14. 5% applies to copyrights; 10% applies to all other royalties.
15. Zero tax rate is specified in the table based on the current approach of the Belarusian tax authorities to dividends taxation under the US-Belarus DTT. We would like to note that due to the fact that the provisions of the US-Belarus DTT do not specify directly any exemptions with regard to dividends taxation, the approach of the Belarusian tax authorities may change and 12% WHT local rate can be applied to dividends.

Tax administration

Taxable period

The taxable period for CIT is a calendar year. The taxable period for CIT withheld on dividends accrued by Belarusian companies is a month.

Tax returns

A CIT return shall be submitted on a quarterly basis, whether a company has taxable income or not, by the 20th day of the month following the reporting period. The CIT return for the fourth calendar quarter is submitted not later than 20 March of the year following the reporting year.

The above CIT reporting rule is also applicable on PEs of foreign companies as well as non-commercial representative offices.

CIT withheld on inter-company dividends must be reported by a tax withholding entity no later than the 20th day of the month following the month in which the dividends were accrued.

A tax-withholding entity must submit a WHT return to the tax authorities no later than the 20th day of the month following the month when the payment was made.

Payment of tax

CIT must be paid on a quarterly basis on actual results of financial and economic activity for a quarter, no later than the 22nd day of the month following the expired reporting period. CIT payment for the fourth quarter of 2018 shall be made no later than 22 December 2018 in the amount of 2/3 of CIT calculated based on the CIT amount for the third quarter of 2018 with subsequent recalculation of the whole CIT for the 2018 year and calculation of CIT to be additionally paid or reduced no later than 22 March 2019.

The above deadline shall also be followed by PEs of foreign entities.

CIT on inter-company dividends shall be paid no later than the 22nd day of the month following the month when dividends were paid.

WHT is to be calculated, withheld, and paid by a Belarusian company or a PE of a non-resident company no later than the 22nd day of the month following the month when the payment was made.

Tax audit process

Due to a reform, scheduled audits are replaced with random ones in 2018. Controlling activity is planned to be performed mostly as monitoring and explanatory process, providing various information, organising seminars, and round tables.

The period to be covered with the audit shall not exceed five years plus the period from current year to date.

Statute of limitations

Starting from 1 January 2018, a five-year statute of limitations is applied to tax charges in Belarus.

Generally, the statute of limitations for penalty due to failing to fulfil tax liability is either three years after the date when violation was committed or six months after the date when violation was exposed by tax authorities.

Topics of focus for tax authorities

Below are the main areas that the tax authorities usually monitor in Belarus:

- Application of CIT incentives.
- CIT treatment of overdue loans and recognition of accounts payable above the statute of limitations.
- Proper justification of deductible marketing, consulting, and other similar costs for CIT purposes.
- VAT deductions and relevant justification thereof.
- Tax treatment of reorganisations, mergers, and spin-offs.
- Tax treatment of related-party transactions.
- Tax treatment of charitable and other similar donations.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

An agreement between the government of the Republic of Belarus and the government of the United States to improve international tax compliance and to implement FATCA was signed on 18 March 2015.

Belgium

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Significant developments

Reform of the corporate income tax (CIT) regime in Belgium

In July 2017, the Belgian government announced that the CIT regime would be reformed, resulting in the Corporate Tax Reform Law of 25 December 2017 (Official Gazette of 29 December 2017). The tax reform in Belgium introduces several tax measures spread out over a period of three years. The tax measures that are applicable as of tax year 2019 (financial years ending 31 December 2018 and later) include a lower CIT rate, a minimum tax base, a 100% participation exemption, modified conditions in order to claim the exemption of capital gains on shares, reimbursement of paid-up capital subject to withholding tax (WHT) to the extent that taxable reserves are deemed to be distributed, modified calculation of the notional interest deduction (NID), etc. The European Anti-Tax Avoidance Directive (ATAD) measures (controlled foreign company [CFC] rules and hybrid mismatches) will enter into force as of tax year 2020 (financial years ending 31 December 2019 and later). Finally, as of tax year 2021 (financial years ending 31 December 2020 and later), a further reduction of the CIT rate, tax consolidation, 30% earnings before interest, taxes, depreciation, and amortisation (EBITDA) rule, and a new, more economic permanent establishment (PE) concept will come into play.

Notional interest deduction (NID)

The Belgian NID rate for tax year 2018 (accounting years ending between 31 December 2017 and 30 December 2018, both dates inclusive) is 0.237% (0.737% for small and medium-sized enterprises [SMEs]).

Fairness tax abolished

The Belgian Constitutional Court has ruled in its decision on the 1 March 2018 that the fairness tax is unconstitutional; consequently, it annulled the fairness tax as of tax year 2019 (financial years ending 31 December 2018 and later). This decision follows a series of actions on both the national and European level. The annulment does, however, not have a retro-active effect, except in specific situations (e.g. redistribution of European Union [EU] dividends).

Taxes on corporate income

Corporate income tax (CIT)

In general, the tax base for CIT purposes is determined on an accrual basis and consists of worldwide income less allowed deductions. The rules are equally applicable to companies and PEs. It is assumed that all income received by a company is, in principle, business income. The income tax base is based on the Belgian Generally Accepted Accounting Principles (GAAP) financial statements of the company.

General rate

As of tax year 2019 (financial years ending 31 December 2018 and later), CIT is levied at a rate of 29% plus a 2% crisis tax, which is a surtax, implying an effective rate of 29.58% (the prior effective rate amounted to 33.99%). This rate applies to both Belgian companies (subject to Belgian CIT) and Belgian PEs of foreign companies (subject to Belgian non-resident CIT). Capital gains on qualifying shares realised without meeting the one-year holding requirement are taxed at 25.50% (25% plus a 2% crisis tax, which can be offset against available tax losses), provided certain conditions are met. Non-qualifying shares are subject to the 29.58% rate.

As of tax year 2021 (financial years ending 31 December 2020 and later), the standard CIT rate is lowered to 25%, without any crisis tax (will be abolished). Capital gains on qualifying shares realised when meeting all conditions remain fully exempt. Non-qualifying shares will be subject to the 25% rate.

Fairness tax

Large companies (i.e. not SMEs, *see below*) are subject to a fairness tax on all or part of their distributed dividends. The fairness tax is a separate assessment at a rate of 5.15% (5% increased by a 3% crisis surtax) borne by the company distributing the dividends.

The tax is only applicable if, for a given taxable period, dividends have been distributed by the company that stem from taxable profit that has been offset against (current year) NID and/or carried forward tax losses. Liquidation bonuses and share buy-back proceeds are not in scope of the fairness tax.

However, the Constitutional Court decided in its decision of 1 March 2018 to repeal the fairness tax as of tax year 2019 (financial years ending 31 December 2018 and later). The annulment does not have a retro-active effect, except in specific situations (e.g. redistribution of EU dividends).

First step

The taxable basis of the fairness tax is determined by the positive difference between the gross dividends distributed for the taxable period and the taxable result that is effectively subject to the nominal corporate taxes of generally 33.99% (there are some exceptions).

Second step

This positive difference as determined in the first step will be decreased with the part of the dividends stemming from taxed reserves constituted, at the latest, during tax year 2014. To identify the origin of the reserves, a last in first out (LIFO) method is applied.

Third step

The outcome of the above calculation is limited by a percentage, being the result of the following fraction:

- The numerator consists of the amount of carried forward tax losses and NID that has been effectively used in the taxable period at hand.
- The denominator consists of the taxable result of the taxable period at hand, excluding the tax-exempt reductions in the value and provisions.

The fairness tax itself is not tax deductible. The fairness tax due can be offset against prepayments made and tax credits.

Large companies are in scope of the fairness tax, whereas it does not apply to SMEs.

Belgian PEs of foreign companies are also in scope of the fairness tax. For Belgian PEs, 'distributed dividends' are, for the purposes of the fairness tax, defined as the part of the gross dividends distributed by the head office, which proportionally corresponds with the positive part of the accounting result of the Belgian PE in the global accounting result of the head office.

Progressive rates

A progressive scale of reduced rates applies to taxpayers with lower amounts of taxable income. If the taxable income is lower than 322,500 euros (EUR), the following rates apply (including the 3% crisis tax):

Taxable income (EUR)	CIT rate (%)
0 to 25,000	24.98
25,001 to 90,000	31.93
90,001 to 322,500	35.54

In case the threshold of EUR 322,500 is reached, the total taxable basis of the company is subject to the general CIT rate of 33.99%. Even if their taxable income does not exceed the aforesaid ceilings, certain companies are excluded from the reduced rate and are subject to the normal CIT rate. These companies include, amongst others, companies that are owned 50% or more by one or more companies.

As of tax year 2019 (financial years ending 31 December 2018 and later), these progressive rates are abolished. SMEs (based on article 15 of the Companies Code and provided several other conditions are met) will be able to profit from a decreased rate of 20% plus a 2% crisis tax, implying an effective rate of 20.40% on the first bracket of EUR 100,000 profit.

As of tax year 2021 (financial years ending 31 December 2020 and later), this rate will amount to 20% as the crisis tax will be abolished.

Surcharge

A surcharge is due on the final CIT amount upon assessment (including the crisis surtax). The surcharge can be avoided if sufficient advance tax payments are made (*see Payment of tax in the Tax administration section for more information*). For tax year 2018 (financial years ending 31 December 2017 and later), the surcharge is 2.25%. As of tax year 2019 (financial years ending 31 December 2018 and later), the surcharge amounts 6.75%.

Secret commissions tax

A special assessment of 103% (100% plus 3% crisis tax) is applicable to so-called 'secret commissions', which are any expense of which the beneficiary is not identified properly by means of proper forms timely filed with the Belgian tax authorities. These expenses consist of:

- Commission, brokerage, trade, or other rebates, occasional or non-occasional fees, bonuses, or benefits in kind forming professional income for the beneficiaries.

- Remuneration or similar indemnities paid to personnel members or former personnel members of the paying company.
- Lump-sum allowances granted to personnel members in order to cover costs proper to the paying company.

The secret commissions tax can be limited to 51.5% (50% plus 3% crisis tax) if certain conditions are met. In some cases, no secret commissions tax applies.

As of tax year 2019 (financial years ending 31 December 2018 and later), the special assessment will amount to 102% (100% plus 2% crisis), be it that this tax can be limited to 51% (50% plus 2% crisis tax).

As of tax year 2021 (financial years ending 31 December 2010 and later), the special assessment will amount to 100%, be it that this tax can be limited to 50%.

Minimum tax base

A minimum tax base is introduced for companies with a taxable profit that exceeds EUR 1 million via the limitation of certain deductions. As of tax year 2019 (financial years ending 31 December 2018 and later), deductions outside the basket are fully deductible. Deductions within the basket can only be claimed up to the amount of 70% of the profits exceeding the EUR 1 million threshold. The remaining 30% will be fully taxable at the CIT rate.

The deductions within the basket are the deduction of tax losses carried forward, the dividends-received deduction (DRD) carried forward, the innovation income deduction carried forward, and the NID (both carried forward and new incremental NID). Other deductions are excluded from the basket and thus fully deductible (e.g. current year tax losses, current year innovation income deduction, investment deduction [both current year and carried forward]).

Taxable income of non-residents

Certain income attributed by a Belgian tax resident to a non-resident is taxable in Belgium. A paragraph in the Belgian Income Tax Code functions as a ‘catch all clause’ to tax certain payments made to a non-resident of Belgium.

The ‘catch all clause’ applies in case the following conditions are all met:

- Revenues stem from ‘any provision of services’.
- Revenues qualify as benefits or profit in the hands of the non-resident beneficiary.
- The services are provided to an individual tax resident in Belgium in the framework of one’s business activity, a corporation, a taxpayer subject to the legal entities tax, or a Belgian establishment.
- There are (in)direct links of interdependence between the foreign supplier and its Belgian client.
- Such revenues are taxable in Belgium according to a double tax treaty (DTT) or, in the absence of any DTT, if the non-resident taxpayer does not provide evidence that income is actually taxed in the state where the taxpayer is resident.

Given the condition of ‘any direct or indirect links of interdependence’, provision of services between non-related parties should thus, in principle, remain out of scope.

The rate amounts to 33% on the gross fee paid (resulting in an effective tax rate of 16.5%, as a lump sum deduction of 50% as professional expenses is allowed).

Local income taxes

No tax is levied on income at the regional or local level. Note that immovable assets (land, building, and possibly machinery and equipment) situated within the Belgian territory are, in principle, subject to an immovable WHT that is levied locally.

Corporate residence

A company is considered to be a resident of Belgium for tax purposes if it has its registered office, its principal place of business, or its seat of management in Belgium. The seat of management has been defined by Belgian case law as the place from where directing impulsions emanate or the place where the company's effective management and central administration abide, meaning the place where the corporate decision-making process actually takes place.

Permanent establishment (PE)

The definition of a Belgian establishment under Belgian domestic tax law corresponds, but is broader than, the definition of a PE under either the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention or Belgium's DTTs. Since the latter prevail over domestic law, Belgium generally cannot levy tax if a non-resident has a Belgian establishment that does not constitute a PE under the relevant DTT. Although Belgium would not be entitled to tax the profit attributable to the Belgian establishment in such a case, the foreign company should still abide by certain formal tax requirements (e.g. filing a non-resident tax return, responding to requests for information).

Other taxes

Value-added tax (VAT)

Scope of VAT

The following transactions are subject to VAT in Belgium if they are considered to take place in Belgium:

- The supply of goods and services effected for consideration by a taxable person acting as such.
- The acquisition of services for consideration from outside Belgium between taxable persons.
- The importation of goods.
- Intra-Community acquisition of goods for consideration by a taxable person acting as such or by a non-taxable legal person (including the transfer of assets).
- The self-supply by a taxable person.

Intra-Community supply and intra-Community acquisition

An intra-Community supply of goods is a supply of goods whereby the goods are moving from one EU member state to another EU member state. In the member state of departure of the goods, the goods can be, under certain conditions, VAT exempt. As a result, the intra-Community acquisition of the goods (i.e. the arrival of the goods in the other member state) will be taxable.

Belgium

Standard and other VAT rates

The standard VAT rate is 21%. This rate applies to all goods and services not qualifying for one of the reduced VAT rates.

The following supplies of goods and services have a 12% VAT rate:

- Restaurant and catering services, excluding beverages.
- Phytopharmaceutical products.
- (Inner) tubes.
- Certain combustible material.
- Margarine.
- Social housing and certain renovation works on immovable property.

The following supplies of goods and services have a 6% VAT rate:

- Works on immovable property (limited in time and with strict conditions).
- Basic necessities, such as food and pharmaceuticals.
- Distribution of water through pipelines.
- Some printed materials (currently, there is a proposal pending at an EU level to expand the reduced rate to electronic publications).
- Transport services of persons.
- Hotels and camping.
- Use of cultural, sporting, and entertainment venues.
- Works of art, antiques, and collector's items.
- Supplies of cars for the disabled, as well as equipment and accessories for such cars.
- Supplies of certain devices for therapeutical use.
- Contract farming.
- Repair of bicycles, shoes and leather goods, clothing, and household linen.
- Some housing for private use, for the disabled, and in the social sector.
- Copyrights.
- Concerts and exhibitions.
- Some medical equipment.
- Goods and services supplied by social organisations.

The following supplies of goods and services are VAT exempt with credit ('zero-rated'):

- Exports and certain related services.
- Intra-Community supplies of goods and certain related services.
- Imports, intra-Community acquisitions, and local trades of goods within VAT warehouses or under special customs regimes.
- Certain transactions on goods placed in a customs or VAT warehouse.
- Cross-border passenger transportation by ship or aircraft.
- Supplies to diplomats and international organisations.
- Certain supplies of goods and services to certain vessels and aircraft mainly involved in international passenger transport.
- Certain newspapers, journals, and magazines.
- Supply of recovered goods or products.

The following supplies of goods and services are, in principle, VAT exempt without credit:

- Healthcare services, excluding certain types of cosmetic surgery.
- Social services.

- Education services.
- Sport services.
- Cultural services.
- Banking services.
- Interest charges.
- Financial services (option to tax possible for paying and cashing services).
- Insurance services.
- Land and real estate sales.
- Property leasing and letting (although an option to tax might be introduced as of 1 October 2018).

It should be noted that specific conditions may apply to the above two categories.

VAT grouping

Under a VAT group, independent legal persons are treated as one single taxable person for VAT purposes if they are closely linked financially, economically, and organisationally. Hence, for VAT purposes, all supplies of goods and services to or by the group members are deemed to be made to or by the group itself.

The application of a VAT group has, amongst other, the following consequences:

- No issuance of 'inter-company' invoices between companies in the VAT group (however, internal documents will be required).
- No charging of VAT between companies in the VAT group (avoiding VAT pre-financing).
- No cascade of limitation of the right to deduct VAT when on charging costs to companies in the VAT group.
- Head office abroad outside the VAT group will be seen as a third party and will trigger VAT on head office/PE services.
- Mutual liability between VAT group members.
- Filing of one VAT return for all companies in the VAT group.

Import duties

Goods coming from outside the European Union and imported into Belgium are subject to import duties. Import duties are calculated based on three main elements:

Classification

All products are classified based on the rules laid down in the Combined Nomenclature (CN). All products traded in the world can be classified according to the tariff nomenclature. An import duty rate is linked to every CN-code.

Origin

Based on international trade agreements (i.e. bilateral), a preferential import duty rate (i.e. a lower import duty rate) may apply to products imported in the European Union in case the goods meet the applicable criteria in the country benefiting from the agreement.

Valuation

The customs value is determined based on one of the six rules laid down in the Union Customs Code (UCC). The most commonly used rule to determine the customs value upon importation in the European Union is the 'transaction value' (i.e. Article 70 of the UCC).

These valuation rules are harmonised on a global level through Article 7 of the General Agreement on Tariffs and Trade (GATT) valuation agreement.

Various economic customs regimes (i.e. bonded warehouse, inward processing procedure, outward processing procedure) are available, allowing optimisation schemes throughout the supply chain.

Excise duties

Excise goods are divided into the following two groups:

- Community excise products: These are defined as excise products at the EU-level, and the same procedures (i.e. excise applications, suspension regimes) should apply in all EU member states. Products in scope are (i) alcoholic beverages, (ii) energy products, and (iii) manufactured tobacco.
- National excise products: These can be defined at the member state level on a voluntary basis. Belgium has identified the following goods as being 'national excise products': (i) non-alcoholic beverages (i.e. soda and water) and (ii) coffee.

The European Union determined the threshold (with minimum and maximum rates) in which the EU member states have to define the applicable excise duty rate per product on a national basis. With respect to the national excise goods, every member state has the liberty to freely decide upon the national excise duty rates applicable.

Property taxes

Immovable property is subject to an immovable WHT (also called 'real estate tax') due on a yearly basis. This tax is calculated in function of the so-called 'cadastral income' of the property (a kind of 'deemed' rental income). The deemed rental income constitutes the average normal net income of one year (based on rental income of 1976). This means that the deemed rental income can be considered as a presumed income, which generally will not match the actual income.

The tax rate depends on where the property is located (as it is a combination of regional, provincial, and communal tax).

Machinery and equipment can also be considered as immovable property in certain cases.

Registration duties

Purchases and transfers of real estate located in Belgium, including buildings (except new buildings, which are subject to VAT as described above), are subject to registration duty at the rate of 12.5% of the higher of transfer price or fair market value (except in the Flemish Region, where the applicable rate is 10%).

If the purchase or transfer of land is subject to VAT, no registration duties will be charged on the purchase or transfer.

In principle, no registration duty is due upon a capital contribution; only a fixed fee of EUR 50 is due.

Stamp duties

Stamp duties are due on transactions relating to public funds that are concluded or executed in Belgium, irrespective of their (Belgian or foreign) origin, to the extent that a professional intermediary intervenes in these transactions. Exemptions for non-residents and others are available.

Payroll taxes

In Belgium, there are no payroll taxes applicable other than those for social security contributions (*see below*) and income tax withholding.

Social security contributions

As of 1 January 2018, the employers' social security contributions were lowered to 25%. This percentage consists of the base rate of the employers' contribution (i.e. 19.88%) and the wage moderation (i.e. 5.12%).

On top of this base rate and wage moderation, additional general contributions should be calculated, namely the contributions to the Asbestos Fund, the Closure Fund, the sector-specific fund for subsistence, etc. The average employers' contribution for white collar workers would thus best be estimated at 27.50%. However, deviations may occur depending on the specific sector.

On 1 January 2018, thorough changes have been made to the structural reduction of employer's contributions whereby the base reduction amount and the high wages component have been abolished, whereas the low wages component has been reinforced (deviations do, however, remain to exist for certain particular employers).

Social security contributions are deductible in determining taxable income both for the employer (CIT) and for the employee (personal income tax or PIT).

For foreign employees with an international employment (i.e. assignment or simultaneous employment) in Belgium who continue to be subject to the social security schemes of their home country, an exemption from subjection to the Belgian social security scheme may be granted, depending on the place of residence and/or nationality of the claimant.

Minimum director's fee

Companies that do not grant a fee, equal to the lesser of EUR 45,000 or the taxable profit, to at least one director (a private individual) will be subject to a distinct taxation of 5.1% (5% including a crisis tax of 2%) as of tax year 2019 (financial years ending 31 December 2018 and later). The rate is applied to the positive difference between the minimum fee and the highest director's fee borne by the company. Exceptions may apply.

Branch income

PE profits are subject to the normal tax rate for Belgian corporations of 33.99% (or 25.75% for certain capital gains on shares not meeting the one-year holding period or 0.412% for those capital gains meeting the one-year holding period and the subject-to-tax test) plus the possible surcharge for absence/insufficiency of advance payments (*see the Taxes on corporate income section*). PEs can benefit from the reduced CIT rates under specific conditions (*see the Taxes on corporate income section*).

As of tax year 2019 (financial years ending 31 December 2018 and later), PE profits are subject to the lowered standard CIT rate of 29% plus a 2% crisis tax, implying an effective rate of 29.58% (or 25.50% for certain capital gains on qualifying shares realised without meeting the one-year holding period or exempted when all conditions are met).

As of tax year 2021 (financial years ending 31 December 2020 and later), PE profits and capital gains on shares that do not meet the one-year holding period are subject to the lowered standard CIT rate of 25% (or fully exempt for certain capital gains on qualifying shares if all conditions are met).

Capital gains realised on real estate located in Belgium by non-resident companies are subject to a professional WHT at the normal CIT rate of 33.99%. These will be subject to the CIT rate of 29.58% as of tax year 2019 and 25% as of tax year 2021.

In general, the taxable basis is the difference between the profits actually realised and the tax-deductible costs actually incurred in the hands of the Belgian PE as determined from the separate set of accounts of the Belgian PE. No legal requirement exists to keep a separate set of accounts in the hands of the PE, in case no legal PE is deemed to exist in Belgium.

Should no separate set of accounts be kept, the taxable basis in the hands of the Belgian PE, in principle, can be determined on a lump-sum basis. As a result, the yearly taxable basis will be determined on 10% of the gross turnover realised in Belgium with a minimum of EUR 7,000 per employee (the minima vary between EUR 7,000 and EUR 24,000, depending on the kind of business) and an absolute minimum of EUR 19,000. As of tax year 2019 (financial years ending 31 December 2018 and later), this absolute minimum will be increased to EUR 34,000. As of tax year 2021 (financial years ending 31 December 2020 and later), this minimum will amount to EUR 40,000. Note that such determination of the taxable basis is often formalised in a written agreement with the local Belgian tax inspector without deviating from the tax law criteria as mentioned.

Income determination

Inventory valuation

Belgian accounting law provides for the following four methods of inventory valuation: the method based on the individualisation of the price of each item, the method based on the weighted average prices, the last in first out (LIFO) method, and the first in first out (FIFO) method. All of these methods are accepted for tax purposes.

Capital gains

Capital gains are subject to the normal CIT rate. For tax purposes, a capital gain is defined as the positive difference between the sale price less the costs related to the disposal of the asset and the original cost of the acquisition or investment less the depreciations and write-offs that have been deducted for tax purposes.

Capital gains realised on tangible fixed assets and intangible assets could be subject to a deferred and spread taxation regime, provided that certain conditions are met.

Capital gains on shares

As of tax year 2019 (financial years ending 31 December 2018 and later), net capital gains on shares are fully exempt provided that the subject-to-tax condition, the one-year holding period, and the participation condition are fulfilled. The conditions to benefit from the capital gains exemption are, as such, entirely aligned with the conditions to benefit from the DRD. Indeed, the participation condition implies a minimum participation threshold of at least 10% or an acquisition value of at least EUR 2.5 million in the share capital of the company concerned.

As of tax year 2019 (financial years ending 31 December 2018 and later), the net capital gain will be taxed at a rate of 25.50% (25% plus a 2% crisis tax) if the minimum holding period of one year is not reached but the taxation condition and the participation condition are met (as of tax year 2021 [financial years ending 31 December 2020 and later], the tax rate will be 25%). If the taxation condition or participation condition is not met, the net capital gain will be subject to the standard effective tax rate of 29.58% (29% plus a 2% crisis tax) (as of tax year 2021 [financial years ending 31 December 2020 and later], the tax rate will be 25%).

Dividend income

Dividends received by a Belgian company are first included in its taxable basis on a gross basis when the dividends are received from a Belgian company or on a net basis (i.e. after deduction of the foreign WHT) when they are received from a foreign company.

Provided certain conditions are met, 95% of the dividend income could, in the past, be offset by a DRD. As of tax year 2019 (financial years ending 31 December 2018 and later), the participation exemption has increased to 100%.

Dividends-received deduction (DRD)

A DRD of 100% (applicable as of tax year 2019 [financial years ending 31 December 2018 or later]) of dividend income can be applied under certain conditions (*see below*). Any unused portion of the DRD from dividends received from a European Economic Area (EEA) subsidiary or a subsidiary from a country with which Belgium has concluded a DTT with a nondiscrimination clause on dividends can be carried forward to future tax years. The same also applies for dividends from Belgian subsidiaries.

The DRD is subject to a (i) minimum participation condition and (ii) taxation condition.

In addition, a rule against hybrid instruments has been introduced into Belgian law. Under this rule, dividends received by the parent company will no longer be tax exempt whenever the distributed profit is tax deductible in the jurisdiction of the subsidiary (e.g. hybrid loans). Further, a general anti-abuse rule (GAAR) has been introduced into Belgian legislation. As a result, the DRD will be denied whenever the dividends originate from legal acts or a whole of legal acts that are artificial (i.e. no valid business reasons that reflect economic reality) and merely in place to obtain the DRD exemption.

Minimum participation condition

According to the minimum participation condition, the recipient company must have, at the moment of attribution, a participation of at least 10% or an acquisition value of at least EUR 2.5 million in the capital of the distributing company. The beneficiary of the dividend must have been holding the full legal ownership of the underlying shares for at least one year prior to the dividend distribution or commit to hold it for a minimum of one year.

Taxation condition

The taxation condition, in summary, means that the dividend income received must have been subject to tax at the level of the distributing company and its subsidiaries if the former redistributes dividends received.

The taxation condition is based on seven 'exclusion' rules and certain exceptions to these rules. Basically, the exclusion rules apply to the following:

- Tax haven companies, which are companies that are not subject to Belgian CIT (or to a similar foreign tax) or that are established in a country where the common taxation system is notably more advantageous than in Belgium. Countries in which the minimum level of (nominal or effective) taxation is below 15% qualify as tax havens for the application of the regime (a list of tainted countries has been published). The common tax regimes applicable to companies residing in the European Union are, however, deemed not to be notably more advantageous than in Belgium.
- Finance, treasury, or investment companies that, although are subject in their country of tax residency to a corporate tax similar to that of Belgium as mentioned in the item above, nevertheless benefit from a tax regime that deviates from common law.
- A Belgian real estate investment trust or foreign regulated investment trust that benefits from a substantially more advantageous tax regime than the Belgian tax regime.
- Offshore companies, which are companies receiving income (other than dividend income) that originates outside their country of tax residency and in these countries such income is subject to a separate taxation system that deviates substantially from the common taxation system.
- Companies having PEs that benefit globally from a taxation system notably more advantageous than the Belgian non-resident corporate taxation system. This exclusion is deemed not applicable to EU companies with an EU PE.
- Intermediary holding companies, which are companies (with the exception of investment companies) that redistribute dividend-received income, which on the basis of regulations mentioned under the items above would not qualify for the DRD for at least 90% of its amount in case of direct holding.
- Companies that have deducted these dividends from their profit or are able to deduct these dividends from their profit.
- Companies that distribute dividends who are associated with a legal action or a set of legal actions of which the tax administration has demonstrated that this action or set of actions is artificial and was set up with the main objective (or one of the main objectives) to claim the deduction on dividends (envisaged by the DRD law), to waive from the collection of WHTs on this type of income, or to claim any other advantage of Directive 2011/96/EU in another member state of the European Union.

While this is a summary of the exclusion rules, numerous exceptions to these exclusion rules exist and need to be analysed on a case-by-case basis.

Bonus shares (stock dividends)

Distribution of bonus shares to shareholders in compensation for an increase of the share capital by incorporation of existing reserves is, in principle, tax free. The situation may be different if the shareholder has the choice between a cash or stock dividend.

Interest, rents, and royalties

Interest that accrued, became receivable by, or was received by a company, and rents and royalties received by a company, are characterised as business profits and taxed at the general CIT rate of 29.58% as of tax year 2019 (financial years ending 31 December 2018 or later) (25% as of tax year 2021 [financial years ending 31 December 2020 or later]). The income can be offset against available tax assets.

Foreign income

A Belgian resident company is subject to CIT on its worldwide income and foreign-source profits not exempt from taxation by virtue of a DTT (*see the treaty list in the Withholding taxes section*). This income is taxable at the normal CIT rate in Belgium (i.e. 29.58% as of tax year 2019 [25% as of tax year 2021]).

A foreign tax credit may be available for foreign royalty income and foreign interest income. *See the Tax credits and incentives section for more information*.

Undistributed income of subsidiaries, whether or not they are foreign, will be subject to Belgian income tax in the hands of the Belgian corporate shareholder as of tax year 2020 (financial years ending 31 December 2019 and later) if certain conditions are met (*see Controlled foreign companies [CFCs] in the Group taxation section*).

Deductions

As a general rule, expenses are tax deductible in Belgium if they are incurred in order to maintain or to increase taxable income, they are incurred or have accrued during the taxable period concerned, and evidence of the reality and the amount of such expenses is provided by the taxpayer.

Depreciation and amortisation

Depreciation of an asset is tax deductible to the extent that it results from a devaluation of the asset, and the devaluation effectively occurred during the taxable period concerned. The depreciation methods that are accepted by Belgian tax law are the straight-line method (linear method) and the double-declining balance method. In the latter case, the annual depreciation may not exceed 40% of the acquisition value. The double-declining method may not be used for intangible fixed assets, automobiles, minibuses and automobiles used for mixed purposes, and for assets, the use of which has been transferred to a third party (e.g. operational leasing). The double-declining method will be abolished as of tax year 2021 (financial years ending 31 December 2020 and later).

Depreciation rates are based on the expected lifetime of the assets concerned, which are normally agreed upon by the taxpayer with the tax authorities. However, for certain assets, rates are set by administrative instructions as follows:

Assets	**Depreciation rate (%)**
Commercial buildings	3
Industrial buildings	5
Machinery and equipment (depending on the type)	20 or 33
Rolling stock	20

Intangible fixed assets have to be amortised over a period of at least five years for tax purposes (except research and development [R&D] expenses, for which the minimum amortisation period is three years).

For the year of acquisition of an asset, only the proportionate share of an annual depreciation calculation can be accepted as depreciation for income tax purposes (in principle to be computed on a daily basis). This provision, however, applies only to companies that cannot be considered as SMEs (*see the Tax credits and incentives section for the definition*). In contrast, SMEs can deduct a full year of depreciation in the year of acquisition. This exception will be abolished as of tax year 2021 (financial years ending 31 December 2020 or later).

Goodwill

Belgian accounting and tax laws allow amortisation of goodwill arising at the occasion of an asset deal. For Belgian tax purposes, the amortisation period, which depends on the elements included in the goodwill, is a minimum of five years, and the straight-line method must be applied. According to the Minister of Finance, ‘clientele’ (client lists) should be amortised over a period of 10 to 12 years. The aforesaid accounting and tax amortisation for goodwill is not available if tax-free mergers or de-mergers occur (i.e. they, among other things, follow the continuity principle from an accounting perspective).

Start-up expenses

Incorporation costs, at the election of the taxpayer, may be deducted fully in the year of incorporation or can be depreciated over a maximum period of five years.

Interest expenses

Interest expenses are, in principle, tax deductible insofar as thin capitalisation limits are respected (*see Thin capitalisation in the Group taxation section*) and the interest is at an arm’s-length rate.

Provisions and bad debt reserves

Provisions and bad debt reserves are tax deductible provided that:

- they are set up to cover clearly identified losses and charges (i.e. not to cover ‘general’ risks) that have been rendered probable by events that took place during the taxable period concerned
- they are booked at the end of the financial year in one or more separate accounts on the balance sheet
- they are reported on a specific form enclosed with the tax return, and
- they relate to losses and charges that are deductible for Belgian tax purposes.

As of tax year 2019 (financial years ending 31 December 2018 and later), provisions for risks and charges are only deductible for tax purposes if:

- they correspond to an existing and known obligation at year-end closing (in addition to the other already existing conditions), and
- they result from any contractual, legal, or regulatory obligation (other than those resulting merely from the application of the law on accounting rules and annual accounts). This change does not apply to existing provisions created before tax year 2019.

Charitable contributions

Charitable contributions may not be less than EUR 40 and may not exceed 5% of the total net income of the taxable period, with a maximum of EUR 500,000 to be tax deductible. The law includes an exhaustive list of gifts that are deductible, including gifts in cash to certain social, cultural, or scientific organisations.

Automobile costs

The deductibility rate of automobile costs in the hands of Belgian companies (and Belgian PEs) varies in a range between 50% and 120% of the automobile costs, depending on the CO2 emission of the company car and its catalogue value.

As of tax year 2021 (financial years ending 31 December 2020 or later), the deductibility rate will vary in a range between 50% and 100% (instead of 120%) and depends fully on the CO2 emission of the company and the type of fuel.

Moreover, the deduction for fuel costs is limited to 75%. As of tax year 2021 (financial years ending 31 December 2021 or later), this deduction will no longer be fixed but will also be linked to the CO2 emission of the car.

Taxes, fines, and penalties

Belgian resident and non-resident CIT, including advance tax payments, any surcharge imposed in case of insufficient advance tax payments, any interest for late payment of the CIT, and any Belgian movable WHT, is not tax deductible in Belgium. Immovable WHT (i.e. real estate tax), secret commissions tax, and foreign taxes, however, are considered as tax deductible. As of tax year 2021 (financial years ending 31 December 2020 and later), the secret commissions tax will no longer be tax deductible.

Regional taxes and contributions, including penalties, increases, ancillary expenses, and interest for late payment, are not tax deductible in Belgium (certain exceptions apply).

Any administrative and judicial fines or penalties (except for VAT proportionate fines) are not tax deductible in Belgium.

Disallowed expenses

The following expenses are not tax deductible in Belgium (this list is not exhaustive):

- 31% of restaurant expenses.
- 50% of representation expenses and business gifts (there are exceptions).
- Advantages granted to employees for social reasons, with certain exceptions (e.g. hospitalisation insurance premiums, gifts of a small value).
- Capital losses on shares (except upon liquidation, up to the amount of paid-up capital of the liquidated company).
- Brokerage, commissions, commercial discounts, or other payments allocated directly or indirectly to a person in the form of a Belgian public bribery.
- 17% of the benefit in kind of company cars (minimum taxable basis).

Net operating losses

Principle: Carried forward without limitation in time

Tax losses can, in principle, be carried forward without any limitation in time. However, please note that as of tax year 2019 (financial years ending 31 December

2018 and later) a minimum tax base is introduced. There are no limits on certain deductions (such as DRD, innovation income deduction [IID], and the investment deduction). Other deductions may offset only 70% of the taxable amount exceeding EUR 1 million. These deductions include, amongst others, carried-forward losses. The remaining 30% will be fully taxable at the CIT rate (*see Minimum tax base in the Taxes on corporate income section*).

Change of control

If a change of control of a Belgian company takes place (e.g. if the shares of the company are transferred and along with them the majority of the voting rights), the amount of tax losses, investment deduction, and NID carried forward available in that company (before the change of control) can no longer be offset against future profits unless the change can be justified by legitimate needs of a financial or economic nature in the hands of the loss realising company (i.e. evidence must be brought that the change is not purely tax driven). As of tax year 2019 (financial years ending 31 December 2018 or later), the amount of IID carried forward and DRD carried forward can only be offset against future profits if the change can be justified by legitimate needs of a financial or economic nature as well.

A ruling can be requested from the Belgian tax authorities to obtain upfront certainty on the Belgian tax treatment of the contemplated operation, so as to ensure the losses are not forfeited as a result of a change of control.

Tax-free merger or (partial) de-merger

If a tax-free merger or (partial) de-merger takes place, Belgian tax law provides for a partial transfer/maintenance of the rollover tax losses of the absorbed/absorbing company. The carried forward tax losses of the companies involved are then reduced based on the proportionate net fiscal value of the company (before the restructuring) compared to the sum of the net fiscal values of both the merging entities (before the restructuring).

No carryback

There is no tax loss carryback provision under Belgian tax law.

Payments to foreign affiliates

A Belgian company can claim a deduction for royalties, management service fees, and interest charges paid to foreign affiliates, provided such amounts are at arm's length. However, when such payments are made, either directly or indirectly, to a foreign person, entity, or PE that is not subject to tax or is subject to a tax regime that is notably more advantageous than the Belgian tax regime on such income, there is a reversal of the burden of proof. Such charges will be disallowed unless the Belgian company can prove that the payments are reasonable and that they correspond to genuine and real transactions.

Fees, commissions, etc. paid to beneficiaries located in foreign countries and not properly reported, will, in principle, be subject to the secret commissions tax.

Payments to tax havens

Companies subject to Belgian CIT or Belgian non-resident CIT that make direct or indirect payments to recipients established in tax havens are obligated to declare them if they are equal to or exceed EUR 100,000 during the tax year. The reporting has to be made on a special form to be attached to the (non-resident) CIT return.

In the event of non-reporting, the payments will be disallowed expenses for CIT purposes. Where the payments have been reported duly and timely, their tax deductibility will be subject to the ability of the taxpayer to prove that (i) said payments were made as part of genuine, proper transactions and (ii) they were not made to an entity under an artificial construction.

A tax haven is defined as: (i) a jurisdiction where the nominal corporate tax rate is less than 10% or (ii) a jurisdiction regarded by the OECD as not being cooperative concerning transparency and international exchange of information (EoI) (i.e. on the OECD 'black list'). Belgian law provides a royal decree containing the list of countries where the nominal corporate tax rate is lower than 10%.

As of 14 July 2016, the scope is extended to payments to:

- PEs located in a state with a low or zero tax charge
- bank accounts managed or held by one of these people or PEs, and
- bank accounts managed or held through credit institutions (or their PE) located in one of those states.

The definitions of 'non-compliant state', 'state', and 'state with a low or zero' tax charge are also enlarged.

Group taxation

Belgium will apply a tax consolidation mechanism with respect to corporate tax as of tax year 2020 (financial year ending 31 December 2019 and later). Belgian companies will be able to transfer taxable profits to other Belgian affiliated companies with the aim to offset these profits against current year losses. The scope of the consolidation regime will be limited to certain qualifying companies who have concluded a 'group contribution agreement' that meets certain conditions. Under similar conditions, it will, in practice, also be possible to deduct final losses of a foreign subsidiary under the consolidation regime.

Transfer pricing

The arm's-length principle is formally codified in the Belgian Income Tax Code (BITC). In addition, the tax authorities can make use of other, more general, provisions in the BITC to assess the arm's-length nature of transfer prices (e.g. the general rules on the deductibility of business expenses). The BITC contains provisions that tackle artificial inbound or outbound profit shifting. These are the so-called provisions on abnormal or gratuitous benefits.

If a Belgian tax resident company grants an abnormal or gratuitous benefit, the benefit should be added back to the taxable income as a disallowed expense unless the benefit was taken into account to determine the taxable basis of the beneficiary. Even if the abnormal or gratuitous benefit was taken into account for determining the taxable basis of the beneficiary, the tax deductibility of the related expenses can still be denied in the hands of the grantor. Notwithstanding the above exception, the abnormal or gratuitous benefit should be added back to the taxable income when the benefit is being granted to a non-resident affiliated company. Such granted abnormal or gratuitous benefits can be offset against any tax deductible items (e.g. tax losses carried forward, NID).

If a Belgian tax resident company receives an abnormal or gratuitous benefit, and to the extent that such benefit is received from a related company, the benefit received cannot be offset by the Belgian company against its current year or carried forward tax losses or other tax deductions. According to the position of the tax authorities (by the Minister of Finance), the taxable basis of a Belgian company equals at least the amount of the benefit received (however, there is case law deviating from this position).

Belgium has a special transfer pricing investigation unit with a mission to (i) build up and share transfer pricing expertise and (ii) carry out in-depth transfer pricing audits of multinationals present in Belgium through a subsidiary or PE. The number of transfer pricing audits being initiated in Belgium has increased significantly.

Belgian tax law has introduced specific transfer pricing documentation requirements. These requirements are based on Action 13 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.

Belgian tax law requires a three-tier documentation approach as provided under BEPS Action 13: Master File, Local File, and Country-by-Country (CbC) Reporting. According to the newly adopted documentation requirements, Belgian entities of a multinational group that exceed one of the following criteria:

- operational and financial revenue of at least EUR 50 million (excluding non-recurring revenue)
- balance sheet total of EUR 1 billion, or
- annual average number of employees of 100 full-time equivalents

need to submit to the tax authorities a master file and a local file (the detailed form that is part of the local file only when at least one of the business units of the entity has realised intra-group cross-border transactions of more than EUR 1 million).

Belgian ultimate parent entities of a multinational group with a gross consolidated group revenue of at least EUR 750 million should file a CbC report. Under certain conditions, the Belgian entity that is not the ultimate parent entity of the multinational group may be required to file the CbC report directly with the Belgian tax authorities.

The master file and CbC report should be filed no later than 12 months after the last day of the reporting period concerned of the multinational group. The local file, however, should be filed with the tax return concerned.

The programme law also introduces specific transfer pricing documentation penalties, ranging from EUR 1,250 to EUR 25,000.

Advance pricing agreements (APAs) can be concluded (unilaterally, bilaterally, and multilaterally) via which the taxpayer can obtain upfront certainty.

Thin capitalisation

For the purposes of the thin capitalisation rule, equity is defined as the sum of the taxed reserves at the beginning of the taxable period and the paid-up capital at the end of the taxable period.

For the purposes of the thin capitalisation rule, debt is defined as:

- all loans, whereby the beneficial owner is not subject to income taxes, or, with regard to the interest income, is subject to a tax regime that is substantially more advantageous than the Belgian tax regime, and
- all intra-group loans.

Bonds and other publicly issued securities are excluded, as well as loans granted by financial institutions.

Interest payments or attributions in excess of the 5:1 ratio are not tax deductible. The thin capitalisation rule is not applicable to loans contracted by (movable) leasing companies and companies whose main activity consists of factoring or immovable leasing (within the financial sector).

In case the loans are guaranteed by a third party or in case loans are funded by a third party that partly or wholly bears the risk related to the loans, the third party is deemed to be the beneficial owner of the interest if the guarantee or the funding has tax avoidance as its main purpose.

To safeguard companies having a centralised treasury function in Belgium, a netting for thin capitalisation purposes is allowed at the level of the interest payments and interest income related to the centralised financing function/cash pool function.

The existing thin capitalisation rule will exist until and including tax year 2020. As of tax year 2021 (financial years ending 31 December 2020 or later), the EBITDA-based rule will apply.

This EBITDA-based rule is in line with the EU ATAD I requirements. Exceeding borrowing costs will only be tax deductible up to the highest of (i) 30% of the taxpayer's fiscal EBITDA or (ii) EUR 3 million. The exceeding borrowing costs that could not be deducted in the current taxable period can be carried forward for an unlimited time. Furthermore, upon certain conditions, taxpayers belonging to the same group also have the possibility to transfer unused EBITDA capacity to other group companies.

A grandfathering clause will apply for loans granted before 17 June 2016. The current thin capitalisation rule will, however, remain applicable for interest payments to tax havens.

Controlled foreign companies (CFCs)

As of tax year 2020 (financial years ending 31 December 2019 and later), the CFC rules will apply when a Belgian company holds a direct or indirect participation of more than 50% of the capital, voting rights, or profit of a foreign entity, and the foreign entity either is not subject to tax under the applicable rules of its residence state or is subject to income tax that is less than half of the CIT of the CFC computed based on Belgian rules. This measure is aimed at non-distributed income from predominantly tax driven arrangements. Specific exemptions are available.

Measures to avoid double taxation will be implemented.

Tax credits and incentives

Foreign tax credits (FTCs)

Unilateral relief from double taxation of foreign-source income may be provided in the form of an exemption, credit, or tax reduction, depending on the type of income. Where taxable, foreign income is subject to tax only on its net amount (i.e. after deduction of expenses and foreign taxes).

Dividend income FTC

Generally, no FTC is available for foreign dividends.

Royalty income FTC

Unless a more advantageous provision (e.g. a tax sparing provision) would apply based on a DTT concluded by Belgium (*see the treaty list in the Withholding taxes section*), an FTC is granted under Belgian tax law with respect to foreign royalty income, provided that this income has effectively been subject to taxation in its source country. This FTC is equal to 15/85 of the net frontier amount (i.e. after deduction of foreign WHT) of the royalty. The FTC is, in principle, included in the taxable basis of the recipient company and is only creditable against Belgian income tax to the extent that said foreign income is included in the taxable basis of the Belgian company. Excess FTC, if any, is not refundable and cannot be carried forward.

Interest income FTC

Unless a more advantageous provision (e.g. a tax sparing provision) would apply based on a DTT concluded by Belgium (*see the treaty list in the Withholding taxes section*), the Belgian beneficiary of foreign interest income is entitled to an FTC under Belgian tax law, provided that this income effectively has been subject to taxation in its source country. The computation of the FTC is based on the net frontier interest income (i.e. after deduction of foreign WHT) and adjusted with a ratio taking into account the financial leverage. The FTC is, in principle, included in the taxable base of the Belgian lender to the extent the FTC can be effectively used. It is creditable against the CIT due but is not refundable in case of excess, neither can it be carried forward.

Notional interest deduction (NID)

Belgian CIT payers can claim NID for tax purposes, reflecting the economic cost of the use of capital, equal to the cost of long-term, riskfree financing.

The NID rate for tax year 2018 (i.e. accounting years ending between 31 December 2017 and 30 December 2018, both dates inclusive) is 0.237% (0.737% for SMEs).

As of tax year 2013, new excess NID can no longer be carried forward, whereas, under the old rules, 'excess NID' (i.e. NID that cannot be claimed owing to the taxpayer having insufficient taxable income) could be carried forward for a maximum of seven years.

However, the 'stock' of excess NID (stemming from previous years, i.e. tax years 2012 and before) can still be carried forward for seven years (as was previously the case), though the excess NID that can be applied in a given year is limited to 60% of the taxable profit (i.e. the profit remaining after setting off carried-forward tax losses and other tax deductions). The 60% limit is only applicable to the part of taxable profit exceeding EUR 1 million. The portion of excess NID that cannot be used due to the

'60% rule' (i.e. 40% of taxable profit minus EUR 1 million) can be carried forward indefinitely.

As for determining the basis on which this deduction is calculated, the company's share capital plus its retained earnings, as determined for Belgian GAAP purposes and as per the last year-end date, will have to be taken into account with some adjustment. The accounting equity as per the last year-end date has to be reduced by, amongst others, (i) the fiscal net value of financial fixed assets qualifying as participations and other shares, (ii) the fiscal net value of participations and shares that qualify for the dividends received deduction regime, and (iii) if a company has a foreign PE located in a jurisdiction with which Belgium has concluded a tax treaty, the NID is reduced by:

- the lower amount of (i) the result of the foreign PE or real estate or (ii) the net asset value of the PE or real estate multiplied by the NID rate if it concerns a PE located in the European Economic Area or
- the net asset value of the PE or real estate multiplied by the NID rate if it concerns a PE or real estate located in a treaty country outside of the European Economic Area.

As of tax year 2019 (financial years ending 31 December 2018 or later), the NID is calculated based on the incremental equity (over a period of five years) and no longer on the total amount of the company's qualifying equity. Simplified, the incremental equity equals one fifth of the positive difference between the equity at the end of the taxable period and the fifth preceding taxable period.

In addition, various other adjustments should be made in order to avoid abuse.

Please note that as of tax year 2019 (financial years ending 31 December 2018 and later), a minimum tax base is introduced. There are no limits on certain deductions (such as DRD, IID, and the investment deduction). Other deductions may offset only 70% of the taxable amount exceeding EUR 1 million. These deductions include, amongst others, incremental NID and carried-forward NID. The remaining 30% will be fully taxable at the CIT rate (*see Minimum tax base in the Taxes on corporate income section*).

Investment deductions

The investment deduction is a deduction from the tax base in addition to the normal tax depreciation on, amongst others, qualifying patents, environmentally friendly R&D investments, and energy-saving investments.

A company can benefit from a one-shot investment deduction of 13.5% (for tax year 2018, i.e. accounting years ending between 31 December 2017 and 30 December 2018 [both dates inclusive]) of the acquisition value of qualifying investments. With respect to environmentally friendly R&D investments, a company can also opt for a spread investment deduction of 20.5% (for tax year 2018) of the depreciation on qualifying environmentally friendly R&D investments.

If certain conditions are met, SMEs can benefit from an increased investment deduction from 8% to 20% for assets acquired or created between 1 January 2018 and 31 December 2019.

If there are insufficient or no taxable profits, the investment deduction can be carried forward without any limitation in time or in amount. Certain restrictions apply as to the maximum amount of investment deduction carried forward that is tax deductible in a given year.

Under certain conditions, the investment deduction carried forward can be lost after a change of ownership (*see Net operating losses in the Deductions section*).

Note that the investment deduction for patents and R&D cannot be combined with the tax credit for patents and R&D.

Note that, in principle, only development costs can be activated; not costs of research.

Patents and R&D tax credit

As an alternative for the above investment deduction for patents and R&D, a company may opt for a tax credit for which the advantage corresponds to the advantage of the investment deduction (i.e. 13.5% one-time and 20.5% for a spread investment deduction for tax year 2018), multiplied by the normal CIT rate of 29.58% (25% as of tax year 2021). The investment deduction implies a deduction of the taxable basis, while the tax credit is a reduction of the tax due. A key advantage of the tax credit for patents and R&D is that it is refundable if it has not been deducted for five subsequent tax years.

Note that the amount of the tax credit should be deducted from the basis of the NID.

Reduced payroll tax for qualifying researchers

80% of the payroll tax withheld from wages of qualifying researchers by a Belgian company or establishment does not need to be remitted to the Belgian Tax Revenue if the researchers are employed in R&D programmes and have a qualifying degree (e.g. a degree in [applied] sciences, veterinary medicines, biotechnology). For the employee's personal tax liability, the Belgian Tax Revenue considers that the payroll WHT amount was entirely withheld.

As of tax year 2019, this incentive has been extended to include holders of a bachelor's degree as well. The exemption is applicable up to 40% of this payroll WHT as of 1 January 2018 and up to 80% as of 1 January 2020.

Belgian law mentions a definition of 'scientific research' and foresees a reporting obligation with the Public Federal Administration for Scientific Policy (*Belspo*), which can approve or reject the request for application if asked for.

Innovation income deduction (IID)

As of 1 July 2016, the Belgian patent income deduction (PID) regime has been abolished. Indeed, in line with the so-called 'modified' nexus approach, the patent box regime had to be replaced with a BEPS (in particular Action Point 5 of the OECD BEPS Action Plan)/EU compliant patent box regime. Subject to conditions, the (old) PID regime is grandfathered for five years.

In contrast to the (old) PID regime, the qualifying patent/innovation income is calculated on a net basis. The percentage of this deduction is raised from 80% under the (old) PID regime to 85% under the new IID regime, resulting in an effective tax rate of 5.1% (or 4.44% as of tax year 2019) over the life time of the intellectual property (IP). The new regime entered into force on 1 July 2016.

Qualifying intellectual property (IP)

The IID can apply to income derived from the following IP of which the company or branch has the full ownership, co-ownership, usufruct, or licence of or right to use:

- Patents and supplementary protection certificates that have not been used for the sale of goods or services to independent parties before 1 January 2007.
- Breeders' rights requested or acquired as of 1 July 2016.
- Orphan drugs, i.e. a drug to treat rare diseases, (limited to first ten years) requested or acquired as of 1 July 2016.
- Data and market exclusivity granted by the competent authorities after 30 June 2016 (e.g. market exclusivity for orphan drugs or data exclusivity for reports with respect to pesticides, clinical studies of generic or animal drugs).
- IP of copyrighted software resulting from a research or development project as defined for the purposes of the partial exemption of wage WHT for R&D and that has not yet generated income before 1 July 2016.

Under the (old) PID regime, the benefit was only provided as of the year the patent was actually granted. Going forward, the benefit would also become available as of the date the patent is requested (and provided that the patent is actually granted afterwards).

Innovation income

Without making any restrictions to SMEs, the following income will be considered as derived from the above qualifying IP in so far as the remuneration is included in the Belgian taxable result of the Belgian company or branch concerned:

- Licence fees.
- IP income embedded in the sales price of own manufactured products for which a third party would be willing to pay a license (so-called 'embedded' royalties).
- IP income derived from process innovation.
- Remunerations on the basis of a court/arbitral decision, an amicable settlement, or an insurance settlement.

Furthermore, the proceeds from a transfer of qualifying IP are also in the scope of the deduction, subject to a reinvestment condition to be met within five years.

For the first taxable period during which the IID will be applied, the (net) innovation income should be decreased by the overall expenditure incurred during (preceding) taxable periods ending after 30 June 2016. Alternatively, one can opt to spread this recapture on a straight-line basis during a period of a maximum of seven years. In the case that the qualifying IP right terminates or is alienated before the end of this seven-year period, a correction will apply in order to limit the IID actually applied to the amount that would have been applied if no spread recapture had been opted for.

Calculation of the IID

The IID is determined by multiplying the net innovation income by a fraction. This fraction represents the ratio between one's own R&D activities and the outsourced R&D activities (towards related parties). As such, the taxable result of a Belgian company or branch will be reduced by 85% of the total net innovation income after this fraction has been applied.

IID = ((qualifying expenditures + uplift) / overall expenditure)) x net innovation income x 85%

It is important to note that the ratio should be calculated on a net basis, implying that (contrary to the [old] PID regime) current year deducted overall expenditure should be deducted from the current year qualifying innovation income.

It is thereby also provided that excess deduction that cannot be used due to insufficient taxable basis can be carried forward to be compensated with future taxable profits (contrary to the [old] PID regime).

The qualifying expenditure may be uplifted by 30%, with a maximum of the overall expenditure. This means that the uplift may increase the qualifying expenditure but only to the extent that the taxpayer has non-qualifying expenditure. The purpose of this uplift is to ensure that the nexus approach does not penalise taxpayers excessively for acquiring IP or outsourcing R&D activities to related parties.

Withholding taxes

Domestic corporations and PEs of foreign corporations paying dividends, interest, royalties, service fees, and/or certain rentals are required to withhold tax.

Capital reductions decided by the general meeting as of 1 January 2018 will be deemed to derive proportionally from paid-up capital, taxed reserves (incorporated and non-incorporated into capital), and exempted reserves incorporated into the capital. The reduction of capital will be allocated to paid-up capital in the proportion of the paid-up capital in the total capital increased by certain reserves. The portion allocated to the reserves is deemed to be a dividend and will become subject to WHT (if applicable). Share premium distribution is submitted to the same system.

A uniform WHT rate of 30% is applicable on dividends, interest, and royalties. There are some exceptions.

Some WHT reductions/exemptions are foreseen under Belgian domestic tax law.

- A WHT exemption is foreseen for the distribution of profits made by a Belgian subsidiary to an EU parent company if both the parent and subsidiary have a legal form that is mentioned in the Annex to the EU Parent-Subsidiary Directive, if both are subject to CIT, and if the parent company holds, during an uninterrupted period of at least one year, a shareholding of at least 10% in the capital of the distributing company (implementation of the Parent-Subsidiary Directive). If the one-year holding requirement is not fulfilled at the time of distribution, the distributing company provisionally should withhold the amount of WHT due (but it does not have to pay the tax authorities). Once the one-year holding requirement is met, the provisionally withheld tax amount can be paid out to the parent company. If the one-year holding requirement eventually is not complied with (e.g. because the Belgian participation is disposed of by the parent company before the one-year holding requirement is met), then the Belgian company has to pay the amount provisionally withheld, increased by interest for late payment (at an annual rate of 7%, and a rate between 4% and 10% as of tax year 2019), to the competent services of the Belgian tax authorities.
- Recently, a GAAR has been introduced into Belgian legislation. As a result, the WHT exemption will be denied whenever the dividends originate from legal acts or a whole of legal acts that are artificial (i.e. no valid business reasons that reflect economic reality) and merely in place to obtain the WHT exemption.

- In 2012, the European Court of Justice ruled that the Belgian dividend WHT regime was incompatible with EU law (the 'Tate & Lyle case'). The regime stated that dividends distributed by Belgian companies to foreign corporate shareholders having a holding interest in the capital of a company of less than 10% but with an acquisition value of at least EUR 1.2 million (currently EUR 2.5 million) are, in principle, subject to full withholding at 30%. According to the Act of 18 December 2015, dividends distributed by a Belgian company to non-resident minority corporate shareholders are now subject to a reduced WHT rate of 1.6995% (instead of 30%), provided certain conditions are met, among which are the following:
  - The reduced rate of 1.6995% is only applicable to the extent that the Belgian WHT cannot be credited or is not refundable in the jurisdiction of the beneficiary.
  - Both the company distributing the dividends and the beneficiary of the dividends are subject to a taxation condition.
  - The beneficiary must be a non-resident corporate shareholder having a holding interest in the capital of the distributing company of less than 10% but with an acquisition value of at least EUR 2.5 million.
  - The holding interest must be held for an uninterrupted period of at least one year (in full ownership).
  - The shareholder must be a company located in the EEA or in a jurisdiction with which Belgium has concluded a DTT.
  - The shareholder must have a legal form as mentioned in the EU Parent-Subsidiary Directive or a similar form.

  As of tax year 2019 (financial years ending 31 December 2018 and later), the special Tate & Lyle WHT rate is replaced by a WHT exemption.

- The application of the Parent-Subsidiary Directive to dividend payments has been extended towards non-EU-resident companies. Dividends distributed towards a country that has concluded a tax treaty with Belgium containing a qualifying exchange of information clause can be exempt from WHT, subject to the same conditions as laid down in the Parent-Subsidiary Directive.

On top of the above exemptions, there are other dividend/interest exemptions/reductions implemented in Belgian tax law.

With respect to payments made to non-resident corporations or individuals, WHT exemptions and/or reductions can also be found in the DTTs concluded by Belgium.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties, certain rentals (6)**
Non-resident corporations and individuals:			
Non-treaty	30	30	30
Treaty:			
Albania	5/15 (4)	5	5
Algeria	15 (4)	15 (6)	5/15
Argentina	10/15 (4)	12 (6)	3/5/10/15
Armenia	5/15 (4)	10 (6)	8
Australia	15 (4)	10	10
Austria	15 (4)	15 (6)	10
Azerbaijan	5/10/15 (4)	10	5/10
Bahrain	10 (4)	5 (6)	0

	WHT (%)		
Recipient	Dividends	Interest	Royalties, certain rentals (6)
Bangladesh	15 (4)	15 (6)	10
Belarus	5/15 (4)	0/10	5
Bosnia-Herzegovina (1)	10/15 (4)	15	10
Brazil	10/15 (4)	10/15 (6)	10/15/20
Bulgaria	10 (4)	10 (6)	5
Canada	5/15 (4)	10 (6)	0/10
Chile	0/15 (4)	5/15	5/10
China, People's Republic of (2)	5/10 (4)	10 (6)	7
Congo	5/10 (4)	10 (6)	10
Croatia	5/15 (4)	10 (6)	0
Cyprus	10/15 (4)	10 (6)	0
Czech Republic	5/15 (4)	10 (6)	5/10
Denmark	0/15 (4)	10	0
Ecuador	15 (4)	10 (6)	10
Egypt	15/20 (4)	15	15/25
Estonia	5/15 (4)	10 (6)	5/10
Finland	5/15 (4)	10	5
France	10/15 (4)	15	0
Gabon	15 (4)	15 (6)	10
Georgia	5/15 (4)	10 (6)	5/10
Germany	15/25 (4)	0/15	0
Ghana	5/15 (4)	10 (6)	10
Greece	5/15 (4)	5/10 (6)	5
Hong Kong	0/5/15 (4)	10 (6)	5
Hungary	10 (4)	15 (6)	0
Iceland	5/15 (4)	10 (6)	0
India	15 (4)	10/15	20
Indonesia	10/15 (4)	10 (6)	10
Ireland, Republic of	15 (4)	15	0
Israel	15 (4)	15	10
Italy	15 (4)	15 (6)	5
Ivory Coast	15/18 (4)	16 (4)	10
Japan	5/15 (4)	10	10
Kazakhstan	5/15 (4)	10 (6)	10
Korea, Republic of	15 (4)	10 (6)	10
Kosovo (1)	10/15 (4)	15	10
Kuwait	0/10 (4)	0	10
Kyrgyzstan (3)	15	15 (6)	0
Latvia	5/15 (4)	10 (6)	5/10
Lithuania	5/15 (4)	10 (6)	5/10
Luxembourg	10/15 (4)	0/15	0
Macedonia	5/15 (4)	10 (6)	10
Malaysia	0/15 (4)	10	10
Malta	15 (4)	10 (6)	0/10
Mauritius	5/10 (4)	10 (6)	0
Mexico	5/15 (4)	10/15 (6)	10
Moldova (3)	15	15 (6)	0
Mongolia	5/15 (4)	10 (6)	5

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties, certain rentals (6)**
Montenegro (1)	10/15 (4)	15	10
Morocco	6.5/10 (4)	10 (6)	10
Netherlands	5/15 (4)	10 (6)	0
New Zealand	15 (4)	10	10
Nigeria	12.5/15 (4)	12.5	12.5
Norway	0/5/15 (4)	15 (6)	0
Pakistan	10/15 (4)	15 (6)	0/15/20
Philippines	10/15 (4)	10 (6)	15
Poland	5/15 (4)	5 (6)	5
Portugal	15 (4)	15	10
Romania	5/15 (4)	10 (6)	5
Russia	10 (4)	10 (6)	0
Rwanda	0/15 (4)	10 (6)	10
San Marino	0/5/15 (4)	10 (6)	5
Senegal	15 (4)	15	10
Serbia (1)	10/15 (4)	15	10
Seychelles	5/15 (4)	5/10	5
Singapore	0/5/15 (4)	5 (6)	5
Slovakia	5/15 (4)	10 (6)	5
Slovenia	5/15 (4)	10 (6)	5
South Africa	5/15 (4)	10 (6)	0
Spain	0/15 (4)	10 (6)	5
Sri Lanka	15 (4)	10 (6)	10
Sweden	5/15 (4)	10 (6)	0
Switzerland	0/10/15 (5)	0/10 (5)	0
Taiwan	10 (4)	10 (6)	10
Tajikistan (3)	15	15 (6)	0
Thailand	15/20 (4)	10/25 (6)	5/15
Tunisia	5/15 (4)	5/10 (6)	11
Turkey	15/20 (4)	15 (6)	10
Turkmenistan (3)	15	15 (6)	0
Ukraine	5/15 (4)	2/10 (6)	0/10
United Arab Emirates	0/5/10 (4)	5 (6)	0/5
United Kingdom	0/10 (4)	10 (6)	0
United States	0/5/15 (4)	0/15	0
Uruguay	5/15 (4)	10	10
Uzbekistan	5/15 (4)	10 (6)	5
Venezuela	5/15 (4)	10 (6)	5
Vietnam	5/10/15 (4)	10 (6)	5/10/15

Notes

1. The treaty concluded with ex-Yugoslavia is still applicable to Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia.
2. Not applicable to Hong Kong.
3. The treaty concluded with the former USSR is still applicable to Kyrgyzstan, Moldova, Tajikistan, and Turkmenistan.
4. It concerns an EU country or the treaty contains a qualifying exchange of information clause. Hence, the rate of 0% is applicable subject to the same conditions as invoked by the Parent-Subsidiary Directive (*see above*). Where multiple rates apply, the difference is generally based on the percentage of participation the recipient holds (directly) in the capital of the company paying the dividends.

5. Under the Bilateral II agreement concluded between Belgium and Switzerland, a rate of 0% is applicable under certain conditions.
6. With respect to EU countries, a WHT exemption is applicable, provided that the conditions laid down in the Interest & Royalty Directive are met (*see above*). Furthermore, please note that some treaties contain an exemption for trade receivables or loans concluded with a governmental body.

The treaties that are currently in force are listed above. Based on the websites of the Belgian government, the following tax treaties are signed, modified, or under renegotiation (including some for the exchange of information clause): Andorra, Canada, Congo, Ethiopia, France, Germany, Greece, Iceland, Ireland, Isle of Man, Japan, Kenya, Macao, Malaysia, Malta, Moldova, the Netherlands, New Zealand, Norway, Oman, Poland, Qatar, Russia, Rwanda, Spain, Switzerland, Tajikistan, Turkey, Uganda, Ukraine, the United Kingdom, and Uzbekistan.

Tax administration

Taxable period

The assessment is based on the taxable income of a financial year. For the application of the rules on statutory limitations and of new laws, an assessment year is related to each taxable period. If the financial year corresponds with the calendar year, the assessment year is the following calendar year (e.g. financial year closing 31 December 2018 corresponds with tax year 2019). If the financial year does not correspond with the calendar year, the tax year, in principle, equals the calendar year during which the financial year ends (e.g. financial year closing 30 June 2018 corresponds with tax year 2018).

Tax returns

As a general rule, the annual resident or non-resident CIT return cannot be filed less than one month from the date when the annual accounts have been approved and not later than six months after the end of the period to which the tax return refers. For instance, assuming that the accounting year has been closed on 31 December 2018, the corporate tax return needs to be filed, in principle, by 30 June 2019 at the latest (this deadline is often postponed).

Payment of tax

CIT is payable within two months following the issue of the tax assessment. Interest for late payment is charted at the (non-cumulative) rate of 7% per year, and a rate between 4% and 10% as of tax year 2019.

The advance tax payments needed to avoid the CIT surcharge (*see the Taxes on corporate income section*) can be made in quarterly instalments. In the situation where the company's financial year ends on 31 December 2018, the due dates for the advance tax payments are 10 April 2018, 10 July 2018, 10 October 2018, and 20 December 2018. If the due date is a Saturday, Sunday, or a bank holiday, the payment is due on the next working day. Advance tax payments give rise to a tax credit. For tax year 2019, the tax credit amounts to 9%, 7.50%, 6%, or 4.50% of the advance tax payment made, depending on whether such payment has been made, respectively, in the first, second, third, or fourth quarter. If the total amount of credits exceeds the surcharge, no surcharge is due, but the excess is not further taken into account for the final tax computation. The taxpayer can choose to either have the excess reimbursed by the tax authorities or used as an advance tax payment for the next year.

Tax audit process

A tax audit normally begins with a written request for information from the tax inspector. The taxpayer must provide the data requested within (in principle) one month. Any documentary evidence considered relevant to the audit can be requested and reviewed by the authorities. Once the tax inspector has completed the analysis, any adjustment is proposed in a notification of amendment outlining the reasons for the proposed amendment. The taxpayer has 30 days to agree or to express disagreement. The tax inspector then makes an assessment for the amount of tax that the tax inspector believes is due (taking into account any relevant comments of the taxpayer with which the inspector agrees). Thereafter, the taxpayer has six months within which to lodge an appeal with the Regional Director of Taxes. The decision of the Regional Director of Taxes may be appealed and litigated. In a number of circumstances, the intervention of the courts can be sought prior to receiving the decision of the Regional Director of Taxes.

Tax supplements

Tax supplements resulting from a tax audit will imply an effective tax cash out as of tax year 2019 (financial years ending 31 December 2018 or later), without the possibility to offset these supplements against any tax deductions (with the exception of the current year DRD). These tax supplements will thus constitute a minimum tax base. This measure, however, only applies if tax penalties equal to or higher than 10% are effectively applied.

Statute of limitations

Based on the Belgian income tax statute of limitations, the period during which the tax authorities are authorised to perform a tax audit and adjust the taxable basis is three years (except in case of fraud, where the statute of limitations is extended to seven years) starting from the first day of the assessment year, unless the company's financial year does not correspond to the calendar year. The same statutes of limitations are applicable for social security contributions, with the difference being that the statute of limitations begins to run from the end of the month following the month for which the social security contributions were due.

Belgian ruling practice

Belgium has a long tradition of providing formal and informal rulings. Currently, a taxpayer may request an advance tax ruling on a wide range of subjects, including, but not limited to, CIT, individual tax, non-resident income tax, legal entity income tax, VAT, customs, and registration duties. The request should cover a 'specific and concrete' operation, which effectively is envisaged to be realised in the foreseeable future. The ruling should be filed before the transaction takes place. In practice, the ruling decision should be granted prior to the filing of the CIT return of the year of the transaction. A ruling is binding upon the Belgian tax authorities for a renewable period of a maximum of five years. Delivery of a requested ruling takes, on average, three months.

The Ruling Office is autonomous from the Belgian tax authorities and has the legal authority to issue decisions, which are binding upon the Belgian tax authorities. The Ruling Office increasingly has adopted a constructive approach towards the taxpayer and is seen in the Belgian tax practice as a powerful insurance instrument in ascertaining the Belgian tax treatment of contemplated operations.

Topics of focus for tax authorities

Topics of interest to Belgian tax authorities include:

- Transactions with entities based in tax havens.
- Structures aimed at tax optimisation for the group.
- Significant increase in transfer pricing audits by the special transfer pricing investigation unit (deviating profit margins compared to prior years, material drop in operating profit or turnover, structurally loss-making entity, thin capitalisation, and others).
- Significant increase in professional WHT audits.
- The deductibility of interest payments (e.g. to tax haven companies).
- Substance.

Other issues

Base erosion and profit shifting (BEPS)

The OECD's Action Plan on BEPS was published in July 2013 with a view to address perceived flaws in international tax rules. The Action Plan identifies actions needed to address BEPS, sets deadlines to implement these actions, and identifies the resources needed and the methodology to implement these actions. The Action Plan contains 15 separate action points with three key themes: coherence, substance, and transparency. The Plan is focused on addressing these issues in a coordinated, comprehensive manner, and was endorsed by G20 Leaders and Finance Ministers at their summit in St. Petersburg in September 2013. Belgium has also been actively involved in this initiative and is likely to endorse and/or implement the outcome of the Action Plan.

On 5 October 2015, the OECD presented its final package of BEPS measures for a comprehensive, coherent, and co-ordinated reform of the international tax rules. The package was endorsed by the G20 Finance Ministers at their meeting on 8 October 2015, in Lima, Peru. It is expected that, following the release of the final package, unilateral measures will be introduced into the Belgian legislation in line with the OECD final package.

Cayman tax

The 'Cayman tax' is a taxation of certain income from certain legal constructions in the hands of Belgian individuals (and Belgian entities subject to legal entities income tax). Income from certain legal constructions becomes subject to PIT in the hands of the private individual, being the founder or beneficiary of the legal construction.

The legal constructions in scope include, among others, foreign trusts, foundations, undertakings for collective investments or pension funds when not publicly offered, low-taxed or non-taxed entities, etc. to which the Belgian individual (or Belgian entity subject to legal entities tax) is, in one way or another, linked as a founder, an effective beneficiary, a potential beneficiary, etc.

By application of this measure, the income of certain legal constructions becomes taxable in the hands of the private individual regardless of whether the income has been distributed by the legal construction to the private individual. The constructions are deemed to be transparent.

Generally, a distinction is made between two categories of legal constructions.

The legal constructions of the first category concern the trusts without legal personality. The income realised by these trusts or paid or attributed by these trusts as of 1 January 2015 is taxable in the hands of the Belgian private individual or entity subject to legal entities tax (being the founder or beneficiary of the legal construction), as if the Belgian individual or entity subject to legal entities tax would have realised the income directly.

The second category concerns legal constructions, being foreign entities (with legal personality), which are subject to an effective tax rate of less than 15%. The income realised by the legal constructions are deemed to be realised directly by the Belgian private individual (being the founder or the beneficiary of the legal construction).

Within both categories, the income concerns profits, such as real estate income, movable income (interest, dividends, and royalties), miscellaneous income, and earned (i.e. professional) income.

United States (US) Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS), and Directive 2014/107/EU

Goal of FATCA and CRS

FATCA (a US initiative) and CRS (an OECD initiative) aim to tackle offshore tax evasion via a shared objective of Automatic Exchange of Information (AEoI) in Tax Matters. Although CRS relies to a large extent on the FATCA system, there are noticeable differences, and interpretation can also substantially vary across different jurisdictions.

In a nutshell, financial institutions have to comply with registration, due diligence, and reporting obligations with respect to: (i) accounts held by specified US persons (FATCA) or reportable residents of other participating states and (ii) accounts held through certain non-financial entities qualifying as 'passive' (or passive NFEs), which are controlled directly or indirectly by private individuals who are reportable persons.

FATCA

The US Congress enacted FATCA in 2010. FATCA is applicable in other jurisdictions in either of the following situations:

- A Model I Intergovernmental Agreement (IGA) was signed by the relevant jurisdiction: Local financial institutions are obligated to report to the local tax authorities, who will then forward the information to their relevant foreign counterpart.
- A Model II IGA was signed by the relevant jurisdiction: Financial institutions will directly report to the US Internal Revenue Service (IRS).
- The relevant jurisdiction has not concluded an IGA with the US: FATCA is imposed unilaterally by the US Treasury Regulations released by the US Department of the Treasury and the IRS.

Belgium entered into a Model I IGA (Belgian IGA) with the US authorities on 23 April 2014.

CRS/DAC2

On 15 July 2015, the OECD approved its CRS on AEoI. This model has been endorsed by more than 100 countries so far (Belgium is amongst the early adopters).

Belgium

At the European level, the CRS was integrated in the EU Directive on Administrative Cooperation in Tax Matters (DAC2) of 9 December 2014, which had to be implemented in member states' national legislation by 31 December 2015.

Belgian domestic law

The Belgian Act of 16 December 2015 gives a legal basis to AEoI in Belgium (including FATCA and CRS). It has implemented the Belgian IGA together with the DAC2 into Belgian domestic law.

On 20 April 2015, the Belgian tax authorities published draft Belgian Guidance Notes on the Belgian IGA related to FATCA, which are subject to modifications, but can offer more insight on certain FATCA concepts.

On 14 March 2017, the Belgian tax authorities have published the Belgian Guidance Notes on CRS (version 1), which contain valuable clarifications on the practical application of the CRS and DAC2.

On 14 June 2017, the King adopted a Royal Decree (published in the Official Gazette of 19 June 2017) that implements the Act of 16 December 2015 relating to the international AEoI for tax purposes. Amongst other things, the Royal Decree lists 'other reportable jurisdictions' (non-EU states) based on the year during which the first CRS reporting will be required (2017 or 2018).

Reporting requirements for financial institutions

Financial institutions should already have made two FATCA reportings (one regarding the second half of 2014, the other relating to 2015). The third FATCA reporting (2016 information) was due by 30 June 2017. The next FATCA reporting (2017 information) is due by 30 June 2018.

The first reporting under CRS/DAC2 (2016 information as well) was due by 30 June 2017. However, on 23 June 2017, the Belgian tax authorities exceptionally granted an extended deadline for this first CRS reporting until 31 July 2017 at the latest (the due date for the FATCA reporting with respect to calendar year 2016 remained 30 June 2017). The next CRS/DAC2 reporting (2017 information) is due by the same date as the FATCA reporting (30 June 2018).

Bermuda

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Significant developments

The Bermuda government has extended the tax exemption granted to Bermuda companies under the Exempt Undertakings Act of 1976 from 28 March 2016 until 31 March 2035. The extended Undertaking provides protection to companies from any newly enacted taxes on income or capital gains until 31 March 2035. Existing companies are required to pay a fee of 179 Bermudian dollars (BMD) with an application for the tax exemption extension in order to benefit from this protection.

The government of Bermuda launched its electronic Tax Information Reporting Portal (Portal) in June 2017. The Portal is currently accepting Common Reporting Standard (CRS) notifications and filings and country-by-country (CbC) reporting notifications and filings.

The 2018/19 Bermuda Budget brings a few updates to the payroll tax. The changes primarily entail reductions to payroll tax for certain individuals, new exemptions, and new payroll tax provisions for taxi operators. *See Payroll tax in the Other taxes section for details*.

Furthermore, the latest Bermuda Budget proposes some changes in the customs duty, a general increase in government fees by 5%, and changes on taxes to commercial properties.

Taxes on corporate income

Bermuda imposes no taxes on profits, income, dividends, or capital gains, has no limit on the accumulation of profit, and has no requirement to distribute dividends.

The Bermuda government routinely grants Tax Assurance Certificates to exempted undertakings (i.e. exempted companies, permit companies, exempted partnerships, and exempted unit trust schemes) on application to the Minister through the Bermuda Monetary Authority. These Tax Assurances guarantee that any Parliamentary imposition of such taxes will not be applicable to the company and its operations in future years. Currently, the Tax Assurances being granted extend to 31 March 2035. *See details on exempted companies in the Other issues section*.

Corporate residence

As there are no income or profit taxes on Bermuda corporations, corporate residence is not specifically defined in Bermuda.

Other taxes

Value-added tax (VAT)

There is no VAT or sales tax in Bermuda.

Customs duties

Customs import duties are imposed on almost all goods arriving on the island at varying rates. The most common rate of customs import duties is at 25%.

The 2018/19 Bermuda Budget will reduce to 0% the duty tax for certain healthy foods. Furthermore, the Budget proposes a lower duty rate on textiles, increase in duty on tobacco, and raise of 30 cents in duty on wines per litre. Lastly, proposals for an increase in fees and 2.5% fee on the telecom industry are in place.

Excise taxes

There are no excise taxes imposed in Bermuda.

Property taxes

A land tax is imposed on all developed land in Bermuda, with exceptions for government land, Bermudian pensioner's primary homesteads, and certain charitable organisations. The tax is based on an assessed annual rental value (ARV) of each valuation unit.

The progressive scale of tax rates ranges between 0.60% and 23.00% based on the ARV of the unit, while commercial properties are taxed at a single rate of tax of 7%.

The 2018/19 Bermuda Budget imposed a temporary 5% increase in land taxes on commercial properties. This new 12% rate will last for one year automatically reverting at year-end.

Transfer taxes

There is no transfer tax imposed in Bermuda.

Stamp taxes

Bermuda imposes stamp duty on a wide variety of legal instruments, such as transfers of property, deeds, and rental agreements. However, international businesses and partnerships ordinarily register as exempted companies and, as such, are not subject to stamp duty.

Payroll tax

Historically, the Bermuda payroll tax was imposed on the employer, and the employer had the right to recover up to a prescribed percentage of the payroll tax from its employees. Effective April 2017, the payroll tax is 'split' into being imposed upon the employer and the employee; however, the tax payment obligation remains with the employer.

Bermuda imposes a payroll tax on employers at a rate determined by the employer category or the total annual payroll. International businesses, which normally register as exempted undertakings, are liable for the employer category only at a rate of 10.25% of total employee remuneration of any kind. There is an employer portion exception for new Bermudian hires, among other special situations.

Annual payroll (BMD)	Rate (%)
Less than 200,000	1.75
200,000 to 500,000	7.00
500,000 to 1 million	9.00
Greater than 1 million and exempted undertakings	10.25

Employees include officers and directors of exempt companies if there is a contract for services and they regularly perform managerial functions on a day-to-day basis. However, a person who ordinarily works outside of Bermuda and whose period of employment in Bermuda does not exceed four consecutive weeks is exempt from payroll tax entirely. We note the application of these rules is complex; as such, we recommend you consult your tax adviser.

Remuneration is interpreted broadly, and includes salaries and the value of employee benefits paid or given to an employee for services to the employer wholly or mainly in Bermuda. Specifically, employee benefits include, but are not limited to, fees, bonuses, leave pay, profit sharing, redundancy settlements, housing allowances, any positive difference between the fair market value of stock options and the option price as of the vesting date, and all other payments or value given from an employer to an employee. In case of dispute, the burden of proof is on the employer to prove that any payment or benefit from the employer to an employee was not compensation. For further guidance on the details of taxable remuneration, we recommend you consult your tax adviser.

The maximum taxable remuneration per employee is set at BMD 900,000, above which there is no liability for payroll tax.

Payroll tax is payable on a quarterly basis, commencing on the first day of April, July, October, and January. Payments are due within 15 days of the end of each tax period.

Effective 1 April 2018, a reduction from 4.75% to 4% in payroll tax was introduced for all workers earning less than BMD 48,000. As such, the new employee portion of the payroll tax will be calculated using a marginal tax rate structure as follows:

Annual remuneration (BMD)	2018/19 rate (%)
Less than or equal to 48,000	4.00
48,001 to 96,000	6.50
96,001 to 235,000	7.75
235,001 and above	8.75

As noted above, the obligation to remit payroll tax (in its entirety) remains with the employer. Additionally, the cap on total remuneration subject to payroll tax has been raised from BMD 750,000 to BMD 900,000.

Additionally, as the post-April 2017 payroll tax structure now imposes a portion of the tax upon the employee, we believe any portion of the employee payroll tax that is paid by the employer is considered additional remuneration subject to payroll tax.

Additionally, the new Bermuda Budget eliminates the employer portion of payroll tax for all disabled employees and implements an annual charge of BMD 1,000 to taxi operators to be settled upon registration.

Social insurance

Bermuda's contributory pension scheme requires employers to make monthly contributions to the Contributory Pensions Fund for every employee above 17 years of age for each week in which the employee works more than four hours. An employer must ensure that each qualifying employee registers with the department and obtains a social insurance number. Civil and criminal penalties may apply to employers for failure to register or pay in for each qualifying employee.

Employees contribute a matching sum via weekly payroll deduction, with several exceptions. Full-time students under the age of 26 who are employed during holidays, weekends, and summer breaks, and their employers, are entirely exempt from social insurance contributions. Employees over the age of 65 are exempt from contributing their half, although the employer must still contribute its part.

The current total contribution per employee per week is BMD 64.14. The employer portion is BMD 32.07 and the employee portion is BMD 32.07. This rate has not risen since 2013.

Annual company fee

Bermuda imposes an annual company fee, payable on registration and then every January thereafter. The assessable capital is defined as the total of the company's authorised share capital and its share premium account or the company's reserve account where the company is a mutual company. A mutual company is defined as an insurance or re-insurance company. The current rate schedule, which has not changed since 2008, is:

Assessable capital of the exempted company (BMD)	Annual company fee (BMD)
0 to 12,000	1,995
12,001 to 120,000	4,070
120,001 to 1,200,000	6,275
1,200,001 to 12,000,000	8,360
12,000,001 to 100,000,000	10,455
100,000,001 to 500,000,000	18,670
500,000,001 or more	31,120

Annual partnership fee

Exempted partnership fees are due on registration and annually in January thereafter. This fee is set at BMD 2,235 per year. For an initial registration after 31 August, the fee is half the annual fee.

Corporate services tax

Bermuda imposes a 7% corporate services tax on the providers of corporate services on the gross revenue earned from exempted companies and partnerships. Corporate services are defined to include corporate administration, corporate management, corporate secretarial, the provision of a registered office, and accounting and financial services. Directors and resident representation services are subject to the tax where the provider is in the business of providing corporate services.

Financial services tax

Effective 1 April 2017, a financial services tax is charged on the following financial services providers:

- Banks: 0.02% of assets.
- Domestic insurers: 2.5% of gross premiums written in a tax period, excluding premiums relating solely to health insurance and annuities.
- Money service businesses: 1% of aggregated incoming and outgoing money transmission volume in a tax period.

Foreign Currency Purchase Tax

Foreign Currency Purchase Tax is imposed at the rate of 1% on foreign currency purchased by a resident from a local bank. *See Foreign exchange controls in the Other issues section for exemption information*.

Branch income

Branches are treated as distinct legal entities doing business in Bermuda.

Income determination

Since income taxes are not imposed on corporations in Bermuda, income determination is not relevant in the context of Bermuda taxation.

Deductions

Since income taxes are not imposed on corporations in Bermuda, deductions from income are not relevant in the context of Bermuda taxation.

Group taxation

Since income taxes are not imposed on corporations in Bermuda, group taxation is not relevant in the context of Bermuda taxation.

Note that a consolidated group cannot obtain one Tax Assurance Certificate for the group. A Tax Assurance Certificate must be obtained for each legal entity in Bermuda.

Tax credits and incentives

Bermuda offers no specific tax incentives other than the Tax Assurance Certificate described in the *Taxes on corporate income section.*

Withholding taxes

There are no withholding taxes in Bermuda.

Tax administration

Since income taxes are not imposed on corporations in Bermuda, tax returns are not required to be completed for corporate income tax compliance purposes.

Other issues

Choice of business entity

Corporations registered in Bermuda are either 'local', 'exempted', or 'permit' companies. International businesses are normally exempted companies and partnerships.

Local companies are incorporated by Bermudians to trade primarily in Bermuda. To meet requirements of a local company, the overall shares must be at least 60% Bermudian owned. We note there are proposals that are reconsidering this 60% requirement.

Exempted companies are often international businesses incorporated by non-Bermudians to conduct business outside Bermuda. Exempted companies are classified as an exempted undertaking and routinely apply for Tax Assurance Certificates. Exempted companies must meet the requirement to retain a minimum of one director, secretary, or representative who is resident in Bermuda.

Permit companies are overseas companies that have received a permit to carry on business in or from within Bermuda. A permit is obtained through application to the Minister of Finance to be able to engage in and carry on any trade or business in Bermuda. A mutual fund is exempt from obtaining a permit if a person who is resident in Bermuda is engaged to be the fund's administrator to perform duties such as corporate secretarial, accounting, administrative, registrar, and transfer agency, or dealing with shareholders.

Foreign exchange controls

Exempted companies and permit partnerships are considered as non-residents for exchange control purposes, unless 80% or greater of the total issued share capital is beneficially owned by Bermudians, or one half or more of the partners are resident in Bermuda. This allows these entities to make dividend payments, distribute capital, open and maintain foreign bank accounts, maintain bank accounts in any currency, and purchase securities without tax or governmental controls. *See Foreign Currency Purchase Tax in the Other taxes section for a description of the tax.*

Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)

Bermuda has entered into a Model 2 Intergovernmental Agreement (IGA) with the United States (US) to facilitate the implementation of the US's FATCA reporting requirements. This convention provides for both automatic and on-request exchange of information, as well as procedures for tipping off and search and seizure. Further details on the implementation of FATCA was delineated in a separate, highly detailed agreement, which specifies rules and procedures for the reporting of financial accounts held by US persons. With a Model 2 IGA, applicable Bermuda foreign financial institutions (FFIs) must file directly with the Internal Revenue Service (IRS) rather than via the Bermuda Portal utilised for CRS and CbC reporting purposes.

It is important to note that Bermuda also had a similar agreement with the United Kingdom (UK) to facilitate the implementation of the UK's FATCA reporting requirements; however, UK FATCA has now transitioned to the CRS.

In 2014, Bermuda committed to the early adoption and implementation of the CRS, a multilateral automatic exchange of information regime developed by the Organisation for Economic Co-operation and Development (OECD).

CRS reporting requirements have been introduced for financial accounts in existence from 1 January 2016. Applicable financial institutions will need to notify the Bermuda government by 30 April, and reporting is due by 31 May of the following year.

Country-by-country (CbC) reporting

Bermuda has agreed to CbC reporting as part of the Base Erosion and Profit Shifting (BEPS) Action Plan set forth by the OECD. With the goal of promoting transparency and accuracy in tax reporting, CbC reporting requires applicable multinational enterprises to include detailed financial and tax information relating to the global allocation of their revenue, profits, and taxes, among other indicators of economic activity.

Bermuda's competent authority will annually exchange, on an automatic basis, the CbC report received from each reporting entity that is resident for tax purposes in Bermuda with all such other competent authorities of jurisdictions with respect to which Bermuda has an agreement in effect and in which, on the basis of the information in the CbC report, one or more constituent entities of the multinational group of the reporting entity are resident for tax purposes or are subject to tax with respect to the business carried out through a Bermuda permanent establishment (PE).

CbC reporting is in effect for fiscal years beginning on or after 1 January 2016. The due date for reporting is 12 months after the fiscal year end and notification is required no later than the last day of the reporting fiscal year.

Tax treaties

Bermuda has a tax treaty with the United States, which was signed in 1986 and entered into force in 1988. The agreement limits its applicability to insurance enterprises and specifically exempts insurance business profits of qualified Bermuda insurance companies from US taxation, unless the company has created a PE in the United States. Of note, the treaty provides no relief for US federal excise tax (FET) on insurance or reinsurance premiums. In brief, the requirements to maintain this tax benefit include greater than 50% direct or indirect ownership by Bermuda residents or US citizens, and that the income is not substantially used to make distributions to non-Bermuda residents or non-US citizens. For further guidance in this complex area, please consult your tax adviser.

Bermuda also has a Mutual Legal Assistance Treaty with the United States, which entered into force in 2012. This agreement provides for cooperation in the area of criminal investigation, including economic crimes and money laundering, and for mutual assistance in document service, search and seizure, evidence production, and potential freezing and forfeiture of assets, which may be the proceeds or instruments of crime.

Bermuda also has tax treaties with the Kingdom of Bahrain and Qatar.

Tax information exchange agreements (TIEAs)

Bermuda has an extensive tax agreement network via its bilateral TIEAs and participation in the OECD's Convention on Mutual Administrative Assistance in Tax Matters, which includes over 100 countries.

Bolivia

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Significant developments

In December 2017, the Bolivian Internal Revenue Services (IRS) approved Resolutions 10170000029 and 10170000030 in respect of applications of double tax treaties (DTTs).

Resolution 10170000029 establishes requirements and administrative procedures that Bolivian natural persons and legal entities must comply with to obtain the certificate of residence, certificate of tax domicile, and/or tax situation within the framework of the application of a DTT.

Resolution 10170000030 defines the obligations, procedures, and requirements that must be met by natural or legal entities in order to apply the provisions included in a DDT. In particular, this resolution establishes that the application of a DDT must be supported by a certificate of residence or a certificate of tax domicile of the involved party of the other contracting state; if not, tax withholding must be applied by the Bolivian entity, and the benefits of the DTT would not be applicable. If withholding taxes (WHTs) have not been applied despite not having the certificate of residence or certificate of tax domicile, then the expense would not be tax deductible for corporate income tax (CIT) purposes. Furthermore, taxpayers must keep the certificate of residence or certificate of tax domicile for the statute of limitation period.

Taxes on corporate income

All companies in Bolivia are subject to CIT at a rate of 25%. The taxable base is the profit arising from financial statements prepared in accordance with Bolivian generally accepted accounting principles (GAAP), adjusted for tax purposes (i.e. by non-deductible and non-taxable items) as per the requirements established in the tax law and regulations.

Bolivia taxes the income generated by corporations following the 'income source' principle (i.e. on a territorial basis). Therefore, income arising from goods and assets located or utilised economically within Bolivian territory and from any activity carried out within the country is considered Bolivian income source. Hence, such income is subject to CIT, regardless of the nationality/residence of the parties involved in generating such income or the place where the contracts were subscribed.

Additional income tax on certain financial institutions

Financial institutions (except for development banks) with a return on equity index higher than 6% must pay an additional income tax of 25%. This additional income tax cannot be offset against the transaction tax (*see below*), nor can it be considered a deductible expense for CIT purposes.

Surtax on extractive activities

There is an additional 25% CIT that affects only extractive activities of non-renewable natural resources (mining and oil/gas). This additional tax is calculated on the same basis as the normal CIT, except that two additional deductions are allowed: (i) up to 33% of the accumulated investment as of 1991, and (ii) 45% of the gross revenue of each extractive operation (e.g. a field or a mining site), with a threshold of 250 million bolivianos (BOB) for each extractive operation.

Special taxes on mining companies

In addition to the general CIT of 25% and the 25% surtax on extractive activities, all mining companies are also subject to an additional tax, calculated on the taxable net profits, at the following rates:

- 12.5% if the mining company carries out exploitation activities.
- 7.5% if the mining company carries out manufacturing activities with raw minerals that add value.

Mining companies are also subject to mining royalties at a rate of between 1% and 7% (depending on the kind of mineral), calculated on the total sales price. Note that there is a 60% discount on the rates of mining royalties if minerals are sold within the Bolivian market. Mining royalties can be offset against CIT if official mineral prices are lower than the prices established by the tax law; however, in this case, mining royalties paid will not be deductible for CIT purposes. On the contrary, if official mineral prices are higher than the prices established by the tax law, then mining royalties will be considered a deductible expense for CIT purposes. Note that mining royalties paid on minerals and metals that are not included in the tax law can always be offset against CIT.

Tax on gross income (transaction tax)

The tax on gross income (also known as transaction tax) generally taxes gross income arising from the performance of any economic or commercial activity (including non-profitable activities) at a rate of 3% on a monthly basis. However, exceptions exist for the sale of investments (as defined by the Stock Exchange Law) and the sale of minerals, oil, and gas within the local market, as long as such sales will ultimately be exported.

Corporations pay either CIT or transaction tax, whichever is higher. From an administrative perspective, CIT is due and paid at the end of each tax year and is considered an advanced payment of transaction tax, while transaction tax is due monthly. If during the year the cumulative monthly transaction tax due exceeds the CIT prepayment, the taxpayer will be subject to transaction tax on a monthly basis until the end of the tax year. For example, a corporation pays CIT for the 2017 fiscal year in April 2018. This payment is considered a prepayment for the transaction tax due between May 2018 and April 2019.

Local income taxes

There are no departmental or local taxes on income in Bolivia.

Corporate residence

A corporation is considered resident in Bolivia if it has been incorporated in Bolivia.

Permanent establishment (PE)

Note that Bolivian commercial laws allow foreign corporations to carry out isolated commercial acts in Bolivia without the obligation to constitute a permanent representation in Bolivia; however, such corporations cannot carry out habitual commercial acts without fulfilling the requirements established to constitute a company in Bolivia (e.g. through either a subsidiary or a branch). Unfortunately, Bolivian legislation does not include provisions to regulate situations that could trigger PE nor does it define what should be understood by 'carrying out habitual commercial acts'.

Other taxes

Value-added tax (VAT)

VAT is levied on the sale of movable goods and provision of services carried out within Bolivian territory at a rate of 13%, including definitive importations. Since this tax is included in the final price, the effective tax rate amounts to 14.94% (13%/87%).

Customs duties

Definitive importations are also subject to customs duties at the following rates: 0%, 5%, 10%, 15%, 20%, 30%, and 40%, depending on the product classification. Customs duties are calculated over the 'transaction value' of the merchandise valued as per Bolivian customs legislation, plus transportation and insurance costs.

Taxes on specific goods for consumption (excise tax)

Specific goods are taxed at the following rates:

Product	Tax rate
Black cigarettes	BOB 74 per 1,000 cigarettes
Blond tobacco cigarettes and cigars	BOB 139 per 1,000 cigarettes
Other cigarettes and tobacco for pipes	50%
Diesel vehicles	15% to 80%
Other vehicles	0% to 40%
Vehicles for transportation of 18 or more persons, vehicles for heavy loads transportation, and health services vehicles	0%
Soft drinks (except natural water and fruit juices)	BOB 0.44/litre
Energising drinks	BOB 4.98/litre
Maize liquor	BOB 0.88/litre
Alcohol	BOB 1.69/litre
Beers with 0.5% or more volumetric degrees	BOB 3.73/litre + 1%
Wines	BOB 3.43/litre + 5%
Ciders and sparkling wines (except maize liquor)	BOB 3.43/litre + 5%
Liquors and creams in general	BOB 3.43/litre + 5%
Rum and vodka	BOB 3.43/litre + 10%
Other brandies/liquors	BOB 3.43/litre + 10%
Whiskey	BOB 14.30/litre + 10%

Special tax on hydrocarbons and derived products

A tax is charged on the commercialisation of hydrocarbons and their derived products within the local market, regardless of whether they are produced in Bolivia or imported. This tax is updated by the Hydrocarbon National Agency and has a threshold annually updated by the Bolivian IRS, which currently amounts to BOB 7.64/litre.

Direct tax on hydrocarbons

A direct tax on hydrocarbons (IDH) is applied on the production of hydrocarbons, measured at the wellhead point, at a rate of 32%. To determine the taxable base for this tax, production of hydrocarbons must be valued taking into account the average sales price and considering the market (internal/external) where such hydrocarbons were sold.

Property tax on real estate and vehicles

Real estate and vehicles are annually subject to municipal government property taxes at progressive rates that range from 0.35% to 1.5% and 1.5% to 5%, respectively. Regarding real estate, property values and tax bands are determined by each municipal government, thus real estate is taxed differently depending on its location.

Transfer taxes

Transfer of property and real estate are subject to a transfer tax at a rate of 3%. This tax must be determined based on the provisions set forth for the transaction tax (tax on gross income; *see the Taxes on corporate income section*) and is collected by the municipal government where the property/real estate is registered.

Stamp taxes

There are no stamp taxes in Bolivia.

Payroll taxes

Employers are obligated to withhold and pay RC-IVA (*Regimen Complementario al Impuesto al Valor Agregado*) on gross salaries paid to employees on a monthly basis at a rate of 13% after labour contributions made to the pension fund administrators. Gross salary includes base salary, commission, bonuses, living allowance, and any other compensation in kind/cash granted to the employee.

Social contributions

The Pension Law establishes employer social contribution obligations. Social tax charges for employers are equal to 16.71% of gross salary in general and 18.71% for the mining sector.

Financial Transaction Tax (FTT)

An FTT is levied on bank transactions (deposit or transfer of funds), carried out within the domestic financial system, at a rate of 0.30% for fiscal year (FY) 2018 (previously 0.25%).

Special tax on lottery and gambling games

A specific tax on lottery and gambling games is applied in Bolivia. The tax is also applicable to business promotions that involve a raffle or random activities in providing awards in order to increase sales or attract clients. The tax rate for lottery and gambling games is 30%, whereas the tax rate for business promotions is 10%.

Branch income

Branch income is subject to the same tax applicable to other types of Bolivian corporations (i.e. CIT of 25%). However, the net profits of Bolivian branches are deemed to be distributed to the head office at the annual filing due date for CIT (i.e. 120 days after the fiscal year-end); consequently, a Bolivian branch must withhold 12.5% on such deemed distributed profits. Note that this can be avoided as long as the head office decides to reinvest the Bolivian branch's net profits.

Income determination

Taxable income is determined based on the financial statements prepared under Bolivian GAAP, then the income is adjusted for tax purposes in accordance with guidelines provided with respect to non-deductible and non-taxable items.

Inventory valuation

Inventories must be valued at replacement cost or market value for tax purposes, whichever is lower. Replacement cost is defined as the necessary costs incurred in acquiring or producing the assets as of the year-end, whereas market value is defined as the net value that the company would have obtained for the sale of assets in normal conditions as of the year-end, less commercialisation direct expenses.

Capital gains

Bolivian legislation does not include specific regulations for capital gains. Capital gains must be included in annual CIT if they are considered Bolivian-source income and will be taxed at a rate of 25%.

Dividend income

Dividend income obtained from domestic corporations subject to CIT must be excluded from the net taxable profits of the investor. Dividend income obtained from foreign corporations is not subject to CIT due to the fact that it is not considered Bolivian-source income.

Interest income

Interest income is subject to annual CIT if loans have been economically utilised within Bolivian territory since associated interest is considered Bolivian-source income.

Rent/royalty income

Rent/royalty income is subject to annual CIT as long as the income comes from an asset situated or economically utilised in Bolivian territory.

Foreign income

Bolivian corporations are taxed only on income generated within Bolivian territory.

Deductions

As a general principle, expenses may be deducted for CIT purposes as long as they are necessary to generate Bolivian-sourced income and are properly documented.

Apart from the above, the Bolivian Tax Code (BTC) has established minimum amounts (BOB 50,000) for which taxpayers must document their economic transactions through documents of payments recognised by the Bolivian financial system and regulated by the *Autoridad de Supervisión del Sistema Financiero* or ASFI (i.e. the bank regulator), including the possibility to document economic transactions through payments made via foreign financial institutions. Non-compliance with these requirements implies the lack of the possibility to compute input VAT and to deduct the associated expenses for CIT purposes.

Depreciation

Depreciation of fixed assets is permitted for CIT purposes if fixed assets contribute to generate taxable income. Depreciation must be calculated based on a straight-line method and considering useful lives included in the tax law. Fixed assets that are not included in the tax law must be depreciated under a straight-line method in accordance with their useful lives, and this needs to be communicated to the tax authorities within ten working days following the incorporation of the affected fixed assets.

Some of the assets included in the tax law are as follows:

Asset	Useful life (years)	Depreciation rate (%)
Building	40	2.5
Fixture and furniture	10	10.0
Machinery	8	12.5
Equipment and facilities	8	12.5
Vehicles	5	20.0
Computer equipment	4	25.0
Tools	4	25.0
Processing plants for the oil/gas industry	8	12.5
Pipeline	10	10.0
Aircraft	5	20.0
Ships and motorboats	10	10.0

Goodwill

Intangible assets (including goodwill) with a true cost can be deductible for tax purposes within a five-year period as long as taxpayers have paid a price for their acquisition.

Start-up expenses

Taxpayers may choose to deduct start-up expenses within the first fiscal period or distribute proportionally their amortisation within a four-year period, commencing the first year of operation. Note that start-up expenses cannot exceed 10% of paid-in capital.

Interest expense

Interest paid to owners or shareholders is not deductible to the extent the interest rate exceeds the London Interbank Offered Rate (LIBOR) plus 3% in the case of foreign owners/shareholders and to the extent the interest rate exceeds the official interest rate on loans published by the Central Bank of Bolivia for national owners/shareholders. Interest deductible on shareholder loans may not exceed 30% of the total interest paid to third parties.

Bad debt

Allowances for bad debt provisions are permitted if determined as required by law, which establishes an average method based on uncollectable receivables of the last three years. Uncollectable receivables are defined by current legislation as those that come from trade receivables and either: (i) remain unpaid for more than one year and have been sued without obtaining a seizure or (ii) when the receivables do not justify being sued due to the quantity of the receivables, remain unpaid for more than three years.

Charitable contributions

Donations are not deductible unless made to non-profit organisations that are not subject to CIT. These donations are deductible up to a maximum of 10% of the donor's net taxable profit.

Compensation expenses

Salaries, as well as associated compensations, paid to employees without the application of WHTs (i.e. RC-IVA) are not deductible.

Provisions for employees' severance payments are deductible. Provisions of other bonuses (e.g. holiday, productivity bonuses) accrued on behalf of employees are tax deductible as long as they are paid prior to the annual CIT filing due date and the company demonstrates it has withheld taxes (if applicable).

Fines and penalties

Fines and penalties arising from late tax payments are not tax deductible (except interest and restatement by inflation associated with tax obligations).

Taxes

Taxes effectively paid by the corporation as a direct taxpayer, other than CIT, are deductible for tax purposes. Any transaction tax (tax on gross income) that has been offset against CIT paid is not deductible for CIT purposes.

Taxes paid in the acquisition of fixed assets are not deductible. These taxes must be included in the cost of the asset and depreciated accordingly.

Other significant items

In broad terms, the following additional items are not deductible for tax purposes, according to current legislation:

- Owners' or shareholders' personal withdrawals and living expenses.
- Fees paid to individuals (i.e. acquisition of goods and services) for which no WHTs have been withheld.
- Amortisation of trademarks and other intangible assets, unless a price has been paid to acquire them.
- Provisions that are not specifically authorised by the tax law and regulations.
- Depreciation of fixed assets that include a revaluation reserve.
- Losses arising from illegal acts.

Net operating losses

Tax losses can be utilised over the following three fiscal years. New entrepreneurial productive projects with a minimum capital of BOB 1 million can utilise tax losses over the five fiscal years following the start-up of operations (including hydrocarbons and the mining sector).

Tax losses cannot be restated due to inflation in any case.

Bolivian legislation does not envisage carryback provision for tax losses.

Payments to foreign affiliates

Payments to foreign affiliates are subject to a 12.5% WHT with no restriction if the Bolivian company is remitting Bolivian-sourced income (e.g. interest on loans, provision of any kind of services, royalties).

Group taxation

Bolivia does not include group taxation rules within its legislation.

Transfer pricing

Arm's-length principle

The value of commercial and/or financial transactions carried out between related parties must be the value that would have been agreed between independent parties if they had engaged in the same transaction under the same circumstances. In addition, domestic companies related to foreign companies must prepare their accounting records separately, so that their financial statements determine taxable net profits from Bolivian-source income.

Existence of relationship

There is a relationship when an individual or a corporate entity participates in the direction, control, administration, or has capital in the other company, or when a third party directly or indirectly participates in the direction, control, administration, or has capital in two or more companies.

When individuals or domestic companies directly or indirectly conduct commercial and/or financial transactions with individuals or companies domiciled in countries or regions with low or null taxation (tax havens), these transactions will be considered as if they were carried out between related parties. Note that the Bolivian legislation has recently approved Administrative Resolution 10170000001, which includes a reference list of countries/regions considered low or nil taxation jurisdictions based on guidelines set forth by Supreme Decree 2993.

Requirement to submit a transfer pricing study

Taxpayers must submit a transfer pricing study to the Bolivian IRS in regards to the transactions carried out between related parties, together with the statutory financial statements and the annual CIT return. The transfer pricing study must include, among others:

- Complete identification of the taxpayer and related parties.
- Description of the activity carried out.
- Description, characteristics, amounts, and volume of transactions carried out between related parties.
- Tax identification number and country of residence of related parties.

- Commercial strategies, including determination of prices and other special circumstances.
- Functions carried out by the taxpayer within the related transaction from a commercial and industrial perspective.

Transfer pricing methods

Each of the following six methods may be used to determine the value of a commercial and/or financial transaction carried out between related parties:

- Comparable uncontrolled price.
- Resale price method.
- Cost plus method.
- Profit split method.
- Transactional net margin method.
- Evident price on transparent markets method.

The application of the above-mentioned methods will depend on the nature and the real economic situation of the transactions under analysis and the circumstances of each case (i.e. rule of the best method). Definitions of the methods are in line with international principles defined by the OECD, except for the sixth method, which comes from Argentinian legislation with some variations.

When it is not possible to determine the value of a transaction through one of the above-mentioned methods, taxpayers can apply other methods that are in accordance with the nature and real economic situation of the transaction.

Thin capitalisation

Bolivian legislation does not include provisions for thin capitalisation apart from establishing restrictions on deductibility of interest when funding is provided by shareholders (*see Interest expense in the Deductions section*).

Controlled foreign companies (CFCs)

There are no CFC provisions in Bolivia.

Tax credits and incentives

Foreign tax credit

Bolivian legislation does not include provisions regarding recognition of foreign tax credits.

Investment incentives

No incentives are granted in Bolivia for domestic or foreign investment; however, further provisions are expected in this regard due to incoming regulation of Law 516 (Promotion Investment Law).

Export incentives

Export activities benefit from reimbursement of VAT and customs duties paid in the process of producing goods to be exported (with some limitations for oil/gas companies).

Other incentives

Foreign exchange transactions are legal in Bolivia, and a system of free-floating exchange rates exists.

Tourist and lodging services by hotels to foreign tourists without a residence or address in the country are exempt from VAT. In addition, importation of books, magazines, and newspapers are exempted from importation taxes (i.e. VAT), and the sale of produced or imported books are taxed at the zero VAT rate.

International transportation by highway is also exempt from VAT (or subject to 0% VAT rate).

Regional manufacturing tax incentives

New investments in manufacturing in the states of Oruro and Potosi are entitled to the following tax exemptions:

Exemption	Conditions of exemption
Import tariffs and VAT on imported machinery	Machinery imported exclusively for the new industry until start-up of operations.
Import tariffs on imported inputs	They do not replace domestic inputs of the same kind and are destined to a transformation process. The exemption is granted for the first ten years of operation.
Transaction tax	For ten years from the start-up of operations.
CIT	For ten years from the start-up of operations if the amount exempt is reinvested in fixed assets in the following fiscal year.

Withholding taxes

Payments made to Bolivian residents

Dividends paid to Bolivian residents, either individuals or corporations, are not taxable.

Payments made by corporations to individuals with respect to the acquisition of goods or provision of services that are not supported with an invoice or fiscal receipt are subject to a WHT of 8% on goods and 15.5% on services.

Payments to non-residents

Dividend payments, distributions of profits to the head office by Bolivian branches, interest payments, royalty payments, and fees paid for any type of services made to non-residents are subject to a WHT of 12.5%.

Activities considered partially performed within Bolivian territory (e.g. telecommunication services, insurance, transportation, production/distribution of cinematographic films, etc.) by non-residents are subject to a reduced WHT of 2.5%.

Tax treaties

Bolivia currently has in force DTTs with the Andean Community (i.e. Colombia, Ecuador, and Peru), Argentina, France, Germany, Spain, Sweden, and the United Kingdom.

Beneficial WHT rates on dividend distributions are provided by DTT with Spain and Sweden at 10% and 0%, respectively, provided the Spanish or Swedish holding company demonstrates it is the ultimate beneficial owner and holds more than a 25% interest in the Bolivian company.

Tax administration

Taxable period

The taxable year is the fiscal year. The fiscal year varies according to the activity of the corporation. Banks and commercial and other service activities have a fiscal year-end as of 31 December; industrial, oil, and gas companies as of 31 March; agribusiness and forestry companies as of 30 June; and mining companies as of 30 September.

Tax returns

CIT is assessed on a self-assessment basis every fiscal year, and the due date for submission is 120 days after the fiscal year-end. Tax returns must be accompanied by audited financial statements (if applicable) and ancillary tax information as requested by the tax authorities.

Payment of tax

CIT is payable in one annual payment 120 days after the fiscal year-end, except for mining companies, which are obligated to make advance payments on a monthly basis with respect to the additional tax (i.e. 12.5% and 7.5% for exploitation and manufacturing mining companies, respectively).

Tax audit process

The tax audit process starts with a formal notification from the tax authorities where they indicate fiscal periods and taxes to be reviewed, together with a requirement of information. Tax inspection may generally take a 12-month period. Shortly after the provision of the finalisation of the tax inspection, a preliminary report of the tax audit's results is provided to the taxpayer in which the total tax debt is described (i.e. tax due, restatement, interests, and penalties) together with the legal arguments supporting the tax enquires.

Taxpayers do have 30 days after receiving the preliminary report to present all supporting documentation and technical arguments if they consider that the tax enquires do not have grounds to be claimed. Tax authorities do have 60 days to review all documentation/arguments provided by the taxpayer and then issue the final report, which is the formal document that could be subject to tax litigation, either via administrative process of by a judicial court. Note that claimed taxes must be paid in advance if taxpayers decide to litigate directly through the judicial court.

Statute of limitations

According to the current BTC, tax authorities have up to eight years to review and recalculate taxes determined by taxpayers, and this period could be extended two years more if taxpayers do not register in the appropriate regime or if taxpayers have performed commercial and/or financial transactions with a person (corporate or individual) resident in a country/region considered a low or nil taxation jurisdiction. This period must be computed as of the first day of the following year in which the tax payment due date has occurred (e.g. if the tax payment deadline occurred in August 2018, the period that can be subject to tax review is 1 January 2019 to 31 December 2026).

Topics of focus for tax authorities

There are not specific topics/taxes of focus in which the tax authorities address their review. This will generally depend on the nature of the taxpayer and the industry where they belong (e.g. a mining company could be more likely to be subject to tax inspections than an industrial company). There are no formal statistics to provide information in this regard.

Bosnia and Herzegovina

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Significant developments

There have been no significant corporate tax developments in Bosnia and Herzegovina during the last 12 months.

Taxes on corporate income

Bosnia and Herzegovina consists of two entities: Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), with a third region, the Brčko District (BD), being administered by both. Direct taxes are imposed at the entity/district level, while indirect tax regulations are imposed at the state level. Corporate income tax (CIT) systems in Bosnia and Herzegovina have been partially harmonised in the past few years, but significant differences remain.

The Federation of Bosnia and Herzegovina, Republika Srpska, and the Brčko District tax resident corporations on a worldwide basis. Non-residents are taxed on income realised in the FBiH, RS, and BD territories.

FBiH CIT

A CIT payer in the Federation of Bosnia and Herzegovina is:

- A resident company or other legal entity performing independent and permanent business activity through the sale of products and provision of services in the domestic or foreign markets for the purpose of generating profit.
- A legal entity from Republika Srpska and Brčko District that is registered in the territory of the Federation of Bosnia and Herzegovina for the income generated in the territory of the Federation of Bosnia and Herzegovina.
- A business unit of a non-resident legal entity that performs activities through a permanent establishment (PE) in the territory of the Federation of Bosnia and Herzegovina and is a resident of the Federation of Bosnia and Herzegovina.
- A non-resident in respect to the income generated from a resident of the Federation of Bosnia and Herzegovina.

The CIT rate in the Federation of Bosnia and Herzegovina is 10%.

RS CIT

A CIT payer in Republika Srpska is:

- A legal entity, a resident of Republika Srpska, for income generated from any source in Republika Srpska, Federation of Bosnia and Herzegovina, Brčko District, or abroad.

- A business unit of a legal entity from Federation of Bosnia and Herzegovina or Brčko District, which is registered in the territory of Republika Srpska, in respect to the income generated from sources in Republika Srpska.
- A legal entity from Federation of Bosnia and Herzegovina or Brčko District for income generated from real estates located in the territory of Republika Srpska.
- A non-resident legal entity that conducts business activity through a PE in Republika Srpska, in respect to the income generated from sources in Republika Srpska.
- A non-resident legal entity for revenue (i.e. income) generated from sources in Republika Srpska.

The CIT rate in Republika Srpska is 10%.

BD CIT

A CIT payer in Brčko District is:

- A legal entity from Brčko District that generates income from any source in Bosnia and Herzegovina or abroad.
- A business unit of a legal entity with headquarters in the Federation of Bosnia and Herzegovina or Republika Srpska, for income generated in Brčko District.
- A non-resident legal entity that conducts business activity and has a PE in Brčko District, for income that is related to that PE.
- A non-resident legal entity that generates income from immovable property in Brčko District, for the income generated in Brčko District.
- A non-resident legal entity that generates income in Brčko District, not mentioned above, and is subject to withholding tax (WHT) in accordance with the CIT law of Brčko District.

The CIT rate in Brčko District is 10%.

Corporate residence

FBiH residency

Under FBiH CIT law, a resident is a legal entity that meets one of the following criteria:

- Headquarters (registration) is entered into a court registry of the Federation of Bosnia and Herzegovina.
- Management and supervision over the business activities is located in the Federation of Bosnia and Herzegovina.

FBiH permanent establishment

A PE of a non-resident is a permanent place of business through which the non-resident performs activity in whole or partially throughout the territory of the Federation of Bosnia and Herzegovina.

A PE under FBiH CIT law is considered to be one of the following:

- Management headquarters.
- Branch office.
- Business office.
- Factory.
- Workshop.

- Location of natural resources extraction.
- Construction site (construction or mounting project) when the work is performed during a period exceeding six months.
- Providing consulting or business services lasting for a period exceeding three months consecutively over a 12-month period.
- A representative acting independently on behalf of a non-resident related to the activities of signing a contract or keeping supplies of products delivered on behalf of a non-resident.

The term PE shall be deemed not to include the following:

- The use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise.
- The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery.
- The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing and finishing by another enterprise.
- Maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise.
- Maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
- Maintenance of a fixed place of business solely for any combination of above-mentioned activities, provided that the overall activity of a fixed place of business is of a preparatory or auxiliary character.

A non-resident legal person shall not be deemed to have a PE in the Federation of Bosnia and Herzegovina merely because it carries on business through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

A non-resident legal person shall not be deemed to have a PE in the Federation of Bosnia and Herzegovina merely because it controls or is controlled by a legal person resident of the Federation of Bosnia and Herzegovina.

Provisions of a double tax treaty (DTT) shall prevail over domestic law when identifying a PE.

RS residency

Under the RS CIT law, a resident of Republika Srpska is a legal entity that meets one of the following criteria:

- Headquarters of a legal entity is registered at the registry of business entities of Republika Srpska.
- The place of actual management and supervision over the business activities of a legal entity is located in Republika Srpska.

RS permanent establishment

A PE is considered to be a place of business in Republika Srpska through which the business of a foreign legal entity is wholly or partially carried on. The term PE includes the following, especially:

- A place of management, a branch, an office, a factory, a store, a workshop, a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources in the territory of Republika Srpska.
- A building site, installation, or assembly works in Republika Srpska, as well as a place of infrastructure used for research or extraction of natural resources or supervisory of the same.
- A place of business where an individual or legal person has the authority to conclude contracts in the name of the non-resident enterprise.
- A place where a resident individual or legal person, without authority to conclude contracts in the name of the non-resident enterprise, does business in the name of the non-resident enterprise by holding stock of goods or merchandise and carries out deliveries on a regular basis in the name of the non-resident enterprise.

The term PE shall be deemed not to include the following:

- The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise.
- The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display.
- The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing and finishing by another enterprise.
- Sale of goods or merchandise belonging to the enterprise, provided that it was displayed during fairs or exhibitions under condition that the sale was executed within a month of closing a fair or an exhibition.
- Maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise.
- Maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
- Maintenance of a fixed place of business solely for any combination of above-mentioned activities, provided that the overall activity of a fixed place of business is of a preparatory or auxiliary character.

A foreign legal entity shall not be deemed to have a PE in Republika Srpska merely because it carries on business through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

A foreign legal entity shall not be deemed to have a PE in Republika Srpska merely because it is controlled by a legal person that is a resident of Republika Srpska or by a person carrying out business in Republika Srpska, whether through a PE or otherwise.

Provisions of a DTT shall prevail over domestic law when identifying a PE.

BD residency

The BD CIT law prescribes that a resident is a legal entity registered in Brčko District.

BD permanent establishment

A PE of a non-resident in Brčko District is considered to be:

- construction works, installation and assembly works, infrastructure used for research or exploitation of natural resources, or supervisory of the same, or

- a place of business where an individual or legal person has the authorisation to conclude contracts for a foreign legal entity.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 17%, and the VAT regime applies equally throughout the country of Bosnia and Herzegovina. There is no reduced VAT rate in Bosnia and Herzegovina.

Taxable persons are all individuals and legal entities registered, or required to be registered, for VAT. Any person making taxable supplies of goods and services that exceeds or is likely to exceed a threshold of 50,000 konvertibilna marka (convertible mark or BAM) is required to register as a VAT payer.

The export of goods is zero-rated.

Taxable transactions include the supply of goods and services in Bosnia and Herzegovina by a taxable person, as well as the importation of goods to Bosnia and Herzegovina by any person. The following transactions are also taxable:

- Transactions for no consideration or for a consideration less than the market value.
- The private use of taxable goods by a taxable person (self-supply).

The following services are exempt from VAT in Bosnia and Herzegovina:

- The leasing and subletting of residential houses, apartments, and residential premises for a period of longer than 60 days.
- The supply of immovable property, except for the first transfer of the ownership rights or the rights to dispose of newly constructed immovable property.
- Financial services.
- Insurance and reinsurance services.
- Educational services provided by private or public educational institutions.
- Postal services.

The VAT period is one calendar month.

Any tax credit that has not been used after a period of six months shall be refunded. Registered exporters are to be refunded within 30 days.

Customs duties

The customs policy law and the rates of customs tariffs to be applied exist and are largely based on European Union (EU) standards. Bosnia and Herzegovina has signed the Stabilisation and Association Agreement (SAA) and the Central European Free Trade Agreement (CEFTA).

Excise duties

There is a single excise regime throughout Bosnia and Herzegovina, which levies excise tax on the following products:

- Petroleum products: BAM 0.3 to BAM 0.4 per litre.

- Tobacco products: 42% on retail price and an additional BAM 0.75 per pack of 20 cigarettes. If the calculated excise duty is lower than the minimally prescribed excise duty, then the minimal excise duty should be paid (the minimal duty is determined every year by the indirect tax authorities by special regulation).
- Non-alcoholic drinks: BAM 0.1 per litre.
- Alcohol and alcoholic drinks: BAM 8 to BAM 15 per litre of absolute alcohol.
- Beer and wine: BAM 0.2 to BAM 0.25 per litre.
- Coffee (unroasted, roasted, and ground coffee and coffee extracts): BAM 1.5 to BAM 3.5 per kilogram.

Property taxes (real estate)

FBiH property taxes

FBiH property taxes are imposed at the cantonal level (ten cantons in total), and the rates as well as the taxpayers are different between the cantons. The taxes are paid in the range of BAM 0.5 to BAM 3 per square metre.

RS property taxes

RS property taxes are imposed at the entity level. The annual tax rate is between 0.05% and 0.5% of the market value of the property. The applicable tax rate is determined every year by the municipalities.

BD property taxes

BD property taxes are imposed by the BD assembly. The annual tax rate is between 0.05% and 1% of the market value of the property. The rate is adopted by the assembly for every year based on the proposed annual budget.

Tax on transfer of land and real estate

FBiH transfer taxes

The FBIH tax on transfer of land and real estate is imposed at the cantonal level. The rate differs by canton; however, it cannot be higher than 5%.

RS transfer taxes

There is no tax on transfer of land and real estate in Republika Srpska.

BD transfer taxes

There is no tax on transfer of land and real estate in Brčko District.

Payroll taxes

FBiH payroll taxes

Personal income tax (PIT) of 10%, in addition to social security contributions, has to be calculated and withheld by an employer with the salary payment.

There are no additional payroll taxes due in the Federation of Bosnia and Herzegovina.

RS payroll taxes

PIT of 10%, in addition to social security contributions, has to be calculated and withheld by an employer with the salary payment.

There are no additional payroll taxes due in Republika Srpska.

BD payroll taxes

PIT of 10%, in addition to social security contributions, has to be calculated and withheld by an employer with the salary payment.

There are no additional payroll taxes due in Brčko District.

Social security contributions

FBiH social security contributions

Mandatory social security contributions in the Federation of Bosnia and Herzegovina are due by the following rates:

Type of contribution	Employee's contributions (%)	Employer's contributions (%)
Contribution for pension and invalid insurance	17.0	6.0
Contribution for health insurance	12.5	4.0
Contribution for unemployment insurance	1.5	0.5

The base for calculation of social security contributions is the gross salary.

In the Federation of Bosnia and Herzegovina, the employer also pays 0.5% of contribution for protection from natural and other disasters, as well as 0.5% of the water protection charge, calculated on net salary.

Social security contributions have to be calculated and withheld by an employer with the salary payment.

RS social security contributions

In Republika Srpska, the following rates of mandatory employee's social security contributions have to be applied:

Type of contribution	% of gross salary
Contribution for pension and invalid insurance	18.5
Contribution for health insurance	12.0
Contribution for unemployment insurance	0.8
Contribution for child protection	1.7

In Republika Srpska, mandatory social security contributions are calculated on gross salary and have to be withheld by the employer, as an income payer. There are no employer's social security contributions in Republika Srpska.

BD social security contributions

Persons who are working in Brčko District can opt to which fund of pension insurance, either the fund of Republika Srpska or fund of the Federation of Bosnia and Herzegovina, they would like to pay pension and invalid insurance contributions.

Health insurance contributions are calculated in the amount of 12% on gross salary.

The table below provides an overview of mandatory social security contributions in Brčko District in a scenario when an employee opts to pay pension and invalid insurance contributions to the Pension Insurance Fund of the Federation of Bosnia and Herzegovina.

Type of contribution	Employee's contributions (%)	Employer's contributions (%)
Contribution for pension and invalid insurance	17.0	6.0
Contribution for health insurance	12.0	-
Contribution for unemployment insurance	1.5	-

The table below provides an overview of mandatory social security contributions in Brčko District in a scenario when an employee opts to pay pension and invalid insurance contributions to the Pension Insurance Fund of Republika Srpska.

Type of contribution	% of gross salary
Contribution for pension and invalid insurance	18.5
Contribution for health insurance	12.0
Contribution for unemployment insurance	1.5

Other local taxes

There are several other taxes introduced at the entity, cantonal, and municipality level. The duties differentiate based on company location, business size, and type of business.

FBiH other local taxes

FBiH other taxes include the communal tax, fire prevention contribution, tourist community contribution, forestry contribution fee, Foreign Trade Chamber of Bosnia and Herzegovina duty, Chamber of Commerce FBiH duty, and administrative stamp duties.

RS other local taxes

RS other taxes include the special republic tax, communal tax, forestry contribution fee, fire prevention contribution, Foreign Trade Chamber of Bosnia and Herzegovina duty, Chamber of Commerce RS duty, and administrative stamp duties.

BD other local taxes

BD other taxes include the communal tax, fire prevention contribution, forestry contribution fee, Foreign Trade Chamber of Bosnia and Herzegovina duty, and administrative stamp duties.

Branch income

Representative offices of foreign companies can be registered in all three administrative units.

A branch of a foreign legal entity can be registered in the Federation of Bosnia and Herzegovina and in Republika Srpska. The tax treatment of the branch of a foreign legal entity is still quite unclear from the local perspective, so we recommend contacting a tax and accounting specialist.

BD regulations do not allow registration of branch of a foreign legal entity.

Income determination

Taxable profit is profit determined by adjusting the accounting profit as stated in the profit and loss statement and determined in accordance with International Financial Reporting Standards/International Accounting Standards (IFRS/IAS) and accounting legislation, in accordance with the provisions of the CIT law.

FBiH income

Taxable income in the Federation of Bosnia and Herzegovina is the income determined in the financial statements, increased for tax non-deductible costs and other tax non-deductible items and decreased for non-taxable items in accordance with the CIT Law of the Federation of Bosnia and Herzegovina.

Income on the basis of collected written-off debt, in the event that it was included in income in a previous period and was not subject to tax allowable or recognised expenditure, shall not be included in the tax base.

FBiH inventory valuation

Expenses of production in accordance with accounting regulations and IFRS/IAS shall be recognised in the value of stocks of unfinished production, semi products, and finished products for the calculation of taxable profit.

The inventory is valued by using the average price method.

FBiH capital gains

Capital gains that increase the CIT base are all amounts that directly increase the accumulated or current profit in the balance sheet in accordance with IAS.

Capital gains that increase the CIT base are also considered to be gains from transactions of sales or transfers of assets if such profit is not included in the balance sheet. Such capital gains are determined as the difference between the value of the transaction and the purchase value, deducted for tax depreciation. If such difference is negative, it is considered as a capital loss.

For the purpose of determining the capital gains, the price of the transaction is the price stipulated in the contract, or the market price of the transaction if the stipulated price is lower than the market price.

FBiH dividend income

Dividends realised based on participation in the capital of other taxpayers shall not be included in the tax base. Shares in the profit of a business association will be considered dividends.

FBiH interest income

Interest income is generally included in the taxable base. The exception, as per FBiH government decision, is for interest income realised from state bonds issued for war claims, which should not be included in the taxable base (the CIT law does not explicitly allow for this, which may lead to discussion with the tax authority).

FBiH royalty income

Royalty income in the Federation of Bosnia and Herzegovina is generally included in the taxable base.

FBiH foreign income

The Federation of Bosnia and Herzegovina taxes resident corporations on a worldwide basis. There are no deferral or anti-deferral provisions in the Federation of Bosnia and Herzegovina.

RS income

Taxable revenue for the purpose of computing the tax base in Republika Srpska includes total revenue presented in the income statement, with the exemption of revenue that has different tax treatment under the CIT Law.

RS inventory valuation

Inventory includes goods used for resale, final goods produced by the taxpayer, semi-final goods used for further production, as well as main and auxiliary materials for production.

Purchase value of inventories at the beginning and end of a fiscal year has to be expressed using the same method for determination of purchase value of inventories.

The costs of material and purchase value of sold goods can be determined by using the weighted average cost method or the first in first out (FIFO) method.

RS capital gains

Capital gain is realised through the sale or other type of transfer of capital or investment assets and represents a difference between the sales price and adjusted base of an asset. The sales price is the contracted price (i.e. the market price established by the competent tax authority in case it finds the contracted price to be lower than the market price).

Capital gains or losses realised during the fiscal year can be offset, and the realised net gain or loss is added or subtracted from the taxable base, if they are not already included in the income or expense.

RS dividend income

Income from dividends is not included in the taxable base.

RS interest income

Interest income is generally included in the taxable base.

Income in the form of interest or its functional equivalent from securities issued by Republika Srpska or by local authority is excluded from the taxable base.

RS royalty income

Royalty income in Republika Srpska is generally included in the taxable base.

RS foreign income

Republika Srpska taxes resident corporations on a worldwide basis. There are no deferral or anti-deferral provisions in Republika Srpska.

BD income

Taxable income in Brčko District includes all income from any source (domestic or foreign), whether in cash or in kind, independent of the relationship to the business activity of the legal person.

BD inventory valuation

The purchase value of inventories can be determined by using the FIFO method or the average cost method.

BD capital gains

Capital gain is realised by sale or transfer of capital and investment goods and represents the positive difference between the sales price and adjusted property base.

Capital gains or losses realised during the fiscal year can be offset, and the realised net gain or loss added or subtracted from the taxable base, if they are not already included in the income or expense.

BD dividend income

Income from dividends is not included in the taxable base.

BD interest income

Income from securities issued by or guaranteed by the state authority, Central Bank BiH, or local authority is excluded from the taxable base.

BD royalty income

Royalty income in Brčko District is generally included in the taxable base.

BD foreign income

Brčko District taxes resident corporations on a worldwide basis. There are no deferral or anti-deferral provisions in Brčko District.

Deductions

FBiH deductions

Tax deductible expenditures are all documented expenditures, decreased for the deductible VAT, that a taxpayer incurred for the purpose of generation of profit, provided they are properly presented in the financial statements.

FBiH depreciation

Depreciation cost is deductible only if it relates to the property subject to depreciation and being used.

Depreciation of fixed assets is deductible up to the amount established by proportionate application of the highest annual depreciation rates using the linear method, prescribed by the FBiH government, as follows:

Assets	Rate (%)
Buildings	5
Roads, communal objects, and upper railway rails machines	10

Assets	Rate (%)
Equipment, vehicles, and facilities	15
Equipment for water management, water-supply, and canalisation	15
Hardware, software, and equipment for environment protection	33.3
Crops	15
Livestock units	40
Intangible non-current assets	20

Property being depreciated with a value of less than BAM 1,000 may be fully deducted in the purchase year, on condition that that the property was put in use.

Depreciated assets, once depreciated, shall not be re-included in the depreciation calculation for the purposes of the tax balance.

Expenditure arisen from devaluation of fixed assets, which are determined as the difference between current net value and the estimated retrievable value, is tax deductible in the tax period when the assets are sold or destroyed by *force majeure*.

FBiH goodwill

Amortisation of goodwill is not tax deductible.

FBiH start-up expenses

Start-up expenses are tax deductible if the expenses occurred, were necessary and related to the registered company, and if original documentation with regard to those expenses are available for inspection.

FBiH interest expenses

Interest expense is generally tax deductible, except for interest from a related-party loan, which can be tax non-deductible if it does not meet the criteria set by the thin capitalisation rule (*see Thin capitalisation in the Group taxation section*).

FBiH bad debt

The expenses occurring based on the write-off of doubtful debts are tax deductible. Debts are considered doubtful under the following conditions:

- The debts have been included in the taxpayer's revenue in the previous tax period and they have not been collected within 12 months from the due date.
- The taxpayer has started court procedures in regard to the receivable, started the enforced collection procedure, or the receivable has been registered in the liquidation or bankruptcy procedure.

FBiH charitable contributions

Costs of humanitarian, cultural, educational, scientific, and sports purposes (except professional sports) are deductible in the amount of up to 3% of total income.

FBiH tax reserves

The following costs related to provisions are tax-deductible costs:

- Provisions for future costs related to environment protection of up to 30% of taxable income before provision was made, provided there is a legal obligation for the taxpayer to undertake the measures for environment protection. The total provision

for environment protection cannot exceed the amount of the taxpayer's registered capital.
- Provisions for future costs in the guarantee period of up to 4% of the taxpayer's annual turnover relating to products subject to guarantee in the tax period.

FBiH fines and penalties

Fines and penalties are not tax deductible.

FBiH taxes

Taxes are generally tax deductible expenses, except for paid CIT.

FBiH other significant items

Representation costs pertaining to business activity are deductible in the amount of 30% of representation costs.

Expenses of membership fees to the chambers are deductible in the amount not exceeding 0.1% of total income, with the exception of membership fees regulated by the law.

Expenses based on sponsorship are deductible in the amount of 3% of total income.

FBiH net operating losses

Tax losses may be offset against profits in a future tax period, not exceeding five years. Tax losses are utilised on a FIFO basis.

Tax losses cannot be carried back.

FBiH payments to foreign affiliates

Payments to foreign affiliates are generally allowed if they relate to realised revenue.

RS deductions

Expenditures deductible from revenue in computing the RS tax base are the expenditures presented in the income statement, with the exception of expenditures that have a different tax treatment under the provisions of the CIT Law.

RS depreciation

Depreciation deductions are allowed only with respect to depreciable assets that are owned by a taxpayer or acquired through a financial lease that are being used for performance of registered business activities.

A depreciable asset is any tangible or intangible asset (except goodwill) with useful economic life longer than 12 months. Land or any other asset that does not decrease in value through wear and tear or obsolescence is not considered a depreciable asset.

Assets are depreciated using the proportional method of depreciation by applying the annual depreciation rates in the following amounts:

- 3% for property and plant.
- 10% for intangible assets, except software.

Group of assets are depreciated using the digressive method of depreciation by applying the annual depreciation rates in the following amounts:

- 40% for computers, IT systems, software, and servers.
- 20% for equipment and other assets.

RS goodwill

Amortisation of goodwill is not tax deductible.

RS start-up expenses

Start-up expenses are tax deductible if the expenses occurred, were necessary and related to the registered company, and if original documentation with regard to those expenses are available for inspection.

RS interest expenses

Interest on loans used for generation of taxable revenue are generally tax deductible. The exceptions are interest that is not at arm's length, interest on loans for private use, and interest on overdue tax payments.

Interest expense is not tax deductible for the amount in which net interest expense exceeds 30% of the tax base, in which are not included interest income and expense. Net interest expense represents a positive difference between interest costs and interest revenue.

RS bad debts and tax reserves

Legal entities, other than banks, authorised credit institutions, or insurance companies, are entitled to a bad debt provision that arose in connection with a sale of goods or services but only if the revenue from the sale was previously included in the tax base of the legal entity. The bad debt provision is allowed in the following manner:

- Up to 25% of amount receivable that is older than 12 months.
- Up to 50% of amount receivable that is older than 18 months.
- Up to 75% of amount receivable that is older than 24 months.

Exceptionally from this, a bad debt receivable will be considered in full as a tax deductible cost if such receivable has not been collected within 12 months from the due date and if the taxpayer undertook at least one of the following activities for collection of the receivable:

- the taxpayer started court litigation for the receivables
- the taxpayer requested execution of the receivable from the competent court
- the taxpayer initiated enforced collection procedures
- the receivables are registered in the bankruptcy procedures of the debtor, or
- an agreement has been reached with the debtor who is in the bankruptcy or liquidation procedures.

In the case of a bank or other authorised credit institution, a deduction is allowed for indirect write-off of placement presented in the income statement of a tax period, maximum to the amount prescribed by the Banking Agency of Republika Srpska for loan categories B, C, D, and E.

Insurance and reinsurance companies are allowed a deduction of costs of mathematical reserves that these companies are obligated to create under the regulations of the Insurance Agency of Republika Srpska, under the condition that the reserve was included in the income statement.

Costs arising from technical reserves of insurance companies are tax deductible at up to 20% of the amount of reserves created under the regulations of the Insurance Agency of Republika Srpska, under the condition that the reserve was included in the income statement.

The tax savings resulting from a reduction or cancellation of any reserve that is collected later on will be included in taxable revenue at the moment of collection in accordance with this law.

RS charitable contributions

Contributions to public institutions and humanitarian, cultural, and educational organisations are deductible in an amount not exceeding 3% of the fiscal year's total revenue. Any excess contribution may be carried forward three years.

RS fines and penalties

Fines and penalties are not tax deductible.

RS taxes

Taxes are generally tax deductible expenses, except for paid CIT.

RS other significant items

Expenditures that are recognised and deductible from revenue also include the following:

- 30% of the cost of entertainment, meals, and amusements related to the legal person's economic activity.
- Sponsorship expenses in an amount not exceeding 2% of the fiscal year's total revenue.
- Costs of reclamation of goods and services in the amount not exceeding 3% of the business revenue in that tax year.

RS net operating losses

Losses may be carried forward and offset against income in the following five years. Tax losses are utilised on a FIFO basis.

Tax losses cannot be carried back.

RS payments to foreign affiliates

Payments to foreign affiliates are generally allowed if they relate to realised revenue.

BD deductions

Expenditures are deductible from revenue in computing the BD tax base if the expenditures directly relate to the realised revenue.

BD depreciation

Depreciation deductions are allowed only with respect to depreciable assets that are being used.

A depreciable asset is any tangible or intangible asset that is held for use in the production or supply of goods and services, for rental to others, or for administrative purposes. Land or any other asset that does not decrease in value through wear and tear or obsolescence is not considered a depreciable asset.

Assets are depreciated using the linear method of depreciation, except for machines and equipment, which can be depreciated with acceleration (first year at 40%, second year at 30%, and third year at 30%). The CIT Rulebook prescribes a wide range of accepted depreciation rates, depending on type of assets.

The calculation of depreciation for newly purchased property starts the following month from the day when it was put to use. The calculation of depreciation for newly constructed buildings starts from the first day of the following year in which it was put to use.

BD goodwill

Amortisation of goodwill is not tax deductible.

BD start-up expenses

Start-up expenses are tax deductible if the expenses occurred, were necessary and related to the registered company, and if original documentation with regard to those expenses are available for inspection.

BD interest expense

Interest on loans used for business purposes are tax deductible. The exceptions are interest that is not at arm's length, interest on loans for private use, and interest on overdue tax payments.

BD bad debts and tax reserves

Legal persons, other than banks, authorised credit institutions, or insurance companies, shall be entitled to a bad debt deduction that arose in connection with a sale of goods or services but only if the revenue from the sale was previously included in the tax base of the legal person. For this purpose, a credit or trade receivable is considered a bad debt only if one of the following is true:

- It is more than 12 months past the due date for payment of the invoiced receivable and the creditor has sued for the receivables or an enforced collection procedure is initiated due to receivables.
- The receivables are registered in the bankruptcy procedure of the debtor or an agreement has been reached with the debtor who is not a physical or related person in the bankruptcy or liquidation procedure.

In the case of a bank or other authorised credit institution, a deduction is allowed for increases in the reserve account for customary losses due to unpaid loans, and the amount may not exceed 20% of the tax base.

In the case of an insurance or reinsurance company, a deduction is allowed for increases in reserves as registered in accounting documents and as authorised according to applicable law. For insurance contracts pertaining to reinsurance, reserves are to be reduced so that they cover only part of the risk remaining with the insurer, and the amount may not exceed 20% of the tax base.

BD charitable contributions

Contributions to public institutions and humanitarian, cultural, and educational organisations are deductible in an amount not exceeding 3% of the fiscal year's total revenue.

BD fines and penalties

Fines and penalties are not tax deductible.

BD taxes

Taxes are generally tax deductible expenses, except for paid CIT.

BD other significant items

Expenditures that are recognised and deductible from revenue also include the following:

- 30% of the cost of entertainment related to the legal person's economic activity.
- Awards to employees, up to the prescribed amount.
- Costs of business trips, meal allowance, transportation, and holiday allowance, up to the prescribed amount.
- Sponsorship expenses in an amount not exceeding 2% of the fiscal year's total revenue.
- Scholarships to students in an amount up to 75% of average monthly net salary in Brčko District.
- Committee membership fees, up to 0.2% of total revenue in the tax year.
- Expenses for research and development (R&D) in accordance with the Rulebook.

BD net operating losses

Losses may be carried forward and offset against income in the following five years. Tax losses are utilised on a FIFO basis.

Tax losses cannot be carried back.

BD payments to foreign affiliates

Payment to foreign affiliates is generally allowed if it relates to realised revenue.

Group taxation

FBiH group taxation

A business association has the right to request tax consolidation on the condition that all businesses in the group are residents of the Federation of Bosnia and Herzegovina.

A headquarters company and its branches may form a business association when there is direct or indirect control between them with no less than 50% share.

A request for tax consolidation must be filed to the authorised branch office of the tax authorities by a headquarters company.

Each group member is required to file its tax balance, and the headquarters of the business association may file a consolidated tax balance for the group.

The consolidated tax balance may offset losses of one or more businesses against the profit of other businesses in the association.

Individual group members are liable for the tax calculated on the consolidated balance proportionately to the profit from the individual tax balance, and the headquarters is the payer of the tax calculated on the consolidated balance.

Once approved, tax consolidation shall be applied for the consecutive period of no less than five years.

When one, several, or all the businesses in the association later opt for individual taxation, all group members shall be obligated to pay the difference proportionately on behalf of the tax privilege they have used.

RS group taxation

The CIT Law of Republika Srpska does not envisage a possibility of group taxation in Republika Srpska.

BD group taxation

An affiliated group of legal persons located within Brčko District may elect to file a consolidated annual tax declaration.

An affiliated group of legal persons is a group of one or more legal entities from Brčko District that are connected through the ownership of stock with a common parent, provided that the common parent owns at least 80% of the stock in a legal person that is included in the affiliated group.

Transfer pricing

Transfer pricing requirements are imposed at the entity level. The Federation of Bosnia and Herzegovina, Republika Srpska, and Brčko District have different regulations in place, including different rules in regard to applicable methods, related parties, and documentation. The regulations in place do not differ if the transactions are within one entity, cross-border, or international. Basically, this means that all transactions can fall under the transfer pricing scope.

With Bosnia and Herzegovina not being an EU or an Organisation for Economic Co-operation and Development (OECD) member, the local legislation does not have the same requirements with respect to transfer pricing documentation as in EU countries nor does the legislation refer to the OECD guidelines.

FBiH related parties

In the Federation of Bosnia and Herzegovina, a related party is considered to be an individual or legal person who has the possibility of control or significant influence on the business decisions of the taxpayer. Owning more than 25% of stocks or shares in a company is considered to be enabled control.

Significant influence is considered to be mutually high sales turnover, technical dependence, or otherwise gained control over the management.

FBiH prescribed methods

The FBiH CIT law recognises the following methods:

- Comparable uncontrolled price (CUP) method (primary method).
- Cost plus method.
- Resale price method.

Alternatively, in case these methods cannot be applied, the following methods can be used:

- Profit split method.
- Transaction net margin method.

In case that none of the above-mentioned methods can be applied, any other method that can reasonably be applied for determination of the arm's-length principle is allowed.

FBiH country-by-country (CbC) reporting regime

The parent company is required to submit Form CBC-901 if the company is a resident of the Federation of Bosnia and Herzegovina and generates gross consolidated income of a minimum of BAM 1.5 billion.

RS related parties

Under the CIT Law of Republika Srpska, a related party is a person or legal entity that directly or indirectly participates in management, control, or capital of another legal entity. Also, two legal entities are considered to be related if the same person(s) directly or indirectly participates in management, control, or capital of both legal entities.

It is considered that a person directly or indirectly participates in management, control, or capital of a legal entity when it directly or indirectly owns at least 25% of the shares in that legal entity or when it has a factual possibility to control business decisions of that other legal entity.

A person is considered to have a factual possibility of control on business decisions of another legal entity when one:

- has or controls 25% or more of the voting rights in another legal entity
- has a control on assembly of the management board of another legal entity
- has a right to participate in the profit of another legal entity of 25% or more
- is a family member or a related person to a family member, or
- in any other way has a factual control on business decisions of another legal entity.

RS CbC reporting regime

The transfer pricing documentation must provide an overview of the distribution of income, taxes, and business activities and a list of all units of the group by area of tax jurisdiction, the CbC form, if the income of the group to which the taxpayer belongs is more than 750 million euros (EUR).

BD related parties

Under the CIT Law of Brčko District, related parties of a legal person are considered to be physical or legal persons if those persons possess more than 10% of active shares with voting rights.

A legal person can be a related party if it directly or indirectly possesses more than 10% active shares in the other person. Indirect ownership is considered to be:

- If a legal person possesses more than 10% of a dependent company, and that dependent company possesses more than 10% in the other legal person.
- If both legal persons have a common shareholder who possesses more than 10% active shares with voting rights in both legal persons.

BD CbC reporting regime

The Brčko District has not enacted a CbC reporting regime.

RS and BD prescribed methods

The RS and BD regulations prescribe the following five methods that can be used in order to establish whether the prices are in accordance with the arm's-length principle:

- CUP method (primary method).
- Cost plus method.
- Resale price method.
- Profit split method.
- Transactional net margin method.

FBiH thin capitalisation

Under the thin capitalisation rule of the CIT Law of the Federation of Bosnia and Herzegovina, in order to be entitled to deduct interest expenses on loans received from a related party, a company's ratio between total liabilities from related-party loans and the company's registered equity should not exceed 4:1. Interest expense related to the liabilities from related-party loans exceeding the ratio 4:1 shall be non-deductible for CIT purposes.

The CIT Law prescribes that this rule does not apply to banks and insurance companies.

RS thin capitalisation

There are no thin capitalisation rules in Republika Srpska.

BD thin capitalisation

There are no thin capitalisation rules in Brčko District.

Controlled foreign companies (CFCs)

Bosnia and Herzegovina has no rules on CFCs.

Tax credits and incentives

FBiH tax incentives

FBiH foreign tax credit

When a taxpayer generates income or profit through business activities outside of the Federation of Bosnia and Herzegovina (directly or through a business unit) and pays the profit tax on such activities, the tax paid abroad shall be credited, up to the amount of the profit tax that would have been paid for the income or profit generated by the same activities in the Federation of Bosnia and Herzegovina.

FBiH investment incentive

Taxpayers who invested their own resources in production equipment worth more than 50% of realised profit in the tax period shall be relieved from 30% of taxation for the year of the investment.

A taxpayer who invested in production within the territory of the Federation of Bosnia and Herzegovina for five consecutive years for a minimum fee of BAM 20 million will be relieved from 50% of taxation for a period of five years, starting with the first year in which it has invested at least BAM 4 million.

FBiH employment incentive

A taxpayer who employed new employees is entitled to a tax-deductible expense in the double amount of gross salary paid to newly employed employees if the following conditions are met:

- Employment contract has to be concluded on a full-time basis for period of minimum 12 months.
- Newly employed employee has not been employed by the taxpayer or by a related legal entity in the past five years.

RS tax incentives

RS foreign tax credit

If a legal entity resident of Republika Srpska generates revenue in a foreign state and that revenue is taxable both in Republika Srpska and in the foreign state, then the tax paid in the foreign state will be deducted from the tax liability of the resident in Republika Srpska.

RS investment incentive for production companies

For a taxpayer who in the territory of Republika Srpska invests in property, plant, and equipment (PPE) for performing its own registered production activity in an amount greater than 50% of generated profit (tax base) of a current tax period, the tax liability will be decreased for 30%.

If the taxpayer disposes of the PPE within three years of the year for which the tax incentive was used, the taxpayer will have to pay the additional tax as if they never used the incentive, as well as penalty interest for late payments.

BD tax incentives

BD foreign tax credit

If a legal entity from Brčko District obtains revenue from a foreign state and the revenue is taxed both in Brčko District and in the foreign state, then the tax paid to the foreign state, whether paid directly or withheld and remitted by another person, is to be credited from the BD CIT, unless such legal entity from Brčko District elects to treat the foreign tax as a deductible expenditure in determining the fiscal year tax base.

BD investment incentive

For a taxpayer who invests in machines and equipment for performing its own registered business activity on the territory of Brčko District, a deduction is allowed for the amount of the investment.

BD employment incentive

For a taxpayer who employs new employees for an indefinite period of time during the tax period, a second deduction is allowed for the total amount of paid gross salaries for the new employees.

Withholding taxes

FBiH WHT

WHT in the Federation of Bosnia and Herzegovina is calculated on income generated by a non-resident through performance of occasional business activity in the territory of the Federation of Bosnia and Herzegovina. WHT is due on payment or any other settlement of the following:

- Dividends (i.e. shares in profit).
- Interest or the functional equivalent to interest.
- Royalties and intellectual property (IP) rights.
- Fees for management, technical, and educational services (including fees for market research, tax consulting, audit services, and consulting services).
- Compensations for lease of movable and immovable property.
- Compensation for fun and sport events.
- Insurance or reinsurance premiums from risks in the Federation of Bosnia and Herzegovina.
- Compensation for telecommunication services.
- Other service fees, but only for non-residents from the countries that do not have a signed DTT with Bosnia and Herzegovina.

WHT shall be paid at the rate of 5% on dividend payments and 10% for interest, royalties, and other, if not reduced under a tax treaty.

RS WHT

As per the CIT Law of Republika Srpska, WHT in Republika Srpska is due on the following income payments to a foreign legal entity:

- Payment of dividends and shares in profit.
- Payment of interest.
- Payment of royalties and other payments for IP rights.
- Payment for performance of entertainment, art, or sports program in Republika Srpska.
- Payment for professional, scientific, technical, and educational services (market research, advertising and promotion, management, consulting, tax and business consulting, services of auditors, accountants, lawyers, education, and other similar services).
- Payments for market research, advertising and promotion, management, consulting, tax and business consulting, and services of auditors, accountants, and lawyers.
- Payments for insurance and reinsurance premiums in Republika Srpska.
- Payments for telecommunication services between Republika Srpska and another country.
- Payments for lease of movable property.

WHT is also due on the income from services that is paid by a resident of Republika Srpska to a resident of a country that has not concluded a DTT with Bosnia and

Herzegovina. WHT is also due in case that income subject to WHT is settled to a non-resident in some other way.

The WHT rate in Republika Srpska is 10%.

BD WHT

Any legal or physical person from Brčko District, as well as any non-resident legal or physical person with PE in Brčko District, who pays revenue to a non-resident legal person is to withhold tax from the total payment of revenue and is to remit the withheld tax to the Public Revenues Account of Brčko District.

The WHT applies to the following revenue payments, regardless of whether the revenue is received in Brčko District or abroad:

- Payment of interest or its functional equivalent under financial instruments and arrangements from a resident.
- Payment for entertainment or sporting activities carried out in Brčko District, regardless of whether the revenue is received by the entertainer or sportsman or by another person.
- Payment for the performance of management, consulting, financial, technical, or administrative services if the revenue is from a resident or if the revenue is paid by or included in the books and records of a PE in Brčko District or if such payment is deducted for the purpose of determining the tax base.
- Payment in the form of insurance premiums for the insuring or reinsuring of risks in Brčko District.
- Payment for telecommunication services between Brčko District and a foreign state.
- Payment of royalties.
- Payment of lease for movable property.
- Payment for the performance of other services in Brčko District.

WHT is not due on dividend payments.

The WHT rate in Brčko District is 10%.

WHT rates based on available DTTs

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Albania	5/10 (1)	10	10
Algeria	10	10	10
Austria	5/10 (1)	5	5
Azerbaijan	10	10	10
Belgium	10/15 (1)	15	10
China	10	10	10
Croatia	5/10 (1)	10	10
Cyprus	10	10	10
Czech Republic	5	0	10
Egypt	5/15 (1)	15	15
Finland	5/15 (1)	0	10
France	5/15 (1)	0	0
Germany	15	0	10
Greece	5/15 (1)	10	10

Bosnia and Herzegovina

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Hungary	10	0	10
Iran	10	10	15
Ireland	0	0	0
Italy	10	10	10
Jordan	5/10 (1)	10	10
Kuwait	5	5	10
Macedonia	5/15 (1)	10	10
Malaysia	5/10 (2)	10	8
Moldova	5/10 (1)	10	10
Netherlands	5/15 (1)	0	10
Norway	15	0	10
Pakistan	10	20	15
Poland	5/15 (1)	10	10
Qatar	5/10 (2)	7	7
Romania	5	7.5	10
Serbia and Montenegro	5/10 (1)	10	10
Slovakia	5/15 (1)	0	10
Slovenia	5/10 (1)	7	5
Spain	5/10 (2)	7	7
Sri Lanka	12.5	10	10
Sweden	5/15 (1)	0	0
Turkey	5/15 (1)	10	10
United Arab Emirates	0/5/10 (3)	10	10
United Kingdom	5/15 (1)	10	10

Notes

1. The lower rate applies if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
2. The lower rate applies if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends.
3. The lower rates apply if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends. The competent authorities of the contracting state shall, by mutual agreement, settle the mode of application of these concessions.

Tax administration

FBiH tax administration

FBiH taxable period

The taxable period is considered to be the calendar month.

FBiH tax returns

An FBiH taxpayer is obligated to file correctly and accurately a completed tax return (declaration) with the tax balance to the authorised branch office of the tax administration by 31 March of the following year.

The deadline for submission of annual calculation of business results is 28 February of the following year.

FBiH payment of tax

A taxpayer shall pay FBiH CIT pursuant to the final tax declaration. CIT prepayments are determined based on the tax return from the prior year and have to be paid monthly (by the last day of the month) for the previous month.

FBiH tax audit process

The tax system is generally based on self-assessment; however, many large and mid-size businesses are under continuous audit by the tax authority and the indirect tax authorities. The audits may include the entire list of taxes for which the business is liable. Smaller businesses with lower incomes are generally subject to audit on a random basis.

FBiH statute of limitations

The statute of limitations is five years.

FBiH topics of focus for tax authorities

The tax authorities focus increasingly on transactions with related parties with respect to transfer pricing and deductibility of expenses in general.

RS tax administration

RS taxable period

The taxable period is considered to be the calendar month.

RS tax returns

The RS tax declaration for a tax year shall be filed no later than 90 days upon the end of the tax year, and in case of a calendar year, no later than 31 March of the current year for the previous year.

RS payment of tax

A taxpayer shall pay RS CIT pursuant to the final tax declaration. CIT prepayments are determined based on the tax return from the prior year and have to be paid monthly (by the tenth day of the month) for the previous month.

RS tax audit process

The tax system is generally based on self-assessment; however, many large and mid-size businesses are under continuous audit by the tax authority and the indirect tax authorities. The audits may include the entire list of taxes for which the business is liable. Smaller businesses with lower incomes are generally subject to audit on a random basis.

RS statute of limitations

The statute of limitations is five years.

RS topics of focus for tax authorities

The tax authorities focus increasingly on transactions with related parties with respect to transfer pricing and deductibility of expenses in general.

BD tax administration

BD taxable period

The taxable period is considered to be the calendar month.

BD tax returns

The BD tax declaration for a tax year shall be filed no later than 90 days upon the end of the tax year, and in case of a calendar year, no later than 31 March of the current year for the previous year.

BD payment of tax

A taxpayer shall pay BD CIT pursuant to the final tax declaration. CIT prepayments are determined based on the tax return from the prior year and have to be paid monthly (by the tenth day of the month) for the previous month.

BD tax audit process

The tax system is generally based on self-assessment; however, many large and mid-size businesses are under continuous audit by the tax authority and the indirect tax authorities. The audits may include the entire list of taxes for which the business is liable. Smaller businesses with lower incomes are generally subject to audit on a random basis.

BD statute of limitations

The statute of limitations is five years.

BD topics of focus for tax authorities

The tax authorities focus increasingly on transactions with related parties with respect to transfer pricing and deductibility of expenses in general.

Additionally, the BD authority scrutinises allocation of expenses for bank branches operating in the district, often decreasing or not allowing the allocated expenses of the headquarters.

Botswana

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Significant developments

Selibe Phikwe Economic Development Unit (SPEDU) region incentive

The Income Tax Act was amended through the SPEDU Region Development Approval Order, 2018 to introduce concessionary corporate income tax (CIT) rates for approved business operating in the SPEDU region. Below are the key points of the Order:

Concessionary CIT rates

The following concessionary CIT rates are applicable for approved business operations in the SPEDU region:

Period of operation	CIT rate (%)
For a new business:	
First five years of operations	5
Thereafter	10
For an existing business:	
First five years of operations as per Tax Relief Certificate	5
Thereafter	10

Areas covered under the SPEDU region

- Selebi-Phikwe.
- Bobonong.
- Mmadinare - Sefhophe.
- Lerala - Maunatlala.
- Neighbouring villages, farms, and cattle posts.

Eligibility criteria

A new business or an existing business under the following sectors in the SPEDU region is eligible to apply for concessionary CIT rates:

- Agriculture.
- Manufacturing.
- Tourism.

Application for tax relief

It is required to submit an application in the prescribed form to the Ministry of Finance and Economic Development in order to obtain approval under this Order.

Taxes on corporate income

Botswana has a source-based taxation system.

CIT is charged at a single flat rate of 22%. Manufacturing companies having the approval from the Minister of Finance for a special tax rate will be charged at the rate of 15%.

International Financial Services Centre (IFSC) profits

IFSC companies are currently taxed at a flat rate of 15%. Companies must apply for a certificate to be classified as IFSC companies, which deal only in specified services and only with non-residents.

Mining profits

Mining profits, other than profits from diamond mining, are taxed according to the following formula:

Annual tax rate = 70 minus (1,500/x), where x is taxable income as a percentage of gross income.

The tax rate shall not be less than the flat CIT rate of 22%.

Diamond mining

Diamond mining is usually taxed in terms of an agreement with the government of Botswana.

Local income taxes

There are no local, state, or provincial government taxes on income in Botswana.

Corporate residence

If a company's registered office or place of incorporation is in Botswana or if the company is managed and controlled in Botswana, then the company is considered a resident of Botswana.

Permanent establishment (PE)

PE has been defined in the Income Tax Act only in the limited context of interest, commercial royalty, and management or consultancy fee. However, PE is defined in all the double taxation agreements (DTAs) that Botswana has entered into with other contracting states. The definition of PE in the DTA follows the definition in the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital.

Other taxes

Value-added tax (VAT)

VAT is imposed on taxable supplies and the importation of goods into Botswana. The standard VAT rate of 12% applies to all supplies that do not qualify for an exemption or are not zero-rated.

The VAT registration threshold is 1 million Botswana pula (BWP).

Vocational training levy (VTL)

VTL is payable when submitting the VAT return by every taxpayer who is registered for VAT. It is calculated as a percentage of turnover ranging from 0.2% to 0.05%, depending on the turnover of the company.

Customs and excise duties

Customs and excise duties are charged on importation of goods (including currencies) into or exported out of Botswana. The import duties may also include anti-dumping and countervailing duties. No customs duties and excise duties are charged on trade between Botswana and South Africa, Lesotho, Namibia, and Swaziland, as these five countries constitute a Southern African Customs Union. In terms of the Botswana/Zimbabwe Trade Agreement, goods originating from either of the trading partners are exempted from payment of customs duties under the condition that the goods meet a minimum of 25% local content. Excise duty and local taxes, such as VAT, are due and payable where applicable.

Property taxes

There are no property taxes in Botswana.

Capital transfer tax (CTT)

CTT is levied on the donee upon the transfer (by way of inheritance or gratuitous disposal of property) of tangible or intangible, movable or immovable, property, at 12.5%.

Transfer duties on immovable property

Transfer duty is levied at 5% of the value of immovable freehold and leasehold property. The first BWP 200,000 of such value are exempt from transfer duty in case of transfer to a Botswana citizen.

In the case of agricultural property, transfer duty is levied at the rate of 30% for a non-citizen. This duty is 5% in the case of a Botswana citizen.

Stamp duty

There is no stamp duty in Botswana.

Payroll taxes

An employer with resident employees earning income above the taxable threshold and non-resident employees must deduct tax by applying the relevant tax rate and remit to the Botswana Unified Revenue Services (BURS) on a monthly basis before the 15th day of the succeeding month. Every employer is required to submit an annual return within 31 days after the end of the tax year.

Social security contributions

There are no social security taxes or contributions in Botswana.

Branch income

CIT payable on branch profits is 30%.

Income determination

Inventory valuation

Inventories are valued at cost less such amounts, if any, that the Commissioner General believes are reasonable as representing the amount by which the value of such stock has been diminished because of damage, deterioration, obsolescence, or other cause. Although not expressly excluded by legislation, last in first out (LIFO) has not been accepted in practice by the tax authorities.

Capital gains

Gains from disposal of specified capital assets (immovable property and marketable securities, including shares in private companies) are included in taxable income in the hands of the corporate taxpayer. Acquisition costs of immovable property are subject to a 10% compound annual addition for inflation for the period from acquisition to 30 June 1982, and thereafter to an inflation addition based on the increase in the consumer price index to the date of sale. For other gains, no inflation allowances are granted, but the taxable gain is set at 75% of the total gain.

Currently, the sale of any shares, units, or debentures of a resident company is exempt from tax under any of the following circumstances:

- The resident company whose shares are being sold is a public company.
- The shares, units, or debentures are traded on the Botswana Stock Exchange.
- The company has released for trading 49% or more of its equity on the Botswana Stock Exchange.

This exemption only applies if the shares, units, or debentures were held by the taxpayer for a period of at least one year prior to the date of disposal.

The aggregate amount of capital losses is offset against the aggregate amount of capital gains in the same tax year. Any excess of loss is deducted from aggregate gains over losses accruing in the succeeding tax year only. Capital losses cannot, in any circumstances, be deducted against other income.

Dividend income

Dividend income from local sources is not subject to tax.

Interest income

In the case of a resident company, interest income is included in gross income and taxed at the CIT rate. In the case of a non-resident company, interest income is subject to withholding tax (WHT), which constitutes a final tax.

Royalty income

Royalty income is included in gross income and taxed at the CIT rate. In the case of a non-resident company, royalty income is subject to WHT, which constitutes a final tax.

Partnership income

Partnership income is taxed in the hands of the partners, in proportion to their share in the partnership.

Foreign income

Resident corporations are not generally taxed on a worldwide income basis. However, interest and dividend income from a foreign source is taxed in the hands of the resident company on an accrual basis. Relief is given for any WHT imposed on such income.

Deductions

Depreciation and depletion

Annual and capital allowances available are as follows.

Companies other than mining companies

Annual taxation allowances for expenditures incurred on machinery and equipment before 30 June 1982 can be claimed up to 100%. This allowance may be for any proportion of previously unclaimed expenditures. For expenditures incurred on machinery and equipment after 30 June 1982, annual allowances are granted, calculated on cost by the straight-line method on the basis of the expected useful lives of the individual assets. Guidelines are provided for expected useful lives of different categories of assets, which vary from four to ten years. Book depreciation is not required to conform to tax depreciation. The capital allowance claimable on a company motorcar is restricted to a maximum of BWP 175,000.

An initial allowance of 25% of cost is granted on certain industrial buildings. All industrial and commercial buildings (excluding residential properties) are granted a 2.5% annual allowance based on cost or, in the case of an industrial building on which an initial allowance has been claimed, the original cost less the initial allowance.

Balancing allowances and charges are brought to account on the disposal of assets on which allowances have been claimed. Where disposal value of an item of machinery or equipment exceeds the difference between expenditures incurred on the asset and allowances granted, the whole amount is taxable as corporate income or the balancing charge can be offset against further additions of new equipment, thus providing rollover relief. However, there is no rollover relief on motorcars except where the cars are used in a car rental or taxi service business.

Mining companies

In ascertaining the business income for any tax year from a mining business, there shall be deducted from business income an allowance, to be known as a mining capital allowance, computed in accordance with 100% of the mining capital expenditure made in the year in which such expenditure was incurred, with unlimited carryforward of losses.

Goodwill

Amortisation of goodwill is not allowed as a tax deductible expense.

Start-up expenses

Start-up expenses are not specified in the law. However, pre-incorporation expenses might be disallowed since, generally, expenses incurred when there is no income are not allowed.

Interest expenses

Interest paid or accrued to a resident is deductible as an expense. Interest paid to a non-resident will be allowed as a deduction in the year where the relevant WHT on interest has been remitted to the BURS.

Bad debt

Bad debts written off and specific provisions for bad debt are allowed as a deduction when computing taxable income. General provisions are not allowed as a deduction.

Charitable contributions

Donations made to (i) any educational institution recommended by the Ministry of Education or (ii) any sports clubs or sports associations recommended by the Ministry responsible for sports, and approved by the Commissioner General, shall be deducted when arriving at taxable income, limited to 20% of the chargeable income.

Fines and penalties

Penalties and associated interest are not allowed as a deduction.

Taxes

Any taxes paid are specifically disallowed in computing a company's taxable income.

Other significant items

An allowance is granted for dwelling houses erected for employees by a business other than a mining business. The amount of the allowance is the lower of cost or BWP 25,000 for each dwelling house constructed.

A deduction of 200% of the cost of an approved training expenditure is allowed.

Companies with shareholders having 5% or more of equity, either directly or indirectly, are classified as close companies, and there are additional tax regulations in respect of these shareholders.

Small companies, that is resident private companies whose gross income does not exceed BWP 300,000, may elect that the company be taxed as a partnership.

Expenses incurred by the company for having its shares listed on the Botswana Stock Exchange are deductible in determining the chargeable income of the company.

Net operating losses

Losses may be carried forward for five years, with the exception of mining and prospecting operations, for which there is no time limit. There is no allowance for carrybacks.

Payments to foreign affiliates

Royalties, interest, and service fees paid to foreign affiliates are generally deductible, provided such amounts are at arm's length and WHT is paid.

In the case of a mining company, head office expenses allowed as a deduction in ascertaining gross revenue from mineral licence shall be limited to 1.5% of gross income for the year of assessment, and any excess of such expense above the limit shall be treated and taxed as a dividend.

Where the interest rate on a loan made by a foreign-based mining company to an affiliate mining company resident in Botswana is considered by the commissioner to be in excess of the market rate, such excess will be disallowed as a deduction and taxed as a dividend.

Group taxation

There are no concessions for group taxation, other than for wholly-owned subsidiary companies of the Botswana Development Corporation Limited (BDC).

BDC was established in 1970 to be the country's main agency for commercial and industrial development. The government of Botswana owns 100% of the issued share capital of the Corporation.

Where in any tax year a wholly owned subsidiary of BDC has incurred any assessed loss, such member may, during the current tax year, by notice in writing to the Commissioner General, elect that the whole or part of such assessed loss shall be deducted in ascertaining the chargeable income of one or more of the other wholly owned subsidiaries.

Transfer pricing

Botswana currently does not have any transfer pricing regulations, so transfer pricing is currently monitored through the anti-avoidance provisions contained in Section 36 of the Income Tax Act.

The arm's-length principle should always be followed in transactions between related parties. If such transactions have created rights or obligations that would not normally be created between independent persons dealing at arm's length, the Commissioner General may determine the liability in such manner as deemed appropriate. However, related party balances arising out of normal trading transactions (e.g. credit purchases with a 30 day credit period) would not be subjected to these provisions.

Interest (at prime rate) should be charged/provided on loans from shareholders/ amounts due to related parties. If no interest has been charged/provided, in terms of the close company legislation, the BURS may deem interest at the prime rate prevailing at the beginning of the tax year, as income in the hands of the lender without allowing the corresponding interest as a charge against the profits of the borrower. The borrower is obligated to deduct WHT at the prevailing rate on the deemed interest.

Amounts due from shareholders/directors may be deemed as dividend income and shall form part of the taxable income of the borrower, in which event these will be taxed at the prevailing dividend WHT rate in the hands of the borrower.

Thin capitalisation

Thin capitalisation rules can be found in the Income Tax Act, but only in relation to mining companies and IFSC companies.

Where a foreign controlled resident mining company has a foreign debt-to-equity ratio in excess of 3:1 at any time during the year of assessment, the amount of interest paid by the resident company during that year on that part of the debt that exceeds the ratio shall be disallowed as a deduction, and the amount so disallowed shall be treated and taxed as a dividend.

In case of an IFSC company, where an amount of foreign debt interest is allowable as a deduction in a particular tax year and, at any time during that tax year, the total foreign debt exceeds the foreign equity product for that year, then the amount of foreign debt interest ascertained in accordance with the following formula will be disallowed:

I x (A/B) x (C/365)

A = amount of the excess of the total foreign debt over the foreign equity product.

B = the total foreign debt.

C = the number of days in that tax year during which the total foreign debt exceeded the foreign equity product by that amount.

I = the foreign debt interest.

Controlled foreign companies (CFCs)

There are no CFC rules in Botswana.

Tax credits and incentives

To encourage investment in Botswana, extra tax relief on revenue or capital accounts will be granted for specific business development projects if the government is satisfied that such projects are beneficial to Botswana.

Foreign tax credit

A credit for the foreign WHT payable is permitted under domestic law. The credit, which is offset against the tax charged in Botswana, shall be the lessor of (i) the tax payable in the foreign country or (ii) the tax charged under the Botswana Income Tax Act on such amount.

Withholding taxes

WHT, at the following rates, must be deducted from payments to residents and non-residents unless a DTA exists.

Residents	**WHT rate (%)**
Dividends	7.5
Interest	10
Payments due under certain construction contracts	3
Payments made for livestock purchased for purposes of slaughter or feeding for slaughter	4
Non-residents	**WHT rate (%)**
Dividends	7.5
Interest	15
Payments due under certain construction contracts	3
Payments made for livestock purchased for purposes of slaughter or feeding for slaughter	4
Payments for royalties, management, or consultancy fees	15
Payments for entertainment fees	10

All rent and commission or brokerage payments to residents or non-residents are subject to WHT at 5% and 10%, respectively, where the total payment is BWP 36,000 *per annum* or more or the monthly payment is BWP 3,000 or more.

Botswana has tax agreements with the following countries, which provide for WHT at the rates shown.

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Management and consultancy fees**
Barbados	5/7.5 (1)	10	10	10
France	5/7.5 (1)	10	10	7.5
India	7.5	10	10	10
Mauritius	5/7.5 (1)	12	12.5	15
Namibia	7.5	10	10	15
Russia	5/7.5 (1)	10	10	10
Seychelles	5/7.5 (1)	7.5	10	10
South Africa	7.5	10	10	10
Sweden	7.5	15	15	15
United Kingdom	5/7.5 (1)	10	10	7.5
Zambia	5/7 (1)	10	10	10
Zimbabwe	5/7.5 (1)	10	10	10

Notes

1. 5% rate of WHT is applicable if the beneficial shareholder is a company resident in the DTA country and holds at least 25% of the share capital in the company paying dividends. Otherwise, the other rate applies.

Tax administration

Taxable period

Botswana has a fiscal year ending on 30 June. However, a business may select its own accounting year, which may end on a date other than 30 June. This accounting year is accepted for the computation of the company's taxable income.

Tax returns

Botswana requires self-assessment, which means that the return submitted constitutes the assessment. The system is one that requires all taxpayers to file tax returns in standard format (providing information relating to taxable income earned) within four months after the financial year-end of the company.

Payment of tax

Under the self-assessment tax procedures, if the tax payable for a tax year exceeds BWP 50,000, then estimated tax is required to be paid in equal quarterly instalments over the period of 12 months ending on the company's financial year-end date. Accordingly, the first quarterly payment should be made within three months of the beginning of the financial year and the balance quarterly payments at three monthly intervals thereafter. The final (balance) payment, if any, is to be made within four months from the end of the financial year, when submitting the return.

Where the tax is less than BWP 50,000, then the tax is payable within four months from the company's financial year-end date.

Tax audit process

There is no prescribed audit process, and an audit can be initiated by any factor as determined by the BURS. The audit or inspection will commence with a request from the BURS for the taxpayer to make available any such records or information as may be required.

Statute of limitations

The assessment should be made any time prior to the expiry of four years after the end of the tax year to which it relates to. Tax returns submitted that have been assessed may not be reopened after a period of four years from date of assessment by the BURS.

Topics of focus for tax authorities

The BURS is focusing on establishing and strengthening the Large Tax Payers Unit, minimising the tax gap, and introducing electronic filing.

Brazil

PwC contact

Durval Portela
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Significant developments

Tax authorities issue new guidance on the disclosure of final beneficiaries in Brazilian corporate taxpayer register (CNPJ)

On 15 August 2017, the Brazilian tax authorities (RFB) issued Normative Instruction (NI) 1,729/2017, which updates the obligation to disclose the final beneficiaries in the CNPJ.

By way of background, NI 1,634/2016 established the obligation to disclose information related to final beneficiaries in the CNPJ. According to the legislation, the term ‘final beneficiary’ refers to (i) an individual who ultimately, either directly or indirectly, holds, controls, or significantly influences an entity; or (ii) an individual on whose behalf a transaction is undertaken. A shareholder is deemed to have significant influence if the shareholder (i) owns more than direct or indirect 25% of the entity’s capital stock or (ii) has the ability to influence the decision-making and elect or appoint members of the entity’s management.

NI 1,729/2017 clarifies that the disclosure of the final beneficiaries can be made up to 90 days from the date of the register in the CNPJ (this term may be extended for another 90 days, upon request) and that the supporting documentation should be submitted online.

Foreign entities registered in Brazil before 1 July 2017 will have until 31 December 2018 to comply with the disclosure obligation and submit the supporting documents. Note that if an entity updates its CNPJ before 31 December 2018 for any other reason, the disclosure obligation will arise at the date of such change.

Tax authorities issue guidance on taxation of capital gains

On 29 August 2017, the RFB issued NI 1,732/2017, which confirms the application of increased tax rates on non-residents capital gains.

By way of background, Law 13,259/2016 introduced new rates for taxing capital gains on individuals (and non-residents) arising on the alienation of Brazilian assets and rights, varying from 15% to 22.5% (depending on the amount of the gain).

Although the new rules were intended to enter into force as of 1 January 2016, the RFB issued an Interpretative Declaratory Act 3/2016 (ADI 3/2016) on 29 April 2016, stating that the increased progressive tax rates in relation to capital gains derived by individuals (and non-residents) should apply from 1 January 2017.

NI 1,732/2017 confirms the application of the new tax rates on capital gains, realised by non-residents legal entities, arising on the alienation of Brazilian assets and rights.

Brazilian double tax convention (CDT) with Russia is now in force

On 1 August 2017, the executive branch of the Brazilian government promulgated Decree 9,115/2017, which converts into internal legislation the CDT between Brazil and Russia, signed on 22 November 2004 and ratified by the Brazilian Senate on 25 May 2017.

As it has become usual in Brazilian CDT practice, the CDT between Brazil and Russia treats technical services and technical assistance as royalties. Further, it does not restrict the application of thin capitalisation and controlled foreign corporation (CFC) rules.

In contrast with other CDTs signed by Brazil, remittances of interest on net equity (*Juros sobre capital próprio* or JCP) are expressly regarded as interest, leaving no room to potential discussions on their characterisation for CDT purposes.

Finally, the CDT between Brazil and Russia includes a provision on limitation of benefits (LOB) aimed at preventing treaty abuse.

The CDT is in force for transactions from January 2018.

New amendment protocol changes CDT with Argentina

On 21 July 2017, a new amendment protocol to the CDT between Argentina and Brazil was signed. The subsequent exchange of instruments of ratification, which is expected to occur soon, will make it effective as of 1 January of the year following such ratification process.

The new protocol introduces reliefs on withholding on payments of (i) interest, (ii) royalties and technical assistance services, and (iii) dividends. It also includes other provisions aligned with the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention and the base erosion and profit shifting (BEPS) project, such as a new permanent establishment (PE) clause, LOB clause, required holding period for enjoying dividends relief, and minimum taxation threshold to enjoy CDT benefits if income were to be assigned to a third-country PE.

However, one of the most relevant changes is to fully leave behind the exemption method to avoid double taxation, now stating the foreign tax credit method.

Brazil signed CDTs with Switzerland and Singapore

In May 2018, Brazil has signed CDTs with Switzerland and Singapore with very similar provisions that deviate from the previous treaties signed by Brazil, which may indicate a new trend for future agreements. Broadly, the new treaties incorporate the new OECD Model Convention standards in relation to anti-abusive minimum rules, including the change in the title, preamble, and the inclusion of a principal purpose test (PPT) and LOB clauses.

Key common aspects of the treaties include: (i) reduction of the withholding tax (IRRF) to 10% on payments of interest if the beneficial owner is a bank for the financing of equipment or of investment projects and the loan was granted for a minimum period of five years, (ii) inclusion of a specific article for technical services that also reduces the IRRF rate to 10% (the introduction of a specific Article for technical services is in line with the new UN Tax Model Convention), and (iii) reduction of the IRRF rate in relation to royalty payments other than trademarks to 10%.

The Brazil/Switzerland CDT also introduces a nine-month threshold period for characterisation of PE construction. Contrary to other CDTs signed with European countries, no tax-sparing clause has been agreed for this CDT, following OECD recommendations.

In line with Brazil's previous treaty practice, both treaties leave out Article 9(2) of the OECD Model Convention that grants credits in case of transfer pricing adjustments in the other contracting state.

The treaties still require Congress followed by Presidential approval in order to be enacted.

Brazilian Congress approves amendment to CDTs with Norway, South Korea, and India

From May 2017 to May 2018, the Brazilian National Congress approved several Protocols that amend the CDTs between Brazil and Norway, South Korea, and India in order to improve the exchange of information between the competent authorities of both contracting states.

Except for the case of the Protocol signed with India, which is already in force, the Protocols signed with Norway and South Korea have been submitted to Presidential approval in order to complete their ratification process in Brazil.

Brazilian Congress approves Tax Information Exchange Agreement (TIEA) with Switzerland

On 21 July 2017, the Brazilian National Congress approved the TIEA signed by Brazil and Switzerland in 2015. The TIEA, which will govern the exchange of tax-related information between the countries, was approved by the Senate Special Commission in April 2018 and submitted to the plenary for final approval.

Brazilian presents a request for joining the OECD

On 29 May 2017, Brazil presented an official request to become a member of the OECD.

Although it is a member of the G20 and has been an observer to the OECD for several years, Brazil is not a member of this organisation. However, this may change as Brazil has filed a formal request to join the OECD, which represents the first of a number of steps that must be taken before the country is accepted as a member of the organisation.

Taxes on corporate income

Brazilian resident companies are taxed on worldwide income. Non-resident companies are generally taxed in Brazil through a registered subsidiary, branch, or PE, based on income generated locally. Other than that, non-resident companies can be subject to withholding tax (IRRF) on income derived from a Brazilian source.

Corporate income tax (IRPJ) is assessed at the fixed rate of 15% on annual taxable income, using either the 'actual profits' method or the 'presumed profits' method (*see the Income determination section*).

Surcharge

Corporate taxpayers are also subject to a surcharge of 10% on the annual taxable income in excess of 240,000 Brazilian reais (BRL).

Social Contribution on Net Income (CSLL)

All legal entities are generally subject to CSLL at the rate of 9% (except for financial institutions, private insurance, as well as certain other prescribed entities, which are taxed at the rate of 20%), which is not deductible for IRPJ purposes. The tax base is the profit before income tax, after some adjustments.

Local income taxes

Corporate income taxes are levied only at the federal level (i.e. there are no state or municipal income taxes).

Corporate residence

A legal entity is considered resident in Brazil if it has been incorporated in Brazil, and its tax domicile is where its head office is located.

Permanent establishment (PE)

The specific term 'permanent establishment' is not included in the Brazilian legislation, rather there is a concept of 'taxable presence'.

In general, a non-resident company may be treated as having a taxable presence if it operates in Brazil either through: (i) a fixed place of business or (ii) an agent who has the power to enter into contracts in Brazil in the name of or on behalf of the non-resident.

Other taxes

Value-added tax (VAT)

The Brazilian indirect taxes system is complex and has been subject to multiple changes during the past years. The text below contains general information applicable to each of the taxes herein mentioned. It is important to note that the respective legislation includes various exceptions to the general stated rules. In the case of the state VAT (ICMS), although a federal law should be followed, each state issues its own legislation, which brings certain differences when compared to the federal law.

The Brazilian indirect tax system comprises three key indirect taxes:

- VAT on Sales and certain Services (ICMS)
- Excise Tax (IPI), and
- Service Tax (ISS),

which are state, federal, and municipal taxes, respectively.

VAT on Sales and Services (ICMS)

ICMS is a state tax on the circulation of merchandise, electric power, rendering of interstate and intermunicipal transportation services, and communications, even when the transaction and the rendering of services start in another country. It is not a cumulative tax, that is, the tax is only assessed on the increase in the price of the product in each part of the circulation process.

The calculation process involves a system where the taxpayer should check the amount of debits and credits related to the state VAT. In case the taxpayer upholds more debits than credits, the taxpayer will be required to pay tax on the difference between them.

In summary, the credits are calculated when the raw materials enter the taxpayer's premises and the debits are computed when the final products exit the establishment. Moreover, as a general rule, taxpayers are not allowed to account for credits on materials purchased that will be used on goods that will not be taxable when they exit the company.

Finally, VAT is collected in the state of São Paulo at an 18% rate. Certain products can attract a higher rate (usually 25%) or a lower rate (in most cases, 12%). The internal ICMS rates may vary according to each state of Brazil. Usually, the ICMS rates range from 17% to 19% for the most cases, but higher and lower rates may be applied as well.

Special rates apply to interstate sales, as shown in the chart below. A 4% rate applies on all interstate sales of imported goods.

From (shipper)	To (addressee)	Rate (%)
South and Southeast	South and Southeast	12
North, Northeast, and Midwest	Any Brazilian state	12
South and Southeast *	North, Northeast, and Midwest *	7

* Including the state of Espírito Santo.

ICMS is due on a monthly basis, and exports are not subject to ICMS.

ICMS-ST regime

In order to avoid illegal tax evasion, enhance the tax control processes, and facilitate tax collection, the legislation may appoint a single taxpayer of a product's chain as the sole liable party, who will collect the ICMS due by all parties until the final consumer. The so-called ICMS-ST regime is imposed for certain goods as listed by each state tax legislation.

ICMS due on interstate sales of goods to non-ICMS taxpayers

As a general rule, ICMS is collected by the state where the supplier of the goods is located. ICMS is collected by most states at internal rates ranging from 17% to 19% (some products attract a lower/higher rate). As noted above, special rates apply to interstate sales, which will be equivalent to 4%, 7%, or 12%, depending on the location of the supplier and client, as well as whether the goods are imported, have a certain content of imported inputs, or are domestically sourced.

The legislation determines that on interstate transactions with final consumers, the 4%, 7%, or 12% rates shall be applied (instead of the internal rate), and the difference between the internal and interstate rates shall be paid by the acquirer (transactions between ICMS taxpayers) or supplier (transactions involving non-ICMS taxpayers) of the goods to the consumer's state. Note, however, there is a transition period (2015 to 2019) where the difference mentioned above will be progressively shared between the supplier's state and consumer's state until the whole difference is allocated to the latter.

Excise Tax (IPI)

This Federal excise tax is paid by manufacturers on behalf of their customers at the time of sale, either to another manufacturer who will continue the manufacturing process or to the retailer who sells to the end user.

The tax paid is stated separately on the sales invoice, as is the nature of the goods involved. Certain exemptions are given to goods considered to be of basic necessity to the country's economy. The rates are defined by the product's tariff code (normally around 5% to 15%, but in certain cases ranging to over 300%) and are in accordance with the essentiality of each product, which generally means that essential products will attract lower tax rates.

As mentioned above, when manufactured products are sold between producers, the IPI is imposed. However, the subsequent manufacturer is allowed a credit against its IPI liability, on the amount of IPI paid to its suppliers (non-cumulative tax, similar to what happens with ICMS).

IPI is due on a monthly basis and is imposed on imports of goods, while exports are not subject to IPI.

Municipal Service Tax (ISS)

The ISS is a municipal tax levied on the provision of services listed by Supplementary Law 116/2003. ISS is imposed on a cumulative basis (it is not creditable), and the rates may vary between 2% and 5%, depending on the type of service (rates to be stipulated on a municipal basis).

Service import is also subject to ISS, to be collected by the Brazilian entity that is contracting the services from a supplier located abroad.

ISS is not levied on export of services. However, if the result of a certain service is verified in Brazil, ISS is imposed, even if the payment for such service is made by a non-resident.

Import tax

The import duty (II) is a federal tax levied on permanent import of goods into Brazil and is also referred to as import tax or customs duty. The rates vary according to the product's tariff code based on Mercosur Harmonised System (NCM/SH), usually ranging from 10% to 20% (there are some exceptions, but the maximum consolidated rate is 35%). As a general rule, the taxable basis consists of the cost, insurance, and freight (CIF) value of the product (i.e. cost, international insurance, and international freight), calculated pursuant to the World Trade Organization's (WTO's) Customs Valuation Agreement.

Import duty is not recoverable by the importer (i.e. it is considered a cost).

Property taxes

A municipal property tax (IPTU) is levied annually based on the fair market value of property in urban areas at rates that generally vary according to the municipality and location of the property. In the municipality of São Paulo, the basic IPTU rate is 1% for residential properties or 1.5% for commercial properties (both rates may be increased or decreased according to the market value of the property).

Transfer taxes

A municipal property transfer tax (ITBI) is levied on the transfer of immovable property, with rates also varying based on the municipality where the property is located. The ITBI rate in the municipality of São Paulo is currently 3%, applied over the market value of the property or the transaction price (whichever is higher).

A state property transfer tax (ITCMD) is normally payable at rates varying from state to state on inheritances and donations of goods and rights. In the state of São Paulo, ITCMD is charged at the rate of 4%.

Tax on financial operations (IOF)

IOF is a tax levied on certain financial operations, such as loans, foreign exchange operations, insurance, and securities, as well as operations with gold (as a financial asset) and foreign exchange instruments. The applicable rate will vary depending on the operation. The IOF rate may be reduced to 0% in some cases, such as: (i) exchange operations relating to the inflow of revenues in Brazil deriving from the export of goods and services; (ii) exchange operations relating to the inflow and outflow of resources in and from Brazil, stemming from foreign loans, with average term exceeding 180 days; and (iii) remittances of interest on net equity and dividends relating to foreign investment.

Social Contribution on Billing (COFINS)

COFINS, a monthly federal social assistance contribution calculated as a percentage of revenue, is levied at the rate of 7.6%. Under the non-cumulative method, a COFINS credit system is meant to ensure that the tax is applied only once on the final value of each transaction. However, some taxpayers (such as financial institutions, telecommunication companies, cooperatives, and companies that opt to calculate IRPJ and CSLL using a 'presumed profits' method) are subject to the cumulative method of COFINS system, which applies a rate of 3% with no credit system.

The general rates of COFINS may be reduced in certain circumstances (e.g. financial revenues may be subject to a rate of 0% or 4% depending on the nature of the transaction). Also, certain transactions are exempt from COFINS (e.g. exportation of services or assets are typically exempt where it results in funds entering Brazil).

Contribution to the Social Integration Program (PIS)

PIS, which is also a federal social contribution calculated as a percentage of revenue, is levied at the rate of 1.65%. Under the non-cumulative method, a PIS credit system is meant to ensure that the tax is applied only once on the final value of each transaction. However, some taxpayers (such as financial institutions, telecommunication companies, cooperatives, and companies that opt to calculate IRPJ and CSLL using a 'presumed profits' method) are still subject to the cumulative method of PIS system, which applies a rate of 0.65% with no credit system.

The general rates of PIS may be reduced in certain circumstances (e.g. financial revenues may be subject to a rate of 0% or 0.65% depending on the nature of the transaction). Also, certain transactions are exempt from PIS (e.g. exportation of services or assets are typically exempt where it results in funds entering Brazil).

PIS and COFINS on imports

Importation of goods and services are also subject to PIS and COFINS (in addition to other taxes imposed on import transactions). PIS and COFINS are generally imposed on the Brazilian entity or individual (the importer of goods or services) and should apply to the import of services at the rates of 1.65% and 7.6%, respectively.

PIS/COFINS rates on importation of goods, however, are 2.1% (PIS) and 9.65% (COFINS), respectively. Accordingly, the combined general rate for the import of goods is 11.75%. There are also increased rates for PIS and COFINS on importations of certain specific products, including pharmaceutical products; perfumes, cosmetics, and toiletries; machinery; and vehicles (under these cases, specific rates were provided). For the import of certain goods listed in the legislation, an additional 1% for COFINS is also applicable.

The contributions paid upon import transactions may, in some instances, be creditable.

Payroll taxes

Legal entities incorporated in Brazil are subject to employer social costs, including: Social Security Contribution (INSS), Employees' Severance Indemnity Fund (FGTS), work accident insurance (RAT), and variable contribution destined to 'third parties' engaged in social development activities (e.g. SENAI, SESC, SESI). As a general rule, INSS is due by the companies at a 20% rate over the employees' payroll. However, certain entities may be eligible to calculate INSS at a range of 1% to 4.5%, applied on the company's gross revenue rather than being calculated upon the company's payroll (CPRB). In relation to FGTS, such contribution is levied on employee's salary at the rate of 8%.

The employer is responsible to withhold income tax and social security contribution on behalf of the employee on a monthly basis.

Contribution for Intervention in the Economic Domain (CIDE)

CIDE is a federal contribution levied at the rate of 10% on remittances made by corporate taxpayers for royalties and for administrative and technical services provided by non-residents. CIDE is payable by the local entity, and, therefore, not creditable to the non-resident. CIDE does not represent a liability to the foreign recipient. CIDE is not applied on the payments relating to the license to use, market, or sub-license software, provided that it does not involve transfer of technology.

Branch income

Profits of branches of foreign corporations are taxable at the normal rates applicable to Brazilian legal entities.

Income determination

Brazilian taxpayers are subject to IRPJ and CSLL using an 'actual profits' method ('*Lucro* Real'), which is based on taxable income (book results before income taxes), adjusted by certain additions and exclusions as determined by the legislation.

Subject to certain restrictions (where gross income does not exceed BRL 78 million), Brazilian taxpayers have the option to calculate IRPJ and CSLL using a 'presumed profits' method ('*Lucro* Presumido'). Under the 'presumed profits' method, the income is calculated on a quarterly basis on an amount equal to different percentages of gross revenue (based on the entity's activities) and adjusted as determined by the prevailing legislation.

Inventory valuation

Brazilian income tax regulations require that inventory may be valued at the actual average cost or by the cost of the most recently acquired or produced goods. Rulings to the effect that last in first out (LIFO) is not acceptable have been given. With the introduction of the public digital bookkeeping system (SPED), the RFB should have access to the productive process and inventory movement of companies (*see the Tax administration section for more information*).

Capital gains

Capital gains derived from the sale of assets and rights, including shares/quotas, are generally taxed as ordinary income.

Carried forward capital losses may be offset only against capital gains. Unused capital losses are treated similarly to income tax losses with regard to limits on use and carryforward period. Capital losses may be used to offset other operating income in the year that they are incurred.

Capital gains derived by non-residents (including transactions carried out abroad between two non-resident investors, involving assets or rights located in Brazil) may be taxed in Brazil.

Such gains should be subject to progressive income tax rates, which range from 15% (for capital gain that does not exceed BRL 5 million) to 22.5% (for the portion of the gain that exceeds BRL 30 million), as per the table below:

Capital gain (BRL)		
Over	**Not over**	**Income tax rate (%)**
0	5 million	15.0
5 million	10 million	17.5
10 million	30 million	20.0
30 million		22.5

For beneficiaries residing in tax haven jurisdictions, the rate applicable remains at 25%, irrespective of the amount of the gain, due to an explicit provision in the law for these situations.

Exemptions from capital gains taxation may be available for specific transactions (e.g. certain regulated investments on the Brazilian stock market).

Dividend income

In general terms, no IRRF is due on cash dividends or profits paid or credited to either corporate or individual shareholders. Brazilian resident beneficiaries are not subject to further income tax on receipt of dividends.

Financial income

Fixed-rate interest income from short, medium, or long-term financial market transactions, including swap transactions, is subject to IRRF at rates ranging from 15% to 22.5%. Non-fixed financial gains related to stock/commodities exchange and/or futures market transactions are taxed at rates of 20% (day-trade) and 15% (all other cases). For legal entities, the total income or gain is considered taxable income, and the tax withheld may be offset against the total tax due by the corporate taxpayer.

Additionally, PIS/COFINS may be levied at a rate of up to 4.65%, depending on the type of transactions and taxation regime (i.e. non-cumulative method).

Royalty income

Under Brazilian tax legislation, royalties are defined as the remuneration agreed between contracting parties for the use or exploration of:

- industrial property rights (i.e. patents, trademarks, brand names, and other rights of the same nature)
- know-how (sharing of technical information, necessary for the industrial manufacturing of a product or process, deriving from experience previously acquired), and
- copyrights.

Royalty income should be subject to regular corporate income taxation in Brazil.

Deductibility of royalty payments relating to registered intellectual property is conditioned to the proper registration with the National Institute of Intellectual Property of the contract and limited to a percentage varying from 1% to 5% of the corresponding net sales revenues.

The payment of royalties to companies abroad is generally subject to IRPJ (15%), CIDE (10%), and IOF (0.38%), as well as potentially ISS in certain cases.

Foreign currency exchange gain/loss

With respect to foreign currency exchange gain/loss, which may arise from receivables or liabilities denominated in foreign currency, Brazilian tax legislation allows the local company to elect to consider the related effect, for tax computation purposes, either upon an accrual or cash basis (i.e. actual receipt/payment of funds).

Foreign income

Brazilian resident companies are taxed on worldwide income. *See Controlled foreign companies (CFCs) in the Group taxation section for more information*.

Deductions

Depreciation and depletion

Depreciation is allowable on a straight-line basis over the useful life of the asset. The annual rates provided by the RFB normally allowable are 10% for machinery, equipment, furniture, and installations; 20% for vehicles; and 4% for buildings. Accelerated depreciation is allowed for companies with a two or three working shift operation by increasing normal rates by 50% and 100%, respectively.

Depletion allowances are allowed for natural resources on a useful-life basis. Special incentive depletion allowances are granted for mining and oil and gas operations.

For Brazilian accounting purposes, companies should generally perform or obtain a useful life study for fixed assets in order to determine the acceptable depreciation rates. For tax purposes, the depreciation considered deductible for the corporate income tax computation is generally determined based on the application of the annual depreciation rate for accounting purposes over the asset's acquisition cost. In cases where the depreciation registered in the books of the company is lower than that calculated based on the depreciation charts issued by the Brazilian Revenue Service, the difference can be excluded from the company's taxable income calculation made under the actual profits method.

Goodwill

Under certain requirements, goodwill paid upon the acquisition of the shares or quotas of a permanent investment may be amortised for tax purposes before realisation/ impairment occurs (e.g. after a merger or a spin-off). It is important to note that the amortisation of goodwill is not permitted in Brazil for accounting purposes.

Whenever the cost of a share acquisition is higher than the net equity value of the acquired company, the acquisition cost of the investments should be segregated into:

i. the net equity of the acquired company
ii. the fair value of the net assets, and
iii. the goodwill deriving from future profitability, which corresponds to the remaining balance from items (i) and (ii).

Upon a merger between buyer and acquired company (downstream or upstream), the amount of goodwill can be amortised for tax purposes over a period of not less than five years, provided certain conditions are complied with.

These conditions include the preparation of an independent appraisal report supporting the value referred to in (ii) above, which will need to be filed with the RFB or a summary with the Register of Deeds and Documents, and that the transaction has been carried out among unrelated parties.

Taxpayers wishing to continue to apply the previous rules for goodwill amortisation in relation to acquisitions made on or before 31 December 2014 had until 31 December 2017 to complete the merger of the target and the acquiring entity.

Amortisation of patents, trademarks, and copyrights, based on their useful life, is a deductible expense within approved limits.

Start-up expenses

As a general rule, for tax purposes, start-up/pre-operational expenses may be deferred and amortised on the straight-line basis over a period of not less than five years, beginning the month in which the business starts operating.

For purposes of corporate income tax calculation based on the actual profits method, the following expenses shall not be computed within the period in which they are incurred: (i) start-up organisation expenses, including from the initial operation phase, when the company only partially used its equipment or its installations and (ii) expenses for expansion of industrial activities.

The expenses mentioned above shall be excluded for purposes of computation under the actual profits method, based on a minimum period of five years, as of the beginning of the regular operations.

Research and development (R&D) expenditures

At the option of the company, R&D expenditures may be deducted when incurred or deferred until termination of the project and then amortised over a period of not less than five years.

R&D expenses may be excluded, for purposes of computation based on the actual profits method, when registered as non-current asset intangibles, during the computation period in which they were incurred. To use this benefit, the taxpayer must add to the net income, for purposes of computation based on the actual profits method, any amount previously recognised for the relevant intangible asset, through amortisation, sale, or write-off.

Interest on net equity (INE)

Companies can pay interest (calculated on a *pro rata* basis and up to a given rate, known as the 'long-term interest rate' [TJLP], which is currently set at 6.6%) to share/quota holders, based on the company's net equity. Such interest, which may not exceed the higher of 50% of the annual profits or 50% of the accumulated earnings and profits, is deductible for both IRPJ and CSLL purposes and is subject to 15% IRRF at the source (or 25% if the beneficiary is located in a tax haven jurisdiction). Whenever the beneficiary is a legal entity subject to normal income tax in Brazil, the tax withheld at the source may be taken by the recipient as a tax credit. If the beneficiary is a Brazilian resident individual, such interest will not become subject to any further taxation.

Interest and other payments to entities in a tax haven or under a privileged tax regime

Provisions similar to those for thin capitalisation (*see the Group taxation section*) are also applicable to interest paid or credited by a Brazilian entity to an individual or legal entity (whether or not a related party) resident or domiciled in a tax haven or in a jurisdiction under a privileged tax regime. In these cases, the interest expense is only deductible for Brazilian income tax purposes if it is viewed as necessary to the company's activities and the total amount of the Brazilian entity's debt with any foreign party resident or domiciled in a tax haven or in a jurisdiction under a privileged tax regime does not exceed 30% of the Brazilian entity's net equity.

The Law also provides that amounts paid, credited, delivered, used, or remitted under any title, directly or indirectly, to related or unrelated individuals or legal entities that are resident or domiciled in a tax haven or in a jurisdiction under a privileged tax regime will only be viewed as deductible for Brazilian income tax purposes if all of the following conditions are met: (i) the effective beneficiary of the payment is identified; (ii) there is evidence that the payment beneficiary has operational capacity (i.e. substance); and (iii) there is adequate documentation to support the relevant payments and the corresponding supply of goods, rights, or utilisation of services.

Tax havens and privileged tax regime lists

The RFB has issued a list (i.e. 'black list') detailing the jurisdictions that are considered not to tax income or to tax it at a rate lower than 20%, or that deny access to information regarding shareholding and ownership of assets and rights.

Another list (i.e. 'grey list') contemplates jurisdictions that are considered to have 'privileged tax regimes', as set forth in Brazilian legislation. The following types of entities are included in the grey list:

- Holding companies incorporated under the law of Denmark, which do not carry out substantive economic activity.
- Holding companies incorporated under the law of the Netherlands, which do not carry out substantive economic activity.
- International trading companies (ITCs) incorporated under the law of Iceland.
- Holding company, domiciliary company, auxiliary company, mixed company, and administrative company incorporated in Switzerland and other legal entities subject to a ruling issued by the tax authorities that apply a combined tax rate lower than 20%.
- Limited liability companies (LLCs) incorporated under the state law of the United States, owned by non-residents and not subject to federal income tax.
- Holding companies (ETVEs) incorporated under the law of Spain. Note that inclusion has been temporarily suspended, pending a review requested by the Spanish government.
- ITCs and international holding companies (IHCs) incorporated under the law of Malta.
- Holding companies incorporated under the law of Austria that do not carry out substantive economic activities.
- Foreign Trade Zones located in Costa Rica.
- International Business Centre of Madeira (IBCM) in Portugal.
- 20 different regimes of companies incorporated in Singapore.

A foreign holding company is deemed to carry out substantive economic activities if it has, in its country of domicile, operating capacity to manage and make decisions regarding (i) activities with the purpose of generating income from its assets or (ii) management of equity interests with the purpose of generating income in the form of profit distributions and capital gains.

Operating capacity should be measured by (i) the existence of physical facilities and (ii) qualified employees to manage and make decisions according to the complexity of the tasks to be performed. It is important to note that the definition only expressly makes reference to Dutch and Danish holding companies although it also could be considered to apply to Austrian holding companies.

It is generally understood that the concept of a privileged tax regime is subject to stricter transfer pricing, thin capitalisation, and tax deduction rules. There are also a number of adverse implications from a Brazilian CFC perspective. For the jurisdictions considered as tax havens, in addition to the tax consequences applicable for privileged tax regimes above, the IRRF rate due on capital gains and cross-border payments, such as services fees, royalties, and interest, is generally 25%.

Jurisdictions that satisfy certain international transparency standards may apply for the rate (to be considered a tax haven/privileged tax regime) to be lowered from 20% to 17%.

Bad debt

Losses on bad debts are tax deductible, depending on the amounts, time overdue, and administrative and/or legal actions taken to recover losses. Losses arising from inter-company transactions are not tax deductible.

Charitable contributions

Donations are deductible, up to certain limits, if recipients are registered as charitable institutions.

Travel expenses

Travel expenses may only be considered deductible if they are incurred in connection with business activities, duly documented and substantiated.

Medical and pension expenses

Expenses of group medical care and health insurance programmes for employees and contributions to private supplementary pension schemes are generally considered deductible if supplied to all employees indiscriminately.

Fines and penalties

Punitive tax/contribution penalties are not deductible for tax purposes.

Taxes/contributions

Taxes, contributions, and related costs, such as late-payment interest, are generally deductible for tax purposes on an accrual basis. This rule does not apply to taxes/contributions being or to be challenged by the taxpayer at any level of litigation, which are deductible for tax purposes only on a cash basis.

Tax losses carried forward

Tax losses (i.e. for IRPJ and CSLL purposes) may be carried forward without any time limitation. However, the tax loss may not reduce taxable income by more than 30% of its amount prior to the compensation of the tax loss itself (and is subject to certain loss recoupment rules).

There is no carryback of tax losses or monetary restatement.

Payments to foreign affiliates and related companies

Royalties and technical service fees (with transfer of technology or know-how) payable to foreign companies with a direct or indirect controlling interest in the Brazilian company are deductible for tax purposes (observing applicable deduction limits), provided the contract has been duly registered with the National Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial* or INPI) and approved by the Brazilian Central Bank.

The Brazilian Chamber of Federal Tax Appeals (CARF) considered that certain rights to distribute/commercialise software should be treated as a 'royalty' for Brazilian tax purposes. The decision issued by the first panel of the Higher Chamber of the Administrative Tribunal considered that such royalty remittances were not deductible when paid to shareholders.

Payments under cost sharing arrangements

Reimbursements paid under cost sharing arrangements can be considered deductible for IRPJ purposes, to the extent that certain requirements set forth by administrative decisions (especially tax ruling COSIT 8/2012) are met by the company performing such payments.

Group taxation

Consolidated tax returns are not permitted in Brazil.

Transfer pricing

The Brazilian transfer pricing rules apply to import and export transactions of goods, services, and rights between related parties (the legislation provides a broad list of the parties considered as 'related' for transfer pricing purposes). Under such rules, the price determined between related parties shall be acceptable, for Brazilian tax purposes, if it is in accordance with one of the transfer pricing methods established by the legislation (no profit methods are available). Since there is no best method approach, taxpayers can choose the least onerous alternative for each good, service, or right on an annual basis (except in cases involving listed commodities). Moreover, all transactions with both tax havens and those subject to privileged tax regimes are subject to transfer pricing rules, whether involving related parties or not.

Interest

Brazilian transfer pricing rules are applicable to interest derived from/charged to inter-company loans and/or with entities situated in low-tax jurisdictions, and such interest must comply with the rates established below, in addition to a spread determined by the Ministry of Finance, in order to be acceptable for tax deductibility purposes:

i. In case of transaction in US dollars, subject to a fixed interest rate: Rate of Brazilian sovereign bonds issued in US dollars in foreign markets.
ii. In case of transaction in Brazilian reais, subject to a fixed interest rate: Rate of Brazilian sovereign bonds issued in Brazilian reais in foreign markets.
iii. In all other cases (e.g. euros): LIBOR for the period of six months.

The additional spread is currently set at 3.5% per year, applicable to interest due to foreign-related parties or to low-tax jurisdictions, and 2.5% per year, in case of interest charged by the Brazilian entity.

For transactions covered in item (iii) above, in currencies for which there is no specific LIBOR, the LIBOR for deposits in US dollars shall be the one to be considered.

Royalties

Operations involving royalties registered with the National Institute of Intellectual Property should not generally be subject to transfer pricing rules.

Services/Goods/Rights

The adequacy of the price performed between related parties in any operations involving goods, services, and rights shall be supported by the application of one of the following transfer pricing methods, as determined in the Brazilian transfer pricing rules (the company may choose the most convenient method as there is no 'best method' rule).

Methods available for documenting the import transactions:

- Comparable independent price (PIC).
- Resale price less profit (PRL).
- Production cost plus profit (CPL).
- Imports of quoted commodities (PCI) - applicable only to commodities.

Methods available for documenting the export transactions:

- Export sales price (PVEx).
- Wholesale price in the country of destination less profit (PVA).
- Retail price in the country of destination less profit (PVV)
- Acquisition or production cost plus taxes and profit (CAP).
- Export of quoted commodities (PECEX) - applicable only to commodities.

Relief of proof rules (materiality and profitability safe harbours) for inter-company export transactions are available.

Please note that imports and exports of commodities, quoted in commodities exchange markets, must be tested by the use of specific methods called PCI and PECEX, respectively. Based on these methods, taxpayers shall compare the transaction amounts with the daily average quote for each product.

Country-by-country (CbC) reporting

Although Brazil recently introduced the obligation to present the CbC report, it has not yet imposed the obligation to file either the Master or the Local file.

Thin capitalisation

The Brazilian thin capitalisation rules establish that interest paid or credited by a Brazilian entity to a related party (individual or legal entity), resident or domiciled abroad, not constituted in a tax haven or in a jurisdiction with a privileged tax regime, may only be deducted for income tax purposes if the interest expense is viewed as necessary for the activities of the local entity and the following requirements are met:

i. the amount of debt granted by the foreign-related party (which has participation in the Brazilian entity) does not exceed twice the amount of its participation in the net equity of the Brazilian entity
ii. the amount of debt granted by a foreign-related party (which does not have participation in the Brazilian entity) does not exceed twice the amount of the net equity of the Brazilian entity
iii. the total amount of debt granted by foreign-related parties as per (i) and (ii) does not exceed twice the sum of participation of all related parties in the net equity of the Brazilian entity, and

iv. in case debt is only granted by related parties that do not have a participation in the Brazilian entity, the total amount of debt granted by all of these related parties does not exceed twice the amount of the Brazilian entity's net equity.

Consequently, if one of the mentioned 2:1 ratios is exceeded, the portion of interest related to the excess debt amount will not be deductible for Brazilian income tax purposes.

Similar provisions are also applicable to interest paid or credited by a Brazilian entity to an individual or legal entity (whether or not a related party) resident or domiciled in a tax haven or in a jurisdiction subject to a privileged tax regime. In these cases, the ratio reduces to 30% of the Brazilian entity's net equity (0.3:1 ratio).

Controlled foreign companies (CFCs)

Law No. 12,973/2014 introduced rules for the treatment of controlled and affiliated companies for Brazilian CFC purposes.

For controlled companies, the law expressly applies to both directly and indirectly controlled entities individually ('top down look through approach'). As such, any investment in a controlled foreign entity must be adjusted yearly to reflect the change in the investment value corresponding to the profits or losses of the directly and/or indirectly controlled entity. The change in investment must be recognised in proportion to the Brazilian parent's participation in its equity, and any positive adjustment relating to profits earned, calculated under the local accounting standards of the jurisdiction of the controlled entity, must be subject to IRPJ and CSLL annually.

Taxpayers will be allowed to consolidate positive and negative adjustments until 2022, provided certain conditions are satisfied as defined by the legislation.

One of the requirements introduced by the legislation is related to the concept of the sub-taxation jurisdiction, which is defined as being a jurisdiction that has a nominal income tax rate of less than 20%. In order to be able to consolidate, a company cannot be subject to a sub-taxation regime, in addition to not being subject to a privileged tax regime or resident in a tax haven (or controlled, directly or indirectly, by such entities).

In case the taxpayer does not choose to consolidate its accounting losses, losses will only be compensated by the foreign controlled entity with its own future profits. Accumulated losses accrued before the above-mentioned law may also be used to offset profits without any time limitation, subject to appropriate disclosure.

Under certain conditions, taxpayers may choose to pay income tax due on the foreign profits proportionally to the profits actually distributed to the Brazilian entity, in subsequent periods to that in which such results were generated. However, in the first year, even where there is no distribution of profits, 12.5% of profits will be deemed to be distributed to the Brazilian parent. If no further profits are distributed, the remaining profits will be deemed to be distributed in the eighth subsequent year. Taxpayers choosing to postpone payment of income tax due should consider the impact of interest as well as foreign exchange rates.

In addition to corporate taxes paid, the law expressly extends foreign tax credits to withholding income tax paid abroad on the profits distributed to the Brazilian parent.

For affiliated companies, the law does not require adjustments to the Brazilian entity's accounts but rather focuses on the profits distributed. Profits will be considered distributed to the parent when credited or paid or in other specific circumstances defined by the legislation. As such, any profits earned by a Brazilian entity through a foreign affiliate will generally only be taxable in Brazil on 31 December of the year in which they were actually distributed to the Brazilian entity, provided that the affiliate satisfies certain conditions defined by the legislation, including not being located in a low-tax jurisdiction.

The CFC rules will not apply for directly or indirectly controlled foreign entities and affiliates in case of activities related to the exploration of oil and gas in Brazil.

Until calendar year 2022, Brazilian parent companies may deduct up to 9% as a presumed/deemed credit on the CFC's taxable profit, generated by investments abroad that are engaged in the manufacture of food and beverage products and in the construction of building/infrastructure works.

This list of activities has been extended to include manufacturing, mineral extraction, exploitation, under public concession contracts, of public assets located in the country of residence of the CFC entity, as well as other general industry.

Tax credits and incentives

Foreign tax credit

Brazilian resident companies are taxed on worldwide income, but they may compensate the income tax paid in the country of domicile of the branch, controlled, or associated company, and the tax paid on earnings and capital gains, against the corporate income tax due in Brazil. The amount of tax effectively paid abroad, to be compensated, may not exceed the amount of income tax and surtax due in Brazil on the amount of profits, earnings, and capital gains included in the calculation of taxable income.

Please refer to Controlled foreign companies (CFCs) in the Group taxation section for a description of the use of foreign tax credits.

Investment project incentives

Total or partial exemption from duty, excise tax, and social contributions on imported equipment is granted on certain approved investment projects.

Approved investment projects are also granted accelerated depreciation on nationally produced equipment and access to low-cost financing. Sales of some capital equipment are exempt from state sales tax.

Brazilian corporate taxpayers can apply a percentage of their income tax liability on deposit for reinvestment and investment in their own approved investment projects. These approved investment projects are normally granted total or partial income tax exemption.

The Brazilian legislation also provides tax incentives for projects focusing on technological innovation.

Program for Investment Partnerships

The Program for Investment Partnerships (*Programa de Parcerias de Investimentos* or PPI) intends to amplify and strengthen the interaction between the Brazilian state and private sector through partnership agreements to carry out public infrastructure projects.

PPIs can be used for (i) public infrastructure projects that are already under way or to be performed through partnership agreements to be signed by the direct or indirect bodies of the Brazilian federal government; (ii) public infrastructure projects to be performed through partnerships signed by the government of states or municipalities directly or indirectly, but delegated or fomented by the federal government; and (iii) other measures established by the National Privatization Plan, per law 9,491/97.

The Brazilian National Development Bank (BNDES) is authorised to support the PPIs through the Partnership Structuring Support Fund (*Fundo de Apoio à Estruturação de Parcerias* or FAEP), created specifically for such partnerships. The fund will be responsible for providing technical services to structure the aforementioned PPIs and the necessary privatisation measures, and shall have a ten-year period, renewable for an additional ten-year period if necessary.

Regional incentives

Income tax exemptions or reductions are also available for companies set up in specified regions within Brazil, primarily the north and northeast regions. These incentives are designed to accelerate the development of certain less-developed regions and industries considered to be of importance to the economy.

ICMS incentives - State tax incentives/benefits

According to the Federal legislation (Complementary Law 24/1975), the ICMS incentives or similar tax benefits granted by an individual state should be approved by all states through an agreement with the National Council of Fiscal Policy (CONFAZ). However, such tax incentives were usually granted by the states without this formal acceptance. As a result, ICMS incentives, granted in such terms, were or could be challenged by the other states, claiming the unconstitutionality of the incentive.

On 12 July 2017, the Brazilian Congress approved the validation of all ICMS incentives currently granted by the Brazilian states to the taxpayers. In practical terms, such validation will sort out the so-called ‘tax war’ in which any state would not be able to challenge going forward the unconstitutionality on any ICMS incentive already granted at the Supreme Court level.

In this sense, on March 2018, all states have listed their ICMS incentives in order to be valid as per the applicable tax legislation (Complementary Law 160/2017 and CONFAZ Agreement 190/2017). Until each of such incentives are valid, other states may grant similar tax incentive of any other state to their taxpayers in order to achieve tax equality.

Other incentives

In addition, certain excise and sales tax exemptions are granted to exporters of manufactured goods.

Withholding taxes

Profits/dividends distributed to resident or non-resident beneficiaries (individuals and/or legal entities) are generally not subject to IRRF (Brazilian term for withholding income tax) (*please see the Income determination section for more information*). This provision is also applicable to dividends paid to non-resident companies located in a tax haven jurisdiction.

The IRRF rate applicable to payments for services rendered by non-resident companies or individuals is generally 15% but can be increased to 25% in certain cases. Other transactional taxes also need to be considered on such payments.

Payments for services, royalties, and interest to non-resident companies located in a tax haven jurisdiction (black list only) are subject to IRRF at the rate of 25%.

The RFB issued guidance in relation to how they should treat certain service fees, which, in effect, allow certain payments to be exempt from IRRF in Brazil, under certain tax treaties.

Certain types of income paid by Brazilian companies to non-resident recipients are subject to IRRF as follows:

	IRRF (%) (3)		
Recipient	**Dividends (1)**	**Interest**	**Royalties**
Non-resident companies and individuals:			
Non-treaty	0	15	15
Tax haven	0	25	25
Treaty (2):			
Argentina	0	15	15
Austria	15	15	10/15/25
Belgium	10/15	10/15	10/15/20
Canada	15	10/15	15/25
Chile	10/15	15	15
China, People's Republic of	15	15	15/25
Czech Republic	15	10/15	15/25
Denmark	25	15	15/25
Ecuador	15	15	15/25
Finland	10	15	10/15/25
France	15	10/15	10/15/25
Hungary	15	10/15	15/25
India	15	15	15/25
Israel	10/15	15	10/15
Italy	15	15	15/25
Japan	12.5	12.5	12.5/15/25
Korea, Republic of	10/15	10/15	10/15/25
Luxembourg	15/25	10/15	15/25
Mexico	10/15	15	10/15
Netherlands	15	10/15	15/25
Norway	15	15	15/25
Peru	10/15	15	15
Philippines	15/25	10/15	15/25
Portugal	10/15	15	15

Recipient	IRRF (%) (3) Dividends (1)	Interest	Royalties
Russia	10/15	15	15
Slovak Republic	15	10/15	15/25
South Africa	10/15	15	10/15
Spain	10/15	10/15	10/15
Sweden	25	25	25
Trinidad and Tobago	10/15	15	15
Turkey	10/15	15	10/15
Ukraine	10/15	15	15
Venezuela	10/15	15	15

Notes

1. Note that the remittance of dividends is generally not subject to taxation in Brazil.
2. Treaty rates in excess of those in force for non-treaty countries are automatically reduced. The relevant treaty should be consulted on a case-by-case basis to confirm that the tax reduction is applicable in each case.
3. For treaties with multiple IRRF rates, the following rules generally apply:
   - Dividends: If there was IRRF on dividends, which is not the case according to Brazilian legislation, the 10% (or 15%) rate would generally apply if the beneficial owner is a company that directly holds a certain minimum participation in the capital of the company paying the dividends; the 15% (or 25%) rate is considered for all other cases.
   - Interest: The 10% rate generally applies to loans with a certain minimum term granted for specific purposes (e.g. acquisition of capital goods); the 15% rate is considered for all other cases.
   - Royalties: The 10% rate generally applies to royalties arising from the use of, or the right to use, cinematographic films, films or tapes for television or radio broadcasting, and any copyright of literary, artistic, or scientific work produced by a resident of a contracting state; the 25% (or 15%) rate generally applies to royalties arising from the use of, or the right to use, trademarks; and the 15% (or 10%) rate is considered for all other cases.

Tax administration

Taxable period

For tax purposes, a company's year-end is 31 December. A different year-end for corporate/accounting purposes is irrelevant.

Tax returns

With few exceptions, corporate entities, including those that are foreign-controlled, must file an annual tax return consolidating the monthly results of the previous calendar year. This tax return must normally be filed by the end of July following the tax year ending on 31 December.

Supporting documentation must be retained for at least five years.

Please note that there are a number of other declarations/returns imposed by the RFB, for different taxes, at federal, municipal, and state levels, which make the tax administration in Brazil notably bureaucratic.

Payment of tax

In the case of income tax, it is generally calculated monthly, and payments should generally be collected and paid by the last working day of the subsequent month. Any amounts of income tax due for the year (exceeding the payments performed) must be paid by the last working day of March of the subsequent year.

There is an option to pay the tax due at the end of each quarter in three instalments, the first one starting from the subsequent month to the end of the quarter. When income tax is calculated quarterly, the taxpayer must perform the applicable payment by the last working day of the month subsequent to the end of the quarter.

There are many other taxes applied in Brazil with different due dates established by the domestic legislation.

Tax audit process

As all tax returns are digital (*please refer to public digital bookkeeping system [SPED] below*) , they may be selected for audit by computer, according to various criteria, including type of business, unusually large or small amounts of income or deductions, and random sampling.

No corporate entity, whether a taxpayer or not, is excused from furnishing information or explanations required by the tax authorities.

When audits are conducted on the premises of taxpayers, tax inspectors have broad powers to inspect books and documents and to request information and any data deemed necessary. This is generally disrupting and, in practice, every effort is made to expedite the conclusion of these audits.

Whenever a violation is determined during a tax audit, the inspectors must draw up an infringement notification, which starts the administrative procedure for additional tax assessments.

It should be noted that, in case of doubts regarding the correct tax procedure to be adopted in a specific situation, taxpayers are allowed to consult with the RFB; however, the results of the consultations only bind the respective taxpayers.

Statute of limitations

The tax authorities may generally audit taxpayers up to five years after the close of the tax year. There is some debate about the moment this five-year period begins, depending on the type of tax considered and certain situations. Certain specific taxes and labour obligations have a longer statute of limitation period.

Topic of focus for tax authorities

It should be noted that, over the years, Brazil has applied a 'form-over-substance' approach. Nonetheless, as of 10 January 2001, Supplementary Law 104/2001 introduced a substantial modification in the Brazilian tax code (the so-called anti-avoidance rule). This law establishes a substance-over-form approach that, once regulated, may allow the RFB to disregard tax-driven transactions.

Although Supplementary Law 104/2001 has not yet been regulated, in our local practice we have seen that tax authorities are keen on ensuring taxpayers have economic substance in their operations (e.g. the use of special purpose entities to enable the amortisation of goodwill for tax purposes in Brazil).

Public digital bookkeeping system (SPED)

Brazil has implemented a public system of digital bookkeeping known as SPED, which aims at gradually replacing paper copies of invoices and tax records for electronic files. SPED can be defined as an instrument that unifies the activities of reception, validation, storage, and legalisation of records and documents that are part of the commercial and tax bookkeeping of companies, through a single, computerised flow of data.

Comprised of three pillars (electronic invoice, digital fiscal bookkeeping, and digital accounting bookkeeping), the implementation of SPED requires adjustments to the relationship with tax authorities, clients, suppliers and, mainly, on the internal operational processes, which will demand an integrated action from different areas (tax, labour [eSocial], indirect tax [bloco K], accounting, information technology, supplies, production, commercial, and others). On the other hand, occasional inconsistencies from databases, as well as operational errors related to tax and accounting information to be generated, usually unknown to the companies' administration, are subject to increased visibility and monitoring by the RFB.

It is important to bear in mind that there are many more Brazilian ancillary obligations to fulfil, based on electronic frameworks established by the relevant federal, state, and municipal authorities, which may not be comprised within the SPED environment.

The RFB provide for so-called 'accounting tax bookkeeping' (ECF), which replaced the Brazilian corporate income tax return (DIPJ), where Brazilian taxpayers need to inform all transactions that impact the computation bases for IRPJ and CSLL purposes. The ECF shall be transmitted on an annual basis to the SPED system up to the last working day of July of the subsequent year to the calendar year it refers.

The Brazilian government is currently introducing two new ancillary obligations for reporting payroll taxes, contributions, and certain withholding taxes, referred to as 'eSocial' and 'EFD-Reinf'. The eSocial specifically relates to payroll taxes and contributions and started in waves in January 2018, and the launching will be concluded in June 2018 for companies with gross revenues exceeding BRL 78 million (in 2016). For the other companies, it is planned to start in the second semester of 2018. An additional group of information related to health and safety will be due in 2019.

EFD-Reinf is a spinoff of eSocial, and aside from the disclosure of certain withholding taxes information, it replaces the 'EFD-contribuições' module in relation to the social security contribution levied on gross revenue (CPRB). EFD-Reinf is also being implemented in steps, starting in June 2018 for companies with gross revenues exceeding BRL 78 million. Companies that should lodge the eSocial should also submit the EFD-Reinf.

Ancillary obligations imposed on import and export of services

The RFB issued regulations that imposed an ancillary obligation, called 'SISCOSERV', regarding transactions carried out between Brazilian residents and non-residents involving services, intangible assets, and other operations. Whenever one of the previous situations takes place, tax authorities must be informed. The type of information to be disclosed is detailed in complementary rules issued by the RFB.

Other issues

Intergovernmental agreements (IGAs)

In force as of August 2015, an IGA was signed between Brazil and the United States, aiming to exchange information related to Brazilian foreign financial institutions (FFIs), in an effort to mitigate tax evasion.

Such IGA is based on the tax information exchange agreement (TIEA) signed by Brazil and the United States in 2007 (although it only came into force in 2013). Both the TIEA and the IGA aim to improve compliance in relation to tax law.

Base erosion and profit shifting (BEPS)

Since June 2014, the RFB have closely followed the discussions of the G20/OECD BEPS project and adopted a series of measures in relation to the minimum standards proposed by the BEPS Action Plans.

Multilateral Convention on Mutual Administrative Assistance (MCAA)

Although not strictly developed under the BEPS project, the MCAA, signed by Brazil and in force since October 2016, provides a platform for automatic and on-demand exchange of information between tax authorities of different jurisdictions.

Under the umbrella of the MCAA, Brazil has signed two Multilateral Competent Authority Agreements, which will allow tax authorities to automatically exchange financial information (CRS MCAA) and country-by-country reportings (CbC MCAA).

Common reporting standards (CRS)

On 29 December 2016, the RFB issued the final regulations in relation to the implementation of the CRS in Brazil. The regulations define the relevant information that should be exchanged, including information on financial assets, as well as the specific procedures that should be followed by the financial institutions that will present the report starting in 2018.

Country-by-country (CbC) reporting

On 29 December 2016, the RFB issued the final regulations in relation to the implementation of CbC reporting, establishing the framework under which multinational enterprises (MNEs) are required to disclose information in Brazil related to their economic activities worldwide. The information has been disclosed on the Corporate Income Tax Return (ECF) since 2017.

Mutual Agreement Procedure (MAP)

RFB issued Normative Instruction 1669/2016 laying out the rules to allow taxpayers to access the MAP. Although Brazil had included Article 25 of the OECD Model Convention (related to MAP provision) in its Double Tax Treaties, before NI 1669/2016 there were no specific procedures to access this resource.

Multilateral Convention to implement tax treaty related measures to prevent BEPS (MLI)

Brazil has not signed the MLI, but has started to include the minimum anti-abusive standards in its newly negotiated treaties.

Exchange of information of Brazilian Rulings

Normative Instruction 1689/2017 introduces the compulsorily exchange of information on tax rulings rule, which according to the RFB should include 'solução de consulta', 'solução de divergência', and 'ato declaratório interpratativo'. The exchange of information should be restricted to transfer pricing, PE, or the PADIS tax benefit.

Bulgaria

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Significant developments

New mandatory country-by-country (CbC) reporting obligations and notification requirements

On 4 August 2017, the amendments to the Tax and Social Security Procedures Code (TSSPC) introducing the CbC reporting requirements in Bulgaria were published in the State Gazette. The rules regulate the mandatory CbC reporting by multinational enterprise groups (MNE groups) with consolidated group revenue exceeding 750 million euros (EUR). Once submitted, the CbC reports will be subject to automatic exchange between the tax administrations of the jurisdictions in which the MNE group operates.

Specific rules have been enacted with respect to MNE groups with total consolidated group revenue exceeding 100 million Bulgarian lev (BGN), whose ultimate parent company is a Bulgarian tax resident. Those groups are now obligated to file CbC reports to the National Revenue Agency (NRA) that will not be subject to automatic exchange of information with other jurisdictions. Bulgarian tax residents that are part of an MNE group shall notify the executive director of the NRA of the group entity that will submit the CbC report. The notification deadline is the last day of the reporting fiscal year (FY) of the MNE group (e.g. 31 December 2018 for FY 2017).

The first year for which CbC reports and CbC notifications should have been submitted was FY 2016 (FY 2017 in case of secondary reporting mechanism).

Amendments of the rules on mandatory value-added tax (VAT) registration (shorter deadlines apply in some cases as of 1 January 2018)

As of 1 January 2018, some amendments have been introduced into the rules on mandatory VAT registration under the Bulgarian VAT Act. The VAT Act previously provided for mandatory VAT registration upon reaching a statutory threshold of BGN 50,000 taxable turnover in Bulgaria for a period of 12 months. As of 1 January 2018, if said threshold of BGN 50,000 taxable turnover in Bulgaria is reached for a period not longer than two consecutive months, including the current month, the taxable person shall apply for a mandatory VAT registration within seven days.

Mandatory registrations in the electronic system of the Customs Agency under a new regime as of 1 February 2018

As of 1 February 2018, an entity should have a registration in the electronic system of the Customs Agency under a new regime in order to submit customs declarations and applications (or to have such submitted on its behalf). The registration is required for all entities that are holders of customs procedures (import, export, inward or outward processing, and others).

Introduction of new garbage collection fee calculation mechanism

Amendments to the Local Taxes and Fees Act have determined that local municipalities will no longer be able to set the amount of the garbage collection fee based on the taxable value of the immovable property, as was permitted before. Instead, local municipalities will calculate the garbage collection fee based on either the actual volume of the garbage produced by the individual property (or alternatively, based on the estimated volume taking into account the volume of the garbage containers and the collection frequency) or on the number of garbage collection service users at the given immovable property.

The new garbage collection fee calculation rules will be applicable as of 1 January 2020.

Taxes on corporate income

Bulgarian tax residents are taxed on their worldwide income. Non-residents are taxed on their income from Bulgarian sources only, through a permanent establishment (PE) and/or via withholding tax (WHT), depending on the case (*see the Branch income section*).

In general, corporate income is subject to corporate income tax (CIT) at a flat rate of 10%.

Alternative tax

Income earned by organisers of gambling games for which the bet is included in the price of a phone or other telecommunication service is subject to 15% alternative tax, applied on the increase in the price of the phone or other telecommunication service (i.e. the difference between the regular price of the service and the new higher price due to the gambling game). A fixed-sum tax is applied to the operation of gaming machines.

Online gambling games are exempt from the alternative tax (and are subject to standard CIT instead), as are a significant part of the other land-based gambling games (i.e. totto; lotto sports betting, including horse and dog racing; and betting on random events or related to the knowledge of facts).

Tonnage tax regime

A special alternative tax regime applies to the operation of commercial maritime vessels, as per their net tonnage, at a rate of 10%.

Local income taxes

There are no provincial or local government corporate income taxes in Bulgaria.

Corporate residence

A corporation is resident in Bulgaria for tax purposes if it is incorporated in Bulgaria.

Permanent establishment (PE)

PEs of foreign tax residents (e.g. branches) are treated as separate entities similar to Bulgarian residents for tax and accounting purposes.

The definition of a PE in the Bulgarian legislation follows, in general, the Organisation for Economic Co-operation and Development (OECD) model; however, it covers a broader scope of activities leading to a tax presence in Bulgaria. A PE is generally defined as a fixed place (own, rented, or otherwise used) through which a foreign entity partly or wholly carries out business activities in the country.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 20%. A reduced VAT rate of 9% applies to certain tourist services. Some activities are zero-rated, including intra-Community supplies, exports of goods to countries outside the European Union (EU), international transport of goods (i.e. transport to or from countries outside of the European Union), and supplies of goods and services related to aircraft and vessels, subject to statutory limitations.

Some supplies are VAT exempt without the right to a VAT credit, including (but not limited to) certain land transactions; leasing of residential property to individuals; financial, insurance, gambling, educational, and health services; and provision of food products to a food bank free of charge, subject to certain statutory conditions. Options to charge VAT exist for certain land transactions, leasing of residential property to individuals, and finance lease contracts.

Input VAT shall be deducted proportionately depending on the percentage of the use of the goods or the immovable property for business purposes.

The VAT Act provides for mandatory VAT registration upon certain conditions (e.g. for all companies upon reaching a statutory threshold of BGN 50,000 taxable turnover in Bulgaria for a period not longer than two consecutive months, including the current month). Voluntary VAT registration is also available. The Bulgarian legislation does not provide for retroactive VAT registration.

The following mechanism for VAT recovery applies to VAT-registered companies: the positive or negative difference between the output VAT charged by the company and the input VAT for the respective month results, respectively, in a VAT payable or a VAT refundable position. The VAT payable should be remitted to the state budget not later than the 14th day of the month following the respective month. VAT refundable is offset against any VAT payable in the following two months, and any remainder is effectively recovered within 30 days thereafter.

The following statutory periods for VAT refunds apply:

- 30 days for persons that have performed supplies subject to zero-rate (e.g. exports) within the last 12 months exceeding 30% of the total value of all taxable supplies performed by them in the same period, as well as by large investors meeting certain specific conditions.
- Two months and 30 days in all other cases.

It is possible to claim a refund for VAT paid with respect to assets acquired not earlier than five years prior to the VAT registration, under certain conditions. In the case of real estate, the term is 20 years.

The cash accounting regime may be applied by persons with a taxable turnover below EUR 500,000 for a period of 12 months and a number of other requirements. Taxpayers authorised to apply this regime remit VAT upon receiving a payment from their counterparts and are entitled to VAT credit when they make a payment to their suppliers. Under this regime, a person who has received an invoice from a supplier that is using the cash accounting regime will be entitled to VAT credit upon payment of the invoiced amount.

The telecommunications, broadcasting, and electronically supplied services rendered to EU non-taxable persons (e.g. private individuals, public bodies) are subject to VAT in the country where the customer is established, has its permanent address, or usually resides. This rule has a significant impact on the pricing strategies and the profit margins of the suppliers. In order to apply the correct VAT rate, the suppliers need to collect information to identify the location of their customers. In addition, under this rule, the suppliers are required to register for VAT purposes and pay VAT in different EU countries where they have customers. In order to avoid such administrative difficulties, a possibility for registration under the Mini One Stop Shop (MOSS) is available. Examples of services that are impacted by this VAT rule include the following:

- Fixed and mobile telephone services.
- Access to internet, website supply, and webhosting.
- Radio and television programmes transmitted over a network or distributed via the internet.
- Supply of software and associated updates.
- Supply of music, films, games, images, texts, and information.
- Distance maintenance of programmes and equipment.
- Supply of distance teaching.

Customs duties

Customs duties are calculated in accordance with the EU customs tariff and regulations.

All entities that are holders of customs procedures shall be registered in the electronic system of the Customs Agency.

Excise duties

Excise duties are charged as a percentage of the sales price or customs value or as a flat amount in Bulgarian lev per unit (or per other quantity measures, depending on the type of the excisable good), unless a suspension regime applies. Excisable products include petrol and diesel fuel, liquefied petroleum gas (LPG), heavy oil, kerosene, beer and spirits, tobacco and tobacco products, and electricity.

The applicable rates include the following:

- Unleaded petrol: BGN 710 per 1,000 litres.
- Diesel: BGN 646 per 1,000 litres if used as motor fuel and BGN 646 per 1,000 litres if used for heating purposes.

- LPG: BGN 340 per 1,000 kg if used as motor fuel and BGN 0 per 1,000 kg if used for heating purposes.
- Kerosene: BGN 646 per 1,000 litres if used as motor fuel and BGN 646 per 1,000 litres if used for heating purposes.
- Natural gas: BGN 0.85 per gigajoule if used as motor fuel (may be increased to BGN 5.10 if the European Commission (EC) rules that the rate is incompatible with the state aid rules); BGN 0.60 per gigajoule if used for production purposes; and BGN 0 per gigajoule if used by households.
- Biogas: Zero rate.
- Heavy oil: BGN 646 per 1,000 kg if used as motor fuel for vessels.
- Electricity: BGN 2 per MWh (zero rate if used by households).
- Beer: BGN 1.50/hl/°Plato.
- Wine: Zero rate.
- Ethyl alcohol: BGN 1,100 per hectolitre.
- Cigarettes: 25% *ad valorem* plus BGN 109/1,000 pieces (minimum total of BGN 177 per 1,000 pieces).

Lower rates may apply in certain cases (e.g. beer produced by independent small breweries).

The Excise Duties and Tax Warehouse Act provides for the tax warehousing regime and regulates the production, storage, and movement of excisable products under duty suspension.

Property tax

The annual property tax rate is determined by each municipality and ranges from 0.01% to 0.45% of the tax value of property. Individuals and legal entities that are owners of immovable property (i.e. land and buildings) are liable for property tax. For individuals and residential properties of enterprises, the taxable base is the tax value as determined by the municipal authorities based on certain statutory criteria. The taxable base for properties of enterprises is the higher of the property's gross book value and its tax value determined by the respective municipal authorities.

A garbage collection fee is payable for immovable property at a rate determined by the local municipal council annually.

New rules on the garbage collection fee calculation are to apply as of 1 January 2020. Local municipalities will calculate the garbage collection fee based on either the actual volume of the garbage produced by the individual property (or alternatively, based on the estimated volume taking into account the volume of the garbage containers and the collection frequency) or on the number of garbage collection service users at the given immovable property.

Transfer tax

A transfer tax is due on the value of transferred real estate or motor vehicles, subject to certain exemptions (e.g. contributions in-kind, acquisitions under the Law on Privatisation and Post-privatisation Control). The rate of the transfer tax ranges from 0.1% to 3% and is determined by each municipality.

Stamp duties

There are no stamp duties in Bulgaria.

Bulgaria

Payroll taxes

Upon payment of salaries, the employer should withhold PIT at a flat rate of 10% due on employment remuneration, bonuses, and certain fringe benefits and should remit it to the tax authorities by the 25th day of the following month.

National insurance contributions

National insurance contributions include social security and health insurance contributions.

The aggregate rate of social security contributions is 23.7% to 24.4%*, of which 13.56% to 14.26%* is payable by the employer and 10.14% is payable by the employee.

The aggregate rate of health insurance contributions is 8%, out of which 4.8% is payable by the employer and 3.2% is payable by the employee.

The total national insurance contribution rate (social security and health insurance) is 31.7% to 32.4%*, out of which 18.36% to 19.06%* is payable by the employer and 13.34% is payable by the employee.

* The range is due to the rate of contributions payable to the 'Accident at Work and Occupational Illness Fund', which is due only by the employer and can vary from 0.4% to 1.1%, depending on the employer's economic activity. The rate for the administration and services sector is 0.5%.

Insurance premium tax

A tax of 2% is levied on all insurance premiums paid under insurance agreements covering risks insured in Bulgaria. Life insurance, reinsurance, aircraft, vessels, and international transport insurance agreements are exempt from this tax. The taxable base is the insurance premium received by an insurance company under an insurance agreement.

Insurance companies and their tax representatives are liable to collect the tax and remit it to the budget quarterly by the end of the month following the quarter when the insurance premium was collected.

Tourist tax

The tourist tax is levied with respect to the number of nights spent in hotels and other places for accommodation. The municipalities may determine the tax within a range of BGN 0.20 to BGN 3 per night, depending on the type of accommodation facility.

The tax is payable on a monthly basis by the 15th day of the following month.

One-off taxes

The following corporate expenses are subject to a one-off tax:

- Representative expenses related to a company's business.
- Social expenses provided to employees in kind (monetary social expenses are subject to PIT).
- Expenses in-kind related to the private use of company assets.

The rate of the one-off tax with respect to the above expenses is 10%. Both the expenses and the related one-off taxes are deductible for CIT purposes.

Branch income

Although branches are not deemed to be separate legal persons, branches of non-resident companies have separate balance sheets and profit and loss accounts and are subject to CIT at the standard rate of 10% as well as other general taxes (e.g. VAT, property tax).

Representative offices of foreign entities are not allowed to carry out business activities and are not subject to CIT. A representative office registered under the Encouragement of Investments Act may perform only those activities that are not regarded as 'economic activities' (e.g. marketing activities normally carried out by a representative office and auxiliary to the activities of its head office). Representative offices do not constitute PEs of the non-resident entities unless they engage in business activities in breach of the law.

Profits repatriated by a branch to its head office abroad are not subject to WHT. However, certain income payable by a Bulgarian branch or a PE to other parts of the enterprise abroad may trigger WHT (e.g. income from technical services, interest, royalties) unless the respective expenses are not deductible to the branch or the PE, or are recharged at cost.

Income determination

The taxable result is based on the statutory accounting principles relating to profit/loss and adjusted for tax purposes. Statutory accounting is maintained on an accrual basis in line with the applicable accounting standards.

Small and medium-sized companies may apply specific national standards for the financial statements of small and medium-sized companies or, optionally, International Financial Reporting Standards (IFRS). The principles provided by the standards for the financial statements of small and medium-sized companies are similar to those provided by IFRS. Certain types of companies, including banks and insurance companies, are obligated to apply IFRS.

Inventory valuation

The tax legislation follows the accounting rules for inventory valuation methods. The accounting rules may restrict the application of certain methods (e.g. last in first out [LIFO] is not allowed under IFRS).

Inventory valuation and revaluation methods applicable under accounting standards may be used for tax purposes. Companies may choose the method of inventory valuation but must apply the chosen method consistently throughout the accounting period. An inventory of assets and liabilities is carried out in each accounting period. Accounting gains and losses realised upon revaluation of inventory will not be recognised for tax purposes and will form a temporary tax difference. These gains and losses will be recognised for tax purposes in the period in which the inventory is disposed of.

Capital gains

Realised capital gains are included in corporate income and are taxed at the full CIT rate.

Note that capital gains from securities will not be subject to taxation if resulting from shares in listed companies and tradable rights in such shares on a regulated securities market in the EU/European Economic Area (EEA). Assets distributed as dividends are deemed realised at market value, and any capital gains arising from this will be subject to tax.

Dividend income

Dividends distributed by Bulgarian companies to foreign shareholders and resident individuals are subject to 5% WHT under the domestic legislation (*see the Withholding taxes section for exceptions for payments to EU/EEA tax residents and under double tax treaties [DTTs*]).

Inter-company dividends

Inter-company dividend payments between Bulgarian companies and dividends distributed by EU/EEA residents to Bulgarian companies (except for dividends from special purpose investment companies or in case of 'hidden distribution of profits') are not included in the tax base of the recipient company.

Note that dividends distributed to a Bulgarian company by its EU or EEA subsidiary are exempt from CIT only if the distribution is not treated as a tax-deductible expense by the distributing company.

Stock dividends

No explicit regulation with respect to stock dividends exists in the Bulgarian CIT Act. Rather, the tax treatment of stock dividends follows the accounting treatment.

Interest income

Interest income is included in the financial results of the company and is subject to 10% CIT.

Royalty income

Royalty income is included in the financial results of the company and is subject to 10% CIT.

Exchange rate gains/losses

Exchange rate gains and losses are reported in the profit and loss account and reflected in the assessment of taxable profit.

Foreign income

Income derived outside Bulgaria by resident legal entities and income derived in Bulgaria by Bulgarian branches of non-residents is included in the taxable base for the purpose of CIT, regardless of whether such income is subject to taxation abroad.

In instances where the provisions of a DTT are applicable, a tax credit or exemption for the foreign tax paid may be allowed. There is also a unilateral tax credit that may not exceed the amount of the tax that would be payable in Bulgaria for the same type of income.

Undistributed income of foreign subsidiaries of a Bulgarian resident company is not taxed.

Deductions

Depreciation and depletion

For accounting purposes, depreciation is calculated in accordance with the straight-line, progressive, or declining-balance methods. Accounting regulations permit Bulgarian companies to establish a depreciation schedule for each tangible and intangible fixed asset on the basis of the method chosen by the company.

For tax purposes, only the straight-line method is permitted. For machines and equipment that are part of the initial investment, accelerated depreciation may also apply, subject to certain conditions.

For tax purposes, fixed assets are divided into the following seven categories:

Category	Assets	Maximum rates (%)
I	Massive buildings, industrial constructions/equipment, transmission facilities/lines (including electricity)	4
II	Machinery, production facilities, apparatuses	30/50
III	Vehicles (except cars), coverage of roads and runways	10
IV	Computers, peripherals to computers, software and rights to use software, mobile phones	50
V	Cars	25
VI	Long-term intangibles with legal or contractual limitations on the period of use	33⅓
VII	Other assets	15

Under certain conditions, assets classified in Category II that are new may be depreciated at a maximum rate of 50% for tax purposes.

The depreciation rate for Category VI is determined by the period of limitations, but not more than 33⅓%.

Depletion is not specifically regulated for tax purposes.

Goodwill

Goodwill is not amortisable under Bulgarian tax law.

Start-up expenses

Start-up expenses may be recognised as deductible in the year of establishment of the company.

Interest expenses

Interest expenses are recognised as deductible expenses, subject to the thin capitalisation rules applicable in Bulgaria (*see Thin capitalisation in the Group taxation section*).

Bad debt

Bad debt impairment costs can be deducted upon expiration of the statute of limitation period. Also, the impairment costs can be recognised for tax purposes upon transferring the receivables. Such impairment costs are tax deductible for financial institutions in the year of recognition.

Charitable contributions

Generally, charitable contributions to certain organisations or persons, specified by law, can be deductible at up to 10% of a company's accounting profit.

Fines and penalties

Expenses for fines and penalties for violation of the legislation are not deductible.

Taxes

CIT is not deductible for tax purposes. However, other taxes, such as one-off taxes on certain expenses (e.g. representative expenses, certain types of fringe benefits) or local taxes and fees may be recognised as deductible for CIT purposes.

Net operating losses

The taxpayer has the right to carry forward tax losses incurred in a given year over the following five years. The loss subject to carryforward is the negative amount of the financial result adjusted for tax purposes, with certain add-backs and deductions specified in the tax legislation.

Tax losses may be reversed up to the amount of the positive financial result after tax adjustments (without the effect of the loss subject to be carried forward itself).

Carryforwards of foreign-source losses may only offset income from the same source. However, EU/EEA-source losses may offset income from other sources, including Bulgarian sources.

Loss carryback is permitted in very specific cases.

Payments to foreign affiliates

Payments to foreign affiliates may be subject to recalculation by the tax authorities if such payments are not made at arm's length.

Group taxation

No group consolidation is permitted for tax purposes in Bulgaria. All companies must pay tax on the basis of individually assessable profits and losses.

Transfer pricing

Bulgarian law requires that taxpayers determine their taxable profits and incomes applying the arm's-length principle to prices at which they exchange goods, services, and intangibles with related parties (transfer prices). Bulgarian transfer pricing rules generally follow OECD Transfer Pricing Guidelines.

Transfer prices are not set in compliance with the arm's-length principle where:

- prices of the supply of goods or services differ from the market prices or
- loans are received or granted against an interest rate that differs from the market interest rate effective at the time the loan agreement is concluded.

The market interest rate is defined as the interest payable under the same conditions for a loan provided or received, notwithstanding the form of the loan, between non-related parties. The market interest is determined according to the market conditions.

The taxable person should be able to evidence that its relations with related parties are in line with the arm's-length principle.

For the purposes of transfer pricing rules, market prices are determined by the following methods:

- Comparable uncontrolled price method.
- Resale price method.
- Cost plus method.
- Transactional net margin method.
- Profit split method.

Preparation of transfer pricing documentation is not mandatory but is recommendable for material related party transactions. Recently, the revenue authorities have tended to focus more on the transfer pricing area.

Currently, there is no possibility to obtain an Advance Pricing Agreement (APA). However, it is possible to obtain an opinion from the revenue authorities on a case-by-case basis. Such opinions are not binding, but they may provide protection from assessment of interest for late payment and penalties.

Mandatory country-by-country (CbC) reporting obligations and notification requirements

The following entities have the obligation to submit CbC reports to the NRA:

- An ultimate parent company of an MNE group that is a tax resident in Bulgaria (if the consolidated group revenue exceeds BGN 100 million in the year preceding the reporting fiscal year).
- A Bulgarian subsidiary or a PE of an MNE group, with consolidated group revenue exceeding BGN 1,466,872,500 (EUR 750 million) in the year preceding the reporting fiscal year when:
  - the Bulgarian tax administration does not have an available mechanism to receive the CbC reports filed by the ultimate parent entity of the MNE group or another designated reporting group entity, or
  - the MNE group has appointed the Bulgarian subsidiary/PE to act as a surrogate parent company or on behalf of all EU group members, subject to the requirements envisaged in the law.

The CbC reports shall contain certain types of financial information, as well as information on the business activities of all group entities.

The reports will be automatically exchanged between the EU member states or other jurisdictions with which Bulgaria has signed international agreements. An exception exists for the reports submitted by MNEs with group revenue exceeding BGN 100 million whose ultimate parent company is a Bulgarian tax resident, which will not be subject to the automatic exchange of information with other jurisdictions.

The first year for which CbC reports should have been filed by Bulgarian ultimate parent companies or surrogate parent entities was FY 2016. In the other cases, the first reporting year is FY 2017.

Notification requirements

Bulgarian tax residents that are part of an MNE group shall notify the NRA of the group entity that will submit the CbC report. The notification deadline is the last day of the reporting fiscal year of the MNE group.

The first year for which CbC notifications should have been submitted was FY 2016 (the notification deadline for FY 2016 was 31 December 2017).

Thin capitalisation

Interest payable by local companies to local or foreign persons may be restricted by the thin capitalisation rules (which also apply to interest due to non-affiliated companies).

The tax deductibility for interest expenses that exceed interest income is restricted to 75% of the accounting result of the company, exclusive of interest income and expense. If the accounting result of the company before including the effect of the interest income and expenses is a loss, none of the net interest expense will be deductible for tax purposes. Interest on bank loans and interest under financial lease agreements are subject to thin capitalisation regulations only when the agreements are between related parties or guaranteed by or extended at the order of a related party.

The thin capitalisation rules do not apply if the debt-to-equity ratio does not exceed 3:1 for the respective tax period.

Interest expenses restricted in a given year under the thin capitalisation rules may be deducted from the financial result for tax purposes during the following five consecutive years. This reversal may be made up to the tax allowed interest expenses, as per the above formula.

Controlled foreign companies (CFCs)

The Bulgarian tax legislation does not provide for any CFC rules.

Tax credits and incentives

Tax incentives may apply in certain circumstances, including:

- Partial granting of the CIT due for performance of agricultural activities.
- Additional tax deductions for hiring of long-term unemployed, handicapped, or elderly persons.
- Granting back of up to 100% of the CIT due for investment in regions with high unemployment.

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Withholding taxes

Bulgarian companies are required to withhold tax on payments of dividends and liquidation proceeds; interest (including that incurred under finance lease agreements and on bank deposits); royalties; fees for technical services; payments for the use of properties; payments made under operating leasing, franchising, and factoring agreements; and management fees payable to non-residents.

Capital gains from the transfer of shares in a Bulgarian company or immovable property located in Bulgaria realised by a non-resident are also subject to domestic WHT; however, the tax is payable by the non-resident. Capital gains from securities are not subject to WHT if they result from shares in listed companies and tradable rights in such shares on a regulated securities market in the EU/EEA. Capital gains from disposal of governmental bonds are also exempt from WHT realised on a regulated market in the EU/EEA.

Dividends and liquidation proceeds are also taxed where payments are made to resident individuals and non-profit organisations (*for details on dividend payments between domestic companies, see Dividend income in the Income determination section*). Dividends capitalised into shares (stock dividends) are not subject to WHT.

Interest and royalties payable to EU-based associated companies are subject to full WHT exemption in Bulgaria. Associated company criteria are identical to those in the EU Interest and Royalty Directive and require a holding of at least 25% of the capital for at least two years. The WHT exemption on income from interests and royalties can be applied before the expiration of the two-year participation period, provided that the participation in the capital does not fall below the required minimum before the end of this period (i.e. the direct participation is kept for at least two years).

Any fees for services and use of rights (in addition to technical services fees and royalties) accrued to entities in low-tax jurisdictions will attract 10% Bulgarian WHT unless there is proof of the effective provision of the supply. Subject to 10% WHT would also be any accruals for penalties or damages payments to entities in low-tax jurisdictions, except for insurance compensations. The tax legislation introduces a list of low-tax jurisdictions. These are certain off-shore territories that are explicitly listed, as well as countries with which Bulgaria has not signed a DTT and in which the applicable corporate tax rates are more than 60% lower than the applicable rate in Bulgaria.

Certain types of income (other than dividends) accrued by a PE of a foreign person to other parts of its enterprise located outside the country are subject to WHT (*except for that mentioned in the Branch income section*).

Dividends

When a dividend is accrued to a non-resident company or an individual (both resident and foreign), it is subject to WHT at a rate of 5%, unless the rate is reduced by an applicable DTT. No differentiation is made between portfolio and substantial holdings for purposes of this WHT on dividends.

Dividends distributed by a Bulgarian resident company to an entity that is a tax resident in an EU/EEA member state are not subject to Bulgarian WHT.

Interest

A 10% rate applies to interest (including interest from bank deposits) payable to a non-resident, unless the rate is reduced by an applicable DTT.

Interest on borrowings by the government or the Bulgarian National Bank from international financial institutions is not taxable if the respective loan agreements contain relevant exemption arrangements (international treaties override domestic legislation).

Interest paid to an associated EU-based related company is subject to WHT exemption (requiring at least 25% holding for at least two years*, see above for a description of relief from the two-year participation period*).

An exemption from WHT is provided for income from interests on bonds and other debt securities emitted by a local tax resident and admitted to a regulated stock exchange in an EU/EEA member state.

An exemption from WHT is also provided for income from interests on loans extended by a tax resident of an EU/EEA member state, issuer of bonds or other debt securities, provided that the bonds/debt securities are issued for the purposes of extending a loan to a local legal entity and are admitted to a regulated stock exchange in an EU/EEA member state.

Royalties

Royalties payable to foreign persons are taxed at a rate of 10% at source, unless the rate is reduced by an applicable DTT.

Royalty payments to an associated EU-based related company are exempt from WHT (requiring at least 25% holding for at least two years, *see above for a description of relief from the two-year participation period*).

Capital gains and technical services

Capital gains and technical service fees payable to foreign residents are subject to 10% WHT, unless the rate is reduced by an applicable DTT. As per the domestic legislation, technical services include installation and assembly of tangible assets as well as consultancy services and marketing research.

Application of DTT relief

Applying DTT relief is generally possible only after completing an advance clearance procedure with the Bulgarian tax authorities. Companies have to evidence that they satisfy the requirements for applying the DTT (e.g. tax residence, beneficial ownership, existence of contractual relationship, actual accrual/payment of the income). The procedure usually takes 60 days to complete.

The above procedure has to be followed only if the annual income payable by a Bulgarian resident exceeds BGN 500,000. In all other cases, DTT relief can be applied directly, through submitting a tax residence certificate and a beneficial ownership declaration with the payer of the income.

Beneficial ownership is explicitly defined in Bulgarian legislation. A company is considered a beneficial owner of the income if it has the right to dispose of the income, has discretion over its use, bears the whole or a significant part of the risk of the activity from which the income is realised, and does not qualify as a conduit company.

A conduit company is a company that is controlled by persons who would not benefit from the same type and amount exemption if the income was realised directly by them, does not carry out any economic activity except for owning and/or administering the rights or the assets from which the income was realised, and does not own assets, capital, or personnel relevant to its economic activity or does not control the use of the rights or assets from which the income was realised.

The conduit company restriction does not apply to companies that have more than a half of their voting shares traded on a registered stock exchange.

The following is a summary of the main parameters of the Bulgarian DTTs as of 1 January 2018:

	WHT (%)			
Recipient	**Dividends***	**Interest****	**Royalties****	**Capital gains**
Non-treaty	5	10	10	10
Treaty:				
Albania (3, 6, 9, 28)	5/15	0/10	10	0/10
Algeria (24)	10	0/10	10	0
Armenia (1, 2, 6, 28, 36)	5/10	0/5/10	5/10	0/10
Austria (6, 10, 27, 35)	0/5	0/5	5	0/10
Azerbaijan (6, 28, 34)	8	7	5/10	0
Bahrain (6)	5	0/5	5	0
Belarus (6)	10	0/10	10	0
Belgium (6, 10, 27)	10	0/10	5	0
Canada (6, 9, 16, 28, 42)	10/15	0/10	0/10	0/10
China (2, 6, 9, 28)	10	0/10	7/10	0/10
Croatia (27)	5	5	0	0
Cyprus (3, 6, 26, 27)	5/10	0/7	10	0/10
Czech Republic (11, 27)	10	0/10	10	0
Denmark (3, 27)	5/15	0	0	0
Egypt (6)	10	0/12.5	12.5	10
Estonia (9, 16, 27)	0/5	5	5	0/10
Finland (4, 9, 12, 27)	10	0	0/5	0/10
France (5, 27)	5/15	0	5	0
Georgia (6)	10	0/10	10	0
Germany (11, 16, 26, 27, 36, 39)	5/15	0/5	5	0/10
Greece (27)	10	10	10	0
Hungary (6, 27)	10	0/10	10	0
India (6)	15	0/15	15/20	10
Indonesia (6)	15	0/10	10	0
Iran (6, 9, 28)	7.5	0/5	5	0/10
Ireland (3, 6, 9, 27, 28)	5/10	0/5	10	0/10
Israel (18, 19, 20, 21)	10/7.5 to 12.5	0/5/10	7.5 to 12.5	7.5 to 12.5
Italy (27)	10	0	5	0
Japan (3, 6)	10/15	0/10	10	10
Jordan (6, 28)	10	0/10	10	0
Kazakhstan (8, 9, 28)	10	0/10	10	0/10
Kuwait (3, 22)	0/5	0/5	10	0
Latvia (3, 9, 24, 25, 27, 28)	5/10	0/5	5/7	0/10
Lebanon (6)	5	0/7	5	0
Lithuania (16, 27, 28, 29)	0/10	0/10	10	0/10
Luxembourg (3, 10, 27)	5/15	0/10	5	0

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Recipient	WHT (%) Dividends*	Interest**	Royalties**	Capital gains
Macedonia (3, 6)	5/15	0/10	10	0
Malta (12, 17, 27)	0/30	0	10	0
Moldova (3, 6, 9, 28)	5/15	0/10	10	0/10
Mongolia (6)	10	0/10	10	0
Morocco (5, 9, 28)	7/10	10	10	0/10
The Netherlands (3, 7, 9, 27)	5/15	0	0/5	0/10
North Korea (6)	10	0/10	10	0
Norway (16, 22, 28, 41)	0/5/15	0/5	5	0/10
Poland (6, 27)	10	0/10	5	0
Portugal (3, 6, 27)	10/15	0/10	10	0
Qatar (6, 36)	0	0/3	5	0
Romania (6, 27)	5	0/5	5	0
Russian Federation (6)	15	0/15	15	0
Serbia (3)	5/15	10	10	0
Singapore (6, 22)	0/5	0/5	5	0
Slovak Republic (6, 27)	10	0/10	10	0
Slovenia (3, 23, 27, 28)	5/10	0/5	5/10	0/10
South Africa (3, 6, 23, 24)	5/15	0/5	5/10	0/10
South Korea (5, 6)	5/10	0/10	5	0
Spain (3, 27)	5/15	0	0	0
Sweden (9, 27, 28)	10	0	5	0/10
Switzerland (10, 13, 37, 38)	0/10	0/5	0/5	0
Syria	10	0/10	18	0
Thailand (6, 14, 15)	10	0/10/15	5/15	10
Turkey (3, 6, 9)	10/15	0/10	10	0/10
Ukraine (3, 6, 9, 28)	5/15	0/10	10	0/10
United Arab Emirates (6, 22, 34)	0/5	0/2	0/5	0
United Kingdom (27, 28, 38, 40)	5/15	0/5	5	0/10
United States (16, 24, 28, 30, 31, 32, 33)	5/10	0/5/10	5	0/10
Uzbekistan (6, 28)	10	0/10	10	0/10
Vietnam (6, 9)	15	0/10	15	0/10
Zimbabwe (3, 6, 9, 28)	10/20	0/10	10	0/10

Notes

* Under Bulgarian domestic legislation, dividends distributed to non-residents are subject to 5% WHT, unless the recipient is a resident of an EU/EEA member state (in which case the recipient is not subject to WHT).

** Under Bulgarian domestic legislation, interest and royalty payments accrued to EU-resident companies, satisfying the Interest and Royalty Directive requirements, are exempt from WHT.

1. The lower rate applies to dividends paid out to a non-resident that is the direct owner of at least the equivalent of 100,000 United States dollars (USD) forming part of the capital of the company making the payment.
2. The reduced rate for royalties is available for the use of (or right to use) industrial, commercial, or scientific equipment.
3. The lower rate applies to dividends paid out to a foreign company that directly controls at least 25% of the share capital of the payer of the dividends. In the specific cases of the different countries, more requirements may be in place.
4. There is no WHT on royalties for the use of (or the right to use) scientific or cultural works.
5. The lower rate applies to dividends paid out to a foreign company that directly controls at least 15% of the share capital of the payer of the dividends.

6. There is no WHT on interest when paid to public bodies (government, the central bank, and, in several cases, certain governmental bodies).
7. 5% royalties are applicable if the Netherlands applies WHT under its domestic law.
8. Up to 10% branch tax may be imposed on PE profits.
9. The 10% rate on capital gains from securities applies in specific cases that are described in the respective treaty.
10. The zero rate on interest applies if the loan is extended by a bank and also for industrial, trade, and scientific equipment on credit.
11. The zero rate on interest applies if the interest is paid to public bodies (government, municipality, the central bank, or any financial institution owned entirely by the government), to residents of the other country when the loan or the credit is guaranteed by its government, or if the loan is extended by a company for any equipment or goods.
12. The Council of Ministers has stated its intention to renegotiate the DTTs with Malta and Finland.
13. A 5% rate on royalties applies if the Swiss Confederation introduces in its domestic law WHT on royalties paid to non-residents.
14. The 10% rate on interest applies if the interest is received from a financial institution, including an insurance company.
15. The 5% rate on royalties applies if the royalties are paid for the use of copyright for literary, art, or scientific work.
16. The lower rate applies to dividends paid out to a foreign company that directly controls at least 10% of the share capital of the payer of the dividends.
17. The zero rate applies to dividends payable by a Bulgarian resident entity to an entity resident in Malta. The 30% rate applies to dividends payable by a Maltese entity to a Bulgarian entity.
18. The 10% rate applies to dividends distributed by companies that enjoy a reduced or zero CIT by virtue of a tax incentive for investments. In all other cases, the rate is equal to one half of the applicable rate as per the national legislations of Bulgaria and Israel. Nevertheless, the WHT rate may not be less than 7.5% or more than 12.5%.
19. The 5% rate applies to interest payable to banks or other financial institutions. The zero rate applies to interest payable to certain public bodies (governments, municipalities, central banks) or to residents of the other country when the loan or credit is guaranteed, insured, or financed by a public body of that country or by the Israeli International Trade Insurance Company.
20. The rate on royalties is equal to one half of the applicable rate as per the national legislations of Bulgaria and Israel. Nevertheless, the WHT rate may not be less than 7.5% or more than 12.5%.
21. The rate on capital gains from securities is equal to one half of the applicable rate as per the national legislations of Bulgaria and Israel. Nevertheless, the WHT rate may not be less than 7.5% or more than 12.5%. However, capital gains from transfers of shares in entities whose real estate properties exceed 50% of their assets are taxed in the country in which the real estate is located.
22. The zero rate applies to dividends and interest paid to certain public governmental and local bodies as well as entities fully owned by the state.
23. The 5% rate on royalties applies if the royalties are paid for the use of copyright for literary, art, or scientific work as well as for the use of industrial, commercial, or scientific equipment.
24. There is no WHT on interest when paid to and beneficially owned by public bodies (government, local public authorities, the central bank, or any financial institution wholly owned by the government), as well as on interest derived on loans guaranteed by the foreign government or based on an agreement between the governments of the states.
25. The 7% rate on royalties applies if the royalties are paid for the use of, or the right to use, cinematograph films and films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula, or process.
26. The zero rate applies for capital gains from shares in a Bulgarian resident company that are traded on the Bulgarian Stock Exchange.
27. In accordance with the EU Parent-Subsidiary Directive implemented in the Bulgarian legislation, dividends distributed by a Bulgarian resident company to an entity that is a tax resident in an EU member state may not be subject to Bulgarian WHT.
28. Full WHT at source may be levied on capital gains from the sale of shares in companies, the main assets of which are direct or indirect holdings in real estate situated in Bulgaria, and in some other cases (subject to the specifics stipulated in the respective treaty).
29. There is no WHT on interest when paid to public bodies (government, the central bank, governmental institutions) or any financial institution wholly owned by the government.
30. Pension funds and charities are considered resident persons.
31. The zero rate does not apply to dividends distributed to real estate investment trusts (REITs).
32. The zero rate does not apply to interest paid under a back-to-back loan.
33. The benefits of the treaty are limited to entities that satisfy certain criteria (Limitation of Benefits clause).
34. The 5% rate on royalties applies if the royalties are paid for the use of, or the right to use, any patent, design, model, plan, secret formula, process, or know-how.
35. The treaty provides for 10% WHT on capital gains unless shares were sold on a recognised stock exchange or seller owned at least 20% of the issuing company's capital.
36. The reduced rate for interest is available for bank loans (subject to specifics in the treaty).
37. The zero rate applies to dividends paid to a pension fund, central bank, or a foreign company (other than a partnership) if the company directly controls at least 10% of the share capital of the payer for at least one year.

38. The zero rate applies to interest paid to a pension fund, a public body (i.e. the government, a political subdivision, a local authority, or a central bank), in relation to a liability for the sale on credit of goods, equipment or services, as well as to a company with a minimum direct participation of at least 10% in the payer of the interest for at least one year or where a third company holds a 10% minimum direct participation in both the payer and the recipient of the interest.
39. The use or right of use of industrial, economic, and scientific equipment has been excluded from the definition of royalty and is subject to full WHT exemption.
40. The zero rate on dividends applies on dividends distributed to and beneficially owned by a company resident of a contracting state or a pension fund. The 5% rate would apply in all other cases, unless the dividends are paid out of income that is derived from immovable property by an investment vehicle that distributes most of this income annually and whose income from such property is exempted from tax (i.e. real estate investment trust). 15% WHT would apply to a dividend paid out by a real estate investment trust.
41. The zero rate applies to interest paid to certain public bodies (i.e. the government, a political subdivision, a local authority, or a central bank) under a loan extended by a bank or in relation to a sale of industrial, commercial, or scientific equipment on credit or a loan of any kind extended or guaranteed by a governmental institution for the encouragement of exports.
42. The zero rate applies to copyright royalties and other like payments in respect of the production or reproduction of cultural, dramatic, musical, or other artistic work (not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television), arising in one state and paid to a resident of the other state who is subject to tax thereon.

Under some DTTs, technical service payments fall within the definition of royalty payments and are taxed accordingly.

Tax administration

Taxable period

The financial and tax years coincide with the calendar year.

Tax returns

Annual profit must be declared no later than 31 March of the year following the financial (tax) year. Along with their annual CIT returns, companies are required to file financial information for their business activities during the year in a standard statistical form not subject to a financial audit. The self-assessment principle is applied.

Payment of tax

If a company realised net revenue from sales of more than BGN 3 million in the preceding year, it is liable for monthly CIT payments for each month in the current year. If the net revenue from sales for the preceding year is below BGN 3 million but above BGN 300,000, the company is liable for quarterly advance CIT payments for each quarter of the year except the fourth quarter. The amount of the monthly or quarterly CIT instalments is calculated based on the forecasted taxable profit for the current year.

Companies established during the current year and companies with net revenue from sales below BGN 300,000 for the preceding year are not required to pay advance CIT instalments.

The overpaid amount of CIT can be offset against advance and annual payments due for the next period. The overpaid amount may also be effectively claimed for refund by the taxpayer. The difference between the annual tax declared in the CIT return and the advance tax paid for the corresponding year must be paid by the deadline for submitting the tax return on 31 March of the following year.

Priority order for settlement of tax and social security liabilities

Payment of tax liabilities and social security contributions should be made to four separate accounts: for tax liabilities, for general mandatory social security contributions, for supplementary mandatory retirement provisions, and for health insurance contributions.

If a taxpayer has several public liabilities (e.g. tax and/or social security liabilities) to one of the four accounts of the NRA, the one with the earlier payment date will be settled first.

Tax audit process

Tax audits are usually performed every four to five years, corresponding to the period of the statute of limitations.

Statute of limitations

The statute of limitations (i.e. the period within which the state authorities are entitled to collect the tax liabilities and other related mandatory payments) is five years from the beginning of the year following the year in which the tax liabilities became payable. The above periods can be extended in certain cases. However, the maximum period of the statute of limitations is ten years.

Topics of focus for tax authorities

Transfer pricing is likely to become an area of focus for the tax authorities.

Other issues

Intergovernmental agreements (IGAs)

In December 2014, Bulgaria and the United States signed and disclosed a non-reciprocal Model 1B IGA to implement the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA).

As of 1 January 2016, Bulgaria has implemented the rules on automatic exchange of financial information in compliance with the EU law, OECD recommendations, and FATCA. The tax authorities will exchange financial information with foreign tax offices on an annual basis.

The information concerns individual and company accounts (including trusts, foundations, and pass-through foreign control entities), account balances, and fund movements related to dividends, interest, sales proceeds, assets, etc.

Base erosion and profit shifting (BEPS)

Bulgaria has incorporated measures tackling hybrid mismatches in its Corporate Income Tax Act (e.g. non-taxable dividends from EU/EEA subsidiaries become taxable if the dividend payment is deductible at the level of the paying entity).

The Bulgarian tax authorities generally follow the other BEPS developments and consider them in their approach.

Multilateral Instrument (MLI)

Bulgaria is a signatory to the MLI, as of 7 June 2017. As at 1 January 2018, the MLI has not been ratified by Bulgaria. Detailed information regarding the position/reservations of Bulgaria on the provisions of the MLI can be found in the country's List of Reservations and Notifications at the Time of Signature, available on the official OECD website.

Common reporting standard (CRS)

Bulgaria has incorporated the CRS in its domestic Tax and Social Security Procedure Code, effective as of 1 January 2016. Detailed information can be found in the OECD's Automatic Exchange Portal at the OECD BEPS portal.

EU state aid investigations

Currently, there are no investigations on the part of the European Commission (EC) with regard to Bulgarian tax law or Bulgarian companies.

However, in case SA.39869 (2014/N), the EC examined a tax incentive scheme that aims at attracting investments into manufacturing activities in certain of the assisted regions of Bulgaria. The measure allows enterprises to retain up to 100% of the CIT in respect of the tax profit derived from the manufacturing activities carried out in municipalities where the rate of unemployment for the year preceding the current year exceeded by 25% (or more) the national average unemployment rate for the same period.

The EC concluded that the measure meets all the compatibility criteria of the Regional Aid Guidelines, and is therefore compatible with the internal market pursuant to Art. 107(3)(a) TFEU.

Cabo Verde

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Significant developments

State Budget for 2018

The 2018 State Budget Law (Law 20/IX/2017) was published on 30 December 2017 and generally applies from 1 January 2018 onwards. We highlight the most significant amendments introduced.

Corporate income tax (CIT)

- Capital gains realised by non-residents without a permanent establishment (PE) in Cabo Verde, on the sale of share capital or other securities, are exempt from CIT.
- Withholding tax (WHT) exemption on interest on shareholder loans or income from subscription of obligations paid to holding companies.

Tax benefits and incentives

- Long-term financial investments: Income from certificates of deposit and long-term deposits for a period exceeding five years are taxed at 50% of the value for terms between five and eight years (previously between five and ten years) and 25% of their value for terms with maturity over eight years (previously ten years); these benefits are extended to income from insurance products from insurance companies established in Cabo Verde, provided that it has been contractually fixed that (i) the capital invested is blocked for a minimum period of five years and (ii) the remuneration is due at the end of the contractual period.
- Capital gains on sale of shares: Capital gains and capital losses on the sale of share capital or other securities, obtained by residents and non-residents with a PE in Cabo Verde, are exempt from tax if the shares have been held for a consecutive period of at least 12 months; this benefit does not apply to capital gains on the sale of share capital acquired from entities that are subject to a more favourable tax regime.
- Securities market: An exemption from income tax is granted for securities issued up to 2020 and negotiated in the secondary market.
- Loans from non-resident financial institutions: Interest from loans granted by non-resident financial institutions to resident credit institutions is exempt from CIT, provided that such interest is not attributable to the PE of those institutions located in Cabo Verdean territory.
- Conventional remuneration of share capital: Commercial companies or civil law companies incorporated as commercial companies, cooperatives, public enterprises, and other corporate entities of public or private legal persons, with headquarters or place of effective management in Cabo Verdean territory, may deduct from their taxable profit an amount corresponding to conventional remuneration of share capital. The amount to be deducted corresponds to 10% of the amount of entries made in cash or through the conversion loans from shareholders, within the scope of

the incorporation of a company or an increase of the capital, up to 100 million Cabo Verdean escudos (CVE) in each fiscal year, provided that certain conditions are met.
- Incentives on the import of heavy passenger vehicles for collective transport of passengers: An exemption from customs duties, excise duty, and value-added tax (VAT) is granted on the importation of heavy passenger vehicles for collective transport of passengers, aged not more than six years, comprising more than 30 seats including driver, when imported by companies in the sector duly licensed.
- Incentives on the import of light passenger vehicles for executive transport: An exemption from customs duties, excise duty, and VAT is granted on the importation of light passenger vehicles, when new, intended for executive transport, carried out by the licence holders, and duly authorised by the General Direction of Road Transport.
- Incentives on the import of light passenger vehicles for taxi service: An exemption from customs duties is granted on the importation of light passenger vehicles, when new, and equipment, intended exclusively for the taxi service, carried out by the licence holders.
- Incentives on the import of transport vehicles for tourists: An exemption from customs duties, excise duty, and VAT is granted on the importation of heavy passenger vehicles for collective transport of passengers, duly equipped, aged not more than six years, comprising more than 30 seats including driver, and intended for exclusive transport of tourists and baggage, when imported by companies holding a licence and a tourist transport permit.
- Incentives for employers hiring young people: Individuals and legal persons under the organised accounting regime that hire workers not older than 35 years for a first job are exempt from social security contributions due by the employer; this benefit shall only apply to contracts with a duration of one year or more, which relate to workers registered in the social security system and provided that no reduction or elimination of jobs has occurred, and assuming that the employer has paid the contributions due by the employee to the social security.
- Direct incentive to professional internships: The direct incentive to professional internships remains in force (i.e. individuals and legal persons under the organised accounting regime may deduct from tax due the amount of CVE 20,000 for each trainee hired with contract duration of at least six months).

Stamp duty

- Stamp duty on corporate transactions was revoked.
- Registration acts made in Sal, Boa Vista, Sao Vicente, and Maio islands, foreseen under the implementation of a land register regulated by Law Nr. 33/VII/ 2008 of 8 December, among others, transmission of property right occurred until 31 December 2016, remission of property possession, deeds, land registry, as well as other registrable acts are exempt from stamp duty; the exemption shall apply for a period of four years from the beginning of the implementation of land register.

Single Property Tax

- Transfers of buildings, by public deed, acquired until 31 December 2016 by any means (sale, donation, or inheritance), and which were registered with irregularities, are exempt from Single Property Tax; the exemption shall be valid for a period of four years from the beginning of the implementation of land register and is subject to the acceptance by the competent municipality.

Legislative authorisation

The government is granted authorisation to legislate on a tax incentive scheme to be granted to the Japanese International Cooperation Agency (JICA), under Decree No. 3/2014, of 10 March, to finance the Development Project of Water Supply on the island of Santiago, as follows:

- CIT exemption for Japanese companies contracted under this loan agreement to operate as suppliers, contractors, or consultants as suppliers of goods and services.
- Employment income tax exemption for Japanese non-resident employees contracted under the agreement.
- Exemption in the importation of goods and equipment used in the execution of said project.

This legislative authorisation lasts for 180 days from the date of entry into force of this law.

Taxes on corporate income

Cabo Verde's corporate income tax (CIT), called *Imposto sobre o Rendimento das Pessoas Colectivas*, is levied both on profits obtained within the Cabo Verdean territory and those obtained outside by resident companies (worldwide principle). Non-resident companies with a PE in Cabo Verde are also subject to CIT on Cabo Verdean-source income attributable to the PE.

Taxable profit is computed according to the local accounting rules and adjusted for tax purposes.

For the purposes of determining taxable income, CIT payers can be taxed under two methods/regimes as follows:

- Special regime for micro and small-sized companies:
  - Micro-sized company: An entity that employs up to five persons with an annual turnover (gross amount of sales and services) that does not exceed CVE 5 million.
  - Small-sized company: An entity that employs between six and ten persons with an annual turnover (gross amount of sales and services) of between CVE 5 million and CVE 10 million.
  - Micro and small importers: Importers whose customs value of imported goods does not exceed the value of turnover on an annual basis for the purpose of qualifying under the simplified scheme for micro and small-sized companies.
- Standard organised accounting regime (standard/normal regime under which the computation of profits follows the local accounting rules).

Income tax rates

Resident companies are subject to a tax rate of 25%, where taxable income corresponds to the profit less any tax benefits and any losses carried forward, as stated in the tax return. The tax rate of 25% is also applicable for PEs of non-resident companies.

Micro and small-sized companies are subject to a single special tax (SST) of 4% levied on the gross amount of sales obtained in each taxable year, to be paid quarterly. The SST replaces the CIT, fire brigade surtax, and VAT, as well as the contribution to social security attributable to the company.

Non-resident companies without a PE are subject to WHT rates applicable for each income category foreseen in the Tax Code, which range between 1% and 20%.

Surcharge

The CIT rate is increased by a fire brigade surcharge, called *Taxa de Incêndio*, of 2% on the tax due, leading to a final tax rate of 25.5%. This surcharge is levied in the municipalities of Praia (Island of Santiago) and Mindelo (Island of São Vicente).

Corporate residence

A company or entity is deemed to be resident in Cabo Verde if its registered head office or its place of effective management is in the Cabo Verde territory.

Permanent establishment (PE)

Non-resident companies deemed to have a PE in Cabo Verde are also subject to tax in Cabo Verde. Under Cabo Verdean tax law, a non-resident company is deemed to have a PE if the non-resident company:

- has any fixed installation or permanent representation located in Cabo Verde through which, among others, activities of a commercial, industrial, or agricultural nature, or fishing and rendering of services are carried out (including agricultural, fishing, and cattle raising explorations, or other quarries or any other places of natural resources extraction) or
- carries out its activity in Cabo Verde through:
  - employees, or any other personnel hired for that purpose, for a period (continuous or not) of not less than 183 days within a 12-month period
  - a person (a dependent agent), which is not an independent agent, acting, in the Cabo Verde territory on behalf of a company, with powers to intermediate and conclude binding contracts for that company, within the scope of its business activity, or
  - a building site or a construction installation if it lasts for more than 183 days, as well as activities of coordination, supervision, and inspection related with the building site or its construction installation.

A PE of a non-resident is taxed as a resident company.

Other taxes

Value-added tax (VAT)

The VAT system in Cabo Verde closely follows the European Union (EU) VAT system and is assessed at the standard rate of 15%.

The standard VAT rate of 15% is a general tax on consumption, applicable to the import and sale of goods and services in Cabo Verde territory.

The VAT rate will be applied on the following amount on the following supplies of goods and services:

- Diesel: 120%.
- Fuel: 300%.
- Petroleum: 30%.

- Butane gas: 16.65%.
- Fuel-oil: 30%.
- Electricity: 30%.
- Tap water from the public supply: 20%.
- Telecommunication services: 60%.
- Road passenger transport and transport of goods by sea: 15%.

The following transactions are considered to fall outside the scope of VAT:

- The transfer, for consideration or not, of a totality of assets or a part thereof that constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity.
- Indemnities for damages.
- Repayment of expenditure incurred in the name and on behalf of a third party.

Exempt transactions

The VAT regulations establish two types of exempt transactions: exempt transactions without credit and exempt transactions with credit (i.e. zero-rated transactions). VAT incurred is recoverable in as far as the goods and services are used for the purposes of the taxed transactions of a taxable person or for zero-rated transactions.

Exempt transactions without credit include the following:

- Hospital and medical care and closely related activities undertaken by bodies governed by public law, or comparable activities undertaken by other hospitals and centres for medical treatment.
- The provision of medical care through the exercise of the medical and paramedical professions, as well as the supply of transport services for sick or injured persons, and the supply of human organs, blood, and milk.
- The supply of services and goods closely linked to welfare and social security work.
- The supply of services and goods closely linked to the protection of children and young people by bodies governed by public law.
- The provision of children's or young people's education, school or university education, including the supply of services and goods closely related thereto.
- The supply of services, and goods closely linked thereto, by non-profit-making organisations.
- The supply of copyright and art objects by the original creators or their heirs.
- The supply by the public postal services of stamps and stamped paper.
- The supply of certain cultural, educational, technical, and recreational services.
- Garbage removal.
- Burial and cremation supplies.
- Banking, financial, insurance, and reinsurance transactions, including related services performed by insurance brokers and insurance agents.
- Immovable property transactions (excluding the provision of accommodation in the hotel sector or in sectors with a similar function, the granting of facilities for collective parking of vehicles, the leasing of permanently installed machinery and equipment, and the granting of facilities for exhibitions and advertising).
- Specified basic foodstuffs and pharmaceutical products.
- Goods used in agriculture, stockbreeding, forestry, and fisheries.

Exempt transactions with credit (i.e. zero-rated transaction) on imports include the following:

- Import of goods whose supply qualifies for exemption.
- Re-import of goods by the person who exported them, in the state in which they were exported, where they qualify for exemption from customs duties.
- Services in connection with the import of goods where the value of such services is included in the taxable amount.
- Import of gold by the central bank.
- Import into ports by sea fishing undertakings of their catches, unprocessed or after undergoing preservation for marketing but before being supplied.
- Import of goods under diplomatic and consular arrangements that qualify for exemption from customs duties.
- Import of goods for the fuelling and provisioning of sea-going vessels and aircraft.

The most important exemptions with credit (i.e. zero-rated) for exports and connected transactions include the following:

- Supply, modification, repair, maintenance, chartering, and hiring of aircraft used by airlines operating both on domestic and international routes, and the supply, hiring, repair, and maintenance of equipment incorporated or used therein.
- The supply of goods for the fuelling and provisioning of such aircraft.
- Services meeting the direct needs of such aircraft or their cargoes.

Customs duties

Customs duties are levied at rates ranging from 0% to 50% on the customs value of most imported goods. Since Cabo Verde imports the majority of the goods it consumes, a 50% tariff protection applies for certain domestically produced goods.

Raw materials or capital goods can be imported with an exemption from customs duties or at a low rate.

Special consumption tax

A special consumption tax is imposed at rates ranging from 10% to 150% on goods that are deemed superfluous, luxurious, or undesirable for economic, social, or environmental policy reasons.

The excise duty rate is 40% in the case of beers, wines, vermouths, and other alcoholic drinks, and 20% in the case of tobacco.

Vehicles used for transportation, up to 5 tons, are subject to rates of up to 150%, according to their age:

- Up to four years: not applicable.
- More than four and up to six years: 40%.
- More than six and up to ten years: 80%.
- More than ten years: 150%.

Property taxes

A property tax, called *Imposto Único sobre o Património* (IUP), is levied at the rate of 1.5% in Cabo Verde.

IUP is due on the ownership of immovable property on an annual basis by the owner of the real estate, registered as such on 31 December of the relevant year. The taxable basis corresponds to 25% of the value attributed by the Evaluation Commission.

IUP is also due on the transfer (gratuitously or for a consideration) of real estate, based on the value of the contract declared by the transferee.

Exemption of IUP due on the acquisition is granted to:

- Cabo Verdean emigrants who own saving bank accounts.
- Projects with Touristic Utility Status (*see the Tax credits and incentives section for more information*).

In taxable transfers (not exempt), IUP is payable by the transferee.

IUP is also due on the capital gains arising from the sale of:

- plots of land for construction if the sales price is more than double the purchase price, and
- buildings or other real estate if the sale price exceeds the purchase price by more than 30%.

IUP on capital gains is normally paid by the transferor, on the highest of the declared price and the official value of the property concerned.

Capital gains obtained by companies that are in the business of buying real estate for resale are not subject to IUP.

Stamp duty

Stamp duty is payable on a wide variety of transactions and documents, at rates that may be set in specific amounts or on a percentage basis.

Stamp duty rates:

Item	Stamp duty rate
Loans	0.5%
Bank interest and fees/commissions	3.5%
Guarantees	0.5%
Insurance	3.5%
Promissory notes, securities	0.5%
Emoluments, registrations acts	15.0%
Contracts	CVE 1,000 *

* Fixed exchange rate 1 euro (EUR) = CVE 100.265 under an exchange agreement between Cabo Verde and Portugal.

Stamp duty on corporate transactions was revoked as of 1 January 2018.

Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

Social security contributions

Social security contributions are payable by the employee on their gross income at a rate of 8.5% and by the employer at 16%.

Ecologic charge

Cabo Verde's ecologic charge is applied to packing material, whether empty or full, imported or produced internally, non-biodegradable or made out of metal, glass, or plastic.

The ecologic charge varies from CVE 2 to CVE 100 per item, depending on the quantity or weight of the goods.

This fee is due by the local producer or the importer.

Exemptions are available in the case of packing material used in medicine, essential food (e.g. corn, rice, sugar, flour, and milk), and construction (e.g. cement). Packing material that is exported, reutilised, or recycled is also exempt.

Tourism tax

A tourism tax is applied to accommodation in the hotel sector. The tax amounts to CVE 220 per person per night for people over 16 years of age and cannot exceed ten consecutive nights.

Branch income

A branch is not considered a separate legal entity distinct from the foreign head office. It is governed by the domestic law of Cabo Verde.

From a tax perspective, branches are subject to CIT if considered a PE under Cabo Verde law.

Income determination

Taxable income is computed on the basis of the accounting income, adjusted by deducting from taxable profits the prior years' losses and any deductions under the tax (incentive) legislation.

Inventory valuation

The tax law does not foresee any mandatory inventory valuation method that should be adopted by Cabo Verdean taxpayers. For tax purposes, accepted inventory methods should be consistent with the accounting rules in force and with generally accepted local business practice. Such methods should be applied in a consistent manner over the financial years and based on the prices effectively paid or established by official documents (for regulated prices).

Capital gains

Capital gains are not subject to a separate capital gains tax and are treated and taxed as ordinary business income.

Capital gains and capital losses determined for tax purposes are usually different from capital gains and capital losses determined for accounting purposes and are quantified as follows:

Capital gains/losses = sales - (acquisition value - deductible accumulated depreciation - deductible impairment losses) x coefficient

The exemption on capital gains derived from disposal of shares when owned for more than one year was revoked.

Capital gains can be considered only in 50% of the respective amount if the sales proceeds are reinvested in the acquisition, production, or construction of tangible fixed assets, intangible assets, or non-consumable biological assets. For this purpose, the reinvestment must take place in the previous tax year, in the tax year in which the transfer occurs, or in the two tax years following the transfer.

In case of partial reinvestment, a partial relief (proportional to the investment made) will apply. In case the reinvestment is not fully accomplished during the reinvestment period, the difference (or the proportional difference) will be considered as taxable income of the second year following the disposal, increased by 15%.

Capital gains on the sale of share capital or other securities obtained by non-resident entities without a PE in Cabo Verde are exempt from CIT.

Dividend income

The tax legislation provides a full relief from taxation on profit distribution at the beneficiary level, without any requirements to be met by the entities involved, except for entities with a local CIT rate reduction, for which the tax relief is only 50%.

Interest income

There is no special tax provision regarding interest income. Interest income is treated and taxed as ordinary business income (excluding interest from bonds or similar products listed in the securities market).

Royalty income

The term ‘royalties’ is not defined as such in Cabo Verde’s principal tax law, but the relevant regulations define royalties as “income from intellectual, industrial copyrights, or from an experience acquired in an industrial, commercial, or scientific area, as well as income from technical assistance and from the use of commercial, industrial, or scientific equipment”.

Foreign income

Resident companies are subject to taxation on foreign income. Cabo Verdean tax law allows a foreign tax credit to mitigate the double taxation on foreign income taxed in another jurisdiction (*see Foreign tax credit in the Tax credits and incentives section*).

PEs of non-resident companies are taxable on a territorial base principle, meaning that income obtained outside Cabo Verde is not subject to taxation therein.

Deductions

Depreciation

Depreciation is considered a deductible cost with respect to all fixed assets (except land), up to the limits determined by the applicable tax law.

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As a general rule, depreciation must be computed by using the straight-line method. Tax authorities may allow other depreciation methods on the basis that the actual depreciation is higher than the one calculated at regular rates or according to the taxpayer's accounting practice.

Under the straight-line method, the maximum depreciation that is deductible is calculated by applying the general depreciation rates set out by the Decree No. 42/2015, of 24 August, to the adjusted purchase cost or production cost.

Land is not depreciable.

Main depreciation rates for tangible assets

Group	Asset	Depreciation rate (%)
1	Property:	
	Minor/small buildings	10
	Buildings	3 to 10
	Water reservoirs	4 to 5
	Seals and urban arrangements	5 to 8.33
2	Facilities	6.66 to 10
3	Machinery, equipment, and tools:	
	Apparatus and electronic machines	20
	Air condition	12.5
	Laboratory and precision equipment	14.28
	Ventilation equipment	12.5
	Scales	12.5 to 33.33
	Workshop equipment	12.5 to 20
	Machine tools	12.5 to 25
4	Transport materials:	
	Aircraft	20
	Boats	8.33 to 25
	Motor vehicles	12.5 to 20
	Tanks	16.66
5	Other tangible fixed assets:	
	Movies, records, and audio cassettes	25
	Drawing and typography materials	12.5
	Furniture	12.5
	Molds, dies, shapes, and controls	25
	Computer programs	33.33

Main depreciation rates for intangible assets

Asset	Depreciation rate (%)
Installation and expansion costs	33.33
Research and development (R&D) costs	33.33

Goodwill

Goodwill is an asset subject to impairment tests. The goodwill's impairment is not a deductible cost for tax purposes.

Start-up expenses

Start-up expenses include, among others, cost incurred with set-up and organisation of companies, projects, and increase of capital. Start-up expenses are considered a deductible cost up to the limits derived from the applicable tax law, 33.33% per year being deductible over a period of three years.

Interest expenses

Interest expenses are deductible if considered indispensable for the realisation of taxable profits/gains (*see Limitation on the tax deductibility of net financing expenses in the Group taxation section*).

Bad debt

Bad debts are those where the related recovery risk is considered to be justified. According to the CIT Code, the recovery risk is justified whenever there is a:

- Company insolvency and recovery proceeding and enforcement procedure.
- Law court or arbitration court claimed debt.
- Overdue debt.

The deduction for tax purposes of impairment losses on overdue debt is subject to the following limits, computed on the amount of the debt:

Impairment losses	Delay on payment	Limit (%)
Debt overdue	More than 6 and up to 12 months	25
	More than 12 and up to 18 months	50
	More than 18 and up to 24 months	75
	More than 24 months	100

Charitable contributions

Charitable contributions granted to certain entities whose main activity consists of the execution of initiatives in the social, cultural, environmental, scientific or technologic, sports, and educational areas are considered as cost for tax purposes (within certain limits, and in certain circumstances, with an additional deduction).

Fines and penalties

Tax fines and penalties are not deductible for tax purposes. Contractual fines and penalties are deductible for tax purposes.

Taxes

Taxes paid in connection with the activity of the company are tax deductible, excluding CIT and autonomous taxation. The annual IUP cannot be deducted as a cost for CIT purposes.

Net operating losses

Income tax losses can be offset against taxable profit and can be carried forward for seven years, capped at 50% of the taxable profit. Carryback of tax losses is not allowed in Cabo Verde.

According to the transitional regime, tax losses generated before 2015 can be carried forward for three years without limit.

The tax losses incurred by a company are not transferable to another company unless previously accepted by the tax authorities.

Payments to foreign affiliates

Currently, there are no special restrictions on the deductibility of royalties, interest, and service fees paid to foreign affiliates, provided that the payments are regarded as indispensable to generate taxable profits and gains and to maintain the business of the company.

Payments made to foreign affiliates located in a favourable tax regime are not accepted as deductible tax costs unless it can be demonstrate that the payment is a necessary cost and is not an exaggerated amount (i.e. it should be demonstrated that it is an acceptable/normal amount).

Group taxation

There is no special tax regime for groups of companies in Cabo Verde.

Transfer pricing

Commercial transactions between associated enterprises should be subject to identical terms and conditions to those that would be accepted and agreed between independent entities (arm's-length principle).

Taxpayers must keep information and documentation regarding their transfer pricing policies on hand. The following taxpayers must prepare a transfer pricing documentation file:

- Entities classified as 'Large Taxpayers'.
- Entities considered taxed under a privileged tax regime, as defined in the General Tax Code.
- PEs of non-resident entities.
- Other entities designated as such by the tax authorities.

Limitation on the tax deductibility of net financing expenses

Net financing expenses are only deductible up to the higher of the following limits:

- CVE 110 million.
- 30% of earnings before depreciation, net financing expenses, and taxes.

Controlled foreign companies (CFCs)

The CIT Code contains specific CFC rules. Profits or income obtained by non-resident entities that are clearly subject to a more favourable tax regime are imputed to the resident taxpayers subject to CIT that hold, either direct or indirectly, even if through a representative, fiduciary, or intermediary, at least 25% of their share capital, voting rights, or attribution rights over the income or the assets of those non-resident entities.

Tax credits and incentives

Foreign Investor Status (Estatuto do Investidor Externo)

The Foreign Investor Status, which has granted some tax benefits at the level of the investor (e.g. exemption from WHT on distribution of profits and on interest related to the financing of the investment) was revoked by the New Investment Code with effect from 1 January 2013. The tax benefits already granted or for which recognition has been requested prior to the entry into force of the Tax Benefits Code (TBC) and the Investment Code are maintained. Investment projects submitted for analysis and approval to the competent authorities prior to the entry into force of the Tax Benefits Code continue to be regulated under the legislation in force at the date of the respective submission.

Contractual tax benefits

There are exceptional incentives, regarding customs duties, CIT, personal income tax (PIT), property tax, and stamp duty, to investments that fulfil all of the following conditions:

- Investment value over CVE 550 million (or CVE 275 million if carried out outside the municipalities of the Praia, Sal, and Boavista).
- Relevant investment for the promotion and acceleration of economic development, under the government's program.
- Creation of at least ten jobs.

The concession of contractual tax benefits is subject to approval by the Council of Ministers upon agreement.

Industrial activity

The following tax and customs benefits are provided for industrial activity:

CIT benefits

A CIT credit is available for up to 50% of the eligible investments made in an industrial activity. Any unused tax credit may be carried forward for ten years, subject to certain limitations.

Eligible investments include the acquisition of new fixed assets, patents, and licences regarding technologies.

IUP benefits

Industrial activities may benefit from an exemption from IUP on the acquisition of immovable property used exclusively for industrial purposes; however, the recognition of such tax exemption should be approved by the municipality.

Customs duty benefits

Industrial activities benefit from an exemption from customs duties on the import of construction material, machines, utensils, semi and finished materials, products, and raw materials used in the production of goods.

Stamp duty benefits

Financing transactions of industrial projects are exempt from stamp duty.

International Business Centre (IBC) of Cabo Verde

The Cabo Verdean Agency for Foreign Investment is the entity responsible for granting the licences to operate within the IBC, upon previous proposal of the Zona Franca Comercial S.A.. The following tax benefits are applicable to entities licensed to operate in the IBC on income from industrial or business activities and services in respect of operations carried out with other IBC licensed entities or with non-residents entities (without a PE in Cabo Verde).

Note that these tax benefits are not applicable to entities engaged in tourism, banking and insurance, real estate, or construction.

CIT benefits

Reduced CIT rates of 5%, 3.5%, or 2.5% are applicable to entities that create respectively 5, 20, or 50 jobs.

The CIT rate is 2.5% in case of the creation of two jobs for entities licensed to operate within the International Service Centre.

Entities licensed to operate within the IBC are granted to benefit from reduced CIT rates until 2030.

Shareholders benefits

Shareholders of the entities licensed to operate within the IBC are exempt from taxation on dividends and interest received.

VAT and customs duty benefits

All the exemptions foreseen in the VAT regulation and customs law apply.

An exemption from customs duties applies with respect to certain goods, equipment, and materials used within the scope of the activity developed and licensed under the IBC.

Tax and financial incentives for internationalisation of Cabo Verdean companies

A regime that provides for tax and financial incentives for investment projects in order to promote the internationalisation of Cabo Verdean companies is in force.

The following incentives, to be granted under a contract of not more than three years, apply to internationalisation projects of companies with head office and place of effective management in Cabo Verde that are undertaken before 31 December 2020.

CIT benefits

Investments that are eligible for the regime of tax benefits for internationalisation may benefit from:

- Reduced CIT rate of up to 50%, applicable until the term of the investment contract.
- Exemption from CIT on income obtained by qualified expatriate employees.

Additionally, a deduction for creation of employment ranging between CVE 26,000 and CVE 35,000 for each new job created may apply.

IUP benefits

An exemption from IUP may be available on the acquisition of immovable property for the establishment or expansion of the activity of the investor.

VAT and customs duty benefits

Exemptions provided for in the VAT Code apply, as well as customs duties incentives as provided for in the general applicable legislation.

Stamp duty and other benefits

An exemption from stamp duty is available on the incorporation of companies on an increase of share capital of existing companies, and on financing transactions.

An exemption from notary and registration fees is available on the incorporation and registration of companies.

Tax benefits for social housing

Entities responsible for the construction of social housing, duly authorised by the competent regulatory authority (*Comissão de Coordenação e Credenciação do Sistema Nacional de Habitação de Interesse Social* or CCC-SNHIS), may benefit from the following:

- Only 30% of the income derived from the activity carried out within the scope of the social housing project is subject to CIT, under certain conditions.
- A refund of 80% of the VAT incurred in the Cabo Verdean market is available in cases where those entities carry exclusively exempt operations without the right to deduct input VAT.
- A reduction of 75% of customs duties levied on construction material listed in an annex to the diploma is available.

Development promotion entities, provided they are also authorised by CCC-SNHIS, are also eligible for VAT benefits.

Touristic Utility Status (Estatuto de Utilidade Turística)

Cabo Verde may grant Touristic Utility Status to certain touristic projects. Touristic Utility Status is granted to the following types of touristic projects:

- Installation: Granted to new touristic projects.
- Functioning: Granted to touristic projects starting to operate.
- Refurbishment: Granted to touristic projects in case of refurbishment projects with a value of at least 25% of the initial investment.

Touristic Utility Status generally allows for the following tax incentives and benefits:

- CIT credit of up to 50% of the eligible investments made in tourism, touristic promotion activities, and real estate tourism project investment.
- Exemption from IUP on the acquisition of real estate used for construction and installation of touristic projects if granted by the municipality.
- Exemption from customs duties on the importation of materials and equipment used in touristic projects.
- Exemptions from stamp duty on the financing of tourism investments.

Tax incentives for renewable energies

There is a regime for promotion, encouragement, and access, licensing, and exploitation inherent to the exercise of independent production and self-production of electricity based on renewable energy sources.

Water, wind, solar, biomass, biogas or industrial, agricultural or urban waste, oceans and tides, and geothermal are to be considered sources of renewable energy. Under the regime, renewable energy producers may benefit from the following.

CIT benefits

A CIT credit is available for up to 50% of the eligible investments made in renewable energies projects.

Customs duty benefits

An exemption from customs duties and other customs charges applies on the importation of capital goods, raw materials and supplies, finished and semi-finished products, and other materials that are incorporated or used in the production of goods or services involved in the production of electrical energy from renewable sources.

IUP and stamp duty

Exemptions from IUP and stamp duty are granted on the acquisition of immovable property and other assets related to the investment project or its financing.

Shipping transport industry incentive

CIT benefits

A CIT credit is available for up to 50% of the eligible investments made in shipping, air, and sea transportation projects.

Customs duty benefits

An exemption from customs duties applies on the importation of shipping material for the maintenance, production, and repair of shipping and respective equipment.

IUP and stamp duty

Exemptions from IUP and stamp duty are granted on the acquisition of immovable property and other assets related to the investment project or its financing.

Job creation incentives

Entities taxed under the verification method are entitled to deduct the following amounts for each created permanent job:

- CVE 26,000 for each job created in the municipalities of Boa Vista, Praia, and Sal.
- CVE 30,000 for each job created in the remaining municipalities.
- CVE 35,000 in case of a disabled person.

Media, telecommunications, and internet

Importation of goods, materials, equipment, vehicles, and other equipment exclusively for the purpose of telecommunications and media are exempt from customs duties.

Incentives on the import of vehicles

Incentives on the import of heavy passenger vehicles for collective transport of passengers

An exemption from customs duties, excise duty, and VAT is granted on the importation of heavy passenger vehicles for collective transport of passengers, aged not more than six years, comprising more than 30 seats including driver, when imported by companies in the sector duly licensed.

Incentives on the import of light passenger vehicles for executive transport

An exemption from customs duties, excise duty, and VAT is granted on the importation of light passenger vehicles, when new, intended for executive transport, carried out by the licence holders, and duly authorised by the General Direction of Road Transport.

Incentives on the import of light passenger vehicles for taxi service

An exemption from customs duties is granted on the importation of light passenger vehicles, when new, and equipment, intended exclusively for the taxi service, carried out by the licence holders.

Incentives on the import of transport vehicles for tourists

An exemption from customs duties, excise duty, and VAT is granted on the importation of heavy passenger vehicles for collective transport of passengers, duly equipped, aged not more than six years, comprising more than 30 seats including driver, and intended for exclusive transport of tourists and baggage, when imported by companies holding a licence and a tourist transport permit.

Tax benefits to the financial sector

The Tax Benefit Code has several measures in the financial sector, as follows.

Financial investments

Income derived from certificates of deposit and long-term bank deposits benefit from a CIT exemption of up to 75% (depending on the maturity date of the deposits).

Securities market (bonds)

Income derived from bonds or similar products (except public debt securities) listed in the securities market obtained until 31 December 2025 benefit from a 5% CIT flat rate.

Additionally, dividends from shares listed in the stock exchange, placed at the disposal of its holders until 31 December 2025, are exempt from CIT.

Investment funds (securities and real estate funds)

Income derived from securities funds, when established and operating under the Cabo Verdean legislation, is taxed as follows:

- Income obtained in the Cabo Verdean territory is exempt from CIT (except capital gains).
- Foreign income is subject to a 10% CIT flat rate (except capital gains).
- Capital gains are subject to a 10% CIT rate.

Income derived from real estate funds, established under the Cabo Verdean legislation, is taxed as follows:

- Real estate income benefits from a 10% CIT rate (after deduction of the respective expenses).
- Capital gains benefit from a 15% CIT rate over 50% of the income, resulting in an effective rate of 7.5%.

Income received by unit holders in securities funds and real estate investment funds, established under Cabo Verdean legislation, is exempt from CIT.

Venture capital funds

Income derived from venture capital funds, established under Cabo Verdean legislation, as well as income received by the unit holders in venture capital funds, is exempt from CIT.

International financial institutions

International financial institutions within the scope of Law 43/III/88 and revoked by Law 61/VIII/2014, of 27 December, benefit from:

- Customs duties exemption on the importation of materials and equipment that are exclusively for the setting-up of the financial institution.
- CIT exemption until 31 December 2017 and a 2.5% CIT rate from 1 January 2018 onwards.
- Stamp duty exemption in transactions with non-residents entities.

Individuals and entities considered as clients of such international financial institutions benefit from:

- CIT exemption, regardless of the type of income.
- Stamp duty exemption.

Loans from non-resident financial institutions

Interest from loans granted by non-resident financial institutions to resident credit institutions is exempt from CIT, provided that such interest is not attributable to the PE of those institutions located in Cabo Verdean territory.

Long-term financial investments

Income from certificates of deposit and long term deposits for a period exceeding five years are taxed at 50% of the value for terms between five and eight years (previously between five and ten years) and 25% of their value for terms of maturity over eight years (previously ten years); these benefits are extended to income from insurance products from insurance companies established in Cabo Verde, provided that it has been contractually fixed that (i) the capital invested is blocked for a minimum period of five years and (ii) the remuneration is due at the end of the contractual period.

Capital gains on sale of shares

Capital gains and capital losses on the sale of share capital or other securities, obtained by residents and non-residents with a PE in Cabo Verde, are exempt from tax if the shares have been held for a consecutive period of at least 12 months. This benefit does not apply to capital gains on the sale of share capital acquired from entities that are subject to a more favourable tax regime.

Securities market

An exemption from income tax is granted for securities issued up to 2020 and negotiated in the secondary market.

Conventional remuneration of share capital

Commercial companies or civil law companies incorporated as commercial companies, cooperatives, public enterprises, and other corporate entities of public or private legal persons, with headquarters or place of effective management in Cabo Verdean territory, may deduct from their taxable profit an amount corresponding to conventional remuneration of share capital. The amount to be deducted corresponds to 10% of the amount of entries made in cash or through the conversion loans from shareholders, within the scope of the incorporation of a company or an increase of the capital, up to CVE 100 million in each fiscal year, provided that certain conditions are met.

Tax benefits with social nature and customs duties benefits

Incentives for employers hiring young people

Individuals and legal persons under the organised accounting regime that hire workers not older than 35 years for a first job are exempt from contributions due by the employer to social security.

This benefit shall only apply to contracts with a duration of one year or more, which relate to workers registered in the social security system and provided that no reduction or elimination of jobs has occurred, and assuming that the employer has paid the contributions due by the employee to social security.

Training, internships, and grants

Companies taxed under the verification method may deduct 150% of the following costs:

- Costs related to the training of employees.
- Costs associated with the hiring of young people for internship positions.
- Costs associated with scholarships granted to students.

Direct incentive to professional internships

Individuals and legal persons under the organised accounting regime may deduct from tax due the amount of CVE 20,000 for each trainee hired with contract duration of at least six months.

Donations

Companies may deduct 130% of the amounts donated to the following entities and activities, up to 1% of the turnover, under certain conditions:

- Entities that develop, among others, social, cultural, sportive, educational, environmental, scientific, technological work, and health services.
- State, municipalities, and any other public services.
- Municipal associations.
- Foundations.

Customs duties benefits

Under certain conditions, the following business sectors, among others, may benefit from customs duties exemption on the importation of products, materials, and equipment related to the activity/project:

- Agriculture, livestock, and fishing activity.
- Civil aeronautics.
- Diplomatic and consular missions.
- Aid to economic development.
- Foreign citizen retired.
- Sports and musicals.
- Fire corporation.

Exemption from stamp duty on registration acts

Registration acts made in Sal, Boa Vista, Sao Vicente, and Maio islands, foreseen under the implementation of a land register regulated by Law Nr. 33/VII/ 2008 of 8 December, among others, transmission of property right occurred until 31 December 2016, remission of property possession, deeds, land registry, as well as other registrable act are exempt from stamp duty; the exemption shall apply for a period of four years from the beginning of the implementation of land register.

Exemption from Single Property Tax on transfer of buildings

Transfers of buildings, by public deed, acquired until 31 December 2016 by any means (sale, donation, or inheritance), and which were registered with irregularities, are exempt from Single Property Tax. The exemption shall be valid for a period of four years from the beginning of the implementation of land register and is subject to the acceptance by the competent municipality.

Tax benefits to other sectors of investment

Eligible investments made in activities such as information technology and scientific research may benefit from:

- CIT credit of up to 50%.
- Exemptions from IUP, stamp duty, and customs duties on the acquisition of immovable property and other assets related to the investment project or its financing.

Tax benefits regarding the Recovery of Business and Insolvency Code

There are CIT, PIT, stamp duty, and property tax benefits for companies under recovery of business and insolvency procedures.

Foreign tax credit

Cabo Verdean tax law allows a foreign tax credit to mitigate the double taxation on foreign income taxed in another jurisdiction. The tax credit is equal to the lesser of: (i) the income tax paid abroad or (ii) the CIT fraction calculated before the deduction is given corresponding to incomes that may be taxed in the country concerned, net from any cost or losses, directly or indirectly incurred, for the purposes of its realisation. Foreign tax credit cannot exceed the tax foreseen in the tax treaty, if applicable.

Withholding taxes

A full WHT relief on profit distributions is in force (*see Dividend income in the Income determination section*).

Interest payments, in general, are subject to WHT at a rate of 20%.

Bond interest is subject to WHT at the rate of 10%, except bonds and similar financial products (except public debts) duly listed on the stock exchange, which are subject to CIT at the reduced rate of 5%.

Interest on shareholder loans or income from subscription of obligations paid to holding companies is exempt from WHT.

Royalty payments are subject to WHT at the rate of 20%.

Payments of services between resident companies are generally not subject to WHT. Payments of services to non-resident entities are subject to WHT at the rate of 15%, unless waived under the applicable tax treaty.

Rental payments are subject to WHT of 10% when paid or made available by companies. However, rental payments between resident companies are generally not subject to WHT.

For a Cabo Verde-based recipient, tax withheld is a payment on account against the final income tax due regarding income derived from (i) business, commercial, and services activities, (ii) real estate income, and (iii) employment income when the beneficiary of such income opts to file a tax return.

Any non-Cabo Verdean resident entity carrying out an economic activity in Cabo Verde is subject to a final WHT at the same rates applicable to each income category foreseen by the Tax Code.

Regarding income paid to micro and small-sized companies, the WHT applicable is 4%.

Tax treaties

	WHT (%) (1)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	N/A	20	20
Treaty:			
Guinea Bissau	0/5 (2)	10	10
Macau	10	10	10
Mauritius	5	10	7.5
Portugal	10	0/10 (3)	10

Notes

1. Whenever the tax treaty rate is higher than the statutory rate, the statutory rate should apply.
2. There is a WHT exemption (WHT at the rate of 0%) if a direct or indirect participation in share capital or voting rights of at least 5% is held, consecutively, for 24 months prior to the date at which the profits are made available.
3. 0% applies to interest paid by public bodies.

Tax administration

Taxable period

As a general rule, the tax year is the calendar year. A different tax year may be applied, subject to authorisation from the Ministry of Finance, in the case of non-resident companies with a PE in Cabo Verde and in other situations duly justified by economical reasons.

Tax returns

Taxpayers are required to file a tax return by 31 May of the year following the end of the tax year in case the tax year corresponds to the calendar year (last day of the fifth month following the end of the tax year in case the tax year is different from the tax year).

Payment of tax

Corporate taxpayers taxed under the standard regime must make three pre-payments on account of their income tax liability for the current tax year. The pre-payments are due by the end of March, July, and November and amount to 30%, 30%, and 20%, respectively, of the preceding tax year's income tax liability.

Taxpayers are required to self-assess the tax due by 31 May of the year following the end of the tax year.

Micro and small-size companies are also subject to pre-payments, at a 4% tax rate levied on the annual turnover (sales and services), due by the last day of April, July, October, and January of the following year.

Tax audit process

There are no specific rules regarding the tax audit cycle in Cabo Verde.

Statute of limitations

The statute of limitations period in Cabo Verde is of five years.

Topics of focus for tax authorities

The main topics of focus for the Cabo Verde tax authorities include cost incurred on vehicles, communications, representation expenses, personnel costs, management fees, and payments to non-residents.

Large Taxpayers

Taxpayers that meet at least one of the following criteria qualify as a 'Large Taxpayer' and shall be monitored by the Special Tax Office for Large Taxpayers:

- Turnover exceeding CVE 200 million, based on the annual income tax return.
- High level of inherent risk, based on a matrix developed by specific software.
- Taxes paid exceeding CVE 15 million, correspond to the sum of payments of CIT, WHT, VAT, and stamp duty.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

Cabo Verde and the United States have reached an ‘agreement in substance’ on a Model 1 Intergovernmental Agreement (IGA), in which Cabo Verde consented to disclose this status as of 30 June 2014.

Cambodia

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Significant developments

Cambodia introduces transfer pricing rules

On 10 October 2017, the Ministry of Economy and Finance (MEF) issued Prakas No. 986 to provide 'rules and procedures on income and expense allocation among related parties' (known as the 'Local Transfer Pricing Rules'), which is effective immediately. The Prakas represents one of the most important developments in the Cambodian tax regulations in the last 20 years. In addition to being in line with Cambodia's tax reform plans, this regulation also demonstrates Cambodia's commitment to aligning with global tax frameworks on transparency and combatting tax avoidance. *See Transfer pricing in the Group taxation section for more information*.

Revised tax base for tax for public lighting (TPL)

The MEF has issued Prakas No. 976 to revise the current tax base for the TPL on the supplies of alcohol and tobacco products for each supply transaction. This Prakas applies to the supplies of alcohol and tobacco products after the products are imported or produced in Cambodia.

The revised TPL base shall be determined as follows:

- For producers and importers, the TPL base is the price recorded on the invoice inclusive of all taxes, except value-added tax (VAT) and TPL itself.
- For further supply of the products to distributors/consumers, the TPL base is equal to 20% of the price recorded on the invoice inclusive of all taxes, except VAT and TPL itself.

Please note that before this Prakas, TPL was imposed at 3% on the invoice price at every supply of alcohol and tobacco products. TPL is due and payable at the time of supply. The rules of supply for TPL purposes shall be the same as the rules of VAT supply as stated in Article 62 of the Law on Taxation. Taxpayers who supply TPL products shall have their obligations to submit tax returns and make monthly payments of TPL no later than the 20th day of the following month. Prakas 976 is now effective.

Double taxation agreements (DTAs)

At the time of writing, the Kingdom of Cambodia had signed DTAs with the Republic of Singapore, the People's Republic of China, Brunei Darussalam, the Kingdom of Thailand, and the Socialist Republic of Vietnam for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

The agreements between the Kingdom of Cambodia and the Republic of Singapore and between the Kingdom of Cambodia and the Kingdom of Thailand have been effective from 1 January 2018. However, the agreements with the People's Republic of China, Brunei Darussalam, and the Socialist Republic of Vietnam are not yet effective.

The Kingdom of Cambodia is in the process of negotiating DTAs with other countries.

Deadline for submission of banks, insurance enterprises, and financial institutions' reportable accounts for 2014-2016 to the General Department of Taxation (GDT)

The GDT of the MEF has issued a Notification informing banks, insurance enterprises, and financial institutions that are subject to reporting obligations under the Agreement between the Cambodian Government and the Government of the United States of America to improve International Tax Compliance and to implement the Foreign Account Tax Compliance Act (FATCA) to submit their reportable accounts for 2014-2016 to the GDT no later than 30 June 2017.

Banks, insurance enterprises, and financial institutions that are subject to FATCA may incur penalties if they failed to submit their reportable accounts by the deadline.

Amendment to Article 7 of the Sub-Decree on the Establishment of a Social Security Scheme on Healthcare for Persons Defined by the Provisions of the Labour Law

The Royal Government of Cambodia has issued Sub-Decree No. 140 dated 26 August 2017), which amends Article 7 of Sub-Decree No. 1 (dated 6 January 2016) on the Establishment of a Social Security Scheme on Healthcare for Persons Defined by the Provisions of the Labour Law.

Previously, an employer and employee who are under the provisions of the Law on Social Security Schemes for persons defined by provisions of the Labour Law were required to continue paying healthcare benefits based on a 50% split between the employer and employee (i.e. 1.3% of average monthly wage each) to the National Social Security Fund (NSSF) until 31 December 2017.

Under the amended Sub-Decree, which is effective from 1 January 2018, the obligation to pay the contribution of healthcare as stated in the above paragraph is the full burden (100%) of the employer.

Guidelines on implementation of withholding tax (WHT) on dividend distributions

The MEF has issued Prakas No. 518 to provide guidelines on the implementation of WHT on dividend distributions as stated in the new Articles 26 and 33 of the Law on Taxation.

This Prakas intends to set out rules for implementation of WHT on dividend distributions that resident taxpayers pay to non-resident taxpayers. This Prakas is applicable to self-declaration taxpayers carrying out their businesses in Cambodia. The key points are:

- WHT on dividend distributions: Distribution of dividends, as defined in Article 10 of the Law on Financial Management for 2017, by resident taxpayers to non-resident taxpayers is subject to WHT at 14% (Article 26).
- Conversion of retained earnings into capital: Conversion of retained earnings, in part or in full, into registered capital of enterprise isn't considered as dividend

distribution and it's not subject to WHT. Enterprises making the conversion are required to have a resolution of their board of directors, and the revised capital must be recognised by the competent authorities.
- Sale of shares or distribution of capital from conversion of retained earnings: If an enterprise sells its shares or distributes its capital during the on-going business operations or during liquidation or dissolution of the enterprise, the capital portion that is converted from the retained earnings is subject to WHT (Article 26).
- Obligations of withholding agents: An enterprise that makes any dividend payment to non-resident taxpayers must submit a tax return and pay the WHT to the tax authorities by the 20th day of the following month.

For WHT purposes, if the dividend distribution is recorded in the accounting books, it will be considered as a dividend payment and so will trigger WHT obligations.

Taxes on corporate income

Cambodia's taxation rules vary according to the taxpayer's regime, the classification of taxpayers under different tax collection and control procedures of the GDT. The self-declaration regime is the only tax regime in Cambodia. Under the self-declaration regime, taxpayers are classified into three categories (e.g. large, medium, and small taxpayers) based on their turnover, legal form, and other criteria (*see table below*).

Type of taxpayer	Criteria (turnover is in approximate United States dollars [USD])
Small	Sole proprietorship or partnership: • annual turnover from USD 62,500 to USD 175,000 • total turnover for any three consecutive months in calendar year from USD 15,000 • total expected turnover for next three consecutive months from USD 15,000, or • participating in bidding, price consultation, or surveys for the supply of goods or services.
Medium	• annual turnover from USD 175,000 to USD 1 million • registered as a legal person or representative office • national or sub-national state institutions, associations, and non-government organisations (NGOs), or • foreign diplomatic and consular missions, international organisations, and technical cooperation agencies of other governments.
Large	• annual turnover from USD 1 million • Subsidiary of multi-national company, branch of a foreign company, or • Qualified Investment Projects (QIPs).

Resident taxpayers are subject to tax on worldwide income while non-residents are taxed on Cambodian-sourced income only. A permanent establishment (PE) is taxable on its Cambodian-source income only.

Corporate tax rate

The standard rate of corporate income tax (CIT), previously known as tax on profit, for companies and PEs who are classified as medium and large taxpayers is 20%.

For companies and PEs who are classified as small taxpayers, the CIT rates are progressive rates from 0% to 20%.

Industry-specific tax rates

Oil and gas and certain mineral exploitation activities are subject to CIT at the rate of 30%.

Insurance companies are taxable at a rate of 5% on the gross premium income and at the rate of 20% on other income derived from non-insurance/reinsurance activities. Net interest income of insurance companies received after 4% or 6% WHT is not taxable income.

The small taxpayer is subject to CIT at the progressive rates as stated in Article 20 of the Law on Taxation.

Minimum tax (MT)

Self-declaration regime taxpayers are subject to a separate MT. The MT is an annual tax with a liability equal to 1% of annual turnover inclusive of all taxes except VAT. However, an exemption has been provided for QIPs (*see the Tax credits and incentives section for more information*).

As a separate tax to the CIT, the MT is due irrespective of the taxpayer's profit or loss position (i.e. the MT will be liable if the 1% of total annual turnover exceeds the 20% CIT liability).

According to the Law on Financial Management 2017, the MT is no longer applicable to enterprises that maintain proper accounting records from 1 January 2017. However, there is still no definition of what constitutes 'maintaining proper accounting records'.

Additional CIT on dividend distribution

A dividend-paying taxpayer is required to pay an additional CIT at the time of dividend distribution if the profit was previously subject to a 9% or 0% CIT. The rates of additional CIT vary depending on the profits to be distributed. For profit that has been subject to CIT at the rate of 20%, 9%, or 0%, that profit will be subject to additional CIT at the following rates, respectively:

CIT	Additional CIT
20% (standard rate)	0%
9% (preferential rate, which is no longer applicable after 31 December 2010)	11/91 (approximately 12.09%)
0% (during tax holiday)	20%

A shareholder is entitled to establish a special dividend account from which the relevant dividend that was already subject to 20% CIT may be on-paid without further additional CIT obligations.

A dividend will be exempt from tax in the hands of the shareholder if additional CIT and WHT for non-resident shareholders has been paid.

Local income taxes

Provincial and local income taxes are not applicable in Cambodia.

Corporate residence

Resident taxpayers include companies organised, managed, or having their principal place of business in Cambodia.

Permanent establishment (PE)

A non-resident company may be deemed to have a PE in Cambodia if (i) there is a permanent place or entity through which the non-resident persons carry on their business, (ii) there is an exercise of the authority to conclude a contract on behalf of a foreign entity, or (iii) business activities exceed certain time periods in Cambodia.

Factors to be considered in determining a PE include a place of management, an agent or office, a warehouse or factory, a workshop, any place of extraction of natural resources, a plantation, etc. Carrying out projects (e.g. supervisory activities of a construction project, provision of services) exceeding a time period of six months in any 12-month period may also be considered as having a PE.

Other taxes

Value-added tax (VAT)

VAT is applicable to self-declaration regime entities and is charged at 10% on the value of the supply of most goods and services.

Exported goods and services rendered outside Cambodia are zero-rated. In addition, 0% VAT applies to the supporting industries or contractors who directly supply goods (including milled rice) or services (including milled rice production services) to export-oriented garment, textile, footwear, bag, handbag, and headwear manufacturers, milled rice exporters, and domestic supplies of paddy rice.

Some supplies are VAT exempt, the main categories being public postal services, medical and dental services, electricity, water, transportation of passengers by wholly state-owned public transport systems, insurance services, primary financial services, and land. Some are exempt supplies under the Law on Financial Management 2017.

VAT returns and payments are due within 20 days of the following month. Note that strict record-keeping requirements do exist.

Import and export duties

Import duties are levied on a wide range of products. Rates vary from 0% to 35%. Following Cambodia's entry into the Association of South-East Asia Nations (ASEAN) during 1999, the government is required to reduce import duties in accordance with the Common Effective Preferential Tariffs programme.

Export duties are levied on a limited number of items, such as timber and certain animal products (including most seafood).

Specific tax on certain merchandise and services (SPT)

SPT is a form of excise tax that applies to the importation or domestic production and supply of certain goods and services. SPT on domestically produced goods is generally applied to the SPT base, which is 90% of the invoice price before VAT and SPT itself. For imported goods, SPT is due on the cost, insurance, and freight (CIF) value inclusive of customs duty. For hotel and telecommunication services, SPT is payable based on the invoice prices.

For local and international air transportation of passengers, SPT is 10%, payable based on the air ticket value issued in Cambodia for travel within and outside Cambodia. The SPT base is inclusive of all taxes other than SPT and VAT. For example, for return air tickets from Phnom Penh to Singapore costing 2 million Cambodian riel (KHR), exclusive of airport tax, the SPT payable is KHR 181,818 (KHR 2 million/1.1 x 10%).

Accommodation tax

Accommodation tax is calculated at 2% of the accommodation fee, inclusive of all taxes and other services except accommodation tax and VAT.

Tax for public lighting (TPL)

TPL is imposed on the distribution in Cambodia of both foreign made and locally produced alcoholic and tobacco products.

The TPL base for calculation of 3% shall be determined as follows:

- For producers and importers, the TPL base is the price recorded on the invoice inclusive of all taxes, except VAT and TPL itself.
- For further supply of the products to distributors/consumers, the TPL base is equal to 20% of the price recorded on the invoice inclusive of all taxes, except VAT and TPL itself.

Tax on immovable property (ToIP)

ToIP is levied at 0.1% *per annum* of the ToIP base. The tax base is 80% of the market value of the immovable properties stated in Appendix 1 of Prakas No. 371 less the threshold of KHR 100 million. The immovable property valued below the threshold is not subject to ToIP. The Prakas also determines that ToIP is effectively collected on immovable properties located in Phnom Penh and other cities of the provinces.

Immovable property is defined to include land, buildings, and other constructions on land (e.g. infrastructures built on land, regardless of having a wall or roof). Certain exemptions exist for government-owned property, agricultural land, property owned and used for cultural and religious purposes, property of foreign embassies and NGOs, and property in the special economic zones.

The owners, possessors, and final beneficiaries of immovable property are required to register and obtain a Tax Identification Number for each immovable property valued above the threshold from the tax administration where the immovable property is located. Any changes in relation to the registered immovable property (e.g. a change of title) are also required to be reported.

The owners, possessors, and final beneficiaries hold responsibility for calculating ToIP, preparing and filing a ToIP return, as well as remitting the ToIP liability to the tax administration once per year by 30 September. A ToIP return is required for every single immovable property and must be completed and filed separately. Since this is a self-assessment tax, the tax administration will perform a tax audit on ToIP in the subsequent years.

Tax on unused land

Land in towns and other specified areas without any construction, or with construction that is not in use, and even certain built-upon land, is subject to the tax on unused land. The tax is calculated at 2% of the market value of the land per square metre as determined by the Commission for Valuation of Unused Land on 30 June each year. The owner of the land is required to pay the tax on 30 September each year. The tax is paid by the owner on land that doesn't fall under the scope of ToIP.

Stamp tax

Property

The transfer of title in certain assets (e.g. land, building, vehicles) and transfer of company shares (whether partial or full) are subject to stamp tax. The tax is imposed on the transfer values at the following rates:

- Transfer of assets: 4%.
- Transfer of shares: 0.1%.

The tax base for stamp tax on the soft and hard title transfer of immovable property (i.e. land) is the higher of:

- the property's value set by the appendix of the MEF's Prakas No. 962, or
- the property's value stated in a title transfer contract or other related legal documents if the transferred value is equal to or higher than the value set by the appendix of the Prakas.

Government contract

Stamp tax is imposed at the rate of 0.1% on the contract value of the public procurement contract for goods or services.

Document/signage

Stamp tax is to be paid on certain documents relating to the establishment, dissolution, or merger of a business, other official documents (perhaps more importantly for foreign investors), and certain advertising postings and signage. Amounts vary according to such factors as the type of documents, the location of the signage, illumination, and nationality of any scripted words. For certain documents, the tax amount is fixed up to KHR 1 million.

Cigarettes

Domestic producers or importers of cigarettes have the obligation to buy and affix tax stamps on packets of cigarettes. No person is allowed to sell or display packaged cigarettes for sale without a tax stamp.

Patent tax

Registered businesses must pay a (relatively nominal) patent tax on initial business registration and annually thereafter. Patent tax is levied with reference to turnover or estimated turnover.

Type of taxpayers	Patent tax (approximate USD amount)
Small	USD 100 per year
Medium	USD 300 per year

Type of taxpayers	Patent tax (approximate USD amount)
Large	• USD 750 for turnover from USD 500,000 to USD 2,500,000. • USD 1,250 for turnover of over USD 2,500,000.
	Additional tax of USD 750 if the taxpayer has a branch, warehouse, factory, or workshop for a business activity in a different city or province.

The annual patent tax return and payment are to be filed annually, within three months of calendar year-end.

Tax on means of transportation

The tax on means of transportation imposes a number of statutory fees on the registration of certain vehicles, including trucks, buses, and ships.

Tax on Salary (ToS) and Tax on Fringe Benefits (ToFB)

Cambodia's ToS rules follow internationally familiar residency and source principles. A Cambodian resident taxpayer's worldwide salary will be subject to Cambodian ToS. For non-residents, only the Cambodian-sourced salary will be subject to ToS. The place of salary payment is not considered relevant in determining source.

A distinction is made between cash and fringe benefit salary components. Different tax scales also apply.

ToS or ToFB is a tax on employees' income, but employers are held liable to these taxes if the employers fail to withhold.

The tax tables applicable to individuals (e.g. ToS, ToFB) are provided in the Taxes on personal income section of Cambodia's Individual tax summary at www.pwc.com/taxsummaries.

Social security contributions

Employers are currently required to make the Occupational Risks Contribution (ORC) and the payment for healthcare to the National Social Security Fund (NSSF).

Payment for ORC

An employer with at least eight employees must register itself and all its employees with the NSSF.

The employer is required to contribute ORC equal to 0.8% of the monthly average wage of an employee to the NSSF's designated bank account.

Payment for healthcare

In addition to the NSSF payment for ORC, the employer is also required to contribute, collect, and remit the contribution for healthcare to the NSSF on a monthly basis. According to Sub-Decree No. 140, dated 26 August 2017, from 1 January 2018, the obligation to pay the contribution of healthcare is the full burden (100%) of the employer at 2.6% of the monthly average wage of employees. Previously, the healthcare contribution was required from both employers and employees, each equal to 1.3% of the monthly average wage of employees.

Branch income

Branches of foreign corporations are subject to CIT on Cambodian-source income only.

If any branch of a foreign company transfers its Cambodian-sourced income to foreign countries, the income shall be subject to the WHT as stated in paragraph 10 of Article 33 of the Law on Taxation.

Income determination

Inventory valuation

Inventory can be valued at weighted-average cost, first in first out (FIFO), or current value at the close of the period, where this value is lower than the purchase price or production cost. Work-in-progress should be valued at production costs.

Capital gain

Capital gains form part of taxable profit.

Dividend income

Dividend means any distribution of money or property that a legal person distributes to a shareholder with respect to the shareholder's equity interest in such legal person, with the exception of stock dividends and distributions in complete liquidation of the company. Whether or not a distribution is a dividend shall be determined under the preceding condition without regard to whether or not the legal person has current or accumulated income or profit or earnings.

Inter-company dividends

Inter-company dividends between residents are exempt from CIT (*see the Withholding taxes section for more information*).

Gross dividend income received by a resident company from a non-resident enterprise is subject to CIT. A foreign tax credit for taxes paid on these dividends is allowed for deduction from the CIT. The maximum amount of the foreign tax credit is the CIT liability with respect to that dividend income.

Passive income

Designated passive income (such as interest, royalties, and rent) forms part of taxable profit.

Foreign income

Resident entities are taxed on their worldwide income, and tax credits are available for foreign taxes incurred. Foreign income is taxable in the period it is earned; there is no provision allowing tax to be deferred on the income earned overseas.

Deductions

Depreciation and amortisation

Property should be depreciated at rates according to four classes of assets as specified in the tax legislation. Land is not considered a depreciable asset. The straight-line or the declining-balance method is specifically required to be used for each class of assets.

Assets	Method	Rate (%)
Building and structures	Straight line	5
Computers, electronic information systems, software, and data handling equipment	Declining balance	50
Automobiles, trucks, office furniture, and equipment	Declining balance	25
All other tangible property	Declining balance	20

Expenditures on intangible property are amortisable over the life of the property or at 10% *per annum*.

Special depreciation

A QIP will be entitled to a 40% special depreciation in the first year of purchase or, if later, the first year the assets are used. However, the special depreciation will only apply to assets used in 'manufacturing and processing' (still to be defined) and only if the taxpayer has elected not to use a tax holiday. A clawback provision exists for assets held for less than four years.

Goodwill

Purchased goodwill is a depreciable intangible fixed asset for CIT purposes. If the useful life of the intangible fixed assets can be determined, the annual depreciation charges shall be calculated on the useful life by using the straight-line method. If the useful life cannot be determined, the annual depreciation rate of 10% shall be used.

Start-up expenses

Preliminary and formation expenses are allowed to be fully deducted in the period in which the expenses arise, or they can be amortised over two years.

Interest expenses

Interest deductibility in any year is limited to the amount of interest income plus 50% of the net profits excluding interest income and interest expense. The excess non-deductible interest expense can be carried forward to the following tax years indefinitely.

Based on the GDT's internal instruction, the tax authorities set maximum interest rates for loans from third parties (i.e. 120% of the market interest rate at the time of obtaining the loan) and loans from related persons (i.e. the market interest rate at the time of obtaining the loan). If the interest rate is higher than the maximum interest rate, the surplus interest expense is not deductible.

Bad debt

A loss on a claim (i.e. bad debt) is deductible where the impossibility to recover the loss can be clearly shown and that claim has been written off from the accounting books, except where the giving up of the claim is an 'abnormal act of management' (still to be defined).

Charitable contributions

The charitable contribution expense is deductible to the extent the amount does not exceed 5% of taxable profit. The taxpayer must have proper evidence supporting the payments.

Fines and penalties

Additional tax, late tax payment interest, and fines of all types incurred for the violation of various legal provisions are not deductible.

Taxes

Taxes that are not a charge to the enterprise (e.g. WHT, ToS, ToFB, CIT, and additional CIT on dividend distribution) are not deductible.

Loss between related parties

No deduction is available for certain losses incurred on dealings between 51% commonly owned parties.

Net operating losses

Taxpayers may carry forward their losses for five years. The carryback of losses is not permitted. There is no provision for any form of consolidated filing or group loss relief.

To be eligible to carry forward tax losses, a taxpayer must not change its activities or ownership.

If a taxpayer received a unilateral tax reassessment from the GDT, a taxpayer will not be able to utilise the tax losses brought forward in the year of reassessment.

Payments to foreign affiliates

An expense payable to a related party that is not paid within 180 days of the year-end will not be deductible. A deduction can be claimed in the year in which the payments are made. This rule is not applicable for an outlay or expense for inventory, capital property, and depreciable property.

Group taxation

There is no specific provision for group taxation in Cambodia.

Transfer pricing

On 10 October 2017, the MEF issued Prakas No. 986 to provide 'rules and procedures on income and expense allocation among related parties' (known as the 'Local Transfer Pricing Rules'), which is effective immediately.

The Prakas defines the transfer price as 'the price of goods, services, or property charged between related parties'. Transfer pricing refers to setting the value of transactions (e.g. the sale or purchase of goods or services, royalties, or interest) between related parties using the most appropriate transfer pricing methodology. If the transactions aren't at arm's length, the tax authority may adjust the value and impose taxes accordingly.

Cambodia

The purpose of transfer pricing rules is typically to make sure related entities compensate each other appropriately in an amount that is commensurate with the value of property transferred or services provided and to prevent entities from manipulating profits between related parties to minimise tax exposure.

We've summarised key information from the Prakas, including the definition of related party, acceptable transfer pricing methodologies, and the required documentation, below.

Related party definition

The Prakas defines 'related party' as a relative of the taxpayer or an enterprise that controls, is controlled by, or is under common control with the taxpayer. The term 'control' means ownership of 20% or more of the equity interest in the enterprise or voting power of the board of directors.

Transfer pricing methodologies

The acceptable methodologies for determining arm's-length pricing under the Prakas are those endorsed by the Organisation for Economic Co-operation and Development (OECD) in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The five methodologies are described below:

Transfer pricing method	How it works	When to use it
Comparable Uncontrolled Price (CUP)	The CUP method compares the price charged for goods or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction.	The CUP method is generally the most direct and reliable way to measure an arm's-length result for the same property in substantially the same circumstances as the controlled transaction. But it can be difficult to find a transaction that is similar enough that no differences have a material effect on the price.
Resale Price (RP)	The RP method determines the arm's-length price by deducting an appropriate gross margin for the activities of the reseller from the actual resale price.	RP is the easiest method to use if the distributors do not add significant value to the product transferred.
Cost Plus (CP)	The arm's length price is determined by adding an appropriate mark-up to the cost of the product or service.	The CP method is most useful for sales of semi-finished goods, joint facility agreements, long-term buy-and-supply arrangements, and the provision of services.
Transactional Net Margin Method (TNMM)	The TNMM compares the net profit margin relative to an appropriate base (e.g. costs, sales, or assets) that a taxpayer realises from a controlled transaction to an appropriate base. It is similar to the CP and RP methods but at the net profit margin level.	The TNMM applies to cases where one of the parties contributes unique intangibles, while the other party does not make any unique contribution.

Transfer pricing method	How it works	When to use it
Profit Split Method (PSM)	The PSM establishes transfer pricing by dividing the profits of a multinational company in a way that would be expected of independent companies in a joint-venture relationship. Independent companies would split the combined profit in proportion to the value of their respective contributions to the generation of profit in the transaction.	The PSM is the most appropriate method in cases where both parties to a transaction make unique and valuable contributions to the transactions.

Transfer pricing documentation

Entities that transact with related parties must prepare and maintain transfer pricing documentation setting out related-party transactions and the transfer pricing methodologies used to justify an arm's-length value. Documents related to the transactions, such as invoices, must also be kept for ten years from the tax year end.

Entities must also disclose related-party transactions when filing their annual CIT return and provide relevant transfer pricing documents if required by the tax authority.

Thin capitalisation

There is no provision for thin capitalisation in Cambodia.

Controlled foreign companies (CFCs)

There is no provision for CFCs in Cambodia.

Tax credits and incentives

Foreign tax credit

Residents earning foreign-sourced income can receive credits for foreign taxes paid.

Inbound investment

The Council for the Development of Cambodia (CDC) may be approached for a one-stop service to register a project and obtain approval for a QIP status. CDC licensing is, however, not mandatory (except for certain large, politically sensitive projects) and is applicable to those projects that do not fall within the 'negative list'. Some of the projects in the 'negative list' include the following:

- All kinds of commercial activities, import and export activities, and transportation services (except the railway sector).
- Currency and financial services.
- Activities that relate to newspapers and media.
- Production of tobacco products.
- Provision of value-added services of all kinds of telecommunication services.
- Real estate development.

The current investment incentives that are applicable to the QIP registered with the CDC include a CIT exemption period of up to six years or special depreciation (*see Special depreciation in the Deductions section*), import duty exemptions, and exemption from MT. Not all QIPs will be entitled to all incentives.

Annually, a QIP is required to obtain a Certificate of Compliance (CoC) from the CDC to guarantee its investment incentives. The CoC is intended to provide confirmation that the QIP has acted in compliance with the relevant tax regulations.

Additional tax incentives for rice farming, paddy rice purchase, and export of milled rice

The MEF has issued Prakas to provide additional tax incentives to any enterprises in the business of rice farming, paddy rice purchase, and export of milled rice, as follows:

VAT:

- Domestic supplies of paddy rice: 0%.
- Domestic supplies of milled rice: 10%.
- Export of milled rice: 0%.
- Supplies of milled rice or milled rice production services to rice exporters (subject to specific conditions): 0%.
- Supplies of milled rice or milled rice production services to the local market: 10%.
- Input VAT related to rice farming, paddy rice purchase, and export of milled rice is creditable or refundable.
- Input VAT related to import of production inputs and equipment to produce milled rice for export is borne by the government (subject to specific conditions).
- Local purchases of production inputs, except for paddy rice: 10%.

CIT and MT:

- Exempt from 1% MT.
- Entitled to tax holiday period (i.e. trigger period plus three years plus three year priority period).
- Exempt from 1% prepayment of CIT during the tax holiday period.

Withholding taxes

WHT needs to be withheld on payments made by residents (and it seems only to those who fall under the self-declaration regime). The withheld tax constitutes a final tax when withheld in respect of resident and non-residents.

The types of payments caught are as follows.

WHT on payment to residents

- Interest: 15% (except payment to a Cambodian bank).
- Royalties: 15%.
- Rental: 10%.
- Services: 15% (except payments to a registered taxpayer and supported by a valid VAT invoice).

WHT on payment to non-residents

Under the Law on Financial Management 2017, which is effective from 1 January 2017 onwards, any resident taxpayer carrying on a business, including a PE of a non-resident person, who pays any Cambodian-source income as defined under Article 33 of the Law on Taxation to a non-resident taxpayer must withhold tax at 14% of the amount paid. WHT does not apply to property or risk reinsurance premiums in Cambodia.

According to Article 33 of the Law on Taxation, Cambodian-source income includes:

- Interest paid by a resident enterprise, resident pass-through, or a governmental institution of Cambodia.
- Dividends distributed by a resident enterprise.
- Income from services performed in Cambodia.
- Compensation for management and technical services paid by a resident person.
- Income from movable or immovable property, if the property is situated in Cambodia.
- Royalties from the use, or right to use, intangible property paid by a resident person or paid by a non-resident person through a PE maintained in Cambodia.
- Gain from the sale of immovable property located in Cambodia or from the transfer of any interest in immovable property situated in Cambodia.
- Premiums from the insurance or reinsurance of risks in Cambodia.
- Gain from the sale of movable property that is part of a PE's business property maintained by a non-resident taxpayer in Cambodia.
- Income from business activities conducted by a non-resident through a PE in Cambodia.

WHT is due when the amount is paid. An expense is considered 'paid' when it is recorded in the accounting records.

Except WHT on the rental of movable and immovable properties as stated in Article 25 and 26 of the Law on Taxation, small taxpayers are exempted from being the WHT agents for other WHT implications.

Tax administration

Taxable period

The standard tax year is the calendar year, although different accounting year-ends may be granted upon application.

Tax returns

The return for annual tax (i.e. CIT or MT) is to be filed annually, within three months of tax year-end.

Returns for monthly taxes (e.g. 1% prepayments of CIT, WHT, ToS or ToFB, SPT, and accommodation tax) are to be filed monthly, within 20 days of the following month. The deadline will be extended to the next working day if the 20th day falls on a Saturday, Sunday, or public holiday.

Payment of tax

CIT or MT is due for payment three months after tax year-end. The CIT or MT liability can be reduced by prepayment of CIT payments.

Monthly taxes are due for payment by the 20th day of the succeeding month. The deadline will be extended to the next working day if the 20th day falls on a Saturday, Sunday, or public holiday.

Prepayment of CIT

A prepayment of CIT equal to 1% of monthly turnover inclusive of all taxes, except VAT, is required to be paid on a monthly basis. The prepayment can be offset against the annual CIT liability and the MT.

Where a taxpayer is in the period of CIT holiday, the taxpayer is also exempted from the prepayment obligations. However, a nil monthly return will need to be lodged.

Where a taxpayer is not subject to MT, a monthly prepayment of CIT must still be made. However, unutilised prepayments from a prior year can be used to offset the current amount due, and no physical payment may be required.

Tax audit process

There are two types of tax audit in Cambodia (i.e. limited and comprehensive tax audits). Initially, the tax authorities will send a notification letter to the taxpayer informing them of a tax audit. During the tax audit process, tax auditors visit the taxpayers' office to review the documents and discuss any potential tax issues with the taxpayers and may request supporting evidence. After the visit to the taxpayer's office, the tax auditors issue a notice of tax reassessment (NoTR), which indicates the reassessed tax liabilities and the basis of their tax reassessment. If the taxpayers agree with the reassessed tax liabilities, they can proceed with the payment. If not, the taxpayers have to submit an objection letter to the tax authorities within 30 days of the receipt of the NoTR.

Statute of limitations

The tax audit period (i.e. the limitation of the period within which the tax authorities can perform tax audits) is as follows:

- Within three years of the date of submission of the tax returns.
- Within ten years of the date of submission of the tax returns if there is any evidence of 'obstruction of the implementation of laws'.
- Any time with the written consent of the taxpayers.

In practice, the GDT regularly extends the time limit for tax audit up to ten years.

Topics of focus for tax authorities

In practice, the tax authorities focus the tax reassessment on various matters, including payment to third parties overseas, fringe benefits provided to employees, and related party transactions (e.g. payment of management fee to head office, loans from shareholder).

Other issues

Statutory financial audit requirement

All enterprises (whether physical or legal persons) that meet two of the following criteria are required to have their financial statements audited by an independent external auditor registered with the Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA):

- Annual turnover above KHR 3 billion.
- Total assets above KHR 2 billion.

- More than 100 employees.

QIPs registered with the CDC are required to have their financial statements audited by independent external auditors registered with the KICPAA.

The law does not state the deadline for the enterprises to submit their audited financial statements. However, the deadline for audited financial statements to be completed is six months after the accounting year-end (i.e. for the financial year ended 31 December 2017, the deadline is 30 June 2018).

United States (US) Foreign Account Tax Compliance Act (FATCA)

The intergovernmental agreement (IGA) between the United States and Cambodia regarding the US FATCA was signed on 14 September 2015. This agreement shall enter into force on the date of Cambodia's written notification to the United States that Cambodia has completed its necessary internal procedures for entry into force of this agreement.

Cameroon, Republic of

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Significant developments

As of 1 January 2018, the following significant corporate tax developments were introduced in Cameroon by the 2018 Finance Law:

- The ceiling of the computer fee, which rate is 0.45%, shall be fixed at 15,000 *Communauté Financière Africaine* francs (XAF) per export declaration.
- Some arms and their parts, as well as ammunition, (of Chapter 93 of the Economic and Monetary Community of Central Africa [CEMAC] Code) imported by persons other than those governed by public law shall be subject to excise duty at the rate of 25% of the taxable value.
- Software, royalties, usage rights, licences, and updates shall be subject to customs clearance under the terms and conditions provided by the law, regardless of the means of entry into Cameroon.
- Interest for late payment at the rate of 1.5% per month (capped at 50%) has been instituted for persons who have failed to pay taxes and customs duties 30 days after the computation of the detailed declaration.
- Approved intermediaries shall, through electronic means, provide the Directorate General of Customs, on a monthly basis, the information on the status of all foreign financial transactions carried out with their customers and on their personal behalf.
- Any importer or exporter wishing to terminate one's customs activities shall first inform the customs administration at least 90 days beforehand and request a customs audit.
- The Preferential Tariff (PT) of the Economic Community of Central African States (ECCAS) entered into force on 1 January 2018.
- Companies in the large taxpayers unit shall automatically submit their transfer pricing documentation alongside their annual tax return.
- The rate of deduction at source representing the instalment of corporate income tax (CIT) is fixed at 5.5%, irrespective of the tax regime of the service provider, for invoices relating to public procurement amounting to less than XAF 5 million.
- Games of chance and entertainment, including lotteries and mutual, simple, or any other betting games, shall be subject to a specific excise duty of XAF 25 per unit of play or bet.
- Value-added tax (VAT) credit refund procedure shall depend on whether the taxpayer is classified in the category of low, medium, or high-risk company.
- Remunerations paid abroad for the provision of access to digital audio-visual services and remunerations paid for all kind of services provided to oil companies during the research and development (R&D) phases shall be subject to the reduced rate of special income tax (SIT) at 5%.

- Collateral and mortgage loans with microfinance institutions of the first category, as well as the related releases, surety bonds, and guarantees, shall be exempted from the registration formality and the payment of graduated stamp duty.
- Any public procurement of an amount above or equal to XAF 5 million, whatever the source of financing, shall be to the reduced rate of 2% registration duties.
- Individuals or legal entities benefiting from tax and customs incentives contained in the conventions with various administrative authorities and not ratified by the Parliament shall negotiate the harmonisation of the provisions of the said conventions with the law on private investment incentives with the Ministry in charge of finance.

Taxes on corporate income

Resident corporations in Cameroon are taxed on their worldwide income; non-resident corporations are taxed only on Cameroon-source income.

The following shall be deemed to be operating in Cameroon and subject to CIT:

- Undertakings headquartered in Cameroon or with an effective management office in Cameroon.
- Undertakings that have a PE in Cameroon or with an effective management office in Cameroon.
- Undertakings that have a dependent representative in Cameroon.
- Undertakings that carry out activities that form a full commercial cycle in Cameroon.

The profits subject to CIT are determined with sole regard to profits earned by entities located in Cameroon (for residents) or transactions effected in Cameroon (for non-residents having a permanent establishment [PE] in Cameroon).

The net taxable profits are established after deduction of all charges directly entailed by the exercise of activities subject to assessment in Cameroon.

The total Cameroon CIT rate is 33%.

Taxation system/regime

Corporate bodies are assessed according to the following taxation systems determined on the basis of the turnover realised:

- Flat rate taxation system: Sole proprietorships with an annual turnover of below XAF 10 million, except for logging companies, professional officers, and liberal professions.
- Simplified taxation system: Sole proprietorships and corporate bodies with an annual turnover equal to or above XAF 10 million and below XAF 50 million.
- Actual earnings taxation system: Sole proprietorships and corporate bodies with an annual turnover equal to or above XAF 50 million.

Minimum tax

There is a 2.2% or 5.5% minimum tax in Cameroon based on turnover and depending on the tax regime of the taxpayer. The advance payment shall be 10% for any taxpayer that is not on the register of a tax office. The 10% rate shall be increased to 20% for forestry companies where, in addition, they do not provide evidence of possessing a logging permit duly issued by the competent authority.

The 10% rate also applies to remunerations paid to non-salaried sales agents or representatives and agents of direct network sales. The 15% rate applies to taxpayers not registered with a taxation centre and engaged in import activities. The 15% rate shall be increased to 20% where the taxpayer carries out the sale of in-bond goods.

The rate of deduction at source representing the instalment of CIT is fixed at 5.5%, irrespective of the tax regime of the service provider, for invoices relating to public procurement amounting to less than XAF 5 million.

The advance payment shall be 15.04% of the gross margin for firms subject to the actual earnings tax system and falling under regulated profit margin sectors, subject to the option for the tax regime of common application. In case of mixed activities, there is a mandatory application of the 2.2% rate on the share of turnover relating to the free margin.

This minimum tax is an instalment of CIT. As such, it shall be offset against CIT. The minimum tax is the sole tax payable if it is greater than CIT.

Local income taxes

A local tax of 10%, called Additional Council Tax, generally applies to the following taxes:

- CIT.
- Personal income tax (PIT).
- Withholding tax (WHT) on income from stock and shares.
- VAT.

The rate provided in this summary for each tax above is therefore inclusive of a basic rate plus 10% surcharge.

Corporate residence

An entity is deemed resident if its registered office, centre of activity, or management is located in Cameroon; if it has resident employees in Cameroon that provide services to customers; or if it has a PE in Cameroon.

Permanent establishment (PE)

Undertakings that have a PE in Cameroon or with an effective management office in Cameroon shall be deemed to be operating in Cameroon and subject to CIT.

PE shall mean a physical installation with certain fixity and with a certain degree of autonomy through which the foreign company carries out wholly or part of its business.

Other taxes

Value-added tax (VAT)

VAT shall be levied on natural persons or corporate bodies that automatically, habitually, or occasionally carry out taxable transactions consisting of provisions of services or sales of goods.

The total VAT in Cameroon is 19.25%. Exports are zero rated. The VAT paid upstream is recoverable, except where otherwise stated.

Note that VAT is invoiced only by natural and legal persons whose turnover (taxes excluded) is equal to or above XAF 50 million and who are under the tax regime of actual earnings.

Customs duties

Customs duties of between 5% and 30%, depending on the nature of the goods imported, are levied based on the customs value.

Goods acquired electronically and imported into Cameroon shall be subject to customs duties and taxes under conditions laid down by regulation.

Software, royalties, usage rights, licences, and updates shall be subject to customs clearance under the terms and conditions provided by the law, regardless of the means of entry into Cameroon.

The rate of the Common External Tariff (CET) has been re-established on some products, such as rice and cement. As such, the import of rice, which previously benefitted from the suspension of duties and taxes, is henceforth subject to the CET at the rate of 5%, and the CET rate has been revised upwards for some types of cement.

There is an African Integration Contribution (AIC) at the rate of 0.2% applicable to the taxable value of goods imported from third party countries into the African Union.

The ceiling of the computer fee, which rate is 0.45%, shall be fixed at XAF 15,000 per export declaration.

As of 1 January 2018, interest for late payment at the rate of 1.5% per month (capped at 50%) has been instituted for persons who have failed to pay taxes and customs duties 30 days after the computation of the detailed declaration.

The Preferential Tariff (PT) of the Economic Community of Central African States (ECCAS) entered into force in Cameroon on 1 January 2018. As of this date, Cameroonian goods exported in the countries of the ECCAS shall be exempt from customs duty. Goods from those countries shall be subject to zero-rate customs duty.

Countries of the ECCAS include Angola, Burundi, Cameroon, Central African Republic, Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Republic of Congo, and São Tomé and Príncipe.

Excise taxes

An excise duty of 25% is applicable to cigarettes, drinks, cosmetics, luxury items (e.g. jewels, precious stones), slot machines, and other devices used for games of chance. A reduced rate of excise duty (12.5%) shall apply to soft drinks and private vehicles with engine capacities of 2,000 cm^3.

There is an extra-reduced rate of excise duties at 2% applicable to mobile telephone communications and Internet services.

Deductions initially made as excise duties shall be subject to regularisations by tax officials in case of reselling throughout the national territory.

There are minimum excise duties applicable to alcoholic beverages and tobacco. For tobacco, the minimum tax shall not be less than XAF 3,500 for 1,000 cigarette rods. For alcoholic beverages, the minimum tax depends on the nature of the alcohol and the alcohol level per litre.

Some arms and their parts, as well as ammunition, (of Chapter 93 of the CEMAC Code) imported by persons other than those governed by public law shall be subject to excise duty at the rate of 25% of the taxable value.

As of 1 January 2018, games of chance and entertainment, including lotteries and mutual, simple, or any other betting games, shall be subject to a specific excise duty of XAF 25 per unit of play or bet.

Real property tax

Cameroon property tax is payable annually on real estate with or without an ownership certificate or an administrative or judicial order issued. Tax is charged at 0.1% of the assessed property value.

Properties belonging to clubs, associations, or sporting bodies' accredited properties intended for sports and sports facilities are exempt from real property tax.

Transfer tax

The sale of a business in Cameroon is subject to a transfer tax rate of 15%.

Registration duty

The registration duty applies to certain deeds listed by the General Tax Code (GTC). The assessment basis depends on the nature of transactions, and the rate varies from 1% to 15%.

The formation of a company and subsequent capital increases in Cameroon are not subject to registration duty.

Public contracts or procurements for amounts of less than XAF 5 million, paid from the budget of the state, local, and regional authorities, administrative public establishments, or from external funding, shall be subject to registration duty at the rate of 5%.

Public contracts and procurements paid from the budget of state-owned companies and semi-public corporations shall be subject to registration duty at the rate of 2% or 1% where the amount is, respectively, less or more than XAF 5 million.

Public orders for fuels and lubricants, regardless of the purchase or payment method, shall be exempted from registration duty and stamp duty.

The following transactions are subject to registration duty at the rate of 2%:

- The transfer of shares and bonds of commercial or civil companies with registered offices outside of the CEMAC zone when said instruments are utilised or when the transfer produces consequences in a CEMAC country.
- The transfer (even indirect) in Cameroon or abroad of shares and bonds of companies with registered offices in Cameroon.
- Any public procurement of an amount above or equal to XAF 5 million, whatever the source of financing.

Collateral and mortgage loans with microfinance institutions of the first category, as well as the related releases, surety bonds, and guarantees, shall henceforth be exempted from the registration formality and the payment of graduated stamp duty.

Stamp duty

Stamp duty in CEMAC countries is established, independent of registration fees, on all papers to be used for civil and legal instruments and documents that may be brought before law courts as proof. It shall be collected on the basis and in accordance with the rules laid down in the GTC.

Stamp duty shall be fixed according to the nature of the instruments subject thereto. There shall be no exemptions except those expressly indicated in the GTC.

The maximum and minimum stamp duty based on paper size are fixed at XAF 1,500 and XAF 1,000, respectively, in Cameroon.

Payroll tax

Employers in Cameroon are required to make monthly contributions of 2.5% of the total amount of salaries and fringe benefits of their employees to the Housing Loan and Employment Fund of Cameroon.

Social security contributions

Employer and employee must contribute on a monthly basis to Cameroon's National Social Insurance Fund at 11.2% and 4.2%, respectively. The basis of contribution is capped at XAF 750,000 per month (i.e. XAF 9 million per year). Employers in Cameroon must also contribute 1.75%, 2.5%, or 5% of total salaries to the National Social Insurance Fund for Industrial Accidents when they are respectively classified in groups A, B, or C according to the classification per type of activity. The calculation basis in this category is the gross salary, including the benefits in kind assessed for their actual amount.

Business licence tax

Any natural person or corporate body carrying on a trade, industry, or profession in Cameroon shall be liable to a business licence tax. The business licence tax is paid annually and shall be calculated by applying a rate to the turnover of the previous financial year-ended as follows:

- 0.159% on the turnover of large companies (those under the jurisdiction of the large taxpayers unit), for a minimum contribution of XAF 5 million and a maximum contribution of XAF 2.5 billion.
- 0.283% on the turnover of medium-sized companies (those under the jurisdiction of the Medium Size Taxpayers Centre, Specialised Tax Centre, and Specialised Tax

Centre for Liberal Professions and Real Estate), for a minimum contribution of XAF 141,500 and a maximum contribution of XAF 4.5 million.
- 0.494% on the turnover of small-sized companies (those under the jurisdiction of the divisional tax centres), for a minimum contribution of XAF 50,000 and a maximum contribution of XAF 140,000.

New enterprises shall be exempt from the payment of the business licence tax during the first year of operation.

Branch income

The local branch of any foreign company is taxed at the same rate as a company. The net profits (after CIT) of entities having their residence or head office outside Cameroon (such as the branch of a foreign company) are assumed to be distributed each fiscal year to companies not located in Cameroon. Their net profits (after CIT) shall therefore be subject to the WHT on distributions at 16.5%.

Income determination

Inventory valuation

For valuation purpose, the GTC only provides that stocks shall be valued at cost price; however, if the market price is lower than the cost price, the undertaking shall make provisions for depreciation of inventory. No reference is made to the accounting method that shall be used (e.g. first in first out [FIFO], last in first out [LIFO]). Only FIFO and weighted average methods are allowed under the Organisation for the Harmonisation of Business Law in Africa (OHADA) Accounting Principles. Where there is any difference between the valuation method permitted by the GTC and the book valuation, the accounting result shall be modified accordingly.

Firms shall, by 15 March, submit a summary of all the stock movements of the financial year concerned, together with the software used in managing the said stock. The summary of inventory movements should be produced in dematerialised form.

The right of ascertainment of stocks by the tax administration shall allow tax officers to conduct unannounced on-site operations to physically audit the stocks of one or several products of the non-prescribed period. A notice of passage shall be remitted to the taxpayer or representative during the first intervention within the framework of such audit.

Capital gains

Capital gains are normally taxed at full CIT rates.

The net overall capital gains arising from the transfer of shares and stocks; income from bonds; income from debts, deposits, surety-bonds, and current accounts; profits realised from the transfer of shares; reimbursement of sums put at the disposal of the company by a manager or a partner as an advance or a loan; and capital gains on the transfer of rights relating to natural resources shall be subject to 16.5% WHT.

For transfers realised abroad, the Cameroonian law enterprise and the transferor shall be jointly and severally liable to payment of the sums due under such transfer.

Dividend income

Dividends are subject to the WHT of 16.5%. However, dividends shall be treated as proceeds for the purpose of CIT, and the tax withheld at source is used as instalment for the payment of CIT.

Interest income

Interests are subject to the WHT of 16.5%. However, interests shall be treated as proceeds for the purpose of CIT, and the tax withheld at source shall be used as instalment for the payment of CIT.

Interests on external loans of a maturity period of at least seven years, signed as of 1 January 2014, are exempted from the WHT.

Royalty income

Royalties received from foreign entities shall be included in the taxable income subject to CIT, subject to double tax treaties (DTTs).

Foreign income

As a matter of both fact and law, revenue from abroad earned by corporate bodies situated in Cameroon shall be subject to CIT in Cameroon. There is no provision on tax deferral in Cameroon.

Deductions

Depreciation

Depreciation is generally computed on a straight-line basis over the useful life according to the rates provided for by the GTC, including those that might have already been deferred in times of deficit.

The following depreciation rates are generally accepted for tax purposes:

Assets	Depreciation rates (%)
Construction	5 to 20
Stationary equipment and tools	5 to 20
Portable equipment	10 to 100
Transport equipment	10 to 33.33
Railway lines	1 to 10
Engines	5
Rehabilitation	5 to 25
Furniture fittings and other equipment	10 to 33.33
Fishing equipment and fishing vessels	15

The deduction of depreciation can be carried forward indefinitely.

The threshold for small equipment and tools to be included in the balance sheet shall be XAF 500,000.

Goodwill

With regard to rules governing the deduction of provisions and depreciation, impairment of goodwill shall be allowable for CIT purposes.

Start-up expenses

There is no specific provision in the GTC relating to start-up expenses.

However, the OHADA Accounting Principles effectively state that start-up expenses shall be capitalised and must be completely depreciated as early as possible: over two to five years, except bond premiums, which are depreciated throughout the life of the loan.

No distribution of profit should be carried out before the complete depreciation of start-up expenses.

Intellectual property (IP)

Sums paid to related entities for the use of valid patents, brands, designs, and models are capped at the overall limit of 2.5% of the taxable income before the deduction of expenses claimed. When they are paid to entities located outside the CEMAC that directly or indirectly hold shares or are members of the Cameroonian entity's board of directors, they shall be considered as sums accruing from the distribution of profits. As such, they are not allowable.

Interest expenses

Interest expenses are fully deductible.

However, interest paid to partners/shareholders in respect of the sums they leave with or place at the disposal of the company over and above their capital, irrespective of the type of company, shall be acceptable within the limits of those calculated at the rate of the central bank discount rate, raised by two points.

Bad debt

The deductibility of provisions for bad debts is subject to the following conditions:

- The debt must be specified (i.e. clarification is needed on the nature, amount, and the debtor).
- The company must show that it has unsuccessfully carried out actions for debt recovery (e.g. reminder letters, notice to pay, complaints).

For losses related to bad debts to be deductible, they should have been subjected to all amicable or forced collection methods and means provided for by the OHADA Uniform Act on the Organization of Simplified Procedures for Collection and Enforcement Procedures. Otherwise, they shall not be deductible.

In this regard, the impossibility of recovering the debt must be evidenced by:

- a deficiency report prepared by a bailiff
- a bankruptcy decision duly passed by the judge, if necessary, or
- a decision passed by a judge, bearing out the debtor who disputed the debt.

Charitable contributions

Acts of liberality, gifts, and subsidies shall not represent the charges deductible from profits.

However, payments made to R&D bodies and to collective philanthropic, educational, sports, scientific, social, and family institutions and bodies, on condition that the latter are situated in Cameroon, shall be deductible as soon as there is proof of payment and as long as they do not exceed 0.5% of the turnover for the fiscal year. Similarly, gifts made on the occasion of a disaster shall be deducted in the form and conditions determined by order of the Minister of Economy and Finance.

Liberalities, gifts, and subsidies awarded to clubs participating in the elite national competitions or to recognised organisations responsible for the organisation of official sport competitions are deductible, provided they are justified, within the limit of 5% of the annual turnover.

Fines and penalties

Compounding fees, fines, confiscations, and any penalty concerning persons who violate legal, economic, and fiscal provisions shall not be deducted from the profits subject to taxation.

Taxes

Only the professional taxes issued for collection during the fiscal year and which are to be borne by the firm in relation to the operations carried out in Cameroon shall be subject to deduction.

CIT, WHT, and PIT shall not be considered as deductible expenses for the levying of taxes.

Net operating losses

Any loss sustained in a given year can be carried forward up to the fourth year following the recording of the loss. The carryback of losses is not permitted in Cameroon.

Losses due to damage in inventories shall be deductible from the taxable basis when they are duly established and validated by a Commissioner of damage in the presence of a taxation officer with the rank of at least an inspector, under the conditions specified in the Manual of Tax Procedures.

Payments to foreign entities

Head office overhead expenses for operations carried out in Cameroon and the remuneration of certain effective services (studies, technical, financial, or accounting assistance) provided to Cameroonian firms by foreign natural persons or corporate bodies are not totally deductible.

Fees paid are deductible up to a maximum of:

- 5% of intermediary earnings as a general rule
- 2.5% of the turnover for firms specialised in public works, and
- 7.5% for design firms operating in accordance with regulations relating to design firms and consulting engineers.

The notion of technical assistance shall include services provided by entities located either overseas or in Cameroon.

Expenses linked to transactions with natural persons or legal entities resident or established in a territory or state considered to be a tax haven shall not be deductible. This rule shall not apply to imports of goods made in those countries. A tax haven is any state where the tax on the income of a natural person (PIT) or legal entity (CIT) is less than a third of that paid in Cameroon, or any state or territory considered not to be co-operative in matters of transparency or of exchange of information required for fiscal purpose by international or financial organisations. The rate to be considered in Cameroon for that purpose is 35% for PIT and 30% for CIT.

Group taxation

There is specific taxation of groups within the CEMAC area.

Where a joint stock company and a private limited company own either registered stock in a joint stock company or shares in a private limited company, the net proceeds of the share in the second company paid to the first during the financial year shall be deducted from the total net profit of the latter, less a percentage for costs and charges. This percentage is fixed at 10% of the total amount of the proceeds. This system shall apply when all of the following conditions are met:

- The stocks or shares owned by the parent establishment represent at least 25% of the capital of the subsidiary firm.
- The parent and subsidiary firms have their registered office in a CEMAC state (Cameroon, Central African Republic, Chad, Gabon, Equatorial Guinea, and Republic of Congo).
- The stocks or shares allotted at the time of issue are still registered in the name of the participating company that undertakes to retain them for at least two consecutive years in registered form.

Transfer pricing

There are provisions in the GTC that relate to transfer pricing.

Within the framework of a tax audit, the documents required for the justification of transfer pricing shall be presented to the tax inspectors at the start of the procedure. Items such as business transactions, payments in consideration for intangible rights, allocations of costs and expenses (head office costs, agreements to share costs, disbursements, etc.), financial transactions, etc. are particularly targeted for close scrutiny.

Companies in the large taxpayers unit shall declare participation in companies that are equal to or more than 25% of the share capital of the latter, as well as the documentation to justify their transfer pricing policy for intra-group transactions, at the same time as their annual tax return.

Thin capitalisation

The deduction of interests on sums of money left or placed at the disposal of local entities by partners or related companies who directly or indirectly own at least 25% of the share capital or corporate voting rights is capped at:

- one and a half times the amount of equity or
- 25% of profit before corporate tax and before deduction of the said interests and amortisations taken into account in determining such profit.

Otherwise, interests on the excess amount shall not be deductible.

Controlled foreign companies (CFCs)

We are not aware of any special provisions for CFCs. Indeed, subject to the provisions of international conventions and the provisions relating to group taxation mentioned above, revenue from stocks and shares held in a company based abroad shall be subject to income tax in Cameroon.

Tax credits and incentives

Foreign tax credit

Taxes paid abroad are not considered as tax credits unless provided as such by DTTs.

The system of reinvestment relief

This system of reinvestment relief previously provided by the GTC has been cancelled by the 2015 Finance Law.

The private investment tax incentive regime

The private investment tax incentive regime instituted by Law No. 2013/04 of 18 April 2013 applies to investment operations relating to the creation, extension, renewal, refurbishing of assets, and/or the transformation of activities carried out in Cameroon.

The major tax advantages related to the private investment regime in Cameroon are the following:

- During the installation phase: Tax incentives for a maximum period of five years.
- During the exploitation phase: Tax incentives for a maximum period of ten years.
- For the development of existing companies: Tax incentives for a maximum of five years.
- Possibility of specific advantage for prioritised sectors.

Tax and customs incentives granted to investors consist of exemptions from or reductions of payment of several taxes, duties, and other fees listed.

According to the 2017 Finance Law, conventions and agreements signed by the authorities that provide for customs and tax exemptions and waivers shall, under pain of unenforceability, be subject to prior approval by the Minister in charge of finance.

Individuals or legal entities benefiting from tax and customs incentives contained in the conventions with various administrative authorities and not ratified by the Parliament shall, in accordance with the 2017 Finance Law and within the deadline of two years from the promulgation of the 2018 Finance Law (20 December 2017), negotiate the harmonisation of the provisions of the said conventions with the above-mentioned law on private investment incentives with the Ministry in charge of finance.

Incentives applicable to listed companies

Companies whose ordinary shares are listed on the Cameroon Stock Exchange shall be entitled to the following reduced CIT rates:

- 22% for a period of three years for capital increases that represent at least 20% of the share capital.
- 27.5% for a period of three years for transfers of shares that represent at least 20% of the share capital.

- 30.8% for a period of three years from the date of listing for capital increases or transfers of shares that represent less than 20% of the share capital.

According to the 2016 Finance Law, such reduction shall be granted to companies listed on the stock market within three years, with effect from 1 January 2016.

Companies that issue stocks on the Cameroon Stock Exchange shall be entitled to a reduced CIT rate of 25% (i.e. 27.5% including 10% additional council tax) for a period of three years, with effect from the year of issue.

Specific tax incentives

The following may benefit from specific tax incentives:

- Transactions on real estate located in areas subject to the official list price.
- Promotion of youth employment.
- Members and promoters of approved management centres.
- Education, vocational training, and health establishments.
- New investments carried out in economic disaster areas.
- Companies involved in agriculture, stock breeding, and fisheries.
- Public establishments promoting local building materials.
- New beverages produced and packaged exclusively using local raw materials.
- Expenses for research and innovation.

Withholding taxes

Special income tax (SIT)

Subject to international tax treaties, an SIT is levied by the state or regional and local authorities on income paid to natural persons and corporate bodies domiciled abroad by enterprises or establishments based in Cameroon. The tax is withheld at source by the Cameroonian entity that pays the remuneration.

Subject to international tax treaties, the SIT rates are fixed as follows:

- The general rate of 15% is applicable to remunerations paid abroad in respect of various services provided and used in Cameroon.
- The average rate of 10% is applicable to remunerations for *ad hoc* material services paid to non-domiciled companies (undertaking short-term operations in Cameroon) that have a PE in Cameroon and waived the tax in accordance with the tax returns.
- The reduced rate of 5% shall apply to:
  - Remunerations under public procurement where the successful bidders are not domiciled in Cameroon.
  - Remunerations paid abroad for the provision of access to digital audio-visual services.
  - Remunerations paid for all kind of services provided to oil companies during the R&D phases.

Non-commercial profits WHT

A 16.5% WHT is to be deducted at source by entities that pay remunerations granted to the board members of public institutions, public corporations, and semi-public companies in any capacity.

The tax rate applicable to non-commercial revenue is 11% to be deducted at source by entities that pay the following:

- Allocations of any nature, such as allowances, gratuities, compensations, and daily subsistence allowances granted, in addition to salaries, by public and semi-public entities, excluding statutory compensations falling under the category of wages and of salaries, and reimbursement of costs, the list of which shall be established by decision of the Minister in charge of finance.
- Amounts, allowances, allocations, or remunerations of any nature paid to sportsmen and artists, irrespective of their tax domicile.

Dividends WHT

A total WHT of 16.5% applies to dividends paid to both Cameroon residents and non-residents. The WHT rate may be reduced under an applicable DTT.

Interest WHT

The interest from foreign loans is subject to 16.5% WHT. The WHT rate may be reduced under an applicable DTT.

Interests on external loans of a maturity period of at least seven years, signed as of 1 January 2014, are exempted from the WHT.

Royalties WHT

Royalties paid to non-residents are subject to a 15% WHT (the 10% surcharge is not applicable). The tax rate may vary under some DTTs.

Tax treaties

Cameroon has tax treaties with Canada, France, Morocco, South Africa, Tunisia, United Arab Emirates, and members of CEMAC (Cameroon, Central African Republic, Chad, Gabon, Equatorial Guinea, and Republic of Congo).

Recipient	Dividends (%)	Interest (%)	Royalties (%)	Head office expenses and technical assistance (%)
Non-treaty	16.5	16.5	15	15
Treaty:				
CEMAC	16.5	16.5	N/A	N/A
Canada	16.5	16.5	16.5	15
France	15	15	N/A	7.5
Morocco	10	10	10	10
South Africa	10	10	10	10
Tunisia	12	15	15	15
United Arab Emirates	10	7	10	10

Tax administration

Taxable period

The tax year in Cameroon is the calendar year.

Tax returns

On or before 15 March, taxpayers are expected to submit to the tax administration the annual return of revenue derived from their business venture during the period serving as the tax base.

This return must be presented in conformity with the OHADA accounting system.

No one may invoke a claim on the state to shirk its return and payment obligations.

Despite the declarative tax system applicable in Cameroon, the tax administration may send a pre-completed return of collected revenue or any other taxable item, with the tax amount owed, to any natural or legal person paying taxes or duties as per laws and regulations in force.

The taxpayer that feels overtaxed or wrongfully taxed under a pre-filled tax return procedure shall submit a request for correction to the competent taxation centre within one month of receipt of such return. In such case, the tax authorities and the taxpayer shall have 30 days within which to decide the final taxes established by a collection notice (CN).

Failure to pay within 15 days of receiving the CN or respond to a pre-filled tax return in time shall be tantamount to accepting the terms thereof.

Other tax filings

Firms falling under a dispensational or special tax regime shall file, by 15 March, a summary declaration of transactions of the previous year for which they obtained tax benefits, including theoretical taxes and levies corresponding to the said transactions.

Firms shall, by 15 March, submit to the tax administration a summary of all the stock movements of the previous year, together with the software used in managing the said stock.

Approved intermediaries shall, through electronic means, provide the Directorate General of Customs, on a monthly basis, the information on the status of all foreign financial transactions carried out with their customers and on their personal behalf.

Payment of tax

An instalment representing the 2.2% or 5.5% minimum tax of turnover realised during each month shall be paid to the tax authorities not later than the 15th day of the following month.

Advance payment of 0.5%, 2%, 5%, 10%, 14%, 15%, 15.04%, or 20% is withheld at source by the buyer or the customs administration on purchases and imports destined to be resold, depending on the tax regime applicable to the buyer or importer. *See Minimum tax in the Taxes on corporate income section for more information*.

The balance of CIT is paid, at the latest, on 15 March following the fiscal year-end, when submitting the CIT return.

Surplus tax payments

A surplus tax payment can be offset against future taxes of the same nature to be paid.

Excess payments of CIT shall be reimbursed in case of cessation of activities.

For the specific case of VAT, a reimbursement procedure is provided for by the GTC under certain conditions. Such VAT credit refund procedure shall depend on whether the taxpayer is classified in the category of low, medium, or high-risk company.

Tax audit process

There is no audit cycle in Cameroon.

As of January 2018, whatever the cause, any importer or exporter wishing to terminate one's customs activities shall first inform the customs administration at least 90 days beforehand and request a customs audit. In the absence of this prior audit, the taxpayer concerned, the taxpayer's officials, and/or the taxpayer's representatives shall remain jointly and severally liable for the customs debts subsequently established.

Statute of limitations

The statute of limitations is four years.

Topics of focus for tax authorities

The topics of focus for tax authorities include the following:

- Remunerations paid for services provided to local entities by providers located overseas.
- Transfer pricing.
- Deduction and reimbursement of VAT.
- WHT.
- Stocks (inventory valuation and management).

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Significant developments

Canada's corporate summary reflects all 2018 federal, provincial, and territorial budgets. The 2018 federal budget continues the focus on improving the fairness and integrity of the tax system by tightening perceived loopholes or inequities, and by cracking down on tax evasion and tax avoidance. It proposes to invest, '90.6 million [Canadian dollars (CAD)] over five years to address additional cases [of tax evasion and tax avoidance] that have been identified through enhanced risk assessment systems, both domestically and internationally'. In addition, the budget proposes to spend CAD 41.9 million over five years and CAD 9.3 million per year thereafter to 'ensure that Canada's federal courts, including the Tax Court of Canada, receive adequate support to address a growing and increasingly complex caseload'. This comes in conjunction with continued expansion of outreach efforts by the Canada Revenue Agency (CRA) to ensure that taxpayers understand and meet their tax obligations.

This summary is based on enacted and proposed legislation and assumes that the proposed legislation will become law. Generally, budget proposals and draft legislation are enacted into law, especially if there is a majority federal government, which is currently the case.

Voluntary Disclosures Program (VDP)

In June 2017, in response to the recommendations of the Standing Committee on Finance and the report of the Offshore Compliance Advisory Committee (OCAC), which commented on the perceived shortcomings of the VDP, the CRA released draft Information Circular - IC00-1R6 - Voluntary Disclosures Program, for discussion purposes. It was finalised in December 2017. IC00-1R6 introduces numerous changes that significantly tighten the VDP, for applications received after 28 February 2018. *See Voluntary Disclosures Program (VDP) in the Tax administration section for more information*.

Equity-based financial arrangements

The 2018 federal budget expands existing synthetic equity arrangement and securities lending arrangement rules to prevent taxpayers from realising artificial losses through the use of equity-based financial arrangements to circumvent these rules. *See Synthetic equity arrangements and Securities lending arrangements in the Income determination section for more information*.

Derivatives

Recently enacted legislation clarifies the timing of the recognition of gains and losses on derivatives held on income account for taxpayers that are not financial institutions. The legislation:

- allows taxpayers to elect to mark-to-market all eligible derivatives held on income account, for taxation years beginning after 21 March 2017, and
- prevents the avoidance or deferral of income tax through the use of offsetting derivative positions in straddle transactions, for any loss realised on a position entered into after 21 March 2017 (exceptions apply).

See Derivatives in the Income determination section for more information.

Cross-border surplus stripping

The 2018 federal budget amends the existing cross-border surplus stripping rules to add comprehensive 'look-through' rules for partnerships and trusts, to ensure that these rules cannot be avoided inappropriately. The amended rules apply to transactions occurring after 26 February 2018. *See Cross-border surplus stripping in the Income determination section for more information*.

Foreign affiliates

The 2018 federal budget advances by nine months the filing due date of T1134 information returns for foreign affiliates (i.e. due six months after a corporation's year-end instead of 15 months), for taxation years of a taxpayer beginning after 2019. In addition, for taxation years of a taxpayer's foreign affiliate beginning after 26 February 2018, the 2018 federal budget:

- Deems activities carried out by a foreign affiliate and accruing to a specific Canadian taxpayer under a tracking arrangement to be a separate business; each separate business will need to meet specific conditions, including the 'six employees' test, to be excluded from the investment business definition.
- Adds certain minimum capital requirements to the trading or dealing in indebtedness rules for an affiliate to qualify for the regulated foreign financial institution exception.
- Deems a foreign affiliate of a taxpayer to be a controlled foreign affiliate of the taxpayer if foreign accrual property income (FAPI) attributable to specific activities of the foreign affiliate accrues to the benefit of the taxpayer under a tracking arrangement.

See Controlled foreign affiliates and foreign accrual property income (FAPI) in the Group taxation section and Foreign reporting in the Tax administration section for more information.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS)

Canada, along with 67 other jurisdictions, signed this multilateral instrument (MLI) on 7 June 2017. The MLI is not a tax treaty; it is an instrument modifying existing bilateral tax treaties. The signing authorities are required to meet certain minimum standards developed under the Organisation for Economic Co-operation and Development (OECD)/Group of 20 (G20) BEPS project relating to anti-treaty shopping rules, dispute resolution, and mutual agreement procedure measures. *See Treaty shopping in the Tax administration section for more information*.

Reassessment periods

The 2018 federal budget extends the reassessment period of a taxpayer in the following circumstances:

- for income arising in connection with a foreign affiliate of a taxpayer
- if a requirement for information or compliance order is being contested in court, and
- for a loss carryback previously claimed, if the loss results from a transaction involving a taxpayer and a non-arm's length, non-resident person.

See Statute of limitations in the Tax administration section for more information.

Sharing information for criminal matters

The 2018 federal budget proposes that:

- the CRA can use the legal tools available under the Mutual Legal Assistance Criminal Matters Act to facilitate sharing of information related to tax offences under Canada's tax treaties, Tax Information Exchange Agreements (TIEAs), and the Convention on Mutual Administrative Assistance in Tax Matters, and
- tax information can be shared with Canadian mutual legal assistance partners for acts that, if committed in Canada, would constitute terrorism, organised crime, money laundering, criminal proceeds offences, or designated substance offences.

See Sharing information for criminal matters in the Tax administration section for more information.

Mandatory Quebec Sales Tax registration for non-residents of Quebec

The 2018 Quebec budget proposes to expand the mandatory Quebec Sales Tax (QST) registration rules to non-residents of Quebec. Suppliers that are not residents of, and have no physical or significant presence in, Quebec, and that make digital and certain other supplies to 'specified Quebec consumers', may be required to register for QST under a new specified registration system, starting:

- 1 January 2019, for non-residents of Canada, and
- 1 September 2019, for residents of Canada that reside outside Quebec.

See Provincial retail sales tax in the Other taxes section for more information.

Taxes on corporate income

As a general rule, corporations resident in Canada are subject to Canadian corporate income tax (CIT) on worldwide income. Non-resident corporations are subject to CIT on income derived from carrying on a business in Canada and on capital gains arising upon the disposition of taxable Canadian property (*see Capital gains in the Income determination section for more information*). The purchaser of the taxable Canadian property is generally required to withhold tax from the amount paid unless the non-resident vendor has obtained a clearance certificate.

Canadian CIT and withholding tax (WHT) can be reduced or eliminated if Canada has a treaty with the non-resident's country of residence. *A list of treaties that Canada has negotiated is provided in the Withholding taxes section, along with applicable WHT rates*.

Federal income tax

The following rates apply for 31 December 2018 year-ends. For non-resident corporations, the rates apply to business income attributable to a permanent establishment (PE) in Canada. Different rates may apply to non-resident corporations in other circumstances. Non-resident corporations may also be subject to branch tax (*see the Branch income section*).

	Federal rate (%)
Basic rate	38.0
Less: Provincial abatement (1)	(10.0)
Federal rate	28.0
Less: General rate reduction or manufacturing and processing deduction (2)	(13.0)
Net federal tax rate (3, 4)	15.0

Notes

1. The basic rate of federal tax is reduced by a 10% abatement to give the provinces and territories room to impose CITs. The abatement is available in respect of taxable income allocated to Canadian provinces and territories. Taxable income allocable to a foreign jurisdiction is not eligible for the abatement and normally is not subject to provincial or territorial taxes.
2. The general rate reduction and manufacturing and processing deduction do not apply to the first CAD 500,000 of active business income earned in Canada by Canadian-controlled private corporations (CCPCs), investment income of CCPCs, and income from certain other corporations (e.g. mutual fund corporations, mortgage investment corporations, and investment corporations) that may benefit from preferential tax treatment.
3. Provincial or territorial taxes apply in addition to federal taxes. Provincial and territorial tax rates are noted below.
4. For small CCPCs, the net federal tax rate is levied on active business income above CAD 500,000; a federal rate of 10% (10.5% before 1 January 2018; 9% after 31 December 2018) applies to the first CAD 500,000 of active business income. Investment income (other than most dividends) of CCPCs is subject to the federal rate of 28%, in addition to a refundable federal tax of 10⅔%, for a total federal rate of 38⅔%.

Provincial/territorial income tax

All provinces and territories impose income tax on income allocable to a PE in the province or territory. Generally, income is allocated to a province or territory by using a two-factor formula based on gross revenue and on salaries and wages. Provincial and territorial income taxes are not deductible for federal income tax purposes. The rates given apply to 31 December 2018 year-ends and do not take into account provincial tax holidays, which reduce or eliminate tax in limited cases.

Province/territory	Income tax rate (%) (1, 2)
Alberta	12.0
British Columbia (3)	12.0
Manitoba	12.0
New Brunswick	14.0
Newfoundland and Labrador	15.0
Northwest Territories	11.5
Nova Scotia	16.0
Nunavut	12.0
Ontario (4)	11.5 or 10.0
Prince Edward Island	16.0
Quebec (5)	11.7
Saskatchewan (6, 7)	12.0 or 10.0
Yukon	12.0 or 2.5

Notes

1. When two rates are indicated, the lower rate applies to manufacturing and processing income.

2. In all provinces and territories, the first CAD 500,000 (CAD 450,000 in Manitoba before 2019; CAD 600,000 in Saskatchewan after 2017) of active business income of a small CCPC is subject to reduced rates that range from 0% to 8%, depending on the jurisdiction.
3. British Columbia's general and manufacturing and processing rate increased from 11% to 12% on 1 January 2018.
4. The lower Ontario rate applies to profits from manufacturing and processing, and from farming, mining, logging, and fishing operations, carried on in Canada and allocated to Ontario.

   Corporations subject to Ontario income tax may also be liable for corporate minimum tax (CMT) based on adjusted book income. The CMT is payable only to the extent that it exceeds the regular Ontario income tax liability. The CMT rate is 2.7% and applies when total assets are at least CAD 50 million and annual gross revenue is at least CAD 100 million on an associated basis.
5. Quebec's rate decreased from 11.8% to 11.7% on 1 January 2018, and will decrease to 11.6% on 1 January 2019, and to 11.5% on 1 January 2020.
6. Saskatchewan's general rate decreased from 12% to 11.5% on 1 July 2017, and was then restored to 12% on 1 January 2018; the decrease to 11% on 1 July 2019 has been cancelled.
7. The minimum rate that applies to Saskatchewan's manufacturing and processing profits decreased from 10% to 9.5% on 1 July 2017, and was then restored to 10% on 1 January 2018; the decrease to 9% on 1 July 2019 has been cancelled. The manufacturing and processing reduction from the general rate is determined by multiplying the maximum rate reduction (2%) by the corporation's allocation of income to Saskatchewan.

British Columbia Liquefied Natural Gas Income Tax Act

British Columbia's Liquefied Natural Gas Income Tax Act implements an income tax on income from liquefaction activities at or in respect of a liquefied natural gas (LNG) facility located in the province. This LNG income tax is in addition to federal and provincial income taxes.

The LNG income tax is a two-tier income tax, calculated as follows:

- Tier 1 tax rate of 1.5% applies on the net operating income (NOI), which is the taxpayer's profit or loss (with specific adjustments) less up to 100% of the net operating loss account, and less an investment allowance (the Tier 1 tax paid is added to a tax credit pool that can be used to reduce Tier 2 tax), and
- Tier 2 tax rate of 3.5% applies on the net income (NI), which is the NOI less up to 100% of the capital investment account (CIA) (the Tier 2 tax will not apply until the CIA is fully depleted and is reduced by the tax credit pool balance).

The Tier 2 tax rate of 3.5% applies for taxation years starting after 31 December 2016, and will increase to 5% for taxation years starting after 31 December 2036.

The provincial government also introduced a non-refundable Natural Gas Tax Credit under the British Columbia Income Tax Act. This credit is available to LNG taxpayers that have an establishment in British Columbia and may potentially reduce the effective provincial CIT rate to a minimum of 8% (from 12% [11% before 1 January 2018]). Any unused credit can be carried forward indefinitely.

Corporate residence

Under the Income Tax Act, a corporation incorporated in Canada (federally or provincially/territorially) will be deemed to be resident in Canada. A corporation not incorporated in Canada will be considered to be resident in Canada under Canadian common law if its central management and control is exercised in Canada. Where a corporation's central management and control is exercised is a question of fact, but typically it is where the board of directors meets and makes decisions, provided the board takes action.

A corporation incorporated outside of Canada but with its central management and control situated both in and outside Canada will be deemed to be a non-resident of Canada if it qualifies as a non-resident of Canada under treaty tie-breaker rules.

A corporation incorporated in Canada will cease to be a Canadian resident if it is granted Articles of Continuance in a foreign jurisdiction. Similarly, a foreign corporation will become resident in Canada if it is continued in Canada or is a predecessor corporation of an amalgamated corporation that is resident in Canada.

Permanent establishment (PE)

Canada's tax treaties generally provide that the business profits of a non-resident corporation are not subject to Canadian tax unless the non-resident corporation carries on business in Canada through a PE situated in Canada and the business profits are attributed to that PE. Canada's tax treaties may also restrict the imposition of branch tax to situations where the non-resident corporation carries on business in Canada through a PE situated in Canada and/or limit the applicable branch tax rate. While the wording of tax treaties varies, a PE generally is defined as:

- a fixed place of business through which the business of the non-resident corporation is wholly or partly carried on
- a place of management, a branch, an office, a factory, and a workshop; a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources; a building site, construction, or assembly project that exists for a specified period, and
- a dependent agent or employee who has and habitually exercises an authority to conclude contracts in the name of the non-resident corporation.

In some circumstances, a Canadian PE may also arise where services are rendered in Canada and certain requirements (e.g. relating to the duration of the services) are met.

The Canadian domestic definition of PE (federal and provincial/territorial) generally mirrors the above.

The interpretation of what constitutes a PE is expected to be re-evaluated in light of the final report issued in 2015 by the OECD and G20 on Action 7, which is focused on preventing the artificial avoidance of PE status.

Other taxes

Consumption taxes

Federal Goods and Services Tax (GST)

The GST is a federal tax levied at a rate of 5% on the supply of most property and services made in Canada. It is a value-added tax (VAT) applied at each level in the manufacturing and marketing chain. However, the tax does not apply to supplies that are zero-rated (i.e. taxed at 0%) or exempt (e.g. used residential real property and most health care, educational, and financial services). Examples of zero-rated supplies include basic groceries, prescription drugs, feminine hygiene products, and most international freight and passenger transportation services.

Generally, registrants charge GST on their sales and pay GST on their purchases, and either remit or claim a refund for the amount of net tax reported (i.e. the difference between the GST charged and the GST paid). Suppliers are entitled to claim input tax credits for the GST paid or payable on expenses incurred relating to making fully taxable and zero-rated supplies (i.e. commercial activity), but not on expenses relating to the making of tax-exempt supplies.

Harmonised Sales Tax (HST)

Five provinces have fully harmonised their sales tax systems with the GST and impose a single HST, which includes the 5% GST and a provincial component. HST applies to the same tax base and under the same rules as the GST. There is no need to register separately for GST and HST because both taxes are accounted for under one tax return and are jointly administered by the CRA. The HST rates follow.

Province	HST rate (%)
New Brunswick	15
Newfoundland and Labrador	15
Nova Scotia	15
Ontario	13
Prince Edward Island	15

Provincial retail sales tax (PST)

The provinces of British Columbia, Manitoba, and Saskatchewan each levy a PST (in addition to the 5% GST) at 7%, 8%, and 6%, respectively, on most purchases of tangible personal property, software, and certain services.

PST generally does not apply to purchases of taxable goods, software, and services acquired for resale; registered vendors can claim this resale exemption by providing their PST number to their suppliers. Certain exemptions also exist for use in manufacturing.

PST is administered by each province's tax authority, separate from the CRA. Unlike GST/HST, PST is not a VAT and could apply to a business' inputs that are not acquired for resale (e.g. charges for telecommunications services). Therefore, any PST paid on purchases by a business cannot generally be claimed as a credit or otherwise offset against PST charged on sales.

Alberta and the three territories (the Northwest Territories, Nunavut, and the Yukon) do not impose a retail sales tax. However, the GST applies in those jurisdictions.

Quebec's sales tax is a VAT structured in the same manner as the GST/HST. The QST is charged in addition to the 5% GST and is levied at the rate of 9.975% on the supply of most property and services made in the province of Quebec, resulting in an effective combined rate of 14.975%. Registrants charge QST on taxable supplies (that are not zero-rated) and can claim input tax refunds for QST paid or payable on their expenses incurred and/or purchases made in the course of their commercial activity. The resulting net tax is reported to Revenu Québec (Quebec's tax authority) and is either remitted or claimed as a refund. Revenu Québec also administers the GST/HST on behalf of the CRA for most registrants that are resident in the province.

The 2018 Quebec budget proposes to expand the mandatory QST registration rules to non-residents of Quebec. Suppliers that are not residents of, and have no physical or significant presence in, Quebec, and that make digital and certain other supplies to 'specified Quebec consumers' may be required to register for QST under a new specified registration system, starting:

- 1 January 2019, for non-residents of Canada that make supplies of incorporeal moveable property (IPP) and services, and
- 1 September 2019, for residents of Canada that reside outside Quebec and make supplies of corporeal moveable property, IPP, and services.

The requirement to register will also apply to digital property and services distribution platforms in regards to taxable supplies of IPP or services received by specified Quebec consumers if these digital platforms control the key elements of the transaction.

Customs and import duties

Customs tariffs (also known as duties) are tariffs or taxes levied on goods imported into Canada. The amount of customs duty that applies to imported goods depends on a number of factors, including the nature of the duty (i.e. *ad valorem* or specific), tariff classification, country of origin, and value for duty declared. The Tariff Schedule to the Customs Tariff, which is based on the World Customs Organization's Harmonized Commodity Description and Coding System, sets out the customs duty rates for goods imported into Canada. Goods that originate from most countries with which Canada does not have a free trade agreement (FTA) or other preferential tariff arrangement will generally attract the 'Most Favoured Nation' (MFN) duty rate or tariff treatment.

Canada has 13 FTAs currently in force. Canada's newest FTA is the Canada - European Union (EU) Comprehensive Economic and Trade Agreement (CETA), which provisionally entered into force (subject to certain exceptions) on 21 September 2017. Another major FTA for Canada, which is currently the subject of much debate, is the North American Free Trade Agreement (NAFTA). The NAFTA applies to goods imported from both the United States (US) and Mexico. Most goods that originate in the NAFTA territory and qualify as originating for the NAFTA are eligible for duty-free treatment (exceptions apply) when imported into Canada from the other NAFTA partner. Canada's other FTAs are with Chile, Colombia, Costa Rica, the European Free Trade Association (which includes Iceland, Liechtenstein, Norway, and Switzerland), Honduras, Israel, Jordan, the Republic of Korea, Panama, Peru, and Ukraine. Under these FTAs, the originating goods imported from these countries may be eligible for reduced tariff benefits at rates more favourable than the MFN rate.

Canada has concluded, but has not yet implemented the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and is currently in negotiations with several other countries (e.g. Japan, India, Dominican Republic). Like the NAFTA, these FTAs will set out the rules of origin for determining whether goods are eligible for preferential tariff treatment, among other things. Canada is also currently exploring the potential for FTAs with other countries (e.g. China, Turkey) or country groupings (e.g. the Association of Southeast Asian Nations, including Cambodia, Thailand, Vietnam, etc., and the Mercosur countries consisting of Argentina, Brazil, Paraguay, and Uruguay).

Canada also extends preferential tariff rates to many (but not all) products imported from certain countries via the General Preferential Tariff, the Least Developed Countries Tariff, the Commonwealth Caribbean Countries Tariff, the Australia Tariff, and the New Zealand Tariff. To qualify for preferential tariff rates, goods must meet various requirements with respect to the rules of origin and transshipment, among other things.

Other import duties and levies

Importations into Canada may also be subject, in certain cases, to anti-dumping duties and/or countervailing duties, excise duties, and excise taxes. In limited circumstances, Canada may also impose a surtax on certain imports.

Excise taxes and duties

Excise duties are levied at various rates on spirits, wine, beer, malt liquor, and tobacco products. When these goods are manufactured or produced in Canada, duty is payable on the goods at the point of packaging and not at the point of sale. When these goods are imported into Canada, duty is generally payable by the importer at the time of importation. Manufacturers who produce alcohol and tobacco in Canada must be licensed. Excise duties will also apply to cannabis products, when non-medicinal cannabis becomes available for legal sale. Draft legislation requires that persons who manufacture, produce, and/or sell cannabis products in Canada will have to be licensed.

Excise tax is imposed on automobile air conditioners and fuel-inefficient automobiles, in addition to aviation fuel, gasoline, and diesel fuel. A 10% federal excise tax is imposed on premiums paid for insurance against a risk in Canada if the insurance is placed by insurers through brokers or agents outside Canada or with an insurer that is not authorised under Canadian or provincial/territorial law to transact the business of insurance. Premiums paid under contracts for life, personal accident, marine, and sickness insurance, as well as reinsurance and insurance not available in Canada, are exempt.

Property taxes

Property taxes are levied by municipalities in Canada on the estimated market value of real property within their boundaries and by provinces and territories on land not in a municipality. In most provinces and territories, a general property tax is levied on the owner of the property. Some municipalities levy a separate business tax, which is payable by the occupant if the premises are used for business purposes. These taxes are based on the rental value of the property at tax rates that are set each year by the various municipalities. School taxes, also generally based on the value of real property, are levied by local and regional school boards or the province or territory.

In British Columbia, starting 2018, an annual speculation tax will be imposed on residential property in certain urban centres in British Columbia (i.e. Metro Vancouver Regional District, Capital Regional District, Kelowna-West Kelowna, Nanaimo-Lantzville, Abbotsford, Chilliwack, and Mission; most islands are excluded). This new property tax targets foreign and domestic home owners who do not pay income tax in British Columbia, including those who leave their homes vacant. The tax rate, as a percentage of the property's assessed value, will be:

- for 2018: 0.5%.
- after 2018, for:
  - foreign investors and satellite families: 2%.
  - Canadian citizens and permanent residents who do not live in British Columbia: 1%.
  - British Columbians who are Canadian citizens or permanent residents (and are not members of a satellite family): 0.5%.

Up-front exemptions will be available for most primary residences and for qualifying long-term rental properties and certain special cases. Draft legislation has not been released.

Land transfer tax

All provinces and territories levy a land transfer tax or registration fee on the purchaser of real property within their boundaries. These levies are expressed as a percentage, in most cases on a sliding scale, of the sale price or the assessed value of the property sold and are generally payable at the time title to the property is registered. Rates generally range from 0.02% to 3%, depending on the province or territory, but may be higher if the purchaser is a non-resident. Some exemptions (or refunds) are available. Additional land transfer taxes apply for properties purchased in the municipalities of Montreal or Toronto. Other municipalities may also impose these taxes and fees.

In British Columbia, a 20% (15% for transactions registered before 21 February 2018) land transfer tax (in addition to general land transfer tax) is imposed on foreign entities (i.e. foreign nationals and corporations and certain Canadian corporations controlled by such foreign persons) and certain trusts and/or their trustees that have a foreign connection (a taxable trustee) that purchase residential property in the Greater Vancouver Regional District; for transfers registered after 20 February 2018, the area in which this tax applies was expanded to the Capital Regional District, the Regional District of Central Okanagan, the Fraser Valley Regional District, and the Regional District of Nanaimo. Failure to pay this tax or file the required forms can result in interest, plus significant penalties, and/or imprisonment. Anti-avoidance rules capture transactions that are structured to avoid this tax. Relief from the additional land transfer tax is available to:

- foreigners who become Canadian citizens or permanent residents within one year of purchasing a principal residence, or
- foreign workers coming to British Columbia under the British Columbia Provincial Nominee Program who purchase a principal residence.

In Ontario, a 15% land transfer tax (in addition to general land transfer tax and Toronto's land transfer tax) is imposed on foreign entities (i.e. foreign nationals and corporations and certain Canadian corporations controlled by such foreign persons) and taxable trustees that purchase residential property in the Greater Golden Horseshoe (a defined region of Southern Ontario surrounding and including the City of Toronto), for agreements of purchase and sale signed after 20 April 2017. For this tax to apply, the land transferred must contain at least one, but not more than six, single family residence(s). The tax also applies to unregistered dispositions of a beneficial interest in such residential property when the purchaser of the interest is a foreign entity or taxable trustee. Failure to pay this tax can result in penalty, fine, and/or imprisonment. Exemptions from the 15% land transfer tax are available in certain circumstances (including for foreign workers coming to Ontario under the Ontario Immigrant Nominee Program or for refugees under the Immigration and Refugee Protection Act, who purchase a principal residence), and rebates of the tax can be obtained in certain situations.

Federal capital taxes

The federal government does not levy a general capital tax. It imposes the Financial Institutions Capital Tax (Part VI Tax) on banks, trust and loan corporations, and life insurance companies at a rate of 1.25% when taxable capital employed in Canada exceeds CAD 1 billion. The threshold is shared among related financial institutions. The tax is not deductible in computing income for tax purposes. It is reduced by the corporation's federal income tax liability. Any unused federal income tax liability can be applied to reduce Part VI Tax for the previous three and the next seven years. In effect, the tax constitutes a minimum tax on financial institutions.

Provincial capital taxes

The provinces do not levy a general capital tax, but most do impose a capital tax on financial institutions. Capital taxes are deductible for federal income tax purposes. The federal government had proposed to limit the deductibility of capital taxes, but has delayed implementing this proposal indefinitely. The territories do not impose capital taxes.

Provincial capital taxes on financial institutions are imposed at the following rates for 31 December 2018 year-ends.

Province	Banks, trust and loan corporations (%)
Alberta	-
British Columbia	-
Manitoba (1)	6
New Brunswick (2)	4 or 5
Newfoundland and Labrador (3)	6
Nova Scotia (4)	4
Ontario	-
Prince Edward Island (5)	5
Quebec (6)	-
Saskatchewan (7)	4

Notes

1. Financial institutions in Manitoba with taxable paid-up capital of an associated group under CAD 4 billion are not subject to capital tax.
2. New Brunswick's capital tax rate is 5% for banks and 4% for other financial institutions. The first CAD 10 million of taxable paid-up capital is exempt from capital tax.
3. In Newfoundland and Labrador, a CAD 5 million exemption applies if taxable capital for the related group is CAD 10 million or less.
4. In Nova Scotia, the first CAD 500,000 of taxable paid-up capital is exempt from capital tax. However, if a trust and loan company has its head office in Nova Scotia, a CAD 30 million exemption applies. The maximum capital tax payable by financial institutions in Nova Scotia is CAD 12 million annually.
5. In Prince Edward Island, the first CAD 2 million of taxable paid-up capital is exempt from capital tax.
6. In Quebec, financial institutions are subject to a compensation tax of 4.29% (4.48% before 1 April 2018; 4.22% after 31 March 2019; 4.14% after 31 March 2020; 2.8% after 31 March 2022; nil after 31 March 2024) on payroll. The 2018 Quebec budget proposed that, starting 1 April 2018, payroll subject to the compensation tax is limited to CAD 1.1 billion annually.
7. Saskatchewan's rate for financial institutions that have taxable paid-up capital of CAD 1.5 billion or less is 0.7%. Financial institutions that qualified for the 0.7% capital tax rate in taxation years ending after 31 October 2008 and before 1 November 2009 are subject to a 0.7% capital tax rate on their first CAD 1.5 billion of taxable capital and a 4% (3.25% before 1 April 2017) capital tax rate on taxable capital exceeding CAD 1.5 billion. In Saskatchewan, the capital tax exemption is up to CAD 20 million (CAD 10 million plus an additional CAD 10 million, which is shared with associated companies).

Additional taxes on insurers

All provinces and territories impose a premium tax ranging from 2% to 5% on insurance companies (both life and non-life). In addition, Ontario and Quebec impose a capital tax on life insurance companies. Quebec also levies a compensation tax on insurance premiums at a rate of 0.48% (0.3% after 31 March 2022; nil after 31 March 2024).

Part III.1 tax on excess designations

Federal Part III.1 tax applies at a 20% or 30% rate if, during the year, a CCPC designated as eligible dividends an amount that exceeds its general rate income pool (GRIP), or a non-CCPC pays an eligible dividend when it has a positive balance in its low rate income pool (LRIP). A corporation subject to Part III.1 tax at the 20% rate (i.e. the excess designation was inadvertent) can elect, with shareholder concurrence, to treat all or part of the excess designation as a separate non-eligible dividend, in which case Part III.1 tax will not apply to the amount that is the subject of the election.

Eligible dividends are designated as such by the payer and include dividends paid by:

- public corporations, or other corporations that are not CCPCs, that are resident in Canada and are subject to the federal general CIT rate (i.e. 15% in 2018), or
- CCPCs, to the extent that the CCPC's income is:
  - not investment income (other than eligible dividends from public corporations), and
  - subject to the general federal CIT rate (i.e. the income is active business income not subject to the federal small business rate).

Non-eligible dividends include dividends paid out of either income eligible for the federal small business rate or a CCPC's investment income (other than eligible dividends received from public companies).

Payroll taxes

Social security taxes

For 2018, employers are required to pay, for each employee, government pension plan contributions up to CAD 2,593.80 and employment insurance premiums up to CAD 1,201.51. However, Quebec employers instead contribute, per employee, a maximum of CAD 2,829.60 in Quebec government pension plan contributions, CAD 940.94 in employment insurance premiums, and CAD 567.58 to a Quebec parental insurance plan.

The government pension plan will be enhanced starting 1 January 2019. Employers and employees will be required to pay higher government pension plan contributions (to be phased-in over seven years).

Provincial/territorial payroll taxes

Employers in Manitoba, Newfoundland and Labrador, Ontario, and Quebec (and, starting 1 January 2019, in British Columbia) are subject to payroll tax. Maximum rates range from 1.95% to 4.3%. In addition, Quebec employers with payroll of at least CAD 2 million must allot 1% of payroll to training or to a provincial fund. Employers in the Northwest Territories and Nunavut must deduct from employees' salaries a payroll tax equal to 2% of employment earnings.

Withholding tax for non-resident employees

Under Regulation 102 of the Income Tax Act, employers (whether residents of Canada or not) that pay salaries or wages or other remuneration to a non-resident of Canada in respect of employment services rendered in Canada are required to withhold personal income tax (PIT) unless a waiver has been received prior to commencing work physically in Canada. There are no '*de minimis*' exceptions, and this requirement applies regardless of whether the non-resident employee in question will actually be liable for Canadian income tax on that salary pursuant to an income tax treaty that Canada has signed with another country. Complying is time-consuming and administratively burdensome.

An amount paid by a 'qualifying non-resident employer' to a 'qualifying non-resident employee' is exempt from the Regulation 102 withholding requirement.

Generally, a 'qualifying non-resident employer' must meet the following two conditions:

- is resident in a country with which Canada has a tax treaty (treaty country), and
- is at that time certified by the Minister.

A 'qualifying non-resident employee' must meet the following three conditions:

- is resident in a treaty country
- is exempt from Canadian income tax under a tax treaty, and
- either:
  - is present in Canada for less than 90 days in any 12-month period that includes the time of payment, or
  - works in Canada for less than 45 days in the calendar year that includes the time of payment.

To become certified, a non-resident employer must file Form RC473 (Application for Non-Resident Employer Certification) with the CRA. Certification is valid for two calendar years (after which time employers must submit a new Form RC473), subject to revocation if the employer fails to meet certain conditions or to comply with its Canadian tax obligations.

The conditions to maintain non-resident employer certification include:

- track and record, on a proactive basis, the number of days each qualifying non-resident employee is either working in Canada or present in Canada, and the income attributable to these days
- evaluate and determine whether its employees meet the conditions of a 'qualifying non-resident employee'
- obtain a Canadian Business Number
- complete and file the annual T4 Summary and slips, if required
- file the applicable Canadian CIT returns if the corporation is 'carrying on business in Canada', and
- upon request, make its books and records available to the CRA for inspection.

Withholding tax on payments to non-residents for services rendered in Canada

Under Regulation 105 of the Income Tax Act, every person (including a non-resident), paying to a non-resident, a fee, commission, or other amount in respect of services rendered in Canada (excluding remuneration paid to non-resident employees that are subject to payroll withholding requirements, *see Withholding tax for non-resident employees above*) is required to withhold and remit 15% of the payment to Canadian tax authorities unless a waiver has been received before payment. Regulation 105 withholding is not a final tax, but an instalment payment against possible Canadian tax liability if the non-resident is determined to have a PE in Canada. A non-resident corporation that does not have a PE in Canada and is eligible under one of Canada's tax treaties can file a 'treaty-based' corporate tax return to have the previously withheld Regulation 105 amounts refunded. These tax returns may result in the Canadian tax authorities challenging the non-resident's assertion that no PE exists within Canada.

Carbon taxes

To encourage Canadians and Canadian businesses to reduce greenhouse gas emissions, the federal government has indicated that all provinces and territories must adopt a form of carbon pricing by 2018. The price on carbon pollution will start at a minimum of CAD 10 per tonne of carbon dioxide-equivalent emissions in 2018 and gradually rise by CAD 10 per year to CAD 50 per tonne in 2022. The provinces and territories can decide if they will implement carbon pricing by (i) putting a direct price on carbon pollution or (ii) adopting a cap-and-trade system. The federal government intends to apply its carbon pricing system in the provinces and territories that request it and in those that do not have a system in place that meets the federal standard by 31 December 2018 (instead of 1 January 2018, as originally proposed). The following provinces have adopted a carbon pricing plan:

- Alberta: Carbon levy, effective 1 January 2017, and reflects a price of CAD 30 per tonne as of 1 January 2018.
- British Columbia: Carbon tax, introduced in 1 July 2008 and is now priced at CAD 35 per tonne as of 1 April 2018, and increasing by CAD 5 per tonne each year thereafter until it reaches CAD 50 per tonne on 1 April 2021.
- Manitoba: The province announced in fall 2017 that it:
  - will implement a CAD 25 per tonne carbon pricing regime and will hold the rate steady through 2022 (Manitoba's 2018 budget confirmed this pricing), and
  - rejects the federal carbon pricing regime from applying to Manitoba's emissions as it does not recognise the province's contributions to reducing Canada's emissions to date and in the future.
- New Brunswick: The province will likely be subject to the federal 'backstop' carbon pricing regime if its carbon tax plan does not meet federal requirements.
- Nova Scotia: A cap-and-trade system will be introduced during 2018 that is expected to adhere to the federal carbon pricing requirements.
- Nunavut: Nunavut's 2018 budget confirmed that the province does not intend to administer a territorial carbon tax. Instead, Nunavut expects the federal government to implement its 'backstop' tax of approximately 2.5 cents per litre on fuel in the territory.
- Ontario: Cap-and-trade system, effective 1 January 2017.
- Quebec: Cap-and-trade system, introduced 1 January 2013.
- Saskatchewan: The province does not intend to introduce a carbon tax, so will generally be subject to the federal 'backstop' carbon pricing regime once it becomes effective. However, Saskatchewan intends to challenge the federal carbon pricing regime applying in the province.

The other provinces and territories (Newfoundland and Labrador, Northwest Territories, Prince Edward Island, Yukon) have not yet announced if they intend to have the federal regime apply or have not decided whether to apply a cap-and-trade system or a carbon tax regime.

Branch income

A non-resident corporation will be subject to income tax at normal corporate rates on profits derived from carrying on a business in Canada. However, Canada's tax treaties generally restrict taxation of a non-resident's business income to the portion allocable to a PE situated in Canada.

In addition, a special 25% 'branch tax' applies to a non-resident's after-tax profits that are not invested in qualifying property in Canada. The branch tax essentially is equivalent to a non-resident WHT on funds repatriated to the foreign head office. In the case of a corporation resident in a treaty country, the rate at which the branch tax is levied may be reduced to the WHT rate on dividends prescribed in the relevant tax treaty (generally 5%, 10%, or 15%). Some of Canada's treaties prohibit the imposition of branch tax or provide that branch tax is payable only on earnings in excess of a threshold amount. The branch tax does not apply to transportation, communications, and iron-ore mining companies. Nor does it apply to non-resident insurers, except in special circumstances.

Whether or not a treaty applies, a non-resident corporation that has a PE in Canada may be subject to federal and provincial capital taxes (i.e. financial institutions only). *See the Other taxes section*.

Income determination

Inventory valuation

In most cases, all property included in inventory can be valued at fair market value (FMV), or each item can be valued at its cost or FMV, whichever is lower. Most well-established and reasonable approaches to inventory costing can be used for tax purposes, except for the last in first out (LIFO) method. Conformity between methods used for book and tax reporting is not mandatory, but the method chosen should be used consistently for tax purposes. Inventory must be valued at the commencement of the year at the same amount as at the end of the immediately preceding year.

Capital gains

Half of a capital gain constitutes a taxable capital gain, which is included in the corporation's income and taxed at ordinary rates. Capital losses are deductible, but generally only against capital gains. Any excess of allowable capital losses over taxable capital gains in the current year can be carried back three years and carried forward indefinitely, to be applied against net taxable capital gains from those years, except in the case of an acquisition of control. No holding period is required. Intent is a major factor in determining whether the gain or loss is income or capital in nature.

Non-resident corporations are subject to CIT on taxable capital gains (50% of capital gains less 50% of capital losses) arising on the disposition of taxable Canadian property. Taxable Canadian property of a taxpayer includes, among other things:

- Real estate situated in Canada.
- Both capital and non-capital property used in carrying on a business in Canada.
- In general, shares in a corporation that are listed on a stock exchange if, at any time in the preceding 60 months:

- 25% or more of the shares of the corporation are owned by the taxpayer or persons related to the taxpayer, and
- more than 50% of the FMV of the shares is derived from real property situated in Canada, Canadian resource properties, and timber resource properties.
- In general, shares in a corporation that are not listed on a stock exchange if, at any time in the preceding 60 months, more than 50% of the FMV of the shares is derived, directly or indirectly, from property similar to that described above for shares of a public corporation.

However, in specific situations, the disposition by a non-resident of a share or other interest that is not described above may be subject to Canadian tax (e.g. when a share is deemed to be taxable Canadian property).

The general requirement is that a non-resident vendor of taxable Canadian property must report the disposition to the CRA and obtain a clearance certificate in respect of the disposition. If no certificate is obtained, the purchaser is required to withhold and remit to the CRA 25% of the sales proceeds.

Relief from the reporting and 25% withholding requirements may be available if specified conditions are met (e.g. if the gain from the disposition is not taxable in Canada by virtue of a tax treaty Canada has with another country). However, if the parties to the transaction are related, relief is available only if the CRA is notified.

For taxation years ending after 2 October 2016, recently enacted legislation allows the CRA to reassess tax, after the end of the normal reassessment period (three years after the date of the initial notice of assessment, for most taxpayers), on a gain from the disposition of real or immovable property if the taxpayer does not initially report the disposition.

Dividend income

Dividends received by one Canadian corporation from another Canadian corporation generally can be deducted in full when determining taxable income. However, dividends received by a 'specified financial institution' on certain preferred shares are an important exception and are taxed at full corporate rates.

Dividends on most preferred shares are subject to a 10% tax in the hands of a corporate recipient, unless the payer elects to pay a 40% tax (instead of a 25% tax) on the dividends paid. The payer can offset the tax against its income tax liability. The tax is not imposed on the first CAD 500,000 of taxable preferred-share dividends paid in a taxation year. Nor does it apply to dividends paid to a shareholder with a 'substantial interest' in the payer (i.e. at least 25% of the votes and value).

Dividends received by private corporations (or public corporations controlled by one or more individuals) from Canadian corporations are subject to a special refundable tax of 38⅓%. The tax is not imposed if the recipient is connected to the payer (i.e. the recipient owns more than a 10% interest in the payer) unless the payer was entitled to a refund of tax in respect of the dividend. When the recipient pays dividends to its shareholders, the tax is refundable at a rate of 38⅓% of taxable dividends paid.

Stock dividends

If the payer is resident in Canada, stock dividends are treated for tax purposes in the same manner as cash dividends. The taxable amount of a stock dividend is the increase in the paid-up capital of the payer corporation because of the payment of the dividend. Stock dividends received from a non-resident are exempt from this treatment. Instead, the shares received have a cost base of zero.

Avoidance of corporate capital gains

Section 55 of the Income Tax Act contains an anti-avoidance rule that generally taxes as capital gains certain otherwise tax-deductible, inter-corporate dividends in certain situations. Stemming from a Tax Court of Canada decision that involved the creation of an unrealised capital loss that was used to avoid capital gains tax on the sale of another property, legislation that applies to dividends received after 20 April 2015 amends section 55 to ensure it applies when one of the purposes for a dividend is to effect a significant reduction in the FMV of any share or significant increase in the total cost of properties of the dividend recipient. Other related rules ensure this amendment is not circumvented.

Synthetic equity arrangements

For dividends that are paid or become payable after April 2017 (after October 2015 for agreements or arrangements generally entered into, acquired, extended, renewed, or modified after 21 April 2015), the dividend rental arrangement rules are modified to deny the inter-corporate dividend deduction on dividends received by a taxpayer on a Canadian share in respect of which there is a synthetic equity arrangement. A synthetic equity arrangement, in respect of a share owned by a taxpayer, will be considered to exist when the taxpayer (or a person that does not deal at arm's length with the taxpayer) enters into one or more agreements that have the effect of providing to a counterparty all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share.

When a person that does not deal at arm's length with the taxpayer enters into such an agreement, a synthetic equity arrangement will be considered to exist if it is reasonable to conclude that the non-arm's length person knew, or ought to have known, that the effect described above would result. An exception to the revised rule will apply, in general terms, when the taxpayer can establish that no 'tax-indifferent investor' (including tax-exempt Canadian entities and certain trusts, partnerships, and non-resident entities) is a counterparty. Certain other exceptions are provided.

The 2018 federal budget further expands the existing synthetic equity arrangement rules to prevent taxpayers from realising artificial losses through the use of equity-based financial arrangements to circumvent these rules, by clarifying that the no tax-indifferent investor exception to the synthetic equity arrangement rules cannot be met when a tax-indifferent investor obtains all or substantially all of the risk of loss or opportunity for gain or profit in respect of a share, for dividends that are paid or become payable after 26 February 2018.

Securities lending arrangements

In general terms, in a security lending and repurchase arrangement, a counterparty transfers or lends a Canadian share to a taxpayer, and the taxpayer agrees to transfer or return an identical share to the counterparty in the future. Over the term of the arrangement, the taxpayer is obligated to pay to the counterparty amounts (dividend compensation payments) as compensation for all dividends received on the transferred or lent Canadian share. In certain circumstances, a taxpayer can realise artificial losses on this type of arrangement. As a result, the 2018 federal budget expands the securities lending arrangement (SLA) rules to prevent taxpayers from realising artificial losses through the use of equity-based financial arrangements to circumvent these rules, by:

- broadening the SLA definition to include arrangements that are substantially similar to those that fell within the SLA definition, and
- clarifying that the two existing rules that provide for a deduction for dividend compensation payments do not both apply to the same payment,

for dividend compensation payments made after 26 February 2018, unless the securities lending or repurchase arrangement was in place before 27 February 2018, in which case the measure will apply for dividend compensation payments made after September 2018.

Interest income

Interest that accrued, became receivable by, or was received by a corporation is taxable as income from a business or property.

Rental income

Rents received by a corporation are taxable as income from a business or property.

Royalty income

Royalties received by a corporation are taxable as income from a business or property.

Derivatives

Derivatives are sophisticated financial instruments whose value is derived from the value of an underlying interest. Recently enacted legislation implements two measures to clarify the timing of the recognition of gains and losses on derivatives held on income account.

Elective use of the mark-to-market method

In the past, it was uncertain if taxpayers could mark to market their derivatives held on income account under the general principles of profit computation. A June 2016 Federal Court of Appeal decision allowed a taxpayer that was not a financial institution to use the mark-to-market method on the basis that it provided an accurate picture of the taxpayer's income. For taxation years beginning after 21 March 2017, taxpayers can elect to mark to market all of their eligible derivatives held on income account. The election will remain effective until it is revoked with the consent of the Minister of National Revenue. Without this election, recently enacted legislation provides that income or losses from derivatives on income account are to be reported on a realised basis. For eligible derivatives that were previously subject to tax on a realisation basis, the recognition of any accrued gain or loss at the beginning of the first election year will be deferred until the derivative is disposed of.

Straddle transactions

In its simplest form, a straddle is a transaction in which a taxpayer concurrently enters into two or more positions (often derivative positions) that are expected to generate equal and offsetting gains and losses on account of income. The taxpayer then may attempt to benefit from a deferral of recognition of income on the 'gain leg' or through a shifting of that gain to a tax-indifferent investor. Recently enacted legislation introduces a stop-loss rule that will effectively defer the realisation of any loss on the disposition of a position to the extent of any unrealised gain on an offsetting position.

A gain in respect of an offsetting position would generally be unrealised where the offsetting position has not been disposed of and is not subject to mark-to-market taxation. The stop-loss rule will be subject to a number of exceptions and will apply to any loss realised on a position entered into after 21 March 2017.

Investment fund mergers

Merger of mutual fund switch corporations into mutual fund trusts

Canadian mutual funds can be in the legal form of a trust or a corporation. Mutual fund switch corporations are mutual fund corporations with multiple classes of shares, where typically each class is a distinct investment fund. For qualifying reorganisations occurring after 21 March 2017, recently enacted legislation extends the mutual fund merger rules to facilitate the reorganisation of a mutual fund switch corporation into multiple mutual fund trusts on a tax-deferred basis. The rules will apply to a class of shares if all or substantially all of the assets allocable to that class are transferred to a mutual fund trust and the shareholders of that class become unitholders of that mutual fund trust.

Segregated fund mergers

Segregated funds are life insurance policies that have many of the characteristics of mutual fund trusts. Recently enacted legislation allows insurers to effect tax-deferred mergers of segregated funds if carried out after 2017. In addition, segregated funds will be permitted to apply non-capital losses arising in taxation years beginning after 2017 to other taxation years beginning after 2017. The use of these losses will be subject to the normal limitations for the carrying forward and back of non-capital losses and will be restricted following a segregated fund merger.

Foreign exchange gains and losses

The foreign exchange gains and losses of a Canadian taxpayer that arise from business transactions (i.e. on income account), including the activities of a branch operation, are generally fully includable in income or fully deductible. Any method that is in accordance with generally accepted accounting principles may be used to determine foreign exchange gains or losses on income transactions, provided that the treatment is consistent with previous years and conforms to the accrual method of accounting.

A foreign exchange gain or loss that is on capital account is treated the same as any other capital gain or loss. The accrual method of accounting cannot be used for purposes of reporting gains or losses on capital account. This follows from the CRA's view that a taxpayer has not made a capital gain or sustained a capital loss in a foreign currency until a transaction has taken place. Therefore, paper gains and losses are disregarded.

Debt parking to avoid foreign exchange gains

To avoid realising a foreign exchange gain on the repayment of a foreign currency debt, some taxpayers have entered into debt-parking transactions. As a result, the rules require any accrued foreign exchange gain on foreign currency debt to be realised when the debt becomes a parked obligation, generally for debt that becomes a parked obligation after 21 March 2016. The debtor will be deemed to have a gain, if any, that it otherwise would have if it had paid an amount (expressed in the currency in which the debt is denominated) to satisfy the principal amount of the debt equal to:

- when the debt becomes a parked obligation as a result of it being acquired by the current holder, the amount for which the debt was acquired, and
- in other cases, the FMV of the debt.

A foreign currency debt will become a parked obligation if:

- at that time, the current holder of the debt does not deal at arm's length with the debtor or, when the debtor is a corporation, has a significant interest (i.e. generally together with non-arm's length persons, 25% or more of the votes or value) in the corporation, and
- at any previous time, a person who held the debt dealt at arm's length with the debtor and, when the debtor is a corporation, did not have a significant interest in the corporation.

Exceptions will apply to certain *bona fide* commercial transactions, and related rules will provide relief to financially distressed debtors.

Partnership income

For Canadian tax purposes, a partnership is treated as a conduit, and the partners are taxed on their share of the partnership income, whether or not distributed. A corporation is not restricted from being a member of a partnership. Income is determined at the partnership level and then allocated among the partners according to the terms of the partnership agreement. However, certain deductions, such as depletion allowances, exploration and development expenses, and donations, will flow through to be deducted by the various partners directly, as will any foreign tax credits, dividend tax credits, or investment tax credits (ITCs). Partners generally may deduct expenses incurred directly, such as interest on borrowings to acquire partnership interests, in computing income from the partnership.

Corporate partners are generally prevented from deferring taxation on partnership income in respect of partnerships in which they (together with related parties) hold an interest greater than 10% (share of income or entitlement to assets); income from these partnerships must be accrued up to the end of the corporation's taxation year. The accrual is based on the partnership income for the fiscal period ending in the corporation's taxation year (the 'formulaic amount'), unless a lower amount is designated by the partner. Penalties can apply if the designated amount reported is less than both the formulaic amount and the actual prorated income of the subsequent partnership fiscal period. Upon request, permission to change the partnership's fiscal period may be granted. Partnerships in multi-tier structures must adopt the same fiscal period (generally, 31 December).

Joint venture income

An unincorporated joint venture is not recognised as a separate legal entity, and no specific statutory rules govern the taxation of a joint venture in Canada. However, many business arrangements that are set up as joint ventures may be considered partnerships, and treated as such for Canadian tax purposes. Whether a partnership exists in a particular situation is a legal question based on the specific facts and circumstances.

Consistent with the partnership anti-deferral rules (*discussed in Partnership income above*), corporate participants must report their actual share of joint venture income or loss up to the end of their own year-end.

Non-resident trusts (NRTs) and offshore investment funds

An NRT will generally be deemed to be resident for Canadian tax purposes if (i) it has Canadian resident contributors or (ii) certain former Canadian residents have contributed to an NRT that has Canadian resident beneficiaries. However, an election can be filed to deem the creation of a separate notional trust for tax purposes, referred to as a 'non-resident portion trust'. Canadian tax will apply only to the income or gains from the properties held by the trust that are not included in the non-resident portion trust. Properties included in the non-resident portion trust are those properties that have not been directly or indirectly contributed by a Canadian resident or certain former Canadian residents (or property substituted for those properties or income derived from those properties). Many direct or indirect transfers or loans of property or services can be deemed to be contributions to an NRT.

An NRT is deemed to be resident in Canada if a Canadian-resident taxpayer transfers or lends property to the trust (regardless of the consideration received) and the property held by the trust may revert to the taxpayer, pass to persons to be determined by the taxpayer, or be disposed of only with the taxpayer's consent.

The offshore investment fund rules affect Canadian residents that have an interest as a beneficiary in these funds. If the rules apply, the taxpayer will be required to include in its income an amount generally determined as the taxpayer's cost of the investment multiplied by a prescribed income percentage (i.e. the prescribed rate of interest plus 2%) less any income received from the investment. Also, for certain non-discretionary trust funds in which a Canadian-resident person, and persons that do not deal at arm's length with the person, have interests in aggregate of 10% or more of the total FMV of the total interests in the trusts, the trust is deemed to be a controlled foreign affiliate of the Canadian beneficiary and is thereby subject to the Canadian FAPI rules (*discussed below*).

Earnings of specified investment flow-throughs (SIFTs)

Certain earnings of SIFTs (i.e. publicly traded income trusts and partnerships) are subject to a SIFT tax and are deemed to be a dividend when distributed. The rules are intended to discourage corporations from converting to income trusts. The rules do not apply to Real Estate Investment Trusts (REITs) that meet certain conditions.

Foreign income

Canadian resident corporations are subject to Canadian federal income taxes on worldwide income, including income derived directly from carrying on business in a foreign country, as earned. In addition, Canadian resident corporations may be taxable currently on certain passive and active income earned by foreign subsidiaries and other foreign entities. Relief from double taxation is provided through Canada's international tax treaties, as well as foreign tax credits and deductions for foreign income or profits taxes paid on income derived from non-Canadian sources.

Foreign investment income earned directly by Canadian resident corporations, other than dividends, is taxed as earned, with a non-business foreign tax credit and a deduction for foreign income or profits taxes available, subject to certain limitations. Dividends received by Canadian resident private corporations (or public corporations controlled by one or more individuals) from non-connected foreign corporations are subject to the special refundable tax of 38⅓% (*see above*), to the extent that the dividends are deductible in determining taxable income.

Canada

The tax treatment of foreign dividends received by a Canadian resident corporation will depend on whether the payer corporation is a foreign affiliate of the recipient. Dividends received by a Canadian resident corporation from foreign corporations that are not foreign affiliates are taxed when received, with a non-business foreign tax credit and a deduction for foreign income or profits taxes available, subject to certain conditions. Dividends received by a Canadian resident corporation from foreign affiliates may be permitted to flow tax-free, subject to certain limitations pertaining to the nature of the earnings from which the dividends were paid, the foreign income or profits taxes paid, and WHTs paid in respect thereof.

To date, 23 Tax Information Exchange Agreements (TIEAs) have entered into force (one on behalf of five jurisdictions), two have been signed (but not yet in force), and Canada is currently negotiating five other TIEAs. To encourage non-treaty countries to enter into TIEAs:

- an exemption is available for dividends received by a Canadian resident corporation from the active business earnings of its foreign affiliates resident and carrying on their active business operations in non-treaty countries that have entered into a TIEA with Canada, and
- active business income earned by foreign affiliates in non-TIEA, non-treaty countries that have not signed the Convention on Mutual Administrative Assistance in Tax Matters will be treated as FAPI, which is taxable to the relevant Canadian resident corporation on an accrual basis, if a TIEA with Canada is not concluded within a specified period from a written request to commence negotiations or from the commencement of negotiations.

See Controlled foreign affiliates and foreign accrual property income (FAPI) in the Group taxation section for a discussion on foreign affiliates, controlled foreign affiliates, and FAPI.

Shareholder loan rules

Non-resident controlled Canadian corporations are permitted to make certain loans to foreign parent companies or related non-resident companies without being subject to the deemed dividend WHT if appropriate elections are filed. The election may be filed on a loan-by-loan basis, and the Canadian corporation must then include in income interest at a prescribed rate (currently, approximately 5%). The legislation also applies to loans made by, or to, certain partnerships.

The shareholder loan rules have been amended to include rules that are similar to the existing back-to-back loan rules, except that the amended rules will apply to debts owing to Canadian-resident corporations rather than debts owing by Canadian-resident taxpayers, for back-to-back shareholder loan arrangements that are outstanding:

- If there is only one intermediary, after 21 March 2016 (debts arising before 22 March 2016 are deemed to arise on 22 March 2016 for the purposes of these rules).
- If there are multiple intermediaries, after 31 December 2016 (debts arising before 1 January 2017 are deemed to arise on 1 January 2017 for purposes of these rules).

A back-to-back shareholder loan arrangement will be considered to exist when an 'intermediary' that is not connected with the shareholder:

- is owed an amount by the shareholder (the shareholder debt), and
- owes an amount to the Canadian corporation or has a specified right (as defined) relating to a particular property, and

this obligation or property is linked to the shareholder debt (certain conditions must be met).

If the rules apply to the debt owing by a shareholder of a Canadian-resident corporation, the shareholder will be deemed to be indebted directly to the corporation.

Cross-border surplus stripping

Section 212.1 of the Income Tax Act contains an 'anti-surplus-stripping' rule that applies when a non-resident person (or designated partnership) disposes of its shares in a corporation resident in Canada (the subject corporation) to another corporation resident in Canada (the purchaser corporation) with which the non-resident person does not deal at arm's length. The rule is intended to prevent the tax-free receipt by the non-resident person of distributions in excess of the paid-up capital of its shares in the subject corporation and an artificial increase in the paid-up capital of such shares. This rule results in a deemed dividend to the non-resident person or a suppression of the paid-up capital of the shares that would otherwise have been increased as a result of the transaction.

An exception to the anti-surplus-stripping rule ensures the rule does not apply when a non-resident corporation is 'sandwiched' between two Canadian corporations and the non-resident corporation disposes of the shares of the lower-tier Canadian corporation to the Canadian parent corporation to unwind the structure.

Some non-resident corporations with Canadian subsidiaries have used this exception by reorganising the group into a sandwich structure to qualify for this exception in a manner that increases the paid-up capital of the shares of those Canadian subsidiaries. As a result, this exception has been amended, for dispositions occurring after 21 March 2016, to ensure that it does not apply when a non-resident corporation:

- owns, directly or indirectly, shares of the Canadian purchaser corporation, and
- does not deal at arm's length with the Canadian purchaser corporation.

The government will also continue to challenge, under other provisions (including the general anti-avoidance rule), certain transactions undertaken before 22 March 2016 if in its view the taxpayer has inappropriately relied on the exception to the anti-surplus stripping rule.

The existing cross-border surplus stripping rules also do not expressly address certain internal reorganisations that involve situations where a non-resident disposes of an interest in a partnership that owns a Canadian subject corporation to a Canadian purchaser corporation, nor do they deal with similar planning involving trusts. A corresponding corporate immigration rule may be ineffective in similar circumstances. The 2018 federal budget amends these provisions to add comprehensive 'look-through' rules for partnerships and trusts, to ensure that the rules cannot be avoided inappropriately, for transactions that occur after 26 February 2018. These rules will allocate the assets, liabilities, and transactions of a partnership or trust to its members or beneficiaries, as the case may be, based on the relative fair market value of their interest.

'Foreign affiliate dumping' rules

Transactions described as 'foreign affiliate dumping' involve an investment in a foreign affiliate by a corporation resident in Canada (CRIC) that is controlled by a non-resident of Canada. When these rules apply, a dividend will be deemed to have been paid by the CRIC to its foreign parent, to the extent of any non-share consideration given by the CRIC for the 'investment' in the foreign affiliate, and any increase in the paid-up capital pertaining to the investment will be denied. The rules define 'investment' broadly to include:

- an acquisition of shares in or a contribution of capital to the foreign affiliate
- an indirect acquisition by the CRIC of shares of the foreign affiliate that results from a direct acquisition by the CRIC of the shares of another corporation resident in Canada if the total FMV of all of the shares that are held, directly or indirectly, by the other corporation and are shares of foreign affiliates held by the other corporation exceeds 75% of the total FMV of all properties owned by the other corporation
- transactions where the foreign affiliate becomes indebted to the CRIC (or a related Canadian company), and
- an acquisition of certain options in shares or debt of the foreign affiliate.

Any deemed dividend is automatically reduced to the extent of available paid-up capital, in accordance with the paid-up capital offset rules (subject to compliance requirements), and any remainder will be subject to Canadian WHT (as reduced by the applicable treaty).

Recently enacted legislation further expands these rules. They can now apply when the CRIC makes an investment in a non-resident corporation that is not a foreign affiliate of the CRIC but is a foreign affiliate of another corporation resident in Canada that does not deal at arm's length with the CRIC.

Foreign affiliate technical amendments

Recently enacted legislation is intended to ensure that Canada's international tax rules are applied appropriately, and:

- make relieving changes to the 'upstream loan' rules by including:
  - a reserve deduction for previously taxed FAPI when the specified debtor is the Canadian resident taxpayer or a person resident in Canada that does not deal at arm's length with the taxpayer
  - an exception when the debtor is a non-arm's-length foreign affiliate of the taxpayer (that is not a controlled foreign affiliate of the taxpayer) when the shares of the affiliate are owned by the taxpayer and other persons, including arm's-length non-resident persons, persons resident in Canada, and/or controlled foreign affiliates of the taxpayer, and
  - upstream loan continuity rules that ensure that a reorganisation (defined narrowly) involving a debtor (the 'original debtor') or creditor (the 'original creditor') following the making of an upstream loan does not result in double taxation either by causing the upstream loan rules to apply multiple times in respect of what is in substance the same debt or preventing the repayment of the upstream loan
- ensure an appropriate stub-year FAPI inclusion on dispositions of foreign affiliate shares; these rules introduce a taxation year-end at the stub period end time to ensure the stub-period FAPI is properly reflected in the foreign affiliate's taxable surplus, as well as a *de minimis* exception and an exception for Canadian amalgamations
- introduce an elective rule that provides tax-deferred treatment for dispositions of taxable Canadian property on a foreign merger

- include a relieving measure to treat the foreign division of a non-resident corporation as giving rise to a dividend, rather than a shareholder benefit, if all of the shares of the new corporation are received by the shareholders of the original corporation on a *pro rata* basis, and
- expand an existing exception to ensure the foreign tax credit generator rules do not apply solely because the investee is a fiscally transparent entity in the foreign jurisdiction.

Foreign branches of life insurers

Recently enacted legislation ensures that Canadian life insurers are taxable in Canada with respect to income from the insurance of Canadian risks that are allocated to a foreign branch. The measures are modelled on existing anti-avoidance rules and form part of the FAPI regime. The new anti-avoidance rule applies when 10% or more of the gross premium income (net of reinsurance ceded) earned by a foreign branch of a Canadian life insurer is premium income in respect of Canadian risks. The foreign branch's insurance of Canadian risks is deemed to be part of a business carried on by the life insurer in Canada and the related insurance policies to be life insurance policies in Canada.

Other anti-avoidance rules that are part of the FAPI regime were extended to foreign branches of life insurers to ensure that the new rule cannot be avoided through the use of either so-called 'insurance swaps' or the ceding of Canadian risks (*see Captive insurance below*). In addition, if an insurer has insured foreign risks through its foreign branch and it can reasonably be concluded that foreign risks were insured by the life insurer as part of a transaction or series of transactions, one of the purposes of which was to avoid the new measure, the life insurer is treated as if it has insured Canadian risks.

The legislation applies to taxation years of Canadian taxpayers that begin after 21 March 2017.

Captive insurance

For taxation years beginning after 10 February 2014, an anti-avoidance rule in the FAPI regime intended to prevent Canadian taxpayers from shifting income from the insurance of Canadian risks offshore has been clarified to ensure it applies to certain tax planning arrangements sometimes referred to as 'insurance swaps' (the 2014 enacted legislation). If the anti-avoidance rule applies, the foreign affiliate's income from the insurance of the foreign risks and any income from a connected agreement or arrangement will be included in computing its FAPI.

This anti-avoidance rule has been further amended to curtail alternative arrangements that are intended to achieve tax benefits similar to those that the 2014 enacted legislation was intended to prevent. For taxation years that begin after 20 April 2015:

- a foreign affiliate's income in respect of the ceding of Canadian risks is included in computing the affiliate's FAPI, and
- if a foreign affiliate cedes Canadian risks and receives as consideration a portfolio of insured foreign risks, the affiliate is considered to have earned FAPI in respect of the ceding of the Canadian risks in an amount equal to the difference between the FMV of the Canadian risks ceded and the affiliate's costs in respect of having acquired those Canadian risks.

Recently enacted legislation further extends this anti-avoidance rule to foreign branches of Canadian life insurers (*see Foreign branches of life insurers above*).

Emissions trading regimes

Under emissions trading regimes, regulated emitters must deliver emissions allowances to the government. These allowances may be purchased by emitters, earned in emissions reduction activities, or provided by the government at a reduced price or no cost. While previously no specific tax rules dealt with emissions trading regimes, for emissions allowances acquired generally in taxation years beginning after 2016, specific rules clarify the tax treatment of emissions allowances and eliminate the double taxation of certain free allowances. Specifically, emissions allowances will be treated as inventory for all taxpayers; however, the 'lower of cost and market' method cannot be used to value the inventory.

If a free allowance is received, there will be no income inclusion on receipt of the allowance. In addition, the deduction for an accrued emissions obligation will be limited to the extent that the obligation exceeds the cost of any emissions allowances that the taxpayer has acquired and that can be used to settle the obligation. If a deduction is claimed in respect of an emissions obligation that accrues in one year (e.g. 2018) and that will be satisfied in a future year (e.g. 2019), the amount of this deduction will be brought back into income in the subsequent year (2019) and the taxpayer will be required to evaluate the deductible obligation again each year, until it is ultimately satisfied.

If a taxpayer disposes of an emissions allowance otherwise than under the emissions allowance regime, any proceeds received in excess of the taxpayer's cost, if any, for the allowance will be included in computing income.

Deductions

Business expenses that are reasonable and paid out to earn income are deductible for income tax purposes unless disallowed by a specific provision in the Income Tax Act. Some expenses are deductible subject to limitation (e.g. charitable donations, entertainment expenses, the cost of providing an automobile to employees). Deduction of capital expenditures is specifically prohibited, but special provisions may allow depreciation or amortisation of these expenditures.

Because Canadian corporations are taxable on worldwide income, there are no territorial limits on the deductibility of related expenses. Payments to affiliates are deductible if they reflect arm's-length charges. Transfers of losses and other deductions between unrelated corporate taxpayers are severely limited after an acquisition of control.

Depreciation and amortisation

Depreciation for tax purposes (capital cost allowance) is generally computed on a pool basis, with only a few separate classes (pools) of property. Annual allowances are generally determined by applying a prescribed rate to each class on the declining-balance basis. For example, the prescribed annual rate is 20% on most furniture and fixtures, 30% on automotive equipment, and 4% to 10% on most buildings. In the year of acquisition, only half of the amount otherwise allowable may be claimed on most classes of property.

Generally, capital cost allowance (CCA) may not be claimed until the taxation year the property is available for use. The taxpayer can claim any amount of CCA up to the maximum. CCA previously claimed may be recaptured if assets are sold for proceeds that exceed the undepreciated cost of the class. Temporary incentives to accelerate depreciation for eligible manufacturing and processing machinery and equipment acquired after 2015 and before 2026 revise the rate and/or method to 50% declining-balance (from 50% straight-line before 2016 and after 18 March 2007, and 30% declining-balance before 19 March 2007).

Eligible capital property (ECP)

Before 2017, three-quarters of capital expenditures for goodwill and certain other intangible properties were included in a cumulative eligible capital (CEC) pool and could be amortised at a maximum annual rate of 7%, on a declining-balance basis. A portion of proceeds could be taxable as recapture or as a gain on disposition.

Starting 1 January 2017, the ECP regime was repealed and replaced with a new CCA pool, Class 14.1. Transitional rules apply. 100% of eligible capital expenditures are included in Class 14.1 and subject to a 5% declining-balance CCA rate. The rules that apply to depreciable property, such as the 'half-year rule', recapture, and capital gains, also apply to the properties included in Class 14.1.

Special rules apply to expenditures that do not relate to a specific property of a business. Every business is considered to have goodwill associated to it (even if no expenditures on goodwill have been made). Expenditures that do not relate to a particular property will increase the capital cost of the goodwill of the business and, consequently, the balance of the Class 14.1 pool.

A receipt that does not relate to a specific property will reduce the capital cost of the goodwill of the business, and therefore the balance of the Class 14.1 pool, by the lesser of the cost of the goodwill (which may be nil) and the amount of the receipt. Any excess will be treated as a capital gain. Any previously deducted CCA will be recaptured to the extent that the receipt exceeds the balance of the Class 14.1 pool.

CEC balances at 31 December 2016 were transferred to the new Class 14.1 pool as of 1 January 2017. The CCA depreciation rate for the transferred property in the Class 14.1 pool is 7% until 2027. Proceeds received after 31 December 2016, relating to property acquired, expenditures made, or goodwill generated before 1 January 2017, reduce the Class 14.1 pool at a 75% rate.

Mining and oil and gas activity

Generally, mining and oil and gas companies are allowed a 100% deduction for grassroots exploration costs. Other development costs are deductible at the rate of 30% on a declining-balance basis. Generally, for expenses incurred after 20 March 2013, pre-production mine development expenses are treated as 'Canadian development expenses' (CDEs) (30% declining balance) instead of as 'Canadian exploration expenses' (CEEs) (100% deduction). If certain grandfathering criteria are met, taxpayers can continue to treat pre-production mine development expenses as CEEs. In addition, mining expenses incurred after 28 February 2015 that relate to environmental studies, and community consultations that are required to obtain an exploration permit or meet a legal or informal obligation under the terms of the permit, will be treated as CEEs, which may provide an immediate 100% deduction.

For oil and gas expenses generally incurred after 2018, recently enacted legislation classifies expenditures related to drilling or completing a discovery well (or building a temporary access road to, or preparing a site of, any such well) as CDEs, instead of as CEEs.

Capital property costs are subject to the depreciation rules *noted above under Depreciation*. In addition, in certain cases, significant asset acquisitions and assets acquired for a new mine or major expansion benefit from accelerated depreciation of up to 100% of the income from the mine. For certain oil sands assets acquired after 18 March 2007, accelerated depreciation was eliminated in 2015. For other mining assets, the accelerated depreciation is being phased out over the 2017 to 2020 calendar years, generally for expenses incurred after 20 March 2013, unless certain grandfathering criteria are met.

For assets acquired after 19 February 2015, and before 2025, CCA rates increased from:

- 8% to 30% for equipment used in natural gas liquefaction, and
- 6% to 10% for buildings at a facility that liquefies natural gas.

Provinces levy mining taxes on mineral extraction and royalties on oil and gas production. Most are deductible for income tax purposes. Effective for taxation years beginning after 31 December 2016, British Columbia introduced an LNG income tax. *See British Columbia Liquefied Natural Gas Income Tax Act in the Taxes on corporate income section*.

ITCs are available federally (and in some provinces if certain criteria are met) to individuals who invest in shares to fund prescribed mineral exploration expenditures. The federal credit in 2018 for qualified 'flow-through' share investments is 15% of qualifying mining grassroots exploration expenditures. The credit can be used to offset current taxes payable or carried over to certain previous or subsequent taxation years.

Extractive Sector Transparency Measures Act

The Extractive Sector Transparency Measures Act requires public disclosure of government payments made by mining and oil and gas entities engaged in the commercial development of oil, gas, or minerals in Canada or elsewhere. It also applies to entities that control another entity that engages in these activities. However, an entity will be required to report only if it:

- is listed on a stock exchange in Canada, or
- has a place of business in Canada, does business in Canada, or has assets in Canada, and, based on its consolidated financial statements, meets minimum asset, revenue, and/or employee thresholds.

This mandatory reporting standard for extractive companies applies to payments of CAD 100,000 or more in a year that have been made to foreign and domestic governments at all levels, including Aboriginal groups. Both monetary payments and payments 'in kind' must be reported.

Scientific research and experimental development (SR&ED)

Canada provides a generous combination of deductions and tax credits for SR&ED. Current expenditures on SR&ED can be deducted in the year incurred or carried forward indefinitely to be used at the taxpayer's discretion to minimise tax payable. *See*

Scientific research and experimental development (SR&ED) credit in the Tax credits and incentives section for information on the tax credits currently available.

Start-up expenses

Expenses related to the incorporation, reorganisation, or amalgamation of a corporation (e.g. cost of affidavits, legal and accounting fees, costs of preparing articles of incorporation) are not deductible for income tax purposes. They are considered to be eligible capital expenditures, for which 100% of the capital cost of the expenditure is included in Class 14.1 and subject to a 5% declining-balance CCA rate. Expenses incurred after the date of incorporation generally are deductible for income tax purposes if reasonable in amount and incurred to earn income from the business.

Interest expenses

Interest on borrowed money used for earning business or property income, or interest in respect of an amount payable for property acquired to earn income, is deductible, provided the interest is paid pursuant to a legal obligation and is reasonable under the circumstances.

Doubtful accounts and bad debts

A reasonable reserve for doubtful accounts may be deducted for tax purposes. The reserve calculation should be based on the taxpayer's past history of bad debts, industry experience, general and local economic conditions, etc. Special rules apply for determining reserves for financial institutions. A taxpayer can deduct the amount of debts owing that are established to have become bad debts during the year, provided the amount has previously been included in the taxpayer's income or relates to loans made in the ordinary course of business. Recoveries of bad debts previously written off must be included in income in the year of recovery.

Business meals and entertainment

Deductions for business meals and entertainment expenses are limited to 50% of their cost. This includes meals while travelling or attending a seminar, conference, or convention, overtime meal allowances, and room rentals and service charges, etc. incurred for entertainment purposes. If the business meal and entertainment costs are billed to a client or customer and itemised as such, the disallowance (i.e. the 50% not deductible) is shifted to the client or customer.

Insurance premiums

Insurance premiums relating to property of a business are generally deductible, but life insurance premiums are generally not deductible if the company is the named beneficiary. However, if a financial institution lender requires collateral security in the form of life insurance, a deduction is allowed for the associated net cost of any pure insurance for the period.

Charitable contributions

Charitable donations made to registered Canadian charitable organisations are deductible in computing taxable income, generally to the extent of 75% of net income. A five-year carryforward is provided.

Fines and penalties

Most government-imposed fines and penalties are not deductible. Fines and penalties that are not government-imposed are generally deductible if made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property.

Taxes

Federal, provincial, and territorial income taxes are not deductible in determining income subject to tax. The tax treatment of federal capital taxes and provincial payroll and capital taxes is discussed in the *Other taxes section*.

Net operating losses

Net operating losses generally may be carried back three tax years and forward 20. Special rules may prohibit the use of losses from other years when there has been an acquisition of control of the corporation.

Corporate loss trading

Where there has been an acquisition of control of a corporation, an anti-avoidance measure to support the restrictions on the deductibility of losses, and the use of certain other tax benefits, applies:

- when a person or group of persons acquires shares of a corporation to hold more than 75% of the FMV of all of the shares of the corporation without otherwise acquiring control of the corporation, and
- if it is reasonable to conclude that one of the main reasons that control was not acquired was to avoid the loss restriction rules.

Payments to foreign affiliates

Interest, rents, royalties, management fees, and other payments made to related non-residents are deductible expenses to the extent that they are incurred to earn income of the Canadian corporation and do not exceed a reasonable amount. In certain cases, the receipt of these payments by a foreign affiliate of the Canadian corporation or of a related person can give rise to FAPI, which is taxable on an accrual basis in Canada.

Group taxation

Group taxation is not permitted.

Transfer pricing

Canadian transfer pricing legislation and administrative guidelines are generally consistent with OECD Guidelines. Statutory rules require that transactions between related parties be carried out under arm's-length terms and conditions. The CRA has indicated that it will apply the revised OECD guidance on transfer pricing by multinational enterprises (MNEs) arising from the BEPS project (the BEPS final report was issued October 2015; *see Base erosion and profit shifting [BEPS] in the Tax administration section for more information*). The government's view is that the revised guidance is generally consistent with the CRA's interpretation and application of the arm's-length principle and that, consequently, practices are not expected to change significantly.

Penalties may be imposed on adjusted income if contemporaneous documentation requirements are not met. A taxpayer will be deemed not to have made reasonable efforts if the taxpayer does not maintain complete and accurate documentation to evidence that it has determined and used arm's-length prices for its related-party transactions. The documentation must be prepared and complete in all material aspects on or before the taxpayer's documentation due date, which is six months after the end of the taxation year for corporations.

The transfer pricing penalty is 10% of the transfer pricing adjustment if the adjustment exceeds the lesser of CAD 5 million and 10% of the taxpayer's gross revenue for the year. The penalty is not deductible in computing income, applies regardless of whether the taxpayer is taxable in the year, and is in addition to any additional tax and related interest penalties.

Canada has an Advance Pricing Arrangement (APA) program that is intended to help taxpayers obtain a level of certainty on transfer prices acceptable to the local tax authorities and, when negotiated as bilateral or multilateral APAs, with tax authorities in other jurisdictions.

Many of Canada's international tax agreements contain provisions concerning income allocation in accordance with the arm's-length principle. These include a Mutual Agreement Procedure, which is a treaty-based mechanism through which taxpayers can petition competent authorities for relief from double taxation resulting from transfer pricing adjustments.

Transfer pricing adjustments

When the Canadian transfer pricing rules have applied to adjust, for tax purposes, amounts related to transactions between a Canadian corporation and one or more non-arm's length non-residents (a 'primary adjustment'), the related benefit to the non-residents is treated by the CRA as a deemed dividend (a 'secondary adjustment'), subject to WHT, which can be eliminated, at the discretion of the Minister of Revenue, if the amount of the primary transfer pricing adjustment is repatriated to the Canadian corporation.

Country-by-country (CbC) reporting

Annual CbC reporting has been implemented for taxation years beginning after 2015 for MNEs with total annual consolidated group revenue of 750 million euros (EUR) or more (approximately CAD 1 billion). To facilitate the sharing of this information with its international treaty partners, Canada (and 67 other jurisdictions) have signed the OECD's Multilateral Competent Authority Agreement on CbC reporting. The reporting would include key metrics for each country the MNE operates in, such as: revenue, profit, tax paid, stated capital, accumulated earnings, number of employees, and tangible assets, as well as a description of the main activities of each of its subsidiaries. The reporting would be due within one year of the end of the fiscal year to which the report relates, with a view that the first exchanges between jurisdictions of CbC reports would occur by June 2018. Before any such exchanges, the CRA will formalise an exchange arrangement with the other jurisdiction and ensure that appropriate safeguards are in place to protect the confidentiality of the reports. In 2017, the CRA issued:

- Form RC4649 'Country-by-Country Report': Reporting form that follows the CbC reporting format recommended by the OECD in its October 2015 BEPS report on transfer pricing documentation and CbC reporting, and
- Publication RC4651 (E) 'Guidance on Country-By-Country Reporting in Canada': Provides further guidance that is generally consistent with the OECD's recommendations, but includes several differences.

It is important to determine a Canadian entity's CbC report filing obligation by identifying whether Canada has a qualified competent authority agreement with a particular country for purposes of exchanging CbC reports. If this agreement does not exist, a Canadian MNE must file a CbC report in Canada as a constituent entity, even if a CbC report has been prepared and filed by an ultimate parent entity or a surrogate parent entity in that particular country.

Canada and the United States have signed a bilateral competent authority arrangement to allow for the exchange of CbC reports. The reports should be exchanged for fiscal years of MNE groups beginning on or after 1 January 2016, no later than 15 months after the year end, but with an extra three months for the 2016 report.

Thin capitalisation

Thin capitalisation rules can limit interest deductions when interest-bearing debt owing to certain non-residents (or persons not dealing at arm's length with certain non-residents) exceeds one and a half times the corporation's equity. The rules also apply to debts of:

- a partnership of which a Canadian-resident corporation is a member, and
- Canadian-resident trusts and non-resident corporations and trusts that operate in Canada.

Disallowed interest is treated as a dividend for WHT purposes.

Back-to-back loan arrangements

The Canadian Income Tax Act contains 'back-to-back loan' rules that prevent taxpayers from interposing a third party between a Canadian borrower and a foreign lender to avoid the application of rules that would otherwise apply if a loan were made directly between the two taxpayers. The back-to-back loan rules currently ensure that the amount of WHT on a cross-border interest payment cannot be reduced through the use of back-to-back loan arrangements. Legislation enacted in 2014 targeted certain back-to-back loan arrangements undertaken by taxpayers using an interposed third party by:

- amending an anti-avoidance provision in the thin capitalisation rules for taxation years that begin after 2014, and
- introducing a specific anti-avoidance rule relating to WHT on interest payments for amounts paid or credited after 2014.

These back-to-back loan rules have been expanded by:

- extending these rules to cross-border payments of rents, royalties, or similar payments made after 2016 (an exception is available for certain arm's-length royalty arrangements that do not have a main purpose of avoiding WHT)
- adding character substitution rules so the back-to-back loan rules cannot be avoided through the substitution of economically similar arrangements between the

intermediary and another non-resident person, for interest and royalty payments made after 2016
- amending the shareholder loan rules to include rules that are similar to the back-to-back loan rules; this will apply to back-to-back shareholder loan arrangements that are outstanding after 21 March 2016 (if there is only one intermediary) or after 31 December 2016 (if there are multiple intermediaries) (*see Shareholder loan rules in the Income determination section for more information*), and
- clarifying the application of these rules to back-to-back arrangements involving multiple intermediaries, for interest and royalty payments made after 2016, and for shareholder debts as of 1 January 2017.

Controlled foreign affiliates and foreign accrual property income (FAPI)

Under Canada's FAPI rules, Canadian corporations are taxed on certain income of controlled foreign affiliates (typically, certain income from property, income from a business other than active, income from a non-qualifying business, and certain taxable capital gains) as earned, whether or not distributed. A grossed-up deduction is available for foreign income or profits taxes and WHTs paid in respect thereof. In general, a foreign corporation is a foreign affiliate of a Canadian corporation if:

- the Canadian corporation owns, directly or indirectly, at least 1% of any class of the outstanding shares of the foreign corporation, and
- the Canadian corporation, alone or together with related persons, owns, directly or indirectly, at least 10% of any class of the outstanding shares of that foreign corporation.

The foreign affiliate will be a controlled foreign affiliate of the Canadian corporation if certain conditions are met (e.g. more than 50% of the voting shares are owned, directly or indirectly, by a combination of the Canadian corporation, persons at non-arm's length with the Canadian corporation, a limited number of Canadian-resident shareholders, and persons at non-arm's length with those Canadian-resident shareholders).

Income from an 'investment business' of a foreign affiliate is generally included in its FAPI. When the income attributable to specific activities carried out by a foreign affiliate accrues to a specific Canadian taxpayer under a tracking arrangement, the 2018 federal budget proposes to deem such activities to be a separate business, for taxation years of a taxpayer's foreign affiliate beginning after 26 February 2018. Each separate business will need to meet specific conditions, including the 'six employees' test, to be excluded from the investment business definition.

When the principal purpose of a business carried on by an affiliate is to derive income from trading or dealing in indebtedness, the income from that business is generally included in its FAPI. The 2018 federal budget proposes to add certain minimum capital requirements to the trading or dealing in indebtedness rules for an affiliate to qualify for the regulated foreign financial institution exception, for taxation years of a taxpayer's foreign affiliate beginning after 26 February 2018.

Controlled foreign affiliate status

The 2018 federal budget proposes to deem a foreign affiliate of a taxpayer to be a controlled foreign affiliate of the taxpayer if FAPI attributable to specific activities of the foreign affiliate accrues to the benefit of the taxpayer under a tracking arrangement, for taxation years of a taxpayer's foreign affiliate beginning after 26 February 2018.

Tax credits and incentives

Foreign tax credits

Taxpayers that have foreign-source income and are resident in Canada at any time in the year are eligible for foreign tax credit relief. Separate foreign tax credit calculations are prescribed for business and non-business income on a country-by-country basis. All provinces and territories also allow a foreign tax credit, but only in respect of foreign non-business income taxes.

Income or profits taxes paid to foreign governments generally are eligible for credit against a taxpayer's Canadian income taxes payable. The credit in respect of taxes paid on foreign income is restricted to the amount of Canadian taxes otherwise payable on this income. Generally, foreign tax credits are available only to reduce Canadian tax on foreign-source income that is subject to tax in the foreign country.

Foreign business income or loss is computed for each foreign country in which a branch is located. Excess foreign business income tax credits may be carried back three years or forward ten. The foreign non-business income tax credit applies to all foreign taxes other than those classified as business income tax. No carryover is allowed with respect to the non-business income foreign tax credit. Unused foreign non-business income tax may be deducted in computing income.

Regional incentives

In specified regions of Canada (i.e. Atlantic provinces, the Gaspé region, and Atlantic offshore region), a 10% federal ITC is available for various forms of capital investment (generally, new buildings, machinery and equipment, and/or clean energy generation equipment to be used primarily in manufacturing or processing, logging, farming, or fishing). The ITC is fully claimed against a taxpayer's federal tax liability in a given year. Unused ITCs reduce federal taxes payable for the previous three years and the next 20, or may be 40% refundable to CCPCs.

The provinces and territories may also offer incentives to encourage corporations to locate in a specific region. Income tax holidays are available in Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, and Quebec for certain corporations operating in specific industries (e.g. in Ontario and Quebec, commercialisation of intellectual property [IP]; in Prince Edward Island, aviation or marine technology) or meeting certain conditions (e.g. job creation for Newfoundland and Labrador).

Industry incentives

Canada offers many tax incentives at the federal, provincial, and territorial levels, for various industries and activities, including those related to:

- research and development (*see below*)
- film, media, computer animation and special effects, interactive digital media, and multi-media productions
- manufacturing and processing, and
- environmental sustainability.

Scientific research and experimental development (SR&ED) credit

In addition to the SR&ED deduction, a taxpayer can benefit from an ITC, which is generally a 15% non-refundable credit on SR&ED expenditures that can be applied against taxes payable. Alternatively, this tax credit can be carried back three years or forward 20, to be applied against taxes owing.

A qualifying CCPC can qualify for a 35% refundable tax credit annually on its first CAD 3 million in expenditures. This enhanced credit is subject to certain income and capital limitations.

SR&ED ITCs have been extended to certain salary and wages (limited to 10% of salary and wages directly attributable to SR&ED carried on in Canada) incurred in respect of SR&ED carried on outside Canada.

In addition to the federal SR&ED incentives, all provinces (except Prince Edward Island), as well as the Yukon, provide tax incentives to taxpayers that carry on research and development (R&D) activities.

Withholding taxes

WHT at a rate of 25% is imposed on interest (other than most interest paid to arm's-length non-residents), dividends, rents, royalties, certain management and technical service fees, and similar payments made by a Canadian resident to a non-resident of Canada.

Canada is continually renegotiating and extending its network of treaties, some with retroactive effect. This table summarises WHT rates on payments arising in Canada. The applicable treaty should be consulted to determine the WHT rate that applies in a particular circumstance.

	WHT (%)		
Recipient	**Dividends**	**Related-party interest (1)**	**Royalties (2)**
Resident corporations and individuals	0	0	0
Non-resident corporations and individuals:			
Non-treaty	25	25	25
Treaty:			
Algeria	15	15	0/15
Argentina	10/15 (4)	12.5	3/5/10/15 (5)
Armenia	5/15 (4)	10	10
Australia (9)	5/15 (4)	10	10
Austria	5/15 (4)	10	0/10
Azerbaijan (7)	10/15 (4)	10	5/10
Bangladesh	15	15	10
Barbados	15	15	0/10
Belgium	5/15 (4)	10	0/10
Brazil	15/25 (4)	15	15/25
Bulgaria	10/15 (4, 5)	10	0/10 (5)
Cameroon	15	15	15
Chile (5)	10/15 (4)	15	15
China, People's Republic of (6, 9)	10/15 (4)	10	10

Canada

	WHT (%)		
Recipient	**Dividends**	**Related-party interest (1)**	**Royalties (2)**
Colombia	5/15 (4)	10	10 (5)
Croatia	5/15 (4)	10	10
Cyprus	15	15	0/10
Czech Republic	5/15 (4)	10	10
Denmark	5/15 (4)	10	0/10
Dominican Republic	18	18	0/18
Ecuador	5/15 (4)	15	10/15 (5)
Egypt	15	15	15
Estonia (7)	5/15 (4)	10	0/10
Finland	5/15 (4)	10	0/10
France	5/15 (4)	10	0/10
Gabon	15	10	10
Germany (9)	5/15 (4)	10	0/10
Greece	5/15 (4)	10	0/10
Guyana	15	15	10
Hong Kong (6)	5/15 (4)	10	10
Hungary	5/15 (4)	10	0/10
Iceland	5/15 (4)	10	0/10
India	15/25 (4)	15	10/15/20
Indonesia	10/15 (4)	10	10
Ireland, Republic of	5/15 (4)	10	0/10
Israel	5/15 (4)	10	0/10
Italy	5/15 (4)	10	0/5/10
Ivory Coast	15	15	10
Jamaica	15	15	10
Japan	5/15 (4)	10	10
Jordan	10/15 (4)	10	10
Kazakhstan (7)	5/15 (4)	10	10 (5)
Kenya	15/25 (4, 5)	15	15
Korea, Republic of	5/15 (4)	10	10
Kuwait	5/15 (4)	10	10
Kyrgyzstan (7)	15 (5)	15 (5)	0/10
Latvia (7)	5/15 (4)	10	10 (5)
Lebanon (3)	5/15 (4)	10	5/10
Lithuania (7)	5/15 (4)	10	10 (5)
Luxembourg	5/15 (4)	10	0/10
Madagascar (3)	5/15 (4)	10	5/10
Malaysia (9)	15	15	15
Malta	15	15	0/10
Mexico	5/15 (4)	10	0/10
Moldova	5/15 (4)	10	10
Mongolia	5/15 (4)	10	5/10
Morocco	15	15	5/10
Namibia (3)	5/15 (4)	10	0/10
Netherlands (9)	5/15 (4)	10	0/10
New Zealand	5/15 (4)	10	5/10
Nigeria	12.5/15 (4)	12.5	12.5
Norway	5/15 (4)	10	0/10

Recipient	WHT (%) Dividends	Related-party interest (1)	Royalties (2)
Oman	5/15 (4)	10 (5)	0/10
Pakistan	15	15	0/15
Papua New Guinea	15	10	10
Peru (5)	10/15 (4)	15	15
Philippines	15	15	10
Poland	5/15 (4)	10	5/10
Portugal	10/15 (4)	10	10
Romania	5/15 (4)	10	5/10
Russia (7)	10/15 (4)	10	0/10
Senegal	15	15	15
Serbia	5/15 (4)	10	10
Singapore	15	15	15
Slovak Republic	5/15 (4)	10	0/10
Slovenia	5/15 (4)	10	10
South Africa	5/15 (4)	10	6/10
Spain	5/15 (4)	10	0/10
Sri Lanka	15	15	0/10
Sweden	5/15 (4)	10	0/10
Switzerland (9)	5/15 (4)	10	0/10
Taiwan	10/15 (4)	10	10
Tanzania	20/25 (4)	15	20
Thailand	15	15	5/15
Trinidad and Tobago	5/15 (4)	10	0/10
Tunisia	15	15	0/15/20
Turkey	15/20 (4)	15	10
Ukraine (7)	5/15 (4)	10	0/10
United Arab Emirates	5/15 (4)	10	0/10
United Kingdom	5/15 (4)	10	0/10
United States (8)	5/15 (4)	0	0/10
Uzbekistan (7)	5/15 (4)	10	5/10
Venezuela	10/15 (4, 5)	10	5/10
Vietnam	5/10/15 (4)	10	7.5/10 (5)
Zambia	15	15	15
Zimbabwe	10/15 (4)	15	10

Notes

1. Interest: Canada does not impose WHT on interest (except for ‘participating debt interest’) paid or credited to arm’s-length non-residents. Most treaties have an explicit provision for higher WHT on interest in excess of FMV in non-arm’s-length circumstances.
2. Royalties: A zero royalty rate generally applies to:
   - copyright royalties and payments for a literary, dramatic, musical, or other artistic work (but not royalties for motion picture films, work on film or videotape, or other means of reproduction for use in television), and/or
   - royalties for computer software, a patent, for information concerning industrial, commercial, or scientific experience (but not royalties for a rental or franchise agreement), or for broadcasting.

   Most treaties explicitly provide for higher WHT on royalties in excess of FMV in non-arm’s-length circumstances. A zero rate of tax may apply in certain cases.

3. The treaty has been signed, but is not yet in force. In the absence of a treaty, Canada imposes a maximum WHT rate of 25% on dividends, interest, and royalties.

4. The lower (lowest two for Vietnam) rate applies if the beneficial owner of the dividend is a company that owns/controls a specified interest in the paying company. The nature of the ownership requirement, the necessary percentage (10%, 20%, 25%, or higher), and the relevant interest (e.g. capital, shares, voting power, equity percentage) vary by treaty.
5. If the other state (Canada for the treaty with Oman) concludes a treaty with another country providing for a lower WHT rate (higher rate for Kenya), the lower rate (higher rate for Kenya) will apply in respect of specific payments within limits, in some cases.
6. Canada's treaty with China does not apply to Hong Kong.
7. The treaty status of the republics that comprise the former USSR is as follows:
   - Azerbaijan, Estonia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Russia, Ukraine, and Uzbekistan: New treaties entered into force (*see table for rates*).
   - Other republics: No negotiations are underway.

   Belarus, Tajikistan, and Turkmenistan will not honour the treaty with the former USSR. As a result, Canada will impose a maximum WHT rate of 25% on dividends, interest, and royalties until a new treaty enters into force. For other republics that comprise the former USSR, the status of the former treaty with the USSR is uncertain. Because the situation is subject to change, Canadian taxpayers are advised to consult with the CRA as transactions are carried out.

8. For the United States, the reduced treaty rates apply, subject to the Limitation on Benefits article.
9. The treaty or protocol is under renegotiation.

Tax administration

Taxable period

The tax year of a corporation, which is normally the fiscal period it has adopted for accounting purposes, cannot exceed 53 weeks. The tax year need not be the calendar year. Once selected, the tax year cannot be changed without approval from the tax authorities.

Tax returns

Both the federal and the provincial/territorial corporation tax systems operate on an essentially self-assessing basis. All corporations must file federal income tax returns. Alberta and Quebec tax returns must also be filed by corporations that have PEs in those provinces, regardless of whether any tax is payable. Corporations with PEs in other provinces that levy capital tax must also file capital tax returns. Tax returns must be filed within six months of the corporation's tax year-end. No extensions are available.

Certain corporations with annual gross revenues exceeding CAD 1 million are required to electronically file (e-file) their federal CIT returns via the Internet. Also, information return filers that submit more than 50 information returns annually must e-file via the Internet. Penalties are assessed for failure to e-file.

Payment of tax

Corporate tax instalments are generally due on the last day of each month (although some CCPCs can remit quarterly instalments if certain conditions are met). Any balance payable is generally due on the last day of the second month following the end of the tax year.

Functional currency

The amount of income, taxable income, and taxes payable by a taxpayer is determined in Canadian dollars. However, certain corporations resident in Canada can elect to determine their Canadian tax amounts in the corporation's 'functional currency'.

Tax audit process

The tax authorities are required to issue an assessment notice within a reasonable time following the filing of a tax return. These original assessments usually are based on a limited review, if any, of the corporation's income tax return. However, the notice of assessment will identify any changes made (e.g. correcting discrepancies on any balances carried forward).

Traditionally, all corporations with gross income over CAD 250 million, and their affiliates, are assigned a large case file team and undergo an annual risk assessment. Corporations rated as high risk are generally audited annually. Medium-sized corporations (gross income between CAD 20 million and CAD 250 million) generally are selected based on a screening process and identified risks. Smaller corporations, which are usually CCPCs with gross income under CAD 20 million, have been subject to compliance or restricted audits, selected based on statistical data and a screening process. Audits of CCPCs are generally restricted to covering the current and one previous taxation year.

In general, the CRA targets its resources on high-risk taxpayers, with minimal resources spent on lower-risk taxpayers.

Statute of limitations

A reassessment of the tax payable by a corporation that is not a CCPC may be made within four years from the date of mailing of the original notice of assessment, usually following a detailed field audit of the return and supporting information. The limitation period is three years for CCPCs. The three-year and four-year limits are extended a further three years in some cases (e.g. transactions with non-arm's-length non-residents). Reassessments generally are not permitted beyond these limits unless there has been misrepresentation or fraud. Different time limits may apply for provincial reassessments.

For taxation years ending after 2 October 2016, recently enacted legislation allows the CRA to reassess tax, after the end of the normal reassessment period, on a gain from the disposition of real or immovable property if the taxpayer does not initially report the disposition.

The 2018 federal budget extends the reassessment period of a taxpayer by:

- three years for income arising in connection with a foreign affiliate of a taxpayer, for taxation years of a taxpayer beginning after 26 February 2018
- adding a 'stop-the-clock' rule when a requirement for information (excluding foreign-based information, for which an existing 'stop-the-clock' rule already applies) or compliance order is being contested in court, for challenges instituted after royal assent of the enacting legislation; the reassessment period is extended by the amount of time during which the requirement or compliance order is being contested, and
- three years to the extent the reassessment relates to a loss carryback previously claimed, where a reassessment is made to the loss as a consequence of a transaction involving a taxpayer and a non-arm's-length non-resident, for taxation years in which a carried back loss is claimed, if that loss arises in a taxation year ending after 26 February 2018.

Appeals

A taxpayer that disagrees with a tax assessment or reassessment may appeal. The first step is to file a formal notice of objection within 90 days from the date of mailing of the notice of assessment or reassessment, setting out the reasons for the objection and other relevant information. Different time limits may apply for provincial reassessments. Corporations that qualify as 'large corporations' must file more detailed notices of objection. The CRA will review the notice of objection and vacate (cancel), amend, or confirm it. A taxpayer that still disagrees has 90 days to appeal the CRA's decision to the Tax Court of Canada, and, if necessary, to the Federal Court of Appeal and the Supreme Court of Canada. However, the Supreme Court hears very few income tax appeals.

Income tax objection process

The CRA has undertaken 'a comprehensive review of its objection-related processes … to further streamline its processes and gain efficiencies that will contribute towards providing more timely and efficient service to taxpayers'. This is in response to recommendations in the 2016 Fall Reports of the Auditor General of Canada. Report 2, 'Income Tax Objections' examined whether the CRA managed income tax objections efficiently and concluded that the CRA did not:

- process income tax objections in a timely manner
- adequately measure its performance results, or
- adequately analyse or review decisions on income tax objections and appeals, or share the results of these objections and court decisions within the CRA.

Topics of focus for tax authorities

Topics of interest to Canadian tax authorities include:

- Transfer pricing (inbound and outbound), including the quantum and deductibility of:
  - royalty payments made by Canadian corporations to non-arm's-length non-residents
  - goods and services
  - business restructuring expenses incurred by a group of corporations located in more than one country
  - interest rates and interest paid on loans if the funds derived from the loans are used offshore
  - guarantee fees paid by Canadian corporations to related non-resident corporations
  - management fees and general and administrative expenses, and
  - 'hybrid mismatch' financial instruments.
- Offshoring of Canadian-source income by factoring the accounts receivable of Canadian corporations.
- Treaty shopping to reduce Canadian WHT and capital gains tax.
- Manipulation of tax attributes, including:
  - surplus stripping to reduce Canadian WHT by increasing a Canadian corporation's paid-up capital and subsequently distributing the surplus as a return of capital
  - arrangements that manipulate the adjusted cost base of capital assets, and
  - the acquisition of tax losses realised by arm's-length entities.

- The requirement to withhold tax on certain payments made to a non-resident that relate to fees, commissions, or other amounts in respect of services rendered in Canada.
- Transaction costs, including professional fees, related to business restructuring.
- Deductibility of reserves (contingent or unsupported amounts).
- Foreign exchange gains and losses (current or capital).

General Anti-Avoidance Rule (GAAR)

The GAAR was first introduced in 1988 and was designed to challenge transactions or series of transactions that would directly or indirectly result in a tax benefit when:

- a taxpayer relies on specific provisions of the Income Tax Act to achieve an outcome that those provisions seek to prevent
- a transaction defeats the underlying rationale of the provisions that are relied upon, or
- an arrangement circumvents the application of certain provisions, such as specific anti-avoidance rules, in a manner that frustrates or defeats the object, spirit, or purpose of those provisions.

If GAAR applies, the CRA may deny any deduction, exemption, or exclusion in computing taxable income or the nature of any payment or other amount may be recharacterised to deny the tax benefit that would result from an avoidance transaction.

Foreign reporting

Reporting requirements apply to taxpayers with offshore investments. The rules impose a significant compliance burden for taxpayers with foreign affiliates. Failure to comply can result in substantial penalties.

The 2018 federal budget proposes to advance by nine months the filing due date of T1134 information returns for foreign affiliates (i.e. due six months after a corporation's year-end instead of 15 months), for taxation years of a taxpayer beginning after 2019.

Tax avoidance

An 'avoidance transaction' that meets certain conditions is a 'reportable transaction' and must be reported to the CRA. As well, Ontario and Quebec each have a provincial reporting regime for certain aggressive tax planning transactions. Other provinces are considering implementing similar disclosure rules for these transactions.

Tax evasion and aggressive tax avoidance

The 2016 federal budget announced that Canada will invest CAD 444 million 'to crack down on tax evasion and combat tax avoidance' and details how these funds will be allocated. The new initiatives included:

- hiring 100 additional auditors to investigate high-risk multinational corporations
- increasing the number of CRA annual examinations of high-risk wealthy taxpayers from 600 to 3,000
- increasing twelve-fold the number of transactions examined by the CRA
- creating a special CRA programme to stop 'the organisations that create and promote tax schemes for the wealthy'

- using the latest investigative tools and technology, paired with larger CRA investigative teams, and
- creating an independent advisory committee to focus on offshore tax evasion and aggressive tax planning (the OCAC was established on 11 April 2016).

The 2017 federal budget stated that it would invest an additional CAD 523.9 million over five years to prevent tax evasion and improve tax compliance. The CRA planned to:

- increase verification activities
- hire additional auditors and specialists with a focus on the underground economy
- develop robust business intelligence infrastructure and risk assessment systems to target high-risk international tax and abusive tax avoidance cases, and
- improve the quality of investigative work that targets criminal tax evaders.

To further combat tax evasion and tax avoidance, the 2018 federal budget will invest '90.6 million over five years to address additional cases that have been identified through enhanced risk assessment systems, both domestically and internationally'.

The following measures have already been implemented to help the CRA combat international tax evasion and aggressive tax avoidance:

- Certain financial intermediaries are required to report to the CRA international electronic funds transfers of CAD 10,000 or more. The 2018 federal budget states that '[o]ver the last two fiscal years, the government reviewed all large money transfers between Canada and eight countries of concern - a total of 187,000 transactions worth a total of over [CAD] 177 billion that merited closer scrutiny'.
- The 'Stop International Tax Evasion Program' compensates certain persons who provide information that leads to the assessment or reassessment of over CAD 100,000 in federal tax.
- If a taxpayer fails to report income from a specified foreign property on Form T1135 (Foreign Income Verification Statement), and the form was not filed on time or a specified foreign property was not, or not properly, identified on the form, the normal assessment period for this form is extended by three years.

The 2018 federal budget states that 'there are now over 1,000 offshore audits, and more than 40 criminal investigations with links to offshore transactions. The government is also aggressively going after those who promote tax avoidance schemes, and so far has imposed [CAD] 44 million in penalties on these third parties'.

As noted above, the government is committed to crack down on aggressive tax avoidance and tax evasion, and continues to implement the 14 recommendations in Canada's House of Commons Standing Committee on Finance report 'The Canada Revenue Agency, Tax Avoidance and Tax Evasion: Recommended Actions,' dated 26 October 2016. The report had reviewed the CRA's efforts to enhance tax compliance by individuals and corporations, and to address situations of non-compliance, and the development and use of offshore corporate structures.

Voluntary Disclosures Program (VDP)

In June 2017, in response to the recommendations of the Standing Committee on Finance and the report of the OCAC, which commented on the perceived shortcomings of the VDP, the CRA released draft Information Circular - IC00-1R6 - Voluntary Disclosures Program, for discussion purposes. It was finalised on 15 December 2017.

IC00-1R6 significantly tightens the VDP for applications received after 28 February 2018.

Key changes to the VDP include:

- the introduction of two 'tracks' of disclosures:
  - a Limited Program when there is intentional conduct to be non-compliant or for corporations with gross revenue exceeding CAD 250 million in at least two of their last five taxation years and any related entities; requires participants to waive their right to object and appeal in respect of the issue disclosed, and
  - a General Program when the Limited Program does not apply
- replacing the 'no-name' disclosure with a new pre-disclosure discussion service
- referral of transfer pricing applications to the Transfer Pricing Review Committee (and therefore, no relief will be granted under the VDP)
- specialist review of complex issues or large dollar amounts
- payment of the estimated tax at the time of the VDP application
- disclosure of the identity of an adviser who assisted the taxpayer in respect of the non-compliance, and
- cancellation of previous relief if a VDP application was incomplete due to misrepresentation.

VDP relief will not be considered for applications that depend on an agreement being made at the discretion of the Canadian competent authority under a tax treaty provision. If a VDP application does not qualify for VDP relief, a taxpayer may still qualify for penalty and interest relief under the taxpayer relief provisions.

Sharing information for criminal matters

The 2018 federal budget proposes that:

- the CRA can use the legal tools available under the Mutual Legal Assistance Criminal Matters Act to facilitate the sharing of information related to tax offences under Canada's tax treaties, TIEAs, and the Convention on Mutual Administrative Assistance in Tax Matters; these tools include the ability for the Attorney General to obtain court orders to gather and send information, and
- tax information can be shared with Canadian mutual legal assistance partners for acts that, if committed in Canada, would constitute terrorism, organised crime, money laundering, criminal proceeds offences, or designated substance offences.

The proposals become effective upon royal assent of the enacting legislation.

Base erosion and profit shifting (BEPS)

Canada has been an active participant in the BEPS Action Plan, a project of the OECD and the G20. BEPS refers to tax planning strategies that exploit gaps and mismatches in national tax laws to shift profits to low- or no-tax locations. The government will act on the recommendations from the BEPS Action Plan (final report issued 5 October 2015) relating to:

- CbC reporting (*see Country-by-country [CbC] reporting in the Group taxation section for more information*)
- transfer pricing guidance (*see Transfer pricing in the Group taxation section for more information)*
- treaty abuse *(see Treaty shopping below*), and

- the spontaneous exchange of tax rulings.

In its 2018 federal budget, the government confirmed its commitment to safeguard Canada's tax system and continue to be an active participant in the OECD/G20's BEPS initiative. The government continues to work with its international partners to improve international dispute resolution and to ensure a coherent response to fight cross-border tax avoidance.

Spontaneous exchange of tax rulings

Effective 1 April 2016, the CRA began sharing select Canadian tax rulings with certain countries, in accordance with BEPS Action 5. The types of tax rulings shared include cross-border rulings related to 'preferential regimes', transfer pricing legislation, and those providing a downward adjustment not directly reflected in the taxpayer's accounts, as well as PE rulings and related-party conduit rulings. Canada will share a summary of the applicable ruling with the countries of residence of the immediate parent company, the ultimate parent company, and certain other parties.

Treaty shopping

The government is committed to addressing treaty abuse in accordance with the minimum standard contained in the final OECD and the G20 BEPS report on treaty shopping (Action 6). The minimum standard requires countries to include in their tax treaties an express statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements. The minimum standard also requires the adoption of one of two approaches in addressing treaty abuse, either the limitation-on-benefits approach or the limited principal purpose test.

On 7 June 2017, Canada and 67 other jurisdictions signed the Multilateral Convention to Implement Tax Treaty Related Measures to prevent Base Erosion and Profit Shifting (the MLI). The MLI covers the minimum standards, and various other recommendations, of Action 6 (treaty abuse) and Action 14 (dispute resolution), among other things. Canada has chosen to have the MLI apply to 75 of its 93 tax treaties (the Covered Tax Agreements).

With respect to treaty abuse, Canada will adopt, as an interim measure, a principal purpose test rule for the Covered Tax Agreements, but intends to adopt a limitation on benefits provision, in addition to or in replacement of the principal purpose test, through bilateral negotiations. To meet the minimum standards for dispute resolution, Canada has agreed to implement mutual agreement procedure and binding arbitration. For the MLI to take effect, Canada must enact legislation to implement the MLI in Canadian law. This process began on 31 January 2018, when the MLI was tabled in the House of Commons, followed by the tabling of a Notice of Ways and Means Motion (with the proposed Implementation Act) on 28 May 2018. The bill must still be debated in Parliament and approved by the House of Commons, then receive royal assent in order to be enacted in Canadian law. Based on comments from the Department of Finance, the MLI could come into effect on 1 January 2019 with respect to WHTs and 30 June 2019 with respect to all other taxes.

Quebec 'Tax Fairness Action Plan'

On 10 November 2017, Quebec released its 'Tax Fairness Action Plan', which contains 14 actions that address tax havens, aggressive tax planning, transfer pricing, and e-commerce with suppliers having no significant presence in Quebec, among other things. Many of the actions rely on cooperation with federal authorities. Key actions relating to corporations include:

- Improve income tax auditing of CIT:
  - The CRA will give the Quebec government CbC reports and ask other jurisdictions to give Quebec access to similar reports concerning those jurisdictions.
  - The CRA should obtain permission from tax authorities of foreign governments with which Canada has tax treaties to transfer to Quebec information obtained under these treaties.
  - The CRA will give Quebec certain foreign reporting information.
- Collecting sales taxes on supplies of incorporeal moveable property and services to 'specified Quebec consumers' by requiring foreign suppliers with no significant presence in Canada, in addition to suppliers in other provinces and territories that supply goods and services in Quebec, to register for QST. Quebec's 2018 budget proposes to implement this registration (*see Provincial retail sales tax in the Other taxes section for more information*).
- Increasing penalties in respect of GAAR-based assessments to 50% (from 25%) of the amount of the tax benefit denied.

Other issues

Forms of business enterprise

Canadian law is based on the British common-law system, except in Quebec where a civil-law system prevails. The principal forms of business enterprise available in Canada are the following.

- Corporation: A legal entity distinct from its shareholders, whether public or private, incorporated federally, provincially, or territorially.
- Partnership: A business relationship between two or more 'persons' (i.e. individuals, corporations, trusts, or other partnerships) formed for the purpose of carrying on business in common. Not treated as a legal entity distinct from its partners.
- Sole proprietorship: An unincorporated business operated by an individual that is carried on under the individual's own name or a trade name.
- Trust: A relationship whereby property (including real, tangible, and intangible) is managed by one person (or persons, or organisations) for the benefit of another. May hold commercial enterprises.
- Joint venture: Generally, the pursuit of a specific business objective by two or more parties whose association will end once the objective is achieved or abandoned. Not treated as a legal entity distinct from the participants.

Foreign investors usually conduct business in Canada through one or more separate Canadian corporations, although operation as a branch of a profitable foreign corporation may be preferable during the start-up period. In addition, foreign investors may participate as partners in partnerships carrying on business in Canada or as joint venturers.

Cross-border tax compliance

Convention on Mutual Administrative Assistance in Tax Matters

Canada has ratified the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force, in respect of Canada, on 1 March 2014 and into effect for taxable periods beginning after 2014. The member states of the Council of Europe and the member countries of the OECD are signatories of the convention. Under the convention, Canada will exchange tax information based on OECD standards, but is not required to collect taxes on behalf of another country, or provide assistance in the service of related documents. Canada will continue to negotiate a provision on helping to collect tax on a bilateral basis, and has agreed to include such a provision in some of its bilateral tax treaties.

Common Reporting Standard (CRS)

The CRS for the automatic exchange of financial account information between foreign tax authorities became effective in Canada on 1 July 2017, with the first exchange of information in 2018. As of 1 July 2017, Canadian financial institutions were required to have procedures to identify accounts held by residents of any country other than Canada or the United States, and to report the required information to the CRA. Having satisfied itself that each jurisdiction has appropriate capacity and safeguards in place, the CRA will formalise exchange arrangements with other jurisdictions leading to the exchange of information on a multilateral basis.

US Foreign Account Tax Compliance Act (FATCA)

An intergovernmental agreement (IGA) between Canada and the United States to improve international tax compliance and to implement the US FATCA entered into force on 27 June 2014. Canada began reporting the enhanced tax information in 2015.

Factual control

The Canadian Income Tax Act recognises two forms of control of a corporation: *de jure* (legal) control and *de facto* (factual) control. The concept of factual control is broader than legal control and is generally used to restrict access to certain corporate tax advantages. Legal control of a corporation is determined generally based on the right to elect the majority of the board of directors. Factual control is defined to exist where a person has directly or indirectly, in any manner whatever, influence that, if exercised, would result in control in fact of the corporation. Many court cases have discussed which specific factors may be useful in determining whether factual control exists.

However, a 2016 court decision held that for a factor to be considered in determining whether factual control exists, it must include a legally enforceable right and ability to effect a change to the board of directors or its powers, or to exercise influence over the shareholder or shareholders who have that right and ability. For taxation years beginning after 21 March 2017, recently enacted legislation clarifies that a determination of factual control not be limited in the manner contemplated by the court decision.

Cayman Islands

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Significant developments

There have been no significant corporate tax developments in the Cayman Islands during the past year.

Taxes on corporate income

Corporate income, capital gains, payroll, or other direct taxes are not imposed on corporations in the Cayman Islands.

Corporate residence

Since no corporate income, capital gains, payroll, or other direct taxes are currently imposed on corporations in the Cayman Islands, corporate residency is not relevant in the context of Cayman Islands taxation.

Entities engaged in 'scheduled' trade and business in the Cayman Islands (as defined in the Trade & Business Licensing Law) are required to have a trade and business licence. Effecting and concluding contracts in the Cayman Islands and exercising, in the Cayman Islands, powers necessary for the carrying on of a business outside the Cayman Islands is generally not considered to be engaging in trade and business in the Cayman Islands.

Other taxes

Value-added tax (VAT)

There is no VAT imposed in the Cayman Islands.

Import duties

Import duty is paid, generally at a rate of 22% to 27%, on importation of most goods. Please refer to the Cayman Islands Customs' website (*www.customs.gov.ky*) for the latest list of tariff rates.

Excise taxes

There are no excise taxes in the Cayman Islands.

Property taxes

There are no property taxes in the Cayman Islands.

Stamp duties

Stamp duty is paid, generally at a rate of 7.5%, on transfers of Cayman Islands immovable property. Stamp duty, in the form of a transfer tax equal to the applicable stamp duty, also applies to transfers of shares in land holding companies.

Cayman Islands stamp duty may also be payable if any documents are executed in, after execution brought to, or produced before a court of the Cayman Islands. Such stamp duty will be nominal in most instances and is capped at 500 Cayman Islands dollars (KYD).

Stamp duties also apply on legal or equitable mortgages or charges of immovable property or debentures. The stamp duty ranges from 1% to 1.5%, depending on the sum secured.

Branch income

Branches are treated the same as other corporations doing business in the Cayman Islands.

Income determination

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, income determination is not relevant in the context of Cayman Islands taxation.

Deductions

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, deductions from income are not relevant in the context of Cayman Islands taxation.

Group taxation

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, group taxation is not relevant in the context of Cayman Islands taxation.

Tax credits and incentives

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, tax incentives are not relevant in the context of Cayman Islands taxation. However, Cayman entities carrying on business outside the Cayman Islands can register as 'exempted companies' (i.e. a company formed primarily to do business outside of the Cayman Islands and subject to certain requirements) and can apply under the Tax Concessions Law for an undertaking to be issued by the Governor-in-

Council (i.e. the Cayman Islands government) exempting such company from any tax on profits, income, gains, or appreciation that might be introduced in the period of 20 years following the grant of such concessions. The concession is extendable for a further ten years after expiry. 'Exempted limited liability partnerships' (i.e. certain partnerships formed primarily to do business outside of the Cayman Islands) can apply under the Exempted Limited Partnership Law for a similar concession that is for 50 years (rather than 20 years).

Withholding taxes

Currently, no withholding taxes (WHTs) are imposed on dividends or payments of principal or interest.

Tax administration

No tax returns, forms, or procedures are required to be completed for tax compliance purposes in the Cayman Islands.

The Tax Information Authority serves as the competent authority in the Cayman Islands.

Other issues

Tax information reporting

The Cayman Islands currently has 36 signed Bilateral Agreements, of which 29 are in force. Please refer to the Tax Information Authority's website (*http://tia.gov.ky/pdf/International_Exchange_of_Information_Instruments.pdf*) for the latest list of Bilateral Agreements.

The Cayman Islands agreed with the United Kingdom (UK) government to implement the Savings Directive, and so the Reporting of Savings Income Information (European Union or EU) Law (2007 Revision) came into force, setting out a reporting regime whereby Cayman paying agents making interest payments to individuals who are tax resident in an EU member state may have to report interest paid. The Cayman Tax Information Authority receives or facilitates submission of such information reporting.

The Cayman Islands will comply with the regulations set forth under the Common Reporting Standard (CRS). The country recognises that the regulations are a key component of the Cayman Islands' implementation of automatic exchange of financial account information in accordance with the internationally agreed standard. The Cayman Islands Tax Information Authority updated guidance on CRS in Q1 of 2017, including updated Cayman Islands entity and individual self-certification forms and other information, which took effect as of 1 January 2016. The Cayman Islands took a similar approach to CRS as with the UK and United States (US) Foreign Account Tax Compliance Act (FATCA) (*see below*), including certain due diligence and reporting obligations.

Intergovernmental agreements (IGAs)

The Cayman Islands and the United States signed their Agreement to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance

Act based on the Model 1 IGA in 2013. To accommodate the non-direct tax system of the Cayman Islands, the IGA is a model 1B (non-reciprocal) IGA. The Cayman Islands and the United Kingdom also signed their Agreement to Improve International Tax Compliance, which is based on the US Model 1 IGA in 2013. Under these Agreements, Cayman Islands financial institutions must provide the Cayman Islands competent authority with the required information. The Cayman Islands competent authority forwards that information to the competent authority in the relevant jurisdiction. Please refer to the Tax Information Authority's website for access to the Agreements and related Guidance Notes (*www.tia.gov.ky/pdf/FATCA_Legislation.pdf*).

Country-by-country reporting (CbCR)

The Cayman Islands has entered into CbCR as part of the Base Erosion and Profit Shifting (BEPS) Action Plan set forth by the Organisation for Economic Co-operation and Development (OECD). With the goal of promoting transparency and accuracy in reporting, CbCR requires multinational enterprises to include detailed financial and tax information relating to the global allocation of their income and taxes, among other indicators of economic activity.

The Cayman Islands' competent authority will annually exchange, on an automatic basis, the CbC report received from each reporting entity that is resident for tax purposes in the Cayman Islands with all such other competent authorities of jurisdictions with respect to which the Cayman Islands has an agreement in effect and in which, on the basis of the information in the CbC report, one or more constituent entities of the multinational group of the reporting entity are either resident for tax purposes or are subject to tax with respect to the business carried out through a Cayman Islands permanent establishment (PE).

CbCR is in effect for fiscal years beginning on or after 1 January 2016. The due date for reporting is 12 months after the fiscal year-end and notification is required no later than the last day of the reporting fiscal year. For reporting fiscal years ending before 1 January 2017, the reporting due date is 31 May 2018.

Chad

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Significant developments

The significant developments that occurred in 2018 are mainly:

- Transfer pricing documentation requirements.
- Extension of the scope of value-added tax (VAT) credit refund and amendment of the related procedures.
- Enhancement of deductibility rules of interest expenses for entities belonging to the same group of companies.
- New rules against fraud and tax evasion.
- Amendment of eligibility criteria relating to the taxation regime.
- Option to file a corrective tax return within a limited period of two months from the filing of the initial tax returns.
- Recognition of exclusive competence of tax administration in matter of tax assessment.
- Prohibition for chartered accountants non-registered in the Economic and Monetary Community of Central Africa (CEMAC) to validate taxpayers' accounting.
- Prohibition for chartered accountants to provide tax services.
- Requirement for branches of foreign companies to be transformed into a Chadian company.
- Lowering of registration fees for real estate transactions.

Taxes on corporate income

The profits subject to the corporate tax are determined with sole regard to profits earned by businesses carried out or transactions conducted in Chad.

Net taxable profits are established after deduction of all charges directly entailed by the exercise of activities subject to assessment in Chad. As income from other countries is not liable to tax, foreign charges and losses are not deductible either.

The corporate tax rate is 35%.

Tax regimes

The tax regimes applicable to companies are: the normal tax regime, the simplified tax regime, and the flat tax rate regime.

The criteria used by the tax administration is the turnover. Thus, companies with a turnover that comprises between 50 million Central African CFA francs (XAF) and

XAF 500 million are subject to the simplified tax regime and those with a turnover exceeding XAF 500 million are subject to the normal tax regime.

Taxpayers who realise an annual turnover not exceeding XAF 50 million are subject to the flat tax rate regime.

All companies subject to the normal tax regime or the simplified tax regime shall file and pay taxes monthly.

Minimum tax

There is a minimum tax of 1.5% based on turnover and an additional XAF 1 million as the minimum/floor amount.

The minimum tax shall be filed and paid monthly for companies subject to the normal tax regime or the simplified tax regime (*see above for tax regimes*).

Local income taxes

There are no regional or local income taxes in Chad.

Corporate residence

Registered entities (i.e. companies, branches, and subsidiaries) conducting economic activities in Chad are liable to pay corporate tax. Specifically:

- Limited companies.
- Limited partnerships with shares.
- Limited liability companies.
- Cooperative societies and their unions.
- Public institutions.
- Agencies of the state with financial autonomy.
- Municipal bodies and any other legal entities engaged in an operation for gain.
- Real estate companies, regardless of their form.
- Civil companies, other than real estate companies, involved in industrial, commercial, or agricultural activities.
- Limited partnerships, on the share of profits relating to the rights of sponsors.
- Associations in participation, including financial syndicates, on the share of profits relating to the rights of sponsors.
- Co-owners of shipping companies, on the share of profits relating to the rights of sponsors of associated co-owners, other than those with unlimited liability or whose names and addresses are not listed with the tax administration.
- Travel agencies.

Permanent establishment (PE)

According to the CEMAC Fiscal Convention, a legal person is domiciled in one’s ‘permanent home’; this expression denotes the centre of vital interests, i.e. the place with which personal relations are closer.

Consequently, the domicile (permanent home) of legal persons is the place of the registered office or the statutory social place. It constitutes PEs such as:

- The head office of management.

- A branch.
- An office.
- A factory.
- A workshop.
- A mine, quarry, or other place of extraction of natural resources.
- A building or construction site or assembly.
- A facility used for storage, display, or delivery of goods belonging to the business.
- A warehouse belonging to the business, stored for storage purposes, and of display of delivery.
- A fixed installation of business used for the purpose of purchasing goods.

Other taxes

Value-added tax (VAT)

The VAT rate applicable in Chad is:

- 18% on all taxable operations.
- 0% on exports and their related international transportations.

An operation performed in Chad that constitutes an economic activity and for which payment is made, unless included in the list of exemptions in the law governing VAT, is liable for VAT, even if the residence of the natural person or the registered office of the legal entity is located outside Chad.

The VAT law provides a list of transactions exempted from VAT that includes, among many others, the following:

- Sales of products that are directly made by farmers, cattle farmers, or fishermen to consumers, farming, and fishing operations.
- Import operations and sales of newspapers and periodicals, other than the advertising revenues.
- Leasing transactions.
- Sales of gasoil and petrol by the refining company of N'Djamena.

Before fiscal year 2018, the refund of VAT credit applied only to some categories of taxpayers.

From fiscal year 2018, any taxpayer (resident) subject to VAT may apply for the refund of VAT credit, except taxpayers who benefit from any exemption via establishment agreements.

The deadline for the application of the refund of VAT credit is 24 months from the birth of this credit.

The refund of VAT credit is guaranteed by an escrow account domiciled in Bank of the States of Central Africa. This account is fuelled by 15% of various VAT revenues.

Any VAT credit officially recognised by the tax administration shall be refunded.

The consequences of the application for VAT credit are as follows:

- No possibility to use the VAT credit in the filings of the month that follows the one from which the application of refund of the said VAT credit has been made.
- No possibility to deduct the structural VAT credits at the end of a fiscal year.

Refund of VAT credit is disallowed in the following cases:

- Lack of proof of the VAT credit for which refund has been applied for.
- Application for VAT credit done out of the deadline, i.e. after 24 months.
- Taxpayers did not pay all the taxes due.

The consequences of the rejection of the application for VAT credit:

- The lack of justification of this VAT credit will lead to the automatic cancellation of the said VAT credit.

The practice modalities of the refund of the VAT credit are not yet precised by the tax administration.

Customs duties

The tax basis of customs duties corresponds with the customs valuation, namely the selling price of the goods plus cost of delivery to Chad (costs of insurance, transportation, etc.).

The rates of customs duties depend on the nature of the goods and range from 5% to 30%. These rates can be summarised as follows:

- Goods of first need (basic necessities): 5%.
- Raw materials and goods of equipment: 10%.
- Intermediate and miscellaneous goods: 20%.
- Consumer goods: 30%.

Excise duty

Excise duty applies to goods of great consumption: cigarettes, drinks (water, beer, and wine), cosmetics, and luxury products, and transactions of mobile companies, which are the legal taxpayers. Excise duty rates depend on the nature of the goods and range from 5% to 25% of the value of the good.

Some of the rates are as follows:

- Water: 5%.
- Beer and wine: 25%.
- Perfume, jewellery, electronic devices (except computers, telephones etc.), private vehicles with an engine capacity above 1600 cm^3, and weapons: 20%.
- Compound alcoholic preparations: 25%.
- Tobacco (all types): 25%.
- Turnover of mobile companies (legal taxpayers) realised on their transactions: 18%.

This value differs depending on the origin of the good. If the good has been manufactured in the CEMAC zone, the value corresponds with the selling price charged by the manufacturer. If the good is imported into the CEMAC zone, the value is the sum of the freight value plus insurance costs and customs duties.

This value constitutes the basis of the calculations of the excise duty.

Real property tax

The annual real property tax differs according to whether it is a built or an unbuilt property and whether it is located in N'Djamena or elsewhere. The tax is imposed in the municipality where the property is situated.

The tax rate on built property is 10% in N'Djamena and 8% elsewhere.

The tax rate on unbuilt property is 21% in N'Djamena and 20% elsewhere.

The calculation basis is the potential revenue of that property. The potential revenues correspond to four-fifths of the rental value, the rental value being 10% of the market value. For rural unbuilt property, the market value is fixed to XAF 50,000 per hectare.

Some temporary exemptions are granted to new buildings or additions to constructed buildings after 1 January 1968 from this tax in some conditions. In case of construction or reconstruction, owners can benefit from temporary exemptions as follows:

- If the villa is owned by a corporation: 2 years.
- If the villa belongs to an individual and put on rental: 2 years.
- If the villa is built or rebuilt for commercial and industrial use: 2 years.
- New construction or reconstruction and additions to buildings for a holiday resort, for approval (accreditation), or for furnished rent are excluded.

Accommodation tax

The person occupying a building (owner or tenant) has to pay the following amount as accommodation tax annually:

Type of construction	N'Djamena (XAF)	Elsewhere (XAF)
For constructions in local material	10,000	5,000
For hard or semi-hard constructions	25,000	15,000
For R+ hard constructions	40,000 and a supplement of 20,000 per level	20,000 and a supplement of 10,000 per level

Transfer tax

Fixed or proportional transfer duties must be paid on the transfer of ownership of estates, personal property, and real property. Transfer duties are also due on contributions to companies and divisions of property. The proportional fees for the following transfers are:

- Transfers of ownership interests in companies whose capital is not divided into shares: 3%.
- Transfers of shares, founders' shares, or profit shares: 3%.
- Transfers of bonds of companies and legal entities: 3%.
- Transfers of the right to lease or of the benefit of a promise to lease real estates: 10%.
- Transfers of goodwill (business) against payment: 10%.
- Transfer of leases of real estate: 10%.
- Transfers of pension against payment: 10%.
- The undivided shares and portions of real property acquired by bidding are subject to land transfer tax against payment at 10%.
- Transfers and delegations of term debts: 3%.
- The perfect transfer of notarised promissory notes containing the creation of a mortgage and other mortgage bonds: 5%.

- Real estate returns are subject to land transfer (against payment) tax of 10%.
- Transferring ownership for consideration of movable property: 6%.
- Judicial transfer (against payment) of ownership or usufruct of both developed and undeveloped land is 10%.

These transfers are generally registered within three months of their entry into possession.

Stamp duties

Stamp duties must be paid on each civil or judicial document intended to be used as evidence. Stamp duty is generally XAF 1,000 per page.

All claims for reimbursement submitted to the Board are subject to a stamp duty of XAF 2,000.

Requests to the administration for professional competitions are subject to a stamp duty of XAF 1,000.

Applications for allocation of land are subject to a stamp duty of XAF 1,000.

Invoices for supplies to the administration of less than XAF 1 million are subject to a stamp duty of XAF 5,000. The same applies to certificate of sales of reshaped vehicles and materials of vehicles of the state and public bodies.

All invoices that accompany an order of the administration in lieu of a service contract or a public market are subject to a stamp duty of XAF 5,000.

Any application, other than those mentioned above, addressed to the tax authorities is subject to a stamp duty of XAF 2,000.

Furthermore, the stamp duties on the following official documents are as follows:

Documents	Issuance fees (XAF)	Stamp fees (XAF)	Total (XAF)
Passport	77,500	7,500	85,000
Residence card:			
Citizens of CEMAC area	292,500	7,500	300,000
Citizens of other countries	500,000	10,000	510,000
Particular passes	-	6,000	6,000
Extension of stay	5,000	-	5,000
National identity card	9,000	1,000	10,000
Passport for adult Chadian abroad	97,500	7,500	105,000
Passport for minors abroad	45,000	7,500	52,500
Passport for minors in Chad	35,000	7,500	42,500

Registration duty

The registration duty applies to certain deeds listed by the General Tax Code (GTC). The assessment basis depends on the nature of transactions, and the rate varies from 0.25% to 15%.

Payroll tax

Employers in Chad are required to make monthly contributions of 7.5% of the total amount of salaries and fringe benefits paid to permanent employees.

Social security contributions

The monthly contribution to Chad's Social Security Funds is 16.5% of total salaries for the employer (upper limit: XAF 82,500 per month) and 3.5% for the employee (upper limit: XAF 17,500 per month), withheld by the employer.

Apprenticeship tax

Employers in Chad are required to make monthly contributions of 1.2% of the total amount of salaries and fringe benefits of their employees (permanent and temporary) to the National Professional Training Funds (FONAP).

Business licence tax

Any natural person or corporate body carrying on a trade, industry, or profession in Chad shall be liable to a business licence tax. The business licence tax is paid annually and is assessed as follows:

- A determined duty based on 0.1% of the first XAF 2 billion of turnover of the fiscal year N-2; above that, only 1/10 of the turnover is taxed at the rate of 0.1%.
- 10% of the rental value of the premises.
- 10% of the determined duty for the National Social Security Funds.
- 7% of the determined duty for the Consular Commercial Chamber.
- XAF 480 per year for the Rural Intervention Funds.
- 10% of the annual rental value of business premises.

For a new company, the determined duty is calculated based on the projected turnover estimated by the taxpayer as compared to similar activities or those achieved during the first 12 months of activity.

The business licence tax is due 31 December of the tax year.

Special tax on oil products

The 2017 financial law instituted the special tax on oil products (in French: *Taxe Spéciale sur les Produits Pétroliers*). The rates of this tax are as follows:

- Petrol: XAF 50 per litre.
- Gasoil: XAF 50 per litre.
- Jet A1: XAF 50 per litre.

This tax is due at the time of consumption and is supported by the final consumer. It is not deductible for the marketers.

The 2018 financial law has introduced capped fees as follows:

- Gasoline: XAF 47 per litre.
- Gasoil: XAF 22 per litre.
- Jet A1: XAF 20 per litre.
- Petrol: XAF 5 per litre.

Tax for the modernisation of airport infrastructures

The 2017 financial law instituted the tax for the modernisation of airport infrastructures, which rates are as follows:

- Economic class tickets for flight: XAF 10,000.
- Intermediary or business class tickets for flight: XAF 15,000.

This tax is due at the time of payments of the tickets for flight and is supported by the buyer and collected by the airline company and paid to the public Treasury.

From January 2018, the tax for modernisation of airport infrastructures is renowned in fees (in French '*redevances*') for modernisation of airport infrastructures and is paid to the Chadian Civil Aviation Authority.

Tax on behalf of the African Union on imports

The 2017 financial law instituted a tax at the rate of 0.2% on imports out of the Africa area on behalf of the African Union.

The applicable modalities are not yet precised by a ministerial decision.

Branch income

Subject to international conventions, the profits realised by companies that do not have their tax residence in Chad (i.e. branches) are deemed distributed in respect of each fiscal year to the persons who do not have their tax residence in Chad and, to this effect, are subject to WHT at the rate of 20%.

Income determination

Inventory valuation

Stocks shall be valued at cost price; however, if the market price is lower than the cost price, the undertaking shall make provisions for depreciation of inventory.

Capital gains

Capital gains are taxed at 20% via WHT.

Dividend income

Dividends are taxed at 20% via WHT.

Interest income

Subject to international conventions, interest income that benefits a natural person or companies who do not have their real domicile or head office in Chad is subject to a WHT at the rate of 25%.

Royalty income

Royalty income is subject to WHT at the rate of 25% when the beneficiary is located neither in Chad nor in the CEMAC area.

Royalty incomes are deductible up to 10% of the fiscal intermediary result when these royalties are paid to a foreign related entity.

When the royalties are paid to beneficiaries located in a tax haven, the deduction of these royalties are capped to 50% of their amount without prejudice up to the limit of 10% mentioned above.

A tax haven is defined as a non-cooperative country or territory or a country or territory with a privileged taxation listed by the Organisation for Economic Co-operation and Development (OECD) and which did not enter into an agreement providing a mutual exchange of tax information with the republic of Chad.

Foreign income

Income from other countries is not liable to tax in Chad unless an international double taxation agreement (DTA) allocates the right to tax the said income to Chad.

Deductions

Expenses are deductible under the following conditions:

- They must lead to a reduction of the assets.
- They must be incurred in the interest of the enterprise.
- They must be regularly included in the accounts of the entity and justified by receipts.
- They must be related to the fiscal year within which they are incurred.
- They must not be considered as non-deductible by the law.

Depreciation

According to accountancy principles, depreciation is calculated based on the probable length of use of the asset. The straight-line system of depreciation is applicable, and rates vary according to the nature of the business activity concerned and the normal useful life of the assets involved.

From an accountancy point of view, it is possible to depreciate whatever amount corresponds to the above-mentioned principles. However, from a tax point of view, depreciation (i.e. enabling a deduction of the depreciated amount from the taxable income) is only possible under the condition that the depreciation has been entered into the statement of accounts. Therefore, only a legal entity in Chad owning the assets is able to depreciate its assets. In addition, if depreciation in the statement of accounts is higher than the depreciation authorised, the difference is not deductible and has to be reinstated in the taxable income.

The starting point for depreciation is the day of first use. If this date is not the first day of the financial year, the first year's depreciation is reduced pro-rata.

It should be noted that, despite the above, goods that are leased are depreciated at the rate that they are paid for.

Depreciation of goods that are made available for free to managers and supervisors of the business are deductible if the corresponding benefit in kind is declared.

The sum of depreciation applied to the acquisition or creation of an asset cannot, at the end of each financial year, be less than the amount of depreciation calculated on the linear system and spread out over the normal usage period.

Depreciation in loss-making years may be carried forward to the first profitable financial year, and to subsequent years if necessary.

Major repairs

The major repairs carried out by a company on the assets listed in the balance sheet are only deductible by way of depreciation.

Goodwill

There are no provisions for goodwill as regards deduction of expenses.

Start-up expenses

There are no provisions for start-up expenses.

Interest expenses

Interest paid for the depositing of funds by a shareholder is deductible within the base rate of the central bank plus two points, calculated on the basis of the share capital.

However, interest paid to a foreign related entity is deductible up to 10% of the tax intermediary result of the Chadian debtor.

In the event that the beneficiary of these interests is located in a tax haven, the deduction is limited to 50% of the gross amount without prejudice of the application of the limitation of 10% mentioned above.

Bad debt

Provisions for credit customers are deductible if judicial actions have been taken for the recovery of the said debt.

Charitable contributions

Donations and liberalities are deductible within a 0.5% limit of the annual turnover, net of tax, when they are duly justified. However, a decision from the Minister of Finances is required.

Fines and penalties

Tax and customs penalties are not deductible.

Taxes

Income taxes are not deductible.

Structural VAT credits

Structural VAT credits are deductible if the following conditions are met:

- The company justifies the origin of the VAT credits by producing the statement of the deductible VAT accompanied by the original invoices and the receipts of the customs.
- An attestation of VAT credit, signed by the General Tax Director, is produced.

Other significant items

The following expenses are not deductible:

- Provisions for laying off employees.

- Provisions for self-insurance.
- Insurance premiums paid for a third-party.

The following expenses are not fully deductible:

- Foreign social security contributions are deductible only within 15% of the base salary of the expatriates when related to a compulsory retirement plan. Nonetheless, Chad's social security contributions are fully deductible.
- Restaurants, hotels, receptions, and related costs are deductible within a 0.5% limit of the turnover, net of tax.
- Travel expenses for expatriates and their families for vacation are deductible, limited to one trip per year.

Net operating losses

Losses arising from normal business activities of the company are deductible and may be carried forward for up to three years. Carryback of losses is not permitted.

Payments to foreign affiliates (foreign technical assistance and administrative fees)

There is a specific regulation relating to foreign general administrative and technical assistance costs, which are subject to a 10% limitation of deductibility. The scope of the 10% limitation covers study expenses, technical assistance, and other expenses, including commercial and industrial royalties and interests, paid to the head office of an enterprise established outside Chad and outside the CEMAC zone.

These costs are only deductible within 10% of the intermediary fiscal profit (accounting profits plus non-allowable charges/costs) prior to their deduction if the following conditions are met:

- The details of these general administrative and technical assistance costs shall be annexed to Table 22 of the annual tax returns (*Déclaration Statistique et Fiscale* or DSF).
- The details shall present the amounts paid according to the activities' sectors and countries where the company carries out its activities.

However, from fiscal year 2018, foreign technical assistance fees or administrative fees paid to beneficiaries located in a tax haven are deductible up to 50% of their gross amount without prejudice to the limit of 10%.

Group taxation

There is a specific taxation of groups within the CEMAC area.

Where a joint stock company and a private limited company own either registered stock in a joint stock company or shares in a private limited company, the net proceeds of the share in the second company paid to the first during the financial year shall be deducted from the total net profit of the latter, less a percentage for costs and charges. This percentage is fixed at 10% of the total amount of the proceeds. This system shall apply when all of the following conditions are met:

- The stocks or shares owned by the parent establishment represent at least 50% of the capital of the subsidiary firm.

- The parent and subsidiary firms have their registered office in a CEMAC state (i.e. Cameroon, Central African Republic, Chad, Gabon, Equatorial Guinea, and Republic of Congo).
- The stocks or shares allotted at the time of issue are still registered in the name of the participating company that undertakes to retain them for at least two consecutive years in registered form.

Transfer pricing

The Tax Code acknowledges that dependent or controlled companies may transfer benefits indirectly to their company abroad it is dependent on or to the company abroad it is controlled by.

In order to calculate the real benefit, the indirectly transferred benefits (by means of increase of purchase price or decrease of sales price to the controlling company or by any other means) are incorporated into the result established by the accounts.

If the tax administration does not have enough precise elements to determine the benefit, it will establish the taxable benefit by way of comparison to companies normally operated in Chad.

The Tax Code provides further, in accordance with CEMAC regulation, that interest paid to shareholders on sums that they lend over and above their share capital is deductible at the rate for loans allowed by the central bank increased by two percentage points. This deduction is only possible if the amounts lent do not exceed 50% of the share capital.

Transfer pricing documentation requirements

From fiscal year 2018, companies are subject to transfer pricing documentation requirements. Transfer pricing documentation requirements concern:

- Any company under the control of companies located outside of Chad.
- Any company related to enterprises located outside of Chad.
- Any company having control of companies located outside of Chad.

Branches and PEs are within the scope of the said requirement.

Transfer pricing documentation applies to any transaction between related entities and shall contained:

- General information concerning the group of associated companies:
  - General description of the legal and operational structures of the group of associated companies.
  - Identification and geographical location of associated companies engaged in intragroup transactions during the financial year.
- Specific information concerning the Chadian company:
  - Description of transactions with other associates during the year, including the nature of the transactions and their amounts.
  - Identification and geographical location of the group companies involved in the transactions.
  - Presentation of the main competitive price method used and changes during the year.

Thin capitalisation

The thin capitalisation rules apply to companies subject to corporate tax and to advance of funds or receivables granted by shareholders.

The deductibility of interest paid to shareholders is limited by two rules:

- Interest rate limitation: Interest incurred on advances of funds granted by all shareholders is tax deductible up to the rate of the Central Africa Community Bank plus 2.
- Equity ratio: The amount of advance of funds does not exceed 1.5 times the equity. This equity ratio applies only to shareholders that control the management of the entity.

Controlled foreign companies (CFCs)

There are no provisions relating to CFCs in Chad.

Tax credits and incentives

Tax incentives are provided by:

- The General Tax Code.
- Petroleum agreements concluded between oil companies and the Government of Republic of Chad.
- Mine agreements concluded between oil companies and the Government of Republic of Chad.

The main tax incentive provided by General Tax Code is an investment allowance of 40% of the amount invested and applicable to investments exceeding XAF 60 million for construction industry, purchase of equipment and major tools, creation or extension of agricultural planting, and development of farming sites.

Tax incentives provided by petroleum and mine agreements are namely:

- CIT exoneration.
- VAT exemption.
- Apprenticeship tax exemption.
- Property taxes.

Foreign tax credit

There are no provisions for foreign tax credit in Chad.

Withholding taxes

WHT on commerce of retail goods

A 4% WHT rate applies to natural persons and legal entities that purchase or sell wholesale or retail goods. This WHT also applies to imports.

Companies with more than one shareholder that regularly pay their taxes may apply for a suspension of payment of WHT (renewable every three months).

WHT on capital gains and dividends

WHT on capital gains and dividends is 20% and applies to residents and non-residents.

WHT on income of non-residents

WHT on income of non-residents is 25%. It applies to income of any legal or natural person who is not resident in the CEMAC area (i.e. Cameroon, Central African Republic, Chad, Gabon, Equatorial Guinea, Republic of Congo).

The income of legal persons (companies) whose tax residence is in the CEMAC area is exempted from the WHT. However, the income of natural persons whose tax residence is in the CEMAC area is subject to WHT at the rate of 20%.

WHT on personal income

The employer withholds tax on personal income every month.

WHT on income from public procurement contracts financed from outside of the country

Chad's lowest WHT rate on income is 12.5%. It applies in either of the following two cases:

- On income of agents, consultancy firms, and corporations executing a contract within the framework of public procurement contracts financed from outside of the country.
- On income of companies working within the petroleum projects.

The WHT at the rate of 12.5% does not apply to dividends and interests, but only to royalties paid to non-residents within the petroleum projects.

The dividends paid to residents and to non-residents is subject to WHT at the rate of 20%.

WHT on interest

The interests paid to non-residents whose tax residence is outside the CEMAC area are subject to WHT at the rate of 25%, but they are exempted from WHT if they are paid to the CEMAC area's residents.

Bonds and notes are subject to a WHT of 20% of the interests for registered bonds and of the interests for bearer participation certificates.

WHT is not applicable to interests paid to residents.

WHT on rent

WHT on rent is 15% for residents and 20% for non-residents.

WHT on rental of equipment

The rates of WHT on rental of equipment held by natural persons is 15% for residents and 20% for non-residents. The WHT applies on the total amount paid, including the major repairs, which, by nature, should be normally supported by the owner, when these repairs are supported by the tenant without deduction from the price of the rental.

WHT on interconnection expenses of mobile companies

WHT on interconnection expenses of mobile companies paid to non-resident companies is 25%.

Tax treaties

Chad has one tax treaty with the member states of CEMAC.

WHT benefits on payments made to CEMAC residents

To avoid double taxation of incomes of CEMAC origin, the provisions of the Convention provide a principle of exclusive taxation in one country.

Regarding revenues of services, they will be taxed only in the country of location of the beneficiary of incomes (i.e. no WHT in the country of payment of incomes).

Regarding incomes from securities (dividends, interest on deposits, interest on bonds, etc.), they will be taxed only in the country of distribution (i.e. no WHT in the country of payment of incomes).

Tax administration

Taxable period

Companies must, in principle, close off their yearly financial accounts on 31 December each year. Where a company begins operations later in the year (say June 2018), it has the option of operating for a minimum of 12 months or a maximum of 18 months to close off its accounts.

Tax returns

Corporate tax returns are due on 30 April, at the latest, with the possibility to apply for an exceptional extension to 15 May.

Before fiscal year 2018, taxpayers could subscribe to a rectifying Statistical and Tax Statement at any time before any tax audit.

From fiscal year 2018, any taxpayer who has made errors or omissions in one's spontaneous tax returns (monthly tax return, annual tax return, annual statement of salaries and wages) can subscribe to a rectificative tax return within two months from the date of filing of the initial tax return.

An amending declaration is binding to the tax administration if filed within two months.

Payment of tax

Certain taxes are considered instalment payments of corporate tax. Once the amount of corporate tax is known, these payments are deductible from the amount and only the balance has to be paid on 15 May. These taxes include the minimum corporate tax, the quarterly instalment payments, and the 4% discharge for retail goods, if applicable.

Minimum corporate tax (monthly and quarterly)

The minimum corporate tax shall be filed and paid, at the latest, on the 15th day of the month following the month of achievement of the turnover for companies subject to the normal tax regime and quarterly for companies subject to the simplified tax regime.

However, for the payment of the floor rate, payment may be made in four instalments of XAF 250,000 each, 15 days after the end of the quarter.

If this instalment payment exceeds the annual corporate tax, the remainder is lost.

One-third instalment payments (paid three times quarterly)

Corporations that fulfil the following conditions are subject to quarterly instalment payments:

- Liable to corporate tax.
- Made a profit during the prior fiscal year.
- The amount of the corporate tax of the prior fiscal year is superior to at least XAF 100,000.

The quarterly instalment payments are equal to one-third of the difference between the corporate tax due during the prior fiscal year and the minimum income tax paid during the same period.

The payment must take place before the 15th day of May, August, and November.

Since August 2017, taxpayers are authorised to pay taxes, penalties, and fines by electronic money. The tax administration has not yet precised the modalities of payment.

Tax audit process

In brief, the tax audit exercised by the *Direction Générale des Impôts* (Directorate General of Taxes) in Chad consists of three different types of control:

- Audit of monthly, quarterly, and annual tax returns, which requires no prior notice by the tax administration to the taxpayer.
- Spot checks, which are done on one or more taxes on a group of operations over a period of less than one fiscal year. Prior notice is obligatorily given by the tax administration to the taxpayer.
- General verification, which is the most important audit and needs prior notice by the tax administration to the taxpayer. This type also involves the other two audits aforementioned, so that the taxpayer can perform the necessary adjustments on previous declarations.

In all the audits, there are contradictory and contentious proceedings. The contradictory proceeding is engaged when the tax administration finds deficiency, inaccuracy, or omission in the information on the tax returns and notifies the taxpayer thereof. The contentious proceeding, on the other hand, is engaged when the taxpayer, in turn, disagrees with the observations of the tax administration and challenges its position directly with the tax administration and/or with the courts.

Contentious claim

Taxpayers who dispute the justification or the amount of tax levied on them may, if they had formally filed the claim under certain conditions, obtain stay of payment of the disputed portion of the said taxes, on condition that they:

- expressly request respite of payment in the complaint
- state the amount or the basis of the tax relief requested
- provide supporting documents showing payment of the undisputed portion of the tax and 15% of the disputed one, and
- provide the bank guarantee obtained from a bank located in Chad.

Statute of limitations

The total or partial omissions found in the tax base, the inadequacies and inaccuracies, or the taxation errors, can be repaired by the tax administration until the end of the third year following that in which the tax or fee is payable.

Furthermore, any omission or insufficiency of tax revealed by a proceeding before the criminal courts or by a contentious claim may, without prejudice to the general period of repetitions established above, be repaired until the end of the third year following the revelation of the facts.

Validation of the taxpayer's accounts: Competence of Chartered Accountants CEMAC

Before 2018, the certification of the taxpayer's accounts made by an accountant or chartered accountant, accredited to the Court of Appeal of N'Djamena or approved CEMAC, is binding to the tax administration.

From fiscal year 2018, only CEMAC chartered accountant are authorised to validate the taxpayer's accounts.

Applicable sanctions

Fine applicable to the taxpayer: Fine of XAF 300,000 if the taxpayer's account is validated by an accountant or chartered accountant of the Court of Appeal of N'Djamena.

Fines of XAF 5 million are applicable to any accountant who validates an accounting that is inconclusive or tainted by irregularities.

Furthermore, a suspension of approval for two years and criminal prosecution are applicable.

Prohibition of chartered accountants to provide tax advice

From 2018, any accountant who provides tax advice in contradiction to the texts that govern its profession is liable to a fine of XAF 5 million, the suspension of its authorisation for two years, and criminal prosecution.

There is an incompatibility of the practice of the profession of chartered accountant with the profession of tax advisory as defined by the Statute of Tax Council.

Topics of focus for tax authorities

- Foreign technical assistance fees.

- WHT on non-commercial profit.
- Stock variation.
- VAT on provision of foreign services.
- Non-deductible charges (e.g. liberalities, donation, commission on purchases).
- Transfer pricing documentation.
- Transactions between affiliated entities.

Chile

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Significant developments

Full entry into force of the Tax Reform

As of 1 January 2017, the Tax Reform (Law N° 20,780, duly amended by Law N° 20,899) is fully in force. Please note that the 27% rate applicable under the partially integrated system (PIS) is in force as of commercial year 2018.

Most favoured nation clause on interest

As of 1 January 2019, the general rule on interest will be a 10% withholding tax (WHT) due to the applicability of some provisions of the double tax treaties (DTTs) with China and Japan; since those DTTs will trigger several most favoured nation clauses. Note that some DTTs, like the DTT with Argentina, will reduce the rate to just 12%.

Extension of full First Category Tax (FCT) credit

Countries that have signed a DTT that is not yet in force (i.e. United States and Uruguay) will have full FCT credit against their additional WHT on dividends until 31 December 2021. This rule will also be applicable to DTTs signed until 31 December 2018, but whose ratification is pending until 31 December 2021.

New definition of permanent establishment (PE)

The Chilean Internal Revenue Service (IRS) issued a new definition of 'permanent establishment', which 'does not take into consideration only the existence of a mandate agreement with power to conclude or close deals'. In this sense, this new broad definition applies the substance-over-form principle.

Low-tax jurisdiction list

The Chilean IRS issued Resolution N° 124 of 2017, which contains a list of low-tax jurisdiction or preferential tax regimes. These jurisdictions meet the requirements of Article 41 H of the Chilean Income Tax Law.

Taxes on corporate income

First Category Tax (FCT)

The basic tax on income of a legal entity domiciled or resident in Chile and engaged in commerce, mining, fishing, or industrial activities is the FCT, which is assessed at a 25% rate for entities subject to the attributed income system (AIS) and 27% rate for entities subject to the partially integrated system (PIS) on the entity's worldwide income.

Final taxation (i.e. at the Chilean final owner's level or at the foreign owner's level) will depend on the income tax regime to which the Chilean entity is subject to.

Income taxation systems in force

As of 1 January 2017, the 2014 Tax Reform replaced the former totally integrated income tax system with two new income tax systems, the co-existing AIS and PIS.

Attributed income system (AIS)

In general terms, under the AIS, companies have to attribute all the 'attributable income' (mainly the taxable basis for corporate purposes) up-stream to the final owners, subject to the Global Complementary Tax or the Additional WHT.

In this scenario, final owners are subject to the Global Complementary Tax (a progressive tax ranging from 0% to 35%) or Additional WHT (at 35%) regardless of whether a dividend was effectively distributed or not, with a 100% tax credit for the FCT paid at the attributing entity's level. The final owner is responsible for paying the difference between the FCT and the corresponding final tax.

Consequently, a foreign entity or individual subject to this regime is subject to a total Chilean tax burden of 35% (the Additional WHT rate), being able to credit the 25% FCT paid by the company.

For example:

Taxable income	100.00
FCT (25%)	25.00
Gross up amount	100.00
Additional WHT on attributed income (35%)	35.00
Tax credit (100% of FCT paid)	(25.00)
Difference to be paid	10.00
Total taxes paid in Chile (FCT plus difference to be paid)	35.00
Total tax burden	35%

As of 1 January 2017, taxpayers that may elect this system are companies whose owners are exclusively final taxpayers. In certain cases, companies by shares will be able to opt for this system, provided certain requirements are met. Additionally, the AIS is the default system to those taxpayers who do not expressly choose to be subject to the PIS and who have partners, owners, or co-owners who are exclusively individuals domiciled or resident in Chile.

Note that the Taxable Profits Fund (FUT for its Spanish acronym) ledger is replaced by a ledger that records the profits with an average tax credit rate for the FCT paid, creditable against final taxes. Also, as of 1 January 2017, ledgers that must be kept by taxpayers have been simplified and profit allocation order has also been modified. Now taxpayers need to keep the following ledgers and allocate accordingly: (i) own attributed income (including historic FUT); (ii) differences between normal and accelerated depreciation; and (iii) income not subject to final taxes and profits that are not considered income (this ledger includes the Non Taxable Profits Fund [FUNT for its Spanish acronym] determined on 31 December 2016). Any amount exceeding this allocation order will be subject to final taxes, unless it corresponds to paid-in capital.

Partially integrated system (PIS)

Under the PIS, final income taxation is applied upon effective dividend disbursements or profit withdrawals. Consequently, Chilean final owners subject to the Global Complementary Tax or foreign owners subject to the 35% Additional WHT are levied with these final taxes upon effective distribution of profits, with a tax credit of 65% of the FCT paid at the entity level.

However, the tax credit for the FCT paid at the entity level is 100% if the final owner is domiciled or resident in a country with which Chile has a DTT in force.

Therefore, final owners subject to the Additional WHT, residents, or those domiciled in a DTT country will continue having a total Chilean tax burden of 35% (the Additional WHT rate), whilst other foreign investors' total Chilean tax burden will be 44.45% since the 27% FCT rate became applicable in commercial year 2018. This total tax burden of 44.45% is calculated as follows:

Taxable income	100.00
FCT (27%)	27.00
Distribution abroad	73.00
Gross up amount	100.00
Additional WHT on attributed income (35%)	35.00
Tax credit (65% of FCT paid)	(17.55)
Difference to be paid	17.45
Total taxes paid in Chile (FCT plus difference to be paid)	44.45
Total tax burden	44.45%

In general terms, stock corporations, limited joint-stock entities, and companies that at least have one shareholder who is not a final taxpayer will be mandatorily subject to this income taxation regime.

In this income tax system, there has also been a ledger simplification and modification of the allocation order: (i) income subject to taxation, determined according to the entity's tax equity (including historic FUT); (ii) differences between normal and accelerated depreciation; (iii) income not subject to final taxes and profits that are not considered income (this ledger includes the FUNT determined on 31 December 2016); and (iv) accumulated tax credits balance.

Additionally, the FUT ledger has been eliminated and an average rate is applicable; assigned credits from the historic FUT will be allocated according to an average tax credit rate, annually determined, according to the result from the division of the total accumulated tax credits for the FCT paid by the tax profits registered in the FUT.

Common rules for both new taxation systems

- A voluntary payment of the FCT is established in case the entity attributing or distributing income has no corporate tax credits available for the use of the final owners. These voluntary FCT payments under the AIS will be deductible from net taxable income, whilst under the PIS, they will be considered as a tax credit against the FCT due.
- Taxpayer will have to be subject to one of the aforementioned systems for at least five years. After such period, they may change from one system to another. However,

in order to change from one system to another, all FCTs due will need to be paid as if the entity had ceased in its activities.

- Additionally, Law N° 20,899 provides that entities subject to the AIS will change to PIS as of 1 January of the year in which one of its owners is an entity who is not a final taxpayer.
- Taxpayers will need to keep a registry regarding the 'accumulated tax credit balance' in order to control the available FCT credit.

Local income taxes

Chilean legislation does not establish any provincial or local income taxes.

Corporate residence

Companies incorporated in Chile are considered to be domiciled in the country.

Permanent establishment (PE)

An entity may be considered as a PE under DTT terms but not under domestic law. In this case, in principle, the corresponding WHT should apply over the gross basis of the remittance.

However, Chilean IRS rulings have interpreted the relation between the two different PE concepts, in the sense that, even though domestic requirements are not met, the taxpayer may choose to be treated as a local PE in order to be allowed to deduct the expenses incurred in the PE's business.

For purposes of determining whether an entity is considered a PE, the substance-over-form principle will apply according to an administrative interpretation issued by the Chilean IRS in December 2017.

Other taxes

Value-added tax (VAT)

VAT is payable on the transfer of goods and the provision of services at a 19% rate. In general terms, this tax is levied over the price of the following goods and services:

- Sales and other agreements used to transfer the ownership of tangible goods (movable and unmovable), provided that said operations are customary. The law assumes that all sales made within the ordinary course of business are customary.
- Services that are commercial, industrial, or financial, or that are connected to mining, construction, insurance, advertising, data processing, and other commercial operations.
- Imports, customary or not.

The sale of fixed assets is subject to VAT, provided that the taxpayer was entitled to VAT credit for its acquisition, importation, or construction.

VAT works on a credit-debit system. The tax borne by a company or business in the acquisition of goods or services is called the 'VAT credit'. The VAT charged on the goods and services sold to customers is called the 'VAT debit'. As a general rule, the seller or service provider is obligated to withhold and pay the VAT. The tax amount is added to the invoice; consequently, the final consumer economically bears the VAT.

Exceptionally, when a seller or service provider is not domiciled in Chile or when, for other reasons, the Chilean IRS has difficulties assessing the correct payment of VAT, the responsibility to withhold and pay the tax is transferred to the buyer or beneficiary of the service.

The tax is paid every month by deducting the VAT credit from the VAT debit. The balance due (when the debit is greater than the credit) must be paid within the first 12 days of the month following the month in which the transaction took place.

If, in a given month, the VAT credit is greater than the VAT debit, the balance may be kept and carried forward to the following months.

Law N° 20,727 gradually establishes the compulsory use of electronic invoices and other tax documents, such as credit and debit notes, purchase invoices, etc. As of 1 February 2017, all taxpayers should be subject to it.

There are qualified exceptions to this electronic regime, such as zones where there is no public electricity, zones declared as a disaster area, and other exceptions authorised by the Chilean IRS.

Law N° 20,727 also established the express acknowledgement of the invoice receipt as an enabling requirement in order to use the fiscal credit.

Additionally, leasing agreements by a habitual seller are a taxable event. Notwithstanding that the above are exempted when the acquisition of the real estate property subject of the relevant leasing was not taxed with VAT and the aforementioned acquisition was performed to enter into the leasing agreement.

Customs duties

As a general rule, the customs duty rate is 6%. However, as Chile has an extended network of free trade agreements (FTAs), reduced or zero-rate customs duties are available.

Duties on goods are imposed on the cost, insurance, and freight (CIF) price, without deducting special discounts.

In general, Chile has a very open economy, and there are no significant barriers to foreign trade.

Excise taxes

Alcoholic beverages, certain non-alcoholic beverages (e.g. beverages high in sugar levels, hypertonic beverages), tobacco, and certain luxury items (e.g. jewels) are subject to an additional sales tax ranging from 10% to 50%.

A variable gasoline tax is also levied on the difference between a fixed amount and the sales price of gasoline and diesel oil.

The Tax Reform increased the taxes applicable to alcoholic and certain non-alcoholic beverages, as well as the specific tax applicable to tobacco (whilst reducing the excise tax, with an overall result of a tax increase).

Additionally, the Tax Reform gradually introduces ‘green taxes’, which are taxes that are levied on the issuance of certain pollutants by some non-eco-friendly assets, such as boilers or turbines that individually or jointly add a thermal power of 50MWt. It also establishes a corrective tax on the issuance of certain local pollutants connected to vehicles' performance.

Real Estate Tax

Real Estate Tax is levied over an official valuation of real estate at an annual rate of 1.4% in case of non-farming real estate and 1% for farming real estate. Some real estate is exempt from this tax.

Transfer taxes

Currently, Chilean law has not established any transfer taxes.

Stamp tax

Stamp tax is levied mainly on documents that evidence money lending operations, and its rate varies depending on the executed document.

For documents subject to a specific date, stamp tax applies at 0.066% per month or fraction of a month. The maximum stamp tax rate is 0.8%. For documents payable on demand or without an expiration date, the tax rate is 0.332%.

Payroll taxes

The income that the employer pays to the employee that provides personal services in a subordinate and dependent relationship under an employment contract is subject to payroll tax.

Payroll tax is characterised as a single tax that is based on a progressive scale of rates, ranging from 0% to 35%, applicable to income brackets. Only the income or remuneration received is subject to this tax. Whoever pays the taxable income must deduct and withhold the tax on a monthly basis.

Social security contributions

Pursuant to Chilean legislation, affiliation to the Chilean social security system is mandatory from the moment that any individual starts rendering services due to an employment contract.

In order to contribute to the Chilean social security scheme, the assignee needs to be incorporated into the Chilean pension fund (AFP), the Chilean health insurance (private health insurance [ISAPRE] or public health insurance [FONASA]), death and disability insurance, work related accidents and professional illness insurance, and unemployment insurance.

An employer's obligation for social security is low, as it only assumes part of the unemployment insurance (2.4% calculated over the worker's gross salary). Whilst the employee assumes most of the social security contribution (approximately 20% of gross salary).

Branch income

Branches of foreign corporations operating in Chile are taxed on their worldwide income, subject to the FCT at the corresponding tax rate that varies depending on the income tax system to which the branch is subject to. If the branch is subject to the AIS, the FCT rate is 25%. If the branch is subject to the PIS, it is subject to an FCT rate of 27%.

When attributing, distributing, remitting, or withdrawing amounts to abroad, the 35% WHT will levy such transaction. The FCT is creditable against the WHT according to the AIS or PIS rules, respectively.

Income determination

As a general rule, for purposes of the FCT, corporate income is determined on an accrual basis.

Inventory valuation

Inventories must be valued in accordance with monetary correction provisions, basically by adjusting raw material content and direct labour to replacement cost (which is generally the most recent cost), but excluding indirect costs. No conformity is required between book and tax reporting for income determination. Last in first out (LIFO) is not allowed for tax purposes.

Capital gains

Capital gains are subject to normal taxation unless special provisions, such as those pertaining to gains on the sale of shares/quotas or monetary correction on capital repayments, establish exemptions.

Under domestic laws, in certain circumstances, the capital gains derived from the following securities will be subject to a preferential tax treatment:

- Stock of listed local companies.
- Investment funds' quotas listed on an authorised stock exchange market.
- Mutual funds' quotas if the fund invests in stock trade values.
- Investment funds' quotas not participating in a stock exchange market or mutual funds, where at least 90% of the investment portfolio is in a stock exchange market.

Note that, due to indirect sales provisions, capital gains arising from the sale of foreign companies holding Chilean assets may be subject to Chilean taxation if certain requirements are met.

Amendments to capital gains taxation

Shares or quotas capital gains

The Tax Reform eliminated, as of 1 January 2017, the sole tax regime applicable to the capital gains derived from the alienation of shares or quotas of Chilean entities.

As a general rule, under the new regime, capital gains derived from the alienation of shares or quotas from Chilean entities are subject to the general tax regime.

In case of shares or quotas of entities subject to the AIS regime, the accumulated attributed income that has not been distributed will be considered as part of the shares' or quotas' cost basis for capital gains purposes.

Real estate (property) alienation

The exemption applicable to capital gains obtained upon the alienation of real estate is partially limited.

Real estate (property) acquired before 1 January 2004 and sold after 1 January 2017

In the case of real estate (property) acquired before 1 January 2004 and sold after 1 January 2017, the capital gain exemption upon the alienation of real estate will apply without the limitations included in the Tax Reform.

Real estate (property) acquired after 1 January 2004 and sold after 1 January 2017

For real estate (property) acquired as of 1 January 2004 and sold after 1 January 2017, capital gains obtained upon the alienation will be considered as non-taxable income as long as the following joint requirements are met: (i) the seller should be an individual domiciled in Chile; (ii) the acquirer must not be a related entity; (iii) more than one year must have elapsed between the acquisition date and the alienation date or four years in case of alienation of buildings per floors or apartments or in case of land subdivision; and (iv) the total capital gains obtained by the taxpayer upon the alienation of real estates, during its whole life, should not exceed 8,000 *unidades de fomento* (UF, which is a determined amount of Chilean pesos duly adjusted for inflation on a daily basis), regardless of the number of real estates owned by the taxpayer and the transfers performed.

If the requirements mentioned in (i), (ii), and (iii) above are not met, the total capital gain will be subject to the general taxation regime. If the above requirements are met, but the capital gain exceeds UF 8,000, the excess will be subject to: (i) surtax as a sole tax, on an accrued or cash basis, with the option of reassessment within ten years, or (ii) 10% sole and replacement tax, applied on a cash basis.

Dividend income

As a general rule, dividends received by Chilean entities from other Chilean entities that have already been subject to FCT are not subject to the FCT again at an entity level. However, when these dividends are attributed or distributed (depending on the applicable income tax system) up-stream and the ownership chain reaches the final Chilean owners or the foreign owners, they will be taxed with the Global Complementary Tax or the Additional WHT, respectively.

Interest income

No specific provision exists in Chile for interest income; consequently, interest income is subject to FCT.

Royalty income

Royalties paid to a Chilean entity are subject to the general income taxation; consequently, royalty income is subject to FCT.

Foreign income

Resident entities are subject to taxes on their worldwide income. In general terms, foreign income and dividends received by a domestic entity are subject to Chilean taxation in the commercial year when they are received (i.e. on a cash basis); however, certain foreign income needs to be recognised on an accrued basis (i.e. income from foreign PEs and passive income from controlled foreign corporations [CFCs]). A tax credit for taxes paid abroad is granted, subject to the regulations of the Income Tax Law.

Branches of foreign corporations are taxed on their income without regard to the results of the head office.

Deductions

An FCT payer's net taxable income is calculated by deducting from gross income those expenses incurred to generate it that have not already been deducted as costs.

As a general rule, expenses are not deductible for income tax purpose if they are not incurred to generate taxable income.

Depreciation and depletion

Depreciation rates are calculated based on the asset's estimated useful life. The normal depreciation terms for new assets are as follows: heavy machinery, 15 years; trucks, 7 years; factory buildings, in general, 20 years to 40 years. At the request of the Foreign Investment Committee or the taxpayer, the Chilean IRS may reduce the normal useful life.

Annual depreciation is calculated based on the straight-line method. However, taxpayers may recover capitalised costs by using the accelerated depreciation method for up to one-third of the normal useful life regarding new or imported fixed assets, provided that the normal period of depreciation is at least three years.

Accelerated depreciation may be used only to reduce the taxable basis of the FCT. For the purpose of the tax applicable to distributions of dividends, accelerated depreciation is not considered.

No conformity is required between book and tax depreciation.

For tax purposes, depletion for natural mineral resources is allowed on a unit-of-production basis.

The Tax Reform, in order to benefit micro and small entities, establishes a faster depreciation method they can use, provided certain requirements are met.

Goodwill

Following a merger, the positive difference between the price paid for the shares of the absorbed entity (i.e. the acquisition cost of the shares) and its tax equity must be allocated proportionately among the non-monetary assets received from the absorbed entity, up to the fair market value (FMV) of those identifiable assets.

Any amount in excess of the FMV of those assets becomes an asset (i.e. goodwill) in the hands of the acquiring/surviving company that cannot be amortised. The change introduced by the recent Tax Reform qualifies this goodwill as an 'intangible' asset that can be deducted only upon the liquidation or termination of the company. This renders the goodwill a non-amortisable asset for Chilean tax purposes.

Start-up expenses

Start-up expenses must be capitalised and considered as an asset for tax purposes. However, they can be amortised over a six-year period counted from the year in which they were incurred or the start-up of commercial activities.

Furthermore, they are usually deducted when the income is generated.

Interest expenses

As long as the interest paid meets the general requirements set forth by the Income Tax Law, interest expenses can be deducted.

Bad debt

In general, bad debts are deductible only if (i) they are a consequence of operations related to the business purpose, (ii) they have been timely written off into the accounting records, and (iii) the company has prudentially exhausted all reasonable means to collect them.

Determination of whether the company has prudentially exhausted all reasonable means to collect the bad debts varies according to the total amount of the debts. Consequently, a simple estimation or general provision for bad debts is not allowable.

Charitable contributions

Charitable contributions may be deducted from gross income, provided they are made to the institutions established by certain laws (i.e. primary and secondary educational institutions, universities, professional or technical education institutions, National Fire Brigade, National Solidarity Fund, etc.).

In case of charitable contributions, the total annual tax deduction for this purpose is limited, as the deductible amount may not exceed 5% of the company's net taxable income.

Fines and penalties

Fines and penalties imposed for breaching the law or a contract are not deductible, although a deduction is usually available for the legal costs incurred in defending such an action.

Taxes

Taxes imposed by Chilean laws are deductible, provided they are related to the company's normal activities. However, income taxes and special contributions for promotion or improvement are not deductible.

Net operating losses

An indefinite carryforward of losses is allowed. Consistent with monetary correction, losses carried forward are adjusted by a cost-of-living increase.

As of 1 January 2017, carryback losses are no longer allowed. Previously, they were allowed when the taxpayer had retained tax profits and had a subsequent tax loss.

Payments to foreign affiliates

The deductibility of payments made abroad for the use of trademarks, patents, formulas, and consulting and other similar services is limited to a maximum of 4%

of the income derived from sales and services in the corresponding year, unless the royalty is subject to an income tax with a rate of greater than 30% in the country of the beneficiary.

Deduction of payments made to foreign-related parties are allowed in the year in which they are effectively paid by the Chilean entity to the foreign-related party and only if the corresponding Additional WHT (if any) was paid.

Transfer pricing regulations in Chile are in line with general Organisation for Economic Co-operation and Development (OECD) principles (*see the Group taxation section*).

Group taxation

Consolidated returns are not allowed in Chile.

Transfer pricing

The transfer pricing legislation generally adheres to the OECD in its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines). The law establishes contemporaneous documentation requirements, filing of an informative return, and specific penalties for non-compliance.

Although the law does not explicitly mention the adoption of the methods established in the OECD Guidelines, the methods described therein are in line with them. The rules also adopt the best method rule and allow the use of other unspecified methods when the methods described in the Chilean Income Tax Law are deemed not appropriate to determine the arm's-length nature of the inter-company transactions.

Finally, the Income Tax Law includes the ability to enter into advance pricing agreements (APAs), unilateral or multilateral. The Chilean tax authority can reject, totally or partially, the request, and such decision is not subject to an administrative appeals procedure. APAs should be valid for four years and are subject to renewal or extension.

Country-by-country (CbC) report

Chile, as an OECD member, applied Action 13 of the Base Erosion and Profit Shifting (BEPS) Project in order to require from 'multinational enterprises' the filing of a report that includes, among other things, the revenues, results, and taxes of the entities of the group in their relevant jurisdictions.

Provided that the consolidated revenues of the group in the last fiscal year were at least 750 million euros (EUR), the ultimate parent company or controller entity with Chilean residence of a group of 'multinational enterprises' has to file an annual sworn statement by 30 June.

Thin capitalisation

The thin capitalisation rules apply to related-party loans at a 3:1 debt-to-equity ratio, and a 35% sole penalty tax is levied on interest, commissions, services, or any other financial disbursements associated to loans subject to the Additional WHT at a rate lower than 35%, or that have not been taxed under domestic law or due to the application of a reduced rate under a DTT, when the taxpayer is in an excess of indebtedness position.

The excess of indebtedness is calculated on an annual basis, and, in order to determine if the taxpayer is in an excess of indebtedness position, its total annual indebtedness takes into consideration all loans, domestic or foreign, with related parties or not.

In case the company is in an excess of indebtedness position, the tax will apply only to cross-border loans granted by related parties and subject to the 4% Additional WHT, to a rate lower than 35%, or that have not been taxed under domestic law or due to the application of a reduced rate under a DTT.

Controlled foreign companies (CFCs)

The CFC statute provides that taxpayers or affectation equities (*'patrimonios de afectación'*) incorporated, resident, or domiciled in Chile have to recognise passive income (dividend, interest, royalties, etc.) directly or indirectly derived from controlled foreign entities, as long as this passive income exceeds 10% of the controlled entity's total revenues, in the corresponding calendar year. A tax credit will be granted for taxes paid or due abroad no matter how many levels down the chain separate the controlled entity from the Chilean entity, as long as there is a DTT in force between Chile and the source country of the income.

Tax credits and incentives

Foreign tax credit

In order to avoid double taxation, the Chilean Income Tax Law recognises a tax credit mechanism in which the tax effectively paid abroad may be deducted from the taxes to be paid in Chile.

In order to regulate this matter, the Chilean Income Tax Law distinguishes between those countries with which there is a DTT in force with Chile and those that do not have a DTT in force with Chile.

A foreign tax credit may be used even if the foreign tax was paid by an indirect subsidiary of the company remitting the funds to Chile, provided that all the entities are domiciled in the same country and that the remitting entity directly or indirectly participates in 10% or more of the equity of the company paying the foreign tax; and, as of 1 January 2017, it is possible to use a tax credit in Chile for taxes paid by a subsidiary domiciled in a third country if such subsidiary is domiciled in a country with which Chile has a DTT or an Exchange of Information Convention in force.

The foreign tax credit may be carried over for FCT purposes even if the company is in a tax loss situation or if the FCT is lower than the credit.

The total available foreign tax credit has a 35% cap in respect to income taxes paid in countries with which Chile has a DTT in force. In respect to those countries with which Chile has no DTT, the tax credit cap is 32%.

As of 1 January 2017, the tax credit for taxes paid abroad is allocable against Chilean-source income, as foreign-source income is considered Chilean-source income once it is included in the taxpayer's net taxable income and levied with Chilean taxes. Previously, as a general rule, the tax credit for taxes paid abroad was allocated only to foreign-source income.

Investment incentives

The principal investment incentives are the following:

- Tax benefits and other incentives for companies operating in the northernmost and southernmost parts of the country.
- Tax benefits to forestry companies, contracts for oil operation, and nuclear material operations.
- The Tax Reform introduced a series of tax benefits for micro and small entrepreneurs and companies, which are reinforced by Law N° 20,899.

Inbound investment incentives under Law Decree N° 600 (Foreign Investment Statute)

The principal incentives to encourage foreign capital contributions are statutory guarantees covering the repatriation of capital, remittance of profits, non-discrimination toward foreign investment, and access to the foreign exchange market for remittance purposes. In general, foreign investors are subject to the same legislation as national investors. A guaranteed income tax rate of 42% may be granted for ten years or, provided the capital investment project exceeds 50 million United States dollars (USD), 20 years for the development of industrial or extractive projects, under Law Decree N° 600, which contemplates the execution of a Foreign Investment Agreement between the foreign investor and the Chilean government.

Under Law Decree N° 600 and the corresponding Foreign Investment Agreement, the overall rate is comprised of the corporate tax on profits and WHT on dividend or branch profit distributions. The tax rate on dividend or profit distributions is the difference between 42% and the underlying tax paid at the corporate level. The option to be subject to an overall effective tax rate of 42% without change for ten or 20 years is usually not exercised by foreign investors because the current combined effective tax rate on profits and dividend distribution is 35% under the general tax regime.

Under the Foreign Investment Agreement, a foreign investor may request for tax stability with respect to VAT and customs duty regimes. With respect to customs duties, however, stability is granted only for the importation of certain machinery and equipment not available in Chile.

The Tax Reform established the elimination of Law Decree N° 600 as of 1 January 2016 with respect to new investment projects; however, Law N° 20,848, published in the Official Gazette on 25 June 2015, extended the enforceability of Law Decree N° 600 for four years more, counted as of 1 January 2016.

Foreign investors who have already entered into an investment agreement under Law Decree N° 600 with the Foreign Investment Committee will continue being subject to the laws applicable to such agreements according to current rules. On the contrary, new investments, as of 1 January 2016, will be able to opt between the foreign investment statute under Law Decree N° 600 and the new foreign investment statute established by Law N° 20,848.

Law N° 20,848 establishes the frame for '*direct foreign investment*' in Chile and creates a Committee of Ministers for the promotion of foreign investment, as wells as an Agency for the promotion of foreign investment.

Please note that it is not mandatory for foreign investors to opt among one of these two foreign investment regimes, as they can freely invest in Chile as long as they do it through the formal exchange market.

Export incentives

The principal incentives for exports can be summarised as follows:

- Taxes paid in the importation or acquisitions of goods required in the export activity are reimbursed.
- VAT on exports is zero-rated.
- The Productivity Law provides that the export of technical or engineering services duly qualified by the Customs Authority as 'export services' are not subject to Additional WHT in Chile.
- The Productivity Law establishes that the export of services rendered completely or partially in Chile are also subject to the corresponding VAT exemption if the services are qualified as 'export services' by the Customs Authority and are used abroad.

Chile has signed FTAs or Economic Association Agreements (EAAs) with Australia, Canada, Central America (i.e. Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), China, Colombia, the European Free Trade Association (i.e. Iceland, Liechtenstein, Norway, and Switzerland; EFTA), the European Union (EU), Hong Kong, Japan, Malaysia, Mexico, the Pacific 4 (i.e. with Brunei, New Zealand, and Singapore; P4), Panama, Peru, Republic of South Korea, Thailand, Turkey, the United States, and Vietnam. All these agreements provide for reduced or zero-rate customs duties.

Withholding taxes

Dividends paid to a non-resident recipient are subject to a 35% withholding of 'additional' tax, with the FCT paid at the corporate level being totally or partially creditable against this WHT, depending on the income tax system to which the source entity is subject to. This credit is added to the amount that is distributed to form the taxable base for Additional WHT. Consequently, the tax burden for a non-resident recipient of dividends, including taxes at the company level, is 35% if subject to the AIS or resident in a DTT country and 44.45% in other cases.

If the entity is subject to the AIS, the foreign recipient of the dividends will be able to credit 100% of the FCT paid at the entity level. If the entity is subject to the PIS and the foreign recipient of the dividends is resident in a country with which Chile has a DTT in force, the foreign taxpayer will be able to credit 100% of the FCT paid at the entity level against its Additional WHT. Consequently, their total Chilean tax burden will be 35%.

On the contrary, if the entity distributing the dividend is subject to the PIS, but the foreign recipient of such dividends is not domiciled in a country with which Chile has a DTT in force, the taxpayer will be able to credit against its Additional WHT only 65% of the FCT paid at the entity level. Thus, foreign taxpayers in this situation will have a total Chilean tax burden of 44.45%, considering that the FCT rate will correspond to 27% from commercial year 2018 onwards, *as described in the Taxes on corporate income section*.

Branches are subject to a 35% WHT rate on amounts remitted or withdrawn, less the FCT credit. *See the Branch income section for more information*.

Interest paid to non-residents is subject to WHT at a general 35% rate. Interest on loans granted by foreign banks or financial institutions is subject to a sole 4% WHT. Thin capitalisation rules requesting a 3:1 debt-to-equity ratio become applicable when the debt generating interest subject to the lower than 35% rate is secured by related entities.

Royalties paid to non-residents are subject to the WHT at a 30% rate. Royalty payments in connection to software are subject to Additional WHT at a 15% rate. Such rate is increased in case the beneficiary of the payment is resident in a tax haven. The Productivity Law eliminated the rate increase in case software-related payments were made to related parties.

Tax treaties

The following table shows the higher and lower rates of WHT applicable by Chile and the countries with which DTTs exist. The application of one or the other rate will depend on the specific provisions of each treaty.

Please note that Chile has signed DTTs with the United States and Uruguay that are not yet in force.

Please note that Chile has in all its DTTs the so-called ‘Chilean Clause’, pursuant to which, Chile does not grant any remedy regarding WHT on dividends as long as the corporate tax can be fully creditable against the WHT on dividends. Consequently, WHT rules on dividends are fully applicable in DTT scenarios.

	WHT (%)	
Recipient	**Interest**	**Royalties**
Non-treaty	4/35	30
Treaty:		
Argentina	4/12/15 (1)	3/10/15 (17)
Australia	5/10/15 (2)	5/10 (18)
Austria	5/15 (3)	5/10 (19)
Belgium	5/15 (3)	5/10 (19)
Brazil	15	15
Canada	10/15 (4)	15 (20)
China	4/15 (5)	2/10 (32)
Colombia	5/15 (6)	10 (21)
Croatia	5/15 (6)	5/10 (28)
Czech Republic	5/15 (6)	5/10 (28)
Denmark	5/15 (7)	5/10 (19)
Ecuador	10/15 (8)	10 (21)
France	5/15 (3)	5/10 (19)
Ireland	5/15 (3)	5/10 (19)
Italy	5/15 (3)	5/10 (19)
Japan	4/15 (9)	2/10 (22)
Malaysia	15 (10)	10
Mexico	5/10/15 (11)	15 (23)
New Zealand	10/15 (12)	10 (24)
Norway	15 (7)	5/10 (19)
Paraguay	10/15 (13)	15 (25)

Chile

Recipient	WHT (%) Interest	Royalties
Peru	15	15 (26)
Poland	5/15 (7)	5/15 (27)
Portugal	5/10/15 (14)	5/10 (28)
Russia	15	5/10 (28)
South Africa	5/15 (31)	5/10 (28)
South Korea	5/15 (15)	10/15 (29)
Spain	5/15 (3)	5/10 (19)
Sweden	5/15 (3)	5/10 (19)
Switzerland	5/15 (3)	5/10 (19)
Thailand	10/15 (16)	10/15 (30)
United Kingdom	5/15 (3)	5/10 (19)

Notes

1. 15% as a general rule. 4% or 12%, depending on the interest source. If the most favoured nation clause applies, the general rule rate of 15% cannot be reduced further than 12%.
2. 5% if the interest is paid to a financial institution. 10% in all other cases. However, Chile may tax interest arising in the country at a 15% rate. Most favoured nation clause just commands to start negotiations.
3. 15% as a general rule. Interest arising from bank or insurance company loans, bonds, some securities that are regularly negotiated on stock markets, and credit sales of industrial equipment is taxed at a 5% tax rate. Most favoured nation clause with OECD members.
4. 15% as a general rule. If the most favoured nation clause applies, the rate cannot be reduced further than 10%.
5. 4% if the beneficiary is a bank or an insurance company. 15% in all other cases. Please note that, as of 2019, a 10% rate will apply, which will trigger the application of several most favoured nation clauses.
6. 5% if the beneficiary is a bank or an insurance company. 15% in all other cases.
7. 15% as a general rule. It could be 5% by the application of the most favoured nation clause.
8. 10% by the application of the most favoured nation clause. 15% in all other cases.
9. 4% if the beneficiary is a bank, an insurance company, a financial institution, or arising from indebtedness arising as part of the sale on credit of machinery or equipment. 15% in all other cases. Please note that, as of 2019, a 10% rate will apply, which will trigger the application of several most favoured nation clauses.
10. The most favoured nation clause applies only if the other country decides to exempt interests.
11. 15% as a general rule. If the most favoured nation clause applies, 10% as a general rule, 5% if interest is paid to a bank.
12. 15% as a general rule. 10% if interest is paid to banks or insurance companies, or if the most favoured nation clause applies. If the most favoured nation clause applies, rate cannot be reduced further than 10%.
13. 10% if the beneficiary is a bank or an insurance company. 15% in all other cases. Most favoured nation clause is applicable with some restrictions.
14. 15% as a general rule. 5% for interests derived from bonds and some securities that are regularly negotiated on stock markets. 10% for interest arising from bank or insurance company loans and credit sale of machinery or equipment. The foregoing is reduced to 5% by most favoured nation clause when Portugal applies a Directive of the EU Council.
15. 5% if the beneficiary is a bank or an insurance company. 15% in all other cases. Most favoured nation clause applies.
16. 10% if the beneficiary is a bank or an insurance company. 15% in all other cases.
17. 15% as a general rule. 3% for the use of, or right to use, news. 10% for the use of, or the right to use, any copyright of literary, artistic, or scientific work, or for the use of, or the right to use, a patent, brand, design or model, blueprint, formula or secret procedure, or for the use of, or the right to use, industrial, commercial, or scientific equipment, the foregoing just in case the beneficiary is the author or the author's heirs.
18. 10% as a general rule. 5% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause just commands to start negotiations.
19. 10% as a general rule. 5% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause with OECD members.
20. 15% as a general rule. If the most favoured nation clause applies, rate cannot be reduced further than 10%.
21. 10%. Most favoured nation clause applies.
22. 10% as a general rule. 2% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause (doesn't apply automatically).
23. 15%. Most favoured nation clause may reduce rates until 10%.

24. 15%. Most favoured nation clause may reduce rates until 5%.
25. 15%. Most favoured nation clause applies.
26. Most favoured nation clause applies with limitations.
27. 15% as a general rule. 5% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause with OECD members.
28. 10% as general rule. 5% is applicable for the use of, or the right to use, some equipment.
29. 15% as a general rule. 10% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause with OECD members.
30. 15% as general rule. 10% for the use of, or the right to use, any copyright of literary, artistic, or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment.
31. 15% as a general rule. Interest arising from bank or insurance company loans, bonds, some securities that are regularly negotiated on stock markets, and credit sales of industrial equipment is taxed at a 5% tax rate.
32. 10% as general rule. 2% is applicable for the use of, or the right to use, some equipment.

Please note that notwithstanding most DTTs provide that interest paid to a bank or financial institution will be subject to a 5% or 10% WHT, as Chile applies a 4% Additional WHT rate to interest paid to foreign banks or financial institutions, the local tax rate is applied instead of the treaty rate, as local law is more favourable.

Please also note that an Exchange of Information Convention with Guernsey and Uruguay and a Multilateral Convention is in force. On the other hand, Exchange of Information Conventions signed with Bermuda and Jersey are not yet in force.

Tax administration

Taxable period

The tax year coincides with the calendar year.

Tax returns

The tax system is one of self-assessment by the taxpayer, with occasional auditing by the tax authorities. Annual tax returns must be filed with the Chilean IRS before 30 April of each year with respect to the operations of the previous calendar year.

Note that there are many other sworn statements with different deadlines, from March until June of each year.

Payment of tax

Taxes are payable when the annual tax return is submitted in April of each year. Taxpayers, in general, are subject to monthly advance payments on account of their annual income taxes. The difference between the advance payments and the final tax bill is payable in cash at the time the tax return is filed. If prepayments exceed the final tax bill, the excess is reimbursed by the Treasury.

Tax audit process

Generally, the Chilean tax system is based on self-assessment; however, many large businesses are under continuous audit by the Chilean IRS. Businesses and individuals are also generally subject to audit on a random basis.

Statute of limitations

As a general rule, the statute of limitations is three years. However, it can be extended to six years if no tax return was filed or if the tax return was maliciously false.

Topics of focus for tax authorities

The tax authority is currently focused on transfer pricing issues, the implementation of the 2014 Tax Reform, and the issuance of materially false invoices for politic financing purposes.

General Anti-Avoidance Rule (GAAR) provisions

The GAAR provisions grant the Chilean IRS the power to request to the corresponding Tax Court the disallowance of the tax benefits obtained from abusive tax planning. If the tax judge considers that the taxpayer has acted in an abusive way or is simulating a conduct in order to obtain certain tax benefits, the taxpayer will have the obligation to pay the corresponding taxes, interest, and penalties as if the abusive or simulated conduct never existed (substance-over-form principle).

A consultation procedure is available pursuant to which taxpayers may ask the Chilean IRS to determine whether or not a transaction may fall under the GAAR provisions.

According to Law N° 20,899, GAARs will not apply to those transactions whose main elements have been set before the entry into force of these rules (i.e. 30 September 2015), whilst they will apply to transactions executed or concluded before the entry into force of the GAAR provisions but that are amended after such date.

Other issues

Reporting on investments in Chile and abroad

As of 1 January 2017, FCT payers, regardless of the tax system they choose, have the duty to report their local and foreign investment to the Chilean IRS.

Chilean foreign investment

The taxpayer has to file an annual affidavit, informing all the investments performed during the previous year, pointing out the amount, kind of investment, country, purpose, and any other additional information the Chilean IRS may require.

If the affidavit is not filed, the Chilean IRS will presume (except where the taxpayer proves otherwise) that such amounts constitute withdrawals of assets or amounts subject to the penalty tax established in Article 21, not being entitled to deduct the disbursement as expense for FCT purposes.

Investment in Chile

Companies or entities incorporated, resident, or domiciled in Chile and obtaining passive income are not entitled to use such investments in an abusive manner in order to reduce or defer final taxation of their owners, partners, or shareholders.

If the Chilean IRS determines the existence of abusive conduct, such investments will be subject to the penalty tax established in Article 21 of the Chilean Income Tax Law.

Low-tax jurisdictions

In order to qualify as a low-tax jurisdiction or preferential tax regime, the relevant territory must comply with two or more of the requirements set forth in new Article 41 H of the amended Income Tax Law. The Chilean IRS issued Resolution N° 124 of 2017, which provides a list of countries considered as low-tax jurisdictions or preferential tax regimes that fall under Article 41 H.

Please note that OECD member countries will never be considered as low-tax jurisdictions or preferential tax regimes.

Foreign Account Tax Compliance Act (FATCA) agreement

On 5 March 2014, Chile entered into a bilateral intergovernmental agreement (IGA) with the United States (US) in order to comply with FATCA.

Chile signed a Model 2 IGA, which is a non-reciprocal exchange of information agreement. The execution of this agreement will imply that Chilean financial institutions with US account holders, in order to avoid paying the 30% rate WHT that FATCA establishes, will have to register with the US Treasury and US IRS and sign a Foreign Financial Institutions Agreement with them in order to be FATCA compliant.

In this context, each Chilean financial institution that enters into these agreements with the US tax authorities will be required to report to the US IRS directly the individual US account holder's information.

In accordance with the Chilean Bank Secrecy Law, Chilean financial institutions, in respect to those account holders that do not authorise them to disclose their account information to the US IRS, will only be able to disclose their information in aggregate. This will mean that the US IRS, in order to obtain the specific information of those US account holders, will need to request it directly from the Chilean IRS, under the terms of the treaty between both countries.

Taxation applicable to funds

Investment funds and mutual funds are not considered as FCT payers, but their managing entities need to keep a number of registries in order to determine the taxation applicable to their quota holders regarding the amounts attributed or distributed by the fund.

Taxation of funds is similar to taxation of shares of a stock corporation. In this sense, dividends distribution would be treated as a distribution from a stock corporation subject to PIS. In case of capital gains, it would be considered as an alienation of shares of a stock corporation, in this sense, alienation could be tax exempted if funds are regularly traded or 90% or more of their portfolio is invested in regularly traded securities.

Please bear in mind that quota holders that are not domiciled or resident in Chile are just subject to a sole tax rated 10% or tax exempted in case they invest in funds that have 80% of their assets located abroad.

China, People's Republic of

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Significant developments

In 2017 and 2018, the Ministry of Finance (MoF) and State Administration of Taxation (SAT) issued several circulars to deepen the value-added tax (VAT) reform in China. The VAT rate of 13% was abolished from 1 July 2017. The VAT rates of 17%, 11%, and 6% were reduced to 16%, 10%, and 6%, respectively, from 1 May 2018.

In May 2017, China's relevant authorities jointly issued the Administrative Measure on Due Diligence Procedures for Non-residents' Financial Account Information in Tax Matters (the Measures) to implement the Common Reporting Standard (CRS) in China. Financial institutions established in China are required to carry out due diligence procedures on financial accounts starting from 1 July 2017. China is committed to exchange the first round of financial account information by September 2018.

Taxes on corporate income

Tax resident enterprises (TREs) are subject to corporate income tax (CIT) on their worldwide income. A non-TRE that has no establishment or place in China is taxed only on its China-source income. A non-TRE with an establishment or place in China shall pay CIT on income derived by such establishment or place from sources in China as well as income derived from outside China that effectively is connected with such establishment or place.

Under the CIT law, the standard tax rate is 25%.

A lower CIT rate is available for the following sectors/industries:

- Qualified new/high tech enterprises are eligible for a reduced CIT rate of 15%. An enterprise has to fulfil a set of prescribed criteria and be subject to an assessment in order to qualify as a new/high tech enterprise.
- Key software production enterprises and IC design enterprises are eligible for a reduced CIT rate of 10%. An enterprise has to fulfil a set of prescribed criteria and be subject to an assessment in order to qualify as a key software production enterprise or key IC design enterprise.
- Qualified technology-advanced service enterprises are eligible for a reduced CIT rate of 15%. An enterprise has to fulfil a set of prescribed criteria and be subject to an assessment in order to qualify as a technology-advanced service enterprise.

- Enterprises established in the Qianhai Shenzhen-Hong Kong Modern Services Industry Cooperation Zone are eligible for a reduced CIT rate of 15%, provided that the enterprise is engaged in projects that fall within the Catalogue for CIT Preferential Treatments of the zone.
- Enterprises established in Zhuhai's Hengqin New Area are eligible for a reduced CIT rate of 15%, provided that the enterprise is engaged in projects that fall within the Catalogue for CIT Preferential Treatments of the area.
- Enterprises established in the Pingtan Comprehensive Experimental Zone are eligible for a reduced CIT rate of 15%, provided that the enterprise is engaged in projects that fall within the Catalogue for CIT Preferential Treatments of the zone.
- For qualified small and thin-profit enterprises with annual taxable income of less than 1 million renminbi (CNY), the CIT rate is reduced to 10% from 1 January 2018 to 31 December 2020.
- From 1 January 2011 to 31 December 2020, encouraged enterprises in the Western Regions are eligible for a reduced preferential CIT rate of 15%.

Local income taxes

There is no local or provincial income tax in China.

Corporate residence

Enterprises established in China are always TREs. A foreign enterprise with a place of effective management in China is also regarded as a TRE.

Permanent establishment (PE)

An 'establishment or place' is defined in the CIT regulations as an establishment or place in China engaging in production and business operations, including the following:

- Management organisations, business organisations, and representative offices.
- Factories, farms, and places where natural resources are exploited.
- Places where labour services are provided.
- Places where contractor projects, such as construction, installation, assembly, repair, and exploration are undertaken.
- Other establishments or places where production and business activities are undertaken.
- Business agents who regularly sign contracts, store and deliver goods, etc. on behalf of the non-TRE.

Other taxes

Value-added tax (VAT)

The sales or importation of goods, the provision of services, and the sales of intangible properties and immovable properties are subject to VAT. For general VAT payers, input VAT can be credited against output VAT.

The applicable VAT rate for general VAT payers from 1 May 2018 are set out in the following table, and the rate for small-scale VAT payers is 3%.

Industries	Applicable VAT rate (%)
Sales or importation of goods	16
Sales or importation of necessity goods (e.g. agricultural products, water, gas)	10
Provision of repairs, replacement, and processing services	16
Tangible movable property leasing services	16
Transportation services, postal services, basic telecommunications services, construction services, immovable property leasing services, sales of immovable properties, transfer of land-use right	10
Value-added telecommunications services, financial services, modern services (except for leasing services), consumer services, sales of intangible properties (except for land-use right)	6
Exportation of goods; exportation of repair, replacement, and processing services; international transportation services and spacecraft transportation services; exported services that are completely consumed outside China, including: • Research and development (R&D) services. • Energy performance contracting services. • Design services. • Production and distribution services for radio, film, and television programs. • Software services. • Circuit design and testing services. • Information system services. • Process management services. • Offshore outsourcing services. • Transfer of technology.	0

For taxpayers that are eligible for the above zero rate, generally they may be entitled to a credit or refund of the input VAT incurred.

The VAT refund rate for exported services is the same as the applicable VAT rate. For exported goods, the VAT refund rates range from 0% to 16%. There is a prescribed formula for determining the amount of refund, under which full refund of input VAT is not available to many exported goods and the exporter will suffer different degrees of export VAT costs.

In addition, a few types of qualified exported services may be applicable to the VAT exemption treatment. In that respect, the relevant input VAT incurred cannot be credited or refunded.

Customs duties

Import and export customs duty is levied on goods that are allowed to be imported into or exported based on the relevant customs regulations. The Consignee of imported goods, consignor of export goods, and owner of entry articles are parties held liable for paying customs duties.

The customs classification of import and export goods is the base for the customs supervision, customs taxation, and customs statistics. In 2017, along with the revisions of the classified catalogue in 'International Convention for Harmonized Commodity Description and Coding System' made by World Customs Organisation (WCO), large scale adjustments have been made to China's import and export tariff system.

Import duty is charged in ad valorem, specific, compound, or sliding terms, etc. Ad valorem duty is charged based on the customs valuation of the goods. The dutiable value of the goods is multiplied by an ad valorem duty rate to arrive at the amount of duty payable. Duty collection on an ad valorem basis is the main taxation measure used by most countries, including China. The dutiable value of import and export goods is the taxable value determined by the Customs to levy ad valorem duties on the import and export goods, which is the base to value and levy customs duties payable of import and export goods and import links taxes payable of the import goods.

Import duties are categorised as normal tariff rate, Most Favoured Nation (MFN) tariff rate, contractual tariff rate, preferential tariff rate, tariff-rate quota (TRQ) rate, and temporary tariff rate.

The Country of Origin of imported goods also plays a part in determining the applicability of a number of other trade policies, such as TRQ, preferential tariffs, anti-dumping duty, anti-subsidy duty, etc.

Import and export goods are reduced with or exempted from customs duties, import VAT, and consumption tax according to state regulations.

The importation of raw materials under processing trade is bonded, and customs duty, import VAT, and consumption tax exemption is allowed on the part to be re-exported after processing.

For goods that enter into and exit from the customs special supervision zone, import duties, import VAT, and consumption tax are held over at the time of importation, which are to be exempted for exportation and to be paid for sales from the customs special supervision zone to domestic markets.

Consumption tax

A consumption tax is imposed on specified categories of luxury and environmental unfriendly goods, including cigarettes, alcoholic beverages, high-end cosmetics, jewellery, gasoline, automobiles, battery and coating, etc. The tax liability is computed based on the sales amount and/or the sales volume, depending on the goods concerned. Consumption tax is not recoverable but is deductible as an expense for CIT purposes.

Real estate tax

A real estate tax, which is based on the value of the property or rental received, is assessed annually on land and buildings used for business purpose or leased. The tax rate is 1.2% of the original value of buildings. A tax reduction of 10% to 30% is commonly offered by local governments. Alternatively, tax may be assessed at 12% of the rental value. Real estate tax is deductible for CIT purposes.

Urban and township land-use tax

An urban and township land-use tax is levied on taxpayers who utilise land within the area of city, country, township, and mining districts. It is computed annually based on the space of area actually occupied by a taxpayer multiplied by a fixed amount per square metre that is determined by the local governments.

Arable land occupation tax

Arable land occupation tax is levied on companies and individuals who build houses or carry out non-agricultural construction on arable lands. It is computed based on the space of area actually occupied by a taxpayer multiplied by a fixed amount per square metre that is determined by the local governments and is settled in a lump sum.

Land appreciation tax

A land appreciation tax is levied on the gain from the disposal of properties at progressive rates from 30% to 60%. Land appreciation tax is deductible for CIT purposes.

Stamp tax

All enterprises and individuals who execute or receive 'specified documentation', including 11 types of contracts and a few specified documents, are subject to stamp tax. The stamp tax rates vary between 0.005% on loan contracts to 0.1% for property leasing and property insurance contracts.

Deed tax

A deed tax, generally at rates from 3% to 5%, may be levied on the purchase, sale, gift, or exchange of ownership of land-use rights or real properties. The transferee/assignee is the taxpayer.

Payroll taxes

For employment income, an employer is obligated to withhold individual income tax from an employee's salary and settle the payment with the tax authorities on a monthly basis.

Social security contributions

Social security contributions to pension funds, medical funds, etc. are mandatory for both employers and employees in China. Employers are normally required to make social security contributions in relation to pension, medical, unemployment, maternity, and work-related injury for their employees. The percentage of social security benefits borne by employers and employees, as well as the contribution base, vary from city to city.

Urban construction and maintenance tax

Urban construction and maintenance tax is imposed at a certain rate on the amount of China's indirect taxes (i.e. VAT and consumption tax) payable by the taxpayer. Effectively, the taxpayers of indirect taxes are also the taxpayers of urban construction and maintenance tax. It is charged at three different rates depending on the taxpayer's location: 7% for urban areas, 5% for county areas, and 1% for other areas.

Educational surtax

Educational surtax is imposed at 3% on the amount of China's indirect taxes (i.e. VAT and consumption tax) payable by the taxpayer. Effectively, the taxpayers of indirect taxes are also the taxpayers of educational surtax.

Local educational surtax

Local educational surtax is levied at 2% on the amount of China's indirect taxes (i.e. VAT and consumption tax) payable by the taxpayer. Effectively, the taxpayers of indirect taxes are also the taxpayers of local educational surtax.

Motor vehicle acquisition tax

A motor vehicle acquisition tax at a rate of 10% of the taxable consideration will be levied on any purchase and importation of cars, motorcycles, trams, trailers, carts, and certain types of trucks.

Vehicle and vessel tax

A vehicle and vessel tax is a tax that is levied on all vehicles and vessels within China. A fixed amount is levied on a yearly basis. Transport vehicles generally are taxed on a fixed amount according to their own weight, with passenger cars, buses, and motorcycles being taxed on a fixed unit amount. Vessels are taxed on a fixed amount, according to the deadweight tonnage.

Vessel tonnage tax

Vessel tonnage tax is levied on any vessel entering into a port inside the territory of China from overseas and is collected by the General Customs. The tax payable is computed based on the net tonnage multiplied by the applicable tax rate that is determined based on the net tonnage and the term of the tonnage tax licence.

Resource tax

The exploitation of natural resources, including crude oil, natural gas, coal, salt, raw metallic metals, and non-metallic metals, etc., is subject to resource tax on a sales turnover or tonnage/volume basis. The range of tax rates are specified by the State Council.

Resource tax is collected on the usage of water in 10 provinces on a trial basis.

Environmental protection tax (EPT)

China's legislative body passed the Environmental Protection Tax Law (EPT Law) at the end of 2016. The EPT Law became effective on 1 January 2018 and replaced the previous pollutant discharge fees. EPT is collected from enterprises that directly discharge taxable pollutants (i.e. air pollutants, water pollutants, solid waste, and noise pollution) within the territory of China. EPT is calculated based on the volume of pollutants discharged, multiplied by the specific EPT amount.

Tobacco tax

Tobacco tax is levied on taxpayers who purchase tobacco leaves within the territory of China. The tax is assessed at the rate of 20% on the purchasing value and shall be settled with the local tax bureau at the place of the purchase.

Cultural business development levy

Companies and individuals engaged in entertainment and advertising businesses shall pay cultural business development levy at 3% on the relevant income.

Branch income

Under the CIT law, a branch of a non-TRE in China is taxed at the branch level. If there is more than one branch, they may elect to file their tax at the main office in China on a consolidated basis. There is no further tax upon remittance of branch profits.

Income determination

Taxable income is defined as 'gross income in a tax year after deduction of non-taxable income, tax exempt income, various deductions, and allowable losses brought forward from previous years'. The accrual method of accounting should be used.

Gross income refers to monetary and non-monetary income derived by an enterprise from various sources, including, but not limited to, the sales of goods, provision of services, transfer of property, dividends, interest, rentals, royalties, and donations.

Non-taxable income refers to fiscal appropriation, governmental administration charges, governmental funds, and other income specified by the central government.

Inventory valuation

Inventory must be valued according to costs. In computing the cost of inventories, the enterprise may choose one of the following methods: first in first out (FIFO), weighted average, or specific identification.

Unrealised gain or loss due to changes in fair value

An unrealised gain or loss due to changes in the fair value of financial assets, financial liabilities, and investment properties held by an enterprise is not taxable/deductible for CIT purpose. The gain/loss is taxable/deductible only when the asset/liability actually is disposed of or realised.

Capital gains

Capital gains are treated in the same way as ordinary income of a revenue-nature for a TRE.

Dividend income

An exemption exists for CIT on dividend derived by a TRE from the direct investment into another TRE except for where the dividend is from stocks publicly traded on the stock exchanges and the holding period is less than 12 months.

Interest income

Interest income is treated as ordinary income.

Rental income

Rental income is treated as ordinary income.

Royalty income

Royalty income is treated as ordinary income.

Partnership income

Partnerships registered in China are not subject to CIT. The income of a partnership is taxable at the partners' level.

Unrealised exchange gains

Unrealised exchange gain (loss) from the year-end translation of assets (liabilities) denominated in foreign currency generally is taxable (deductible).

Foreign income

The worldwide income of a TRE and its branches both within and outside China is taxable. There are no provisions in the CIT law that allow foreign income directly earned by the TRE to be deferred for tax purposes. The CIT law contains a controlled foreign company (CFC) rule under which the unremitted earnings of a foreign company controlled by Chinese enterprises may be taxable in China (*see the Group* *taxation section for more information*). A foreign tax credit is allowed for foreign income taxes paid on foreign-source income.

Deductions

Generally, an enterprise is allowed to deduct reasonable expenditures that actually have been incurred and are related to the generation of income.

Depreciation of fixed assets

Fixed assets with useful lives of more than 12 months must be capitalised and depreciated in accordance with the CIT regulations. Generally, depreciation is calculated by the straight-line method. Shorter tax depreciation life or accelerated depreciation may be allowed due to advancement of technology or suffering from constant vibration or severe corrosion. Production-nature biological assets, such as livestock held for breeding and commercial timber, also have to be capitalised and depreciated using the straight-line method.

Under the straight-line method, the cost of an item, less its residual value, is depreciated over the useful life of the asset. Residual value should be reasonably determined based on the nature and usage of the asset. The CIT law provides minimum useful lives for the following assets:

Assets	Years
Buildings and structures	20
Aircraft, trains, vessels, machinery, mechanisms, and other production equipment	10
Appliances, tools, and furniture etc. related to production and business operations	5
Means of transport other than aircraft, trains, and vessels	4
Electronic equipment	3
Production-nature biological assets in the nature of forestry	10
Production-nature biological assets in the nature of livestock	3

From 1 January 2018 to 31 December 2020, newly acquired fixed assets, other than real estate properties, with unit value not exceeding CNY 5 million are allowed to be expensed-off in one lump sum in the year of acquisition.

Accelerated depreciation

Shorter tax depreciation life or accelerated depreciation is allowed for particular types of fixed assets (e.g. fixed assets that need to be replaced more frequently due to advancement of technology, fixed assets that suffer from constant vibration or severe corrosion).

From 1 January 2018 to 31 December 2020, new fixed assets and equipment, other than real estate properties, with unit value exceeding CNY 5 million acquired by companies in certain specified industries may be depreciated over a shorter depreciation life or under an accelerated depreciation method.

Where a shorter depreciation period method is applied, the minimum depreciation period cannot be less than 60% of the minimum depreciation period as prescribed in the CIT Law; where an accelerated depreciation method is applied, the double-declining-balance method or sum-of-years-digits method can be used.

Amortisation of intangibles and goodwill

A deduction is allowed for amortisation of intangible assets, such as, but not limited to, patents, trademarks, copyrights, and land-use rights. Generally, intangible assets have to be amortised over a period of not less than ten years. For an intangible asset obtained through capital contribution or assignment, it can be amortised according to the useful life prescribed in the laws or agreed in the contracts, if any. However, acquired goodwill is not deductible until the invested enterprise is entirely transferred or liquidated.

Organisational and start-up expenses

Organisational and start-up expenses are tax deductible fully in the first year of operation.

Research and development (R&D) expense

For R&D expenses incurred for new technology, new products, or new craftsmanship, an extra 50% of the actual expenses incurred are also tax-deductible as an incentive.

From 1 January 2017 to 31 December 2019, the extra 50% deduction is increased to 75% for qualified small and medium-sized technology enterprises.

Asset loss

Asset loss (including bad debt loss) may be deductible in the tax year during which such loss is incurred, provided that supporting documents are maintained for inspection by the in-charge tax bureau.

Interest expenses

Interest on loans generally is tax-deductible. For interest expenses on borrowings from non-financial institutions by a non-financial institution, the portion that does not exceed the commercial rate is deductible. The tax deduction of interest paid to related parties is subject to the thin capitalisation rule under the CIT law (*see the Group taxation section for more information*).

Reserves and provisions

Provisions for asset impairment reserves (e.g. bad debt provisions) and risk reserves generally are not tax-deductible unless otherwise prescribed in the tax rules. Financial institutions and insurance companies may deduct certain provisions and reserves, subject to the caps specified in the relevant tax circulars.

Contingent liabilities

The CIT law does not specifically address the deductibility of contingent liabilities. According to the general principle of the CIT law, contingent liabilities are liabilities that an enterprise has not actually incurred and thus shall not be tax-deductible.

Charitable donations

Charitable donations are tax-deductible at up to 12% of the annual accounting profit, and any excess amount in the current year can be carried forward and deductible in the following three years. Non-charitable donations, as well as sponsorship expenditures that are non-advertising and non-charitable in nature, are not deductible.

Wages and staff welfare expenses

Reasonable wages and salaries of employees incurred by an enterprise are tax-deductible. Directors' fees are also tax-deductible. As an incentive to encourage the hiring of handicapped people, 200% of the actual salary expenses paid to handicapped staff are deductible.

Basic social security contributions, including basic pension insurance, basic medical insurance, unemployment insurance, injury insurance, maternity insurance, and housing funds, that are made by an enterprise in accordance with the scope and criteria as prescribed by the state or provincial governments are deductible.

Commercial insurance premiums paid for investors or employees shall not be tax-deductible unless they are paid for safety insurance for workers conducting special types of work.

Staff welfare expenses, labour union fees, and staff education expenses are tax-deductible at up to 14%, 2%, and 8% of the total salary expenses, respectively.

Entertainment expenses

Entertainment expenses are tax-deductible up to the lesser of 60% of the costs actually incurred and 0.5% of the sales or business income of that year. The excess amount must not be carried forward to and deducted in the following tax years.

Advertising expenses and business promotion expenses

Advertising expenses and business promotion expenses are deductible at up to 15% (30% for certain enterprises in the cosmetics, medicine, and beverage industries) of the sales (business) income of that year unless otherwise prescribed in the tax regulations. Any excess amount is allowed to be carried forward and deductible in the following tax years. Advertising expenses and business promotion expenses incurred by the tobacco industry are entirely not tax-deductible.

Fines and penalties

Fines, penalties, and losses arising from confiscation of property are not deductible for CIT purposes.

Taxes

CIT payments and surcharges that are imposed on overdue taxes are not deductible for CIT purposes.

Net operating losses

Generally, tax losses can be carried forward for no longer than five years starting from the year subsequent to the year in which the loss was incurred. For new/high tech enterprises and small and medium sized technology enterprises, tax loss can be carried forward for ten years. Carryback of losses is not permitted.

Payments to affiliates

Management fees for stewardship are not deductible, but services fees paid for genuine services provided by affiliates in China or overseas and charged at arm's length should be deductible. Other payments to affiliates, such as royalties, are also tax-deductible, provided that the charges are at arm's length.

Group taxation

Group taxation is not permitted under the CIT law unless otherwise prescribed by the State Council.

Transfer pricing

All enterprises are required to conduct transactions with related parties on an arm's-length basis. The Chinese tax authorities are empowered to make adjustments to transactions between related parties that are not conducted at arm's length and result in the reduction of taxable income of the enterprise or its related parties using the following appropriate methods: comparable uncontrolled price method, resale price method, cost plus method, transactional net margin method, profit split method, and other methods (e.g. cost approach, market approach, income approach) that are consistent with the arm's-length principle. In June 2016, the SAT issued a circular that imposed new transfer pricing compliance requirements in China, including annual reporting forms for related-party transactions (RPT forms), country-by-country (CbC) reporting, and transfer pricing documentation, all of which contain substantial changes to the previous rules. Specifically, the transfer pricing documentation requirement has adopted a three-tiered approach, including a master file, local file, and special issue file (i.e. cost sharing agreement special issue file and thin capitalisation special issue file).

The SAT also issued a revised circular on advance pricing arrangements (APAs) in October 2016, which provides process and requirements for an enterprise to apply for an APA as well as the situations where an APA application will be prioritised or declined.

The SAT issued a circular in March 2017 to renew the Chinese rules on the procedures of transfer pricing investigation and mutual agreement procedures (MAPs). This circular empowers the Chinese tax authorities to collect financial information of overseas related parties under the transfer pricing audit for value chain purpose. In addition, this circular reiterates and reinforces the Chinese tax authorities' focus on outbound related-party remittance, such as service fees and royalty payments (*see Recent focus of Chinese tax authorities in the Tax administration section for details*).

The CIT law also contains a few tax avoidance rules, such as a thin capitalisation rule (*see below*), a CFC rule (*see below*), and general anti-avoidance rules (GAAR) (*see the Tax administration section*).

Thin capitalisation

The CIT law has a thin capitalisation rule disallowing interest expense arising from excessive related-party loans. The safe harbour debt/equity ratio for enterprises in the financial industry is 5:1 and for enterprises in other industries is 2:1. However, if there is sufficient evidence (e.g. a thin capitalisation special issue file) to show that the financing arrangement is at arm's length, these interests may still be fully deductible even if the ratios are exceeded.

Controlled foreign companies (CFCs)

Under the CFC rule, the undistributed profits of CFCs located in low-tax jurisdictions with an effective income tax rate of less than 12.5% may be taxed as a deemed distribution to the TRE shareholders. The Chinese tax authorities have published a list of countries (i.e. a 'white list') that they do not regard to be low-tax jurisdictions.

Tax credits and incentives

The CIT law adopts the 'Predominantly Industry-oriented, Limited Geography-based' tax incentive policy. Key emphasis is placed on 'industry-oriented' incentives aiming at directing investments into those industry sectors and projects encouraged and supported by the state. The tax incentive policies mainly include the following and are applicable to both domestic and foreign investments.

Tax reduction and exemption

CIT may be reduced or exempted on income derived from the following projects:

Projects/industries	CIT incentive	Valid period
Agriculture, forestry, animal-husbandry, and fishery projects	Exemption or 50% reduction	All years, as long as it is engaged in these projects
Specified basic infrastructure projects	3 + 3 years tax holiday (2)	Starting from the first income-generating year
Environment protection projects and energy/water conservative projects	3 + 3 years tax holiday (2)	Starting from the first income-generating year
Qualified new/high tech enterprises established in Shenzhen, Zhuhai, Shantou, Xiamen, Hainan, and Pudong New Area of Shanghai after 1 January 2008	2 + 3 years tax holiday (1)	Starting from the first income-generating year
Software enterprises established before 31 December 2017	2 + 3 years tax holiday (1)	Starting from the first profit-making year or 2017, whichever is earlier
Integrated circuits design enterprises established before 31 December 2017	2 + 3 years tax holiday (1)	Starting from the first profit-making year or 2017, whichever is earlier
Integrated circuits production enterprises established before 31 December 2017 with a total investment exceeding CNY 8 billion or that produce integrated circuits with a line-width of less than 0.25um, provided that its operation period exceeds 15 years	5 + 5 years tax holiday (3)	Starting from the first profit-making year
Integrated circuits production enterprises established before 31 December 2017 that produce integrated circuits with a line-width of less than 0.8um	2 + 3 years tax holiday (1)	Starting from the first profit-making year
Integrated circuits production enterprises or projects invested after 1 January 2018 that produce integrated circuits with a line-with of less than 130nm, provided that its operation period exceeds 10 years	2 + 3 years tax holiday (1)	Starting from the first profit-making year for enterprises; Starting from the first income-generating year for projects
Integrated circuits production enterprises or projects invested after 1 January 2018 with a total investment exceeding CNY 15 billion or that produce integrated circuits with a line-with of less than 65nm, provided that its operation period exceeds 15 years	5 + 5 years tax holiday (3)	Starting from the first profit-making year for enterprises; Starting from the first income-generating year for projects
Qualified integrated circuits packaging/testing enterprises established before 31 December 2017	2 + 3 years tax holiday (1)	Starting from the first profit-making year or 2017, whichever is earlier
Qualified enterprises that manufacture key parts or equipment used for the production of integrated circuits established before 31 December 2017	2 + 3 years tax holiday (1)	Starting from the first profit-making year or 2017, whichever is earlier

Projects/industries	CIT incentive	Valid period
Qualified energy-saving service enterprises	3 + 3 years tax holiday (2)	Starting from the first income-generating year
Encouraged enterprises in underprivileged areas of Xinjiang	2 + 3 years tax holiday (1)	Starting from the first income-generating year
Projects involving a clean development mechanism (CDM)	3 + 3 years tax holiday	Starting from the first year during which the first disposal of certified emission reduction units takes place
Certified animation enterprises that produce self-developed animation products established before 31 December 2017	2 + 3 years tax holiday (1)	Starting from the first profit-making year or 2017, whichever is earlier

Notes

1. '2 + 3 years tax holiday' refers to two years of exemption from CIT followed by three years of 50% reduction of CIT.
2. '3 + 3 years tax holiday' refers to three years of exemption plus three years of 50% reduction of CIT.
3. '5 + 5 years tax holiday' refers to five years of exemption plus five years of 50% reduction of CIT.

For income derived from the transfer of technology in a tax year, the portion that does not exceed CNY 5 million shall be exempted from CIT and the portion that exceeds CNY 5 million shall be allowed a 50% reduction of CIT.

A CIT exemption applies to the dividend derived by a TRE from the direct investment into another TRE, except where the dividend is from stocks publicly traded on the stock exchanges and the holding period is less than 12 months.

A CIT exemption also applies to the income derived by recognised non-profit-making organisations engaging in non-profit-making activities.

Reduced tax rate

The CIT rate may be reduced under certain conditions for different industries (*see the Taxes on corporate income section for more information*).

Reduction of revenue

Where an enterprise uses resources specified by the state as its major raw materials to produce non-restricted and non-prohibited products, only 90% of the income derived is taxable.

Offset of certain venture capital investment

For a venture capital enterprise that makes an equity investment in a non-listed small to medium-sized new/high tech enterprise or a start-up technology enterprise for more than two years, 70% of its investment amount may be used to offset against the taxable income of the venture capital enterprise in the year after the holding period has reached two years. Any portion that is not utilised in that year can be carried forward and deducted in the following years. A Chinese corporate partner of a venture capital in the form of a limited partnership is also eligible for such incentive.

Investment tax credit

Enterprises purchasing and using equipment specified by the state for environmental protection, energy and water conservation, or production safety purposes are eligible for a tax credit of 10% of the investment in such equipment. Any unutilised amount can be carried forward and creditable in the following five years.

Other incentives

There are also tax incentives in relation to the deduction of expenses and cost (e.g. 50% additional R&D deduction, shorter tax depreciation period, and accelerated depreciation). *See the Deductions section for more information*.

Foreign tax credit

A TRE is allowed to claim foreign tax credit in relation to foreign income tax already paid overseas in respect of income derived from sources outside China on a country-basket basis or under the comprehensive method. The creditable foreign tax also includes foreign income tax paid by qualified CFCs. However, the creditable amount may not exceed the amount of income tax otherwise payable in China in respect of the foreign-sourced income. In addition, there is a five-year carryforward period for any unutilised foreign tax.

Withholding taxes

Foreign enterprises without establishments or places of business in China shall be subject to a unilateral concessionary rate of withholding tax (WHT) at 10% on gross income from dividends, interest, lease of property, royalties, and other China-source passive income unless reduced under a tax treaty. Nevertheless, dividends distributed by a foreign investment enterprise out of its pre-2008 profit are still exempted from WHT.

WHT rates under China's tax treaties with other countries/nations are as follows (as of 31 May 2018):

	WHT (%)		
Recipient	**Dividends**	**Interest (1)**	**Royalties (2)**
Non-treaty	10	10	10
Treaty:			
Albania	10	10	10
Algeria	5/10 (3a)	7	10
Armenia	5/10 (3a)	10	10
Australia	15	10	10
Austria	7/10 (3b)	7/10 (4a)	6/10
Azerbaijan	10	10	10
Bahrain	10	10	10
Bangladesh	10	10	10
Barbados	5/10 (3a)	10	10
Belarus	10	10	10
Belgium	5/10 (3i)	10	7
Bosnia and Herzegovina (7)	10	10	10
Botswana (9)	5	7.5	5
Brazil	15	15	15/25 (5a)
Brunei	5	10	10
Bulgaria	10	10	7/10
Cambodia	10	10	10
Canada	10/15 (3f)	10	10
Chile	10	4/10/15 (4b)	2/10
Croatia	5	10	10

	WHT (%)		
Recipient	**Dividends**	**Interest (1)**	**Royalties (2)**
Cuba	5/10 (3a)	7.5	5
Cyprus	10	10	10
Czech Republic	5/10 (3a)	7.5	10
Denmark	5/10 (3a)	10	7/10
Ecuador (6)	3/5 (6)	8/10 (6)	8/10 (6)
Egypt	8	10	8
Estonia	5/10 (3a)	10	10
Ethiopia	5	7	5
Finland	5/10 (3a)	10	7/10
France	0/5/10 (3q)	10	6/10
Georgia	0/5/10 (3c)	10	5
Germany	5/10/15 (3o)	10	6/10
Greece	5/10 (3a)	10	10
Hong Kong Special Administrative Region	5/10 (3d)	7	5/7 (5d)
Hungary	10	10	10
Iceland	5/10 (3a)	10	7/10
India	10	10	10
Indonesia	10	10	10
Iran	10	10	10
Ireland, Republic of	5/10 (3b)	10	6/10
Israel	10	7/10 (4a)	7/10
Italy	10	10	7/10
Jamaica	5	7.5	10
Japan	10	10	10
Kazakhstan	10	10	10
Kenya (9)	5	10	10
Korea, Republic of	5/10 (3a)	10	10
Kuwait	0/5 (3l)	5	10
Kyrgyzstan	10	10	10
Laos	5	5 (in Laos) 10 (in Mainland China)	5 (in Laos) 10 (in Mainland China)
Latvia	5/10 (3a)	10	7
Lithuania	5/10 (3a)	10	10
Luxembourg	5/10 (3a)	10	6/10
Macao Special Administrative Region	5/10 (3a)	7	5/7 (5d)
Macedonia	5	10	10
Malaysia	10	10	10/15 (5b)
Malta	5/10 (3a)	10	7/10
Mauritius	5	10	10
Mexico	5	10	10
Moldova	5/10 (3a)	10	10
Mongolia	5	10	10
Morocco	10	10	10
Nepal	10	10	15
Netherlands	0/5/10 (3j)	10	6/10
New Zealand	15	10	10
Nigeria	7.5	7.5	7.5

China, People's Republic of

	WHT (%)		
Recipient	**Dividends**	**Interest (1)**	**Royalties (2)**
Norway	15	10	10
Oman	5	10	10
Pakistan	10	10	12.5
Papua New Guinea	15 (3n)	10	10
Philippines	10/15 (3g)	10	10/15 (5b)
Poland	10	10	7/10
Portugal	10	10	10
Qatar	10	10	10
Romania	0/3 (3r)	0/3 (4c)	3
Russia	5/10 (3p)	0	6
Saudi Arabia	0/5 (3m)	10	10
Seychelles	5	10	10
Singapore	5/10 (3a)	7/10 (4a)	6/10
Slovak Republic	10	10	10
Slovenia	5	10	10
South Africa	5	10	7/10
Spain	10	10	6/10
Sri Lanka	10	10	10
Sudan	5	10	10
Sweden	5/10 (3a)	10	6/10
Switzerland	0/5/10 (3j)	10	9
Syria	5/10 (3a)	10	10
Taiwan (9)	5/10 (3d)	7	7
Tajikistan	5/10 (3a)	8	8
Thailand	15/20 (3d)	10	15
Trinidad and Tobago	5/10 (3e)	10	10
Tunisia	8	10	5/10 (5c)
Turkey	10	10	10
Turkmenistan	5/10 (3a)	10	10
Uganda (9)	7.5	10	7/10
Ukraine	5/10 (3a)	10	10
United Arab Emirates	0/7 (3l)	7	10
United Kingdom	5/10/15 (3k)	10	6/10
United States	10	10	7/10
Uzbekistan	10	10	10
Venezuela	5/10 (3h)	5/10 (4a)	10
Vietnam	10	10	10
Yugoslavia (8)	5	10	10
Zambia	5	10	5
Zimbabwe	2.5/7.5 (3e)	7.5	7.5

Source: State Administration of Taxation, China

Notes

This table is a summary only and does not reproduce all the provisions relevant in determining the application of WHT in each tax treaty/arrangement.

1. 0% is due on interest paid to government bodies, except for Australia, Bosnia and Herzegovina, Brunei, Chile, Cyprus, Israel, Slovenia, and Spain. Reference should be made to the individual tax treaties.

2. The lower rate on royalties applies for the use of or right to use any industrial, commercial, or scientific equipment.
3. The following notes apply to dividend WHT:
   a. The lower rate applies where the beneficial owner of the dividend is a company (not a partnership) that directly owns at least 25% of the capital of the paying company.
   b. The lower rate applies where the beneficial owner of the dividend is a company that directly owns at least 25% of the voting shares of the paying company.
   c. The lowest rate (i.e. 0%) applies where the beneficial owner is a company that directly or indirectly owns at least 50% of the capital of the paying company and the investment exceeding 2 million euros (EUR). The lower rate (i.e. 5%) applies where the beneficial owner is a company that directly or indirectly owns at least 10% of the capital of the paying company and the investment exceeding EUR 100,000.
   d. The lower rate applies where the beneficial owner of the dividend is a company that directly owns at least 25% of the capital of the paying company.
   e. The lower rate applies where the beneficial owner of the dividend is a company that directly or indirectly owns at least 25% of the capital of the paying company.
   f. The lower rate applies where the beneficial owner of the dividend is a company that owns at least 10% of the voting stock of the paying company.
   g. The lower rate applies where the beneficial owner of the dividend is a company that directly owns at least 10% of the capital of the paying company.
   h. The lower rate applies where the beneficial owner is a company (other than a partnership) that directly owns at least 10% of the capital of the paying company.
   i. The lower rate applies where the beneficial owner of the dividend is a company (not a partnership) that directly owns at least 25% of the capital of the paying company within at least 12 consecutive months before the payment takes place.
   j. The lowest rate (i.e. 0%) applies if the beneficial owner of the dividends is the governmental bodies specified in the treaty, any of its institutions, or other entity the capital of which is wholly owned, directly or indirectly, by that contracting state. The lower rate (i.e. 5%) applies if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends. The 10% rate applies in all other cases.
   k. The 0% rate applies if the beneficial owner of the dividends is the government of the other contracting state. The 5% rate applies if the beneficial owner of the dividends is a company that directly holds at least 25% of the capital of the company paying the dividends. The 15% rate applies where those dividends are paid out of income or gains derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle that distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax. The 10% rate applies in all other cases.
   l. The lower rate (i.e. 0%) applies where the beneficial owner of the dividend is (i) the government of the other contracting state or any of its institutions or other entity wholly owned, directly or indirectly, by the government of the other contracting state or (ii) a company that is a resident of the other contracting state whose shares are at least 20% owned, directly or indirectly, by the government of the other contracting state.
   m. The lowest rate (i.e. 0%) applies where the beneficial owner of the dividend is the government of the other contracting state or any of its institutions or other entity wholly owned, directly or indirectly, by the government of the other contracting state.
   n. In the case of Papua New Guinea, the WHT shall be limited to 10% of the dividend while the Chinese tax law existing on the date of the signing of the tax treaty regarding dividends still applies; otherwise, the tax rate shall be 15%.
   o. The lowest rate (i.e. 5%) applies if the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends. The highest rate (i.e. 15%) applies where those dividends are paid out of income or gains derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle that distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax. The 10% rate applies in all other cases.
   p. The lower rate (i.e. 5%) applies if the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends and this holding amounts to at least EUR 80,000 or its equivalent in any other currency.
   q. The lowest rate (i.e. 0%) applies if the dividends are derived by a sovereign wealth fund specified in the treaty. The lower rate (i.e. 5%) applies if the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends. The 10% rate applies in all other cases. However, the dividends may be taxed at the rate under the domestic law if the dividends are paid out of income or gains derived from immovable property within the meaning of Article 6 by an investment vehicle that distributes most of this income or gains annually, whose income or gains from such immovable property is exempted from tax, and where the beneficial owner of those dividends holds, directly or indirectly, 10% or more of the capital of the vehicle paying the dividends.
   r. The lower rate (i.e. 0%) applies if the dividends arise in a contracting state and are paid to the other contracting state or a political subdivision, local authority, or administrative - territorial unit thereof, or any entity wholly or mainly owned by the other contracting state.
4. The following notes apply to interest WHT:
   a. The lower rate applies to interest payable to banks or financial institutions.

b. The lowest rate (i.e. 4%) applies to interest payable to banks or financial institutions. The highest rate (i.e. 15%) will be applied for a period of two years from the date on which the treaty takes effect, and the 10% rate will be applied afterwards. In the event that Chile agrees to a lower rate of tax with another country (in particular with reference to financial institutions wholly owned by the government), such new rate shall automatically apply under the China/Chile tax treaty under the same conditions.
c. The lower rate applies to the interest that is paid (i) in respect of indebtedness arising as a consequence of the sales on credit of any equipment, merchandise, or service; (ii) on any loan granted by a financial institute of that contracting state; or (iii) to that other state or a political subdivision, local authority, or administrative – territorial unit thereof, or any entity wholly or mainly owned by that other state.

5. The following notes apply to royalties WHT:
   a. The higher rate applies to trademarks.
   b. The higher rate applies to copyright of literary, artistic, or scientific work, including cinematograph films or tapes for television or broadcasting.
   c. The lower rate applies to royalties paid for technical or economic studies or for technical assistance.
   d. The lower rate applies to royalties paid to an aircraft and ship leasing business.
6. The lower rates apply in cases where the dividend, interest, or royalty paid from Ecuador to China is applicable to the Foreign Exchange Control Tax in Ecuador.
7. The tax treaty with the former Socialist Federal Republic of Yugoslavia is now applicable to Bosnia and Herzegovina.
8. The tax treaty with the former Federal Republic of Yugoslavia is now applicable to the nations of Serbia and Montenegro.
9. These tax treaties have not yet entered into force as of 31 May 2018.

In addition to the above tax treaties, China has also entered into tax information exchange agreements (TIEAs) with a few countries. For example:

- Argentina.
- Bahamas.
- Bermuda.
- British Virgin Islands (BVI).
- Cayman Islands.
- Guernsey.
- Isle of Man.
- Jersey.
- Liechtenstein.
- San Marino.

Tax administration

Taxable period

The tax year commences on 1 January and ends on 31 December.

Tax returns

Enterprises are required to file their annual income tax return within five months after the end of the tax year, together with an audit certificate of a registered public accountant in China. Information on related-party transactions must be filed with the annual income tax return.

Payment of tax

Enterprises are required to file and pay provisional income taxes on a monthly or quarterly basis within 15 days following the end of each month/quarter. Three options are available to the taxpayer in computing the provisional tax: (i) actual profits of the month/quarter, (ii) average monthly or quarterly taxable income of the preceding year, or (iii) other formulas approved by the local tax authorities.

Settlement of tax payment is due, in conjunction with the annual income tax return, within five months after the end of the tax year.

Tax audit process

There is no fixed audit cycle in China. Tax audit targets are selected pursuant to certain criteria.

Statute of limitations

For unintentional errors (e.g. calculation errors) committed by the taxpayer in its tax filing, the statute of limitation is three years and extended to five years if the amount of tax underpaid is CNY 100,000 or more. For transfer pricing adjustments, the statute of limitation is ten years. There is no statute of limitation for tax evasion, refusal to pay tax, or defrauding of tax payment.

Recent focus of Chinese tax authorities

Since 2009, the Chinese tax authorities have strengthened their tax administration on transfer pricing and income derived by non-TREs. The SAT has released a number of tax circulars addressing the tax administration of transfer pricing, foreign contractors and service providers, WHT on passive income, etc.

Under the CIT Law, non-TREs are subject to CIT on the capital gain derived from the disposal of equity investment in Chinese companies. In addition, the transfer has to be effected at fair value so that any gain shall be recognised for tax purpose at the time when the transaction takes places (unless the transaction qualifies for deferral tax treatment provided under the tax regulations). The Chinese tax authorities have, in recent years, challenged and clawed back CIT on several equity transfer cases whereby non-TREs disposed of their equity investment in China to related parties at cost or below 'fair value'. In addition, they have become more knowledgeable on valuation theories and methodologies and are applying them in reviewing valuation reports in order to ascertain the fair value of equity transfer transactions for tax purposes.

In addition, the Chinese tax authorities have geared up their efforts in recent years to scrutinise investment structures involving intermediate holding companies incorporated in low-tax jurisdictions. One of their focuses is on the indirect equity transfer of Chinese companies by non-TREs. The income derived by a non-TRE from the disposal of a non-Chinese company is not taxable under China's domestic income tax law. However, if the Chinese tax authorities are of the view that the non-TRE transferor has used an abusive arrangement to indirectly transfer the equity of the Chinese company (i.e. interposing and disposing of the special purpose vehicle for no reasonable commercial purpose, but just for avoidance of China withholding income tax), it may re-characterise the equity transfer based on the 'substance over form' principle and disregard the existence of the special purpose vehicle. Once the special purpose vehicle is disregarded, the transfer would be effectively a transfer of the underlying Chinese company's equity, and the transfer gain would be China source and subject to China withholding income tax. In early 2015, the SAT issued a circular that sets out new guidance on the assessment of indirect transfer of China taxable properties by non-TREs. The new guidance extends the scope to capture all 'China taxable properties', including not only equity investment in Chinese companies but also immovable properties located in China and assets of an establishment or place of a foreign company in China. It also provides clearer criteria on how to assess 'reasonable commercial purpose' and introduces 'safe harbour' scenarios.

The SAT has also released circulars relating to the claiming of treaty benefits by non-TREs and interpretation of certain articles and terms in the tax treaties, such as dividends, royalties, beneficial ownership, etc. Aggressive tax planning (including, but not limited to, tax-avoidance and treaty-abusive arrangements) not supported by reasonable commercial purposes and substance will be subject to scrutiny by the Chinese tax authorities. Non-residents and their withholding agents are required to file certain prescribed forms and other supporting documents when performing tax filing to justify their claims for the tax treaty benefits. The tax position taken by the non-residents or withholding agents are subject to examination by the Chinese tax authorities after the tax filing.

The SAT issued a Departmental Interpretation Note (DIN) in 2010 for the tax treaty concluded between China and Singapore. It is the first time the SAT has introduced a set of technical views, interpretation, and practice guidelines for the implementation of a tax treaty in such a comprehensive manner. More importantly, this set of interpretation is also applicable to other tax treaties concluded by China if the provisions of the relevant articles in those tax treaties are the same as those in the China/Singapore tax treaty. Thus, it is likely to have a wide impact to tax residents of other countries/regions that have entered into tax treaties with China.

For transfer pricing investigation, increasing scrutiny has been imposed on outbound related-party remittance, such as service fees and royalty payments. Specifically, in addition to the arm's-length nature of the service fees and royalty transactions, the Chinese tax authorities may also require taxpayers to demonstrate the commercial substance of the overseas service provider or intangible property owner. The Chinese tax authorities are also stringent on activities for the decision-making, monitoring, control, and compliance purposes of the group, and may challenge the service remittance for group finance, tax, human resources, and legal activities, which is different from common positions taken by Organisation for Economic Co-operation and Development (OECD) countries. Another focus of the Chinese tax authorities in transfer pricing investigation is location-specific advantages (e.g. location saving of Chinese low-cost resources, market premium of Chinese market). As such, the Chinese tax authorities often expect a different transfer pricing policy in China, which will pose difficulties on multinational groups who implement a consistent transfer pricing policy around the world.

General anti-avoidance rules (GAAR)

There is a GAAR provision in the CIT law allowing the Chinese tax authorities to make adjustments to taxable revenue or taxable income where business arrangements, structures, or transactions are entered into without reasonable commercial purpose and result in a reduction, exemption, or deferral of tax payment. The Chinese tax authorities may initiate a GAAR investigation if they suspect that an enterprise undertakes any of the following arrangements: abuse of preferential tax treatments, abuse of tax treaties, abuse of corporate structure, use of tax havens for tax avoidance purposes, or other arrangements that do not have a reasonable commercial purpose.

The SAT released the Administrative Measures on GAAR in late 2014. The Administrative Measures provides comprehensive guidance on the implementation of GAAR, including elaboration on certain principles, adjustment methods, procedures throughout the GAAR life cycle, and relevant documentation requirements.

Other issues

Choice of business entity

Foreign companies, enterprises, or individuals may establish equity joint ventures, contractual joint ventures, wholly foreign-owned enterprises, or representative offices in China. Certain foreign financial institutions, including banks and insurance companies, may, subject to approval, set up branches in China. Foreign investors are allowed to establish foreign invested partnerships in China. For certain foreign invested industries and projects, approval is needed from the relevant Chinese government authorities.

Exchange controls

Foreign exchange transactions are administered by the State Administration of Foreign Exchange (SAFE) and its branches. The regulatory administration on foreign exchange transactions of an enterprise depends on whether the transaction is a current account item or a capital account item. Current account items refer to ordinary transactions within the context of international receipts and payments, including, but not limited to, balance of payments from trade, labour services, and unilateral transfers. Capital account items refer to items of increase or decrease in debt and equity due to inflow or outflow of capital within the context of international receipts and payments, including, but not limited to, direct investment, all forms of loans, and investment in securities. Generally, a payment that falls under the category of a current account may be remitted overseas if supported with proper contracts, invoices, and tax payment/exemption certificates. In the past, most of the transactions under the category of capital account items had to be approved by the SAFE. Since the end of 2012, the SAFE has relaxed the administration of certain capital account items so that approval is no longer needed for a few types of transactions.

Intellectual properties

Patents, trademarks, and copyrights are governed by separate laws and administered by separate governmental bodies. The government encourages the development and transfer of intellectual properties. The transfer of qualified technology and qualified technical services are exempted from VAT.

Mergers and acquisitions (M&A) activities

Both Chinese domestic and foreign investors increasingly are using M&A transactions to establish or expand their Chinese operations.

The MoF and the SAT jointly released several circulars that address the CIT treatment for six forms of restructuring transactions, namely, change in legal form, debt restructuring, equity acquisition, assets acquisition, merger, and spin-off. The general principle is that enterprises undergoing corporate restructuring should recognise the gain/loss from the transfer of relevant assets/equity at fair value when the transaction takes place. However, if certain prescribed conditions are satisfied, the parties involved could opt for special tax treatments, which are essentially tax deferral tax treatment. In other words, recognition of gain/loss of the transferor from transfer of assets/equity can be deferred with respect to the equity-payment portion; and the transferee may take over the transferor's tax basis of the acquired assets/equity. Such special tax treatments are only available to a very few specific types of cross-border transactions.

China, People's Republic of

Development of the Foreign Account Tax Compliance Act (FATCA) in China

In late June 2014, the Chinese government reached an agreement in substance with the United States (US) on the terms of a Model 1 Intergovernmental Agreement (IGA). However, as of 31 May 2018, the China-US IGA has not been signed, and the financial institutions in China have not started implementing FATCA.

Base Erosion and Profit Shifting (BEPS) and the Multilateral Instrument (MLI)

China has been actively involved in the BEPS project as a partner of the OECD and one of the G20 members. After the final reports on all the 15 action plans were endorsed in 2015, China has implemented and localised the BEPS action plans on a needed basis.

China imposed new transfer pricing compliance requirements, including annual reporting forms for related-party transactions (RPT forms), country-by-country (CbC) reporting, and transfer pricing documentation, all of which contain substantial changes to the previous rules.

China entered into the Multilateral Competent Authority Agreement (MCAA) for the Automatic Exchange of Country-by-Country Reports in 2016. Out of the 68 signatories to the CbC MCAA, China has activated CbC report bilateral exchange relationships with France, Germany, and the United Kingdom on 31 July 2017 (effective for taxable periods starting on or after 1 January 2017).

China also entered into the Multilateral Instrument (MLI) in June 2017. Some important positions of China in relation to the articles in the MLI are as follows:

- Covered tax agreement: China puts all of its existing tax treaties (excluding China's three tax arrangements with Hong Kong, Macau, and Taiwan) into the covered agreement, except for the one with Chile and the one with India.
- Treaty abuse: China adopts the principle purpose test (PPT) provision but does not adopt the simplified limitation of benefits (LOB) test. The threshold period for enjoying treaty benefit on capital gain from the transfer of property-rich companies is three years instead of the one-year period provided in the MLI.
- China opts out of all the provisions in the avoidance of PE section and the arbitration clause for MAPs.

Common Reporting Standard (CRS)

China entered into the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. In May 2017, the relevant Chinese authorities jointly issued the Administrative Measures on Due Diligence Procedures for Non-residents' Financial Account Information in Tax Matters (the Measures) to implement CRS in China. Financial institutions established in China are required to carry out due diligence procedures on financial accounts starting from 1 July 2017. China is committed to exchange the first round of financial account information by September 2018.

Colombia

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Significant developments

Electronic invoices

Section 616-1 of the Colombian Tax Code, added by Law 1819 of 2016, provides that 'taxpayers obliged to file and pay VAT and or excise tax are obliged to issue electronic invoices as of 1 January 2019'.

However, during fiscal year (FY) 2017 and FY 2018, the Tax Office can require taxpayers that represent a high risk of evasion to implement the electronic invoice system before 1 January 2019.

In this sense, the Tax Office, through Resolutions 072 of 2017 and 010 of 2018, established that large taxpayers and those who had already implemented electronic invoicing in the last five years have to issue electronic invoices as of June 2018 (taxpayers can request an extension up to September 2018).

According to section 2 of the Executive Order 2242 of 2015, electronic invoices are 'documents that support transactions for the sale of goods or services that are issued through computer systems and/or computer solutions and allow compliance with the characteristics and conditions established in this Executive Order in relation to the issuance, receipt, rejection, and conservation of it'.

The issuance (generation and delivery) of the electronic invoices must comply with the technology and tax conditions set in section 3 of the Executive Order 2242 of 2015.

Electronic invoices must be delivered or made available to the customer in the electronic generation format, provided that the purchaser also issues its invoices through electronic system or it accepts to receive the invoices in such format.

If the customer does not accept electronic invoices, it must be delivered in a graphic representation printed or in digital format (invoices must be sent to the email address or address indicated by the customer).

Electronic invoices must be transmitted simultaneously to their issuance to the Tax Office. The Tax Office will review the documents, and if they cannot be opened, it will notify the taxpayer, who will have a term of 48 hours to verify their content. If the taxpayer does not amendment the invoices, the Tax Office will impose a penalty for not sending information, which may be up to 15,000 tax value units (TVU) (497,340,000 Colombian pesos [COP] for FY 2018).

In order to issue electronic invoices, companies can develop their own technology program and obtain the approval of the Tax Office or contract one of the technological providers authorised by the Colombian Tax Office.

Executive Order 1915 of 2017 - Payment of Corporate Income Tax (CIT) by investments in civil works

Taxpayers with gross income in the year equal to or greater than 33,610 TVU (COP 1,114,473,990 for FY 2018) may choose to pay their income tax through civil works.

Two modalities are foreseen: (i) destination in civil works up to 50% of the income tax charged in the taxable year, and (ii) investment as discount in cash payment of the income tax.

Destination in civil works up to 50% of the income tax

Through this modality, the taxpayer will make a direct investment of the tax charged for the execution of viable and prioritised projects of social importance in the different municipalities located in the areas most affected by the armed conflict.

Investment as discount in cash payment of the income tax

This modality consists of investing with the taxpayer's own resources in investment projects of social importance in the different municipalities located in the areas most affected by the armed conflict, whose value exceeds 50% of the income tax charged in the respective period.

The projects for this modality should aim to provide infrastructure for the supply of drinking water, sewerage, energy, public health, public education, and the construction and/or repair of road infrastructure in the municipalities defined as areas most affected by the armed conflict.

For purposes of establishing the projects that can be used as payment of CIT by investment in civil works, the National Government will publish through the Territorial Renewal Agency (ART) a bank of projects that may be selected by the taxpayers. Additionally, taxpayers may submit their own projects, which must be approved by the ART.

Executive Order 2253 of 2017 - Tax refund certificate (CERT)

Through Law 1819 of 2016, the government established the possibility to refund as a tax certificate part of the investment performed by taxpayers in hydrocarbon and mining sectors. The investments applicable for the CERT are those:

- That have as their object the discovery of new hydrocarbon/mining reserves, the addition of proven reserves, or the incorporation of new recoverable reserves, either through exploration activities or through activities aimed at increasing the recovery factor in watershed projects on the mainland, including in the latter case the respective pilot tests.
- Whose purpose is to maintain or increase the production of current projects.
- That accelerate projects that are in transition (from construction and assembly to exploitation) and increase mining exploration projects.

The CERT corresponds to a percentage of the value of the increase in investments whose quota will be defined annually by the Ministry of Mines and Energy, which will designate the amount of the CERT that will correspond to mining and hydrocarbons sectors.

Distribution of the CERT will be given among all the contracts that are presented annually. The annual quota established shall be affected by the amounts of the CERT distributed in previous years to projects with more than one year of investment execution. Therefore, the availability for the distribution made in each subsequent year of the CERT quota will correspond to the subtraction between the specific annual CERT quota and the amounts committed in previous years for projects of more than one year (projects of up to four years can be submitted).

The CERT incentive will be granted in Colombian pesos. Taxpayer interested in the CERT should be submitted to the National Hydrocarbons Agency (ANH) or the National Mining Agency (ANM) as appropriate, between 1 August and 30 September of the previous year, for the investments that will give rise to the CERT of their investment projects.

Taxes on corporate income

National companies (i.e. incorporated in Colombia under Colombian law) are taxed on worldwide income. Foreign non-resident companies and local branches of foreign companies are taxed on their Colombian-source income only. The current general CIT rate is 33%. This rate is applied upon taxable income.

Taxable income is generally defined as the excess of all operating and non-operating revenue over deductible costs and expenses. The customary costs and expenses of a business are generally acceptable as deductible expenditure for CIT purposes, provided they are necessary, reasonable, and have been realised during the relevant tax year under the accrual or cash method of accounting, as the case may be.

The current general capital gains tax rate is 10%.

Qualifying businesses located in Free Trade Zones (FTZs) enjoy a reduced rate of 20% (while subject to capital gains tax at 10%, where applicable).

Domestic income earned by non-resident entities that is not attributable to branches and PEs will be taxed at 33%, provided the non-resident entity must file an income tax return in Colombia.

Upon the CIT rate there is a surcharge that is applicable when the taxpayer's net taxable income equals or exceeds COP 800 million. The surcharge is applicable for FY 2018 at the rate of 4%. This surcharge is not applicable for qualifying businesses located in FTZs.

If the taxpayer is obligated to pay the income tax surcharge, it will be liable for making an anticipated payment of 100% of the surcharge, wherein the base will be the income tax liability paid in the previous year.

Minimum presumptive tax

CIT payers are required to pay a minimum amount of income tax, which is determined based on the presumptive income method. Under this method, presumptive taxable income is measured at 3.5% of net equity as of 31 December of the previous year, in accordance with the information provided by the taxpayer on such year's CIT return. The nominal CIT rate is then applied to the greater of regular taxable income (revenue less allowable costs and expenses) or presumptive taxable income (exempting certain business activities).

In order to determine the taxable base for presumptive income purposes, it is necessary to subtract from the total amount of net assets, which is the base to calculate presumptive income, the following amounts:

- The net asset value of the shares owned in national companies.
- The net asset value of the assets affected by *force majeure*.
- The net asset value of assets associated with operations in unproductive periods.
- The net asset value of assets destined exclusively to sport activities of social clubs or sport clubs.

Each year, taxpayers must compare the value resulting from the application of the foregoing two systems. The income tax for the taxable year will be calculated on the higher value resulting from this comparison. If presumptive income is higher than the ordinary net income, the difference constitutes an excess of presumptive income, which can be carried forward (adjusted for inflation) to any of the following five taxable years and offset against the net income determined by the taxpayer.

Income tax for equality (CREE)

CREE was repealed with the tax bill of 2016; nevertheless, there are some minimum base excesses (CREE taxable income less CREE minimum base) that can be offset during FY 2017 and following years, respecting a cap of five years from the moment in which the excess was generated. CREE tax losses can also be offset during FY 2017 and following years without a time limitation.

In 2018, the Constitutional Court established that the excesses of minimum tax bases established in FY 2012 can be offset in FY 2013 and FY 2014.

Stability Agreement Regime

As of 1 January 2013, the Legal and Tax Stability Framework was repealed. Applications under consideration will be grandfathered and approved if they meet the applicable requirement. Any already executed Legal Stability Agreements will continue to apply until expiration.

Local income taxes

In addition to CIT, there is a local (municipal) tax, known as industry and trade tax. *For more information, see Industry and trade tax in the Other taxes section*.

Corporate residence

Corporate residence is determined by the place of incorporation of any given company.

For CIT purposes, companies incorporated under foreign laws that have their main domicile abroad are considered ’foreign companies’, whereas any company incorporated in Colombia under Colombian law qualifies as a ‘national company’ even if fully owned by foreign shareholders.

Rules on effective place of management are in place (*see below*).

Permanent establishment (PE)

The Colombian internal legislation incorporates the concept of PE. This concept follows the Organisation for Economic Co-operation and Development (OECD) criteria and means a fixed place of business through which an entity carries out its activity, whether partially or totally.

A PE will also be incorporated when a person (other than an independent agent) has the capacity to conclude contracts on behalf of the foreign entity, except for preparatory and auxiliary activities.

In order to define what should be understood as preparatory and auxiliary activities, local regulations have adopted the OECD criteria.

Colombian law upholds the triggering of a PE upon the presence of a fixed place of business that is located in a given place and features a certain degree of permanence (no cut-off timeline is provided) where a non-resident entity conducts part or the whole of its business.

Auxiliary and preparatory activities that do not cause a PE to exist are listed out. The regulations reiterate that a PE is subject to income tax on domestic income attributable to its course of business as well as on any domestic income directly earned.

Also, a PE will be subject to domestic withholding tax (WHT) rates whenever engaged with resident parties.

However, payments or accruals to non-residents having a PE may continue to be subject to rates set out for non-residents if the underlying transaction is unrelated to the PE's purpose. A PE will be required to make annual CIT filings. PEs are given the capacity to withhold and remit taxes as well as to charge and collect value-added tax (VAT) to the extent of taxable transactions.

Requisites for registration of a PE are set out and include, *inter alia*, good standing documentation or proof of existence as well as an active account at a local bank or financial institution.

A PE is required to prepare contemporaneous documentation (in addition to transfer pricing compliance requirements) with a functional and technical analysis of the assets, liabilities, capital, risks income, costs, and expenses attributable to its business in Colombia. In addition, a PE must, for tax purposes, prepare separate accounts for purposes of the attribution of income and capital gains.

Effective place of management

Guidance is available (Regulation 3028 of 27 December 2013) on how to register a non-resident entity that is effectively managed in Colombia and treated as a resident for tax purposes.

The process requires submission of a good standing documentation, proof of identity of the legal representative (or attorney if a mandate to register exists), and availability of an active bank account at a resident bank or financial institution.

The rules require a non-resident entity effectively managed in Colombia to carry local books under International Financial Reporting Standards (IFRS) as well as to satisfy tax compliance requirements upon completion of the tax registration.

Non-resident entities effectively managed in Colombia are obligated to withhold and remit taxes as well as to charge and collect VAT to the extent of taxable transactions.

No effective place of management will be deemed to exist in Colombia for (i) non-resident issuers listed on the Colombian stock exchange, or any other internationally reputed exchange, nor (ii) non-resident entities when 80% or more of its revenue is sourced in the country where the entity is domiciled.

Tax havens

One of the following criteria must be complied with to determine if a jurisdiction must be deemed as non-cooperative or as a place of null or minimum taxation:

- Inexistence of taxation or existence of nominal taxation under the nominal rate used in Colombia.
- Absence of an effective exchange of information or existence rules or administrative practices hindering it.
- Lack of transparency on a legislative, administrative, or regulatory level.
- Inexistence of substantive local presence, development of a real activity, or economic substance.

In addition to the four bullets listed above, there is an extra requisite to define preferential tax regimes, which refers to jurisdictions that ring-fence their benefits for their residents and offer them only to non-resident entities or individuals. If two out of these five rules are met, the jurisdiction under analysis will be deemed as a preferential tax regime.

Aside from these criteria, the Colombian government is enabled to use the accepted international criteria in this matter.

In accordance with the above, the Colombian government will be entitled to adopt a tax haven list; such a list exists currently and can be updated from time to time.

Any payment or accrual, regardless of its nature, that constitutes taxable income for a beneficiary that is deemed as resident, established, located, or functioning in a tax haven jurisdiction is subject to a 33% WHT.

Transactions with entities that are tax haven residents are subject to the transfer pricing regime. As a result, Colombian taxpayers must file a transfer pricing report and a transfer pricing informative return for such transactions, regardless of whether or not the entity's equity or gross income is lower than the threshold established by Colombian law for applying such compliance obligations.

In addition, if the transaction occurs with a related party, the resident taxpayer is required to prepare and submit an additional supporting study, proving the details of the functions performed, along with any assets used or risks assumed, and the full costs and expenses incurred by the tax haven resident while rendering the service or in the overall conduct of the activity to which the deduction relates.

Other taxes

Value-added tax (VAT)

VAT is applicable in the following cases:

- Sale of movable or immovable assets, except those expressly excluded.

- Sale or assignment of rights upon intangible assets, related exclusively with industrial property.
- Provision of services in Colombia or from abroad (if the beneficiary is located in Colombia), unless there is an exception available.
- Import of assets or goods that have not been expressly excluded.
- Operation, circulation, or sale of games of chance or gambling, except the lotteries or chance games operated online.

This tax is not applicable to the sale of fixed assets unless they are included in the exceptions provided for immovable goods of residential use, vehicles and other fixed assets to be sold on a regular basis on behalf of third parties, and aeroplanes.

Services provided from abroad will be taxed through a reverse-charge mechanism, hence the beneficiary of the service will be liable to file the corresponding return and pay the tax before the Colombian Tax Authority if the beneficiary is registered for VAT. Otherwise, as the law is currently written, no VAT can be effectively collected and remitted.

Nevertheless, the latest Colombian tax reform, Law 1819 of 2016, established that the Colombian Tax Office might establish that non-resident service providers rendering services from abroad must register for VAT purposes from 1 July 2018 when they sell taxable services to customers who are not registered for VAT purposes. Registration for VAT purposes does not necessarily mean the triggering of a PE. No regulation has been enacted yet.

Additionally, there are some facts that are considered as a sale, which are the following:

- All acts implying the transference of domain, freely or onerously, of movable or immovable assets and intangible assets related with industrial property.
- Withdrawing movable or immovable assets from the inventory in order to use them or to use them to improve fixed assets recognised by the taxpayer within its equity.
- Incorporation of movable or immovable goods, incorporation of non-taxed services, or transformation of taxed and untaxed goods, when those have been created, built, elaborated, or processed by the same entity or individual performing the incorporation or transformation.

The Colombian VAT is based on a credit-debit system throughout the entire chain of a business. However, certain products are only taxed at the manufacturer level (one-phase VAT). For purposes of VAT calculation, the VAT payer may credit the VAT (input) paid to vendors (certain limitations apply) against any VAT (output) collected from customers.

VAT rates

The general VAT rate is 19%. However, certain services and goods are taxed at 5% and 0%.

The following are the most significant goods and services taxed at 5%:

- Corn for industrial use and other grains (look for the list of Section 185 of Law 1819 of 2016).
- Raw oil from palm trees, sunflowers, palm trees almond, soy, corn, among others.

- Vegetal material, waste or residues, sub-products, and pellets used for nurturing animals.
- Agricultural equipment pertaining to the sub tariff 82.01.
- Electric or hybrid vehicles destined for diverse uses (further consideration must be given towards the list of Section 185 of Law 1819 of 2016).

The following are the most significant goods and services taxed at 0%:

- Meat, fresh eggs, and dairy products.
- Vegetal or animal biofuel destined to be used in diesel engines nationally produced to be mixed with *Acéite Combustible para Motor* (ACPM or motor oil).
- Services to be exported (some requirements are needed).
- Internet services for low to mid-income residential customers.
- Manufactured goods to be exported.
- Tourism services to be supplied to non-resident individuals.

VAT exemptions

Under current law, there are VAT exemptions available for the following items, among others:

- Equipment and materials for the construction, installation, assembly, and operation of environmental monitoring and control systems.
- Imports of raw materials and supplies made under the so-called 'Vallejo Plan' for further processing and incorporation into products that are to be subsequently exported (*see the Tax credits and incentives section for more information on the Vallejo Plan*).
- Temporary importation of heavy machinery and equipment for basic industries (i.e. mining, hydrocarbons, heavy chemistry, the iron and steel industry, metallurgy, power generation and transmission, and the water industry).
- Importation of machinery and equipment, which is not produced in the country, for recycling and processing of waste and refuse.
- Regular imports by major exporters of industrial equipment, which is not produced in the country, for the transformation of raw material.
- Freight transportation.
- Public transportation of passengers in the national territory by water or land.
- Transportation of gas and hydrocarbons.
- Interest and other financial income from credit operations.
- Public utilities.

Withholding VAT

VAT withholding on the purchase of goods and services for most domestic transactions is 15% of the tax due (effective rate 2.85%).

A non-resident supplier of VAT-subject services does not require VAT registration. Services provided from abroad will be taxed through a reverse-charge mechanism (*see above*).

VAT compliance

Filing frequency depends on taxpayer's annual gross revenue as of 31 December of the previous taxable year. For businesses with annual revenue equal to or higher than 92,000 TVU (approximately COP 3 billion), the frequency is bimonthly. If annual revenue is not in excess of TVU 92,000, the filing frequency is every four months.

No VAT filings are required for periods where no inputs or outputs exist.

Additionally, the tax reform of 2016 allows enterprises, branches, or businesses where the main activity is the exploration of hydrocarbons to file a VAT return from the moment in which the enterprise initiates its exploration activity in order to recognise the input VAT paid in acquisition or import of goods and services to be invested in the exploration phase and to be taken as part of the cost of development of their amortisable assets or investments in offshore projects. The balances in favour generated via VAT return during the exploration phases can be claimed during the next year of its generation.

VAT credit

VAT paid to vendors is creditable even if paid at rates higher than those at which taxable sales are made. Where a receivable arises above that credit, a refund will be available upon request, subject to certain circumstances (e.g. zero-rate sales or taxed sales).

Input VAT is to be creditable over eight months, subject to applicable filing frequency.

Deduction of VAT paid on capital assets

Deduction of the VAT paid in the acquisition or importation of capital assets, which are taxed at the general VAT rate of 19%, is now available (Section 67 of the Colombian Tax Code).

This benefit may not be used concurrently with Section 258-2 of the Colombian Tax Code (VAT credit in the acquisition or importation of heavy machinery for basic industries, such as mining, hydrocarbons, generation, and transmission of electric energy, among others).

Consumption tax

A national consumption tax is levied on the following select services and goods:

- Mobile phone services at 4%.
- Certain vehicles, aircraft, and other goods at 8% or at 16%.
- Restaurant and cafeteria services at 8%.

Consumption tax cannot be credited against VAT. Consequently, the tax will be treated as a higher cost of the acquired asset or product and will be treated as a deductible cost for income tax purposes.

Customs duties

Imports, according to customs rules, consist of the entry of goods to the ’national customs territory’ from the rest of the world, or from an FTZ, with the purpose of remaining permanently or temporarily in it for the achievement of a specific purpose.

As a general rule, the importation processes before the Colombian Internal Revenue and Customs Service (DIAN) can be carried out only by users registered in the Customs Information System, either as Customs Agencies (previously called Customs Intermediation Companies) or Permanent Customs Users (UAPs). The latter may file their customs declarations.

According to the Harmonized System of Designation and Coding of Goods approved by the World Trade Organization (WTO), imported goods are classified into subentries composed of six digits. Also, two digits are added, which are for exclusive use of the Andean Community (CAN), and two final digits, which correspond to the digits for use of Colombia. The customs subentry or harmonized tariff schedule (HTS) code, which is the ten-digit result, is exposed in the Colombian Customs Tariff, which is governed by Decree 4927 of 2011, which also reflects the applicable tariff of each duty. VAT, which is also part of the customs duties, is regulated in the Colombian Tax Code.

The general VAT rate for the importation of goods is 19%, and the customs duties range between 0% and 20%.

Excise taxes

There are some excise taxes for the consumption of beer and its derivatives, wine, liquor and its derivatives, and cigarettes and similar products.

Tax rates are defined by law, although the tax is collected by regional authorities:

- Liquor: Between 20% and 40%.
- Beer and similar: Between 20% and 48%.
- Cigarettes and tobacco: 55%.

Property tax

The property tax is a municipal tax that is imposed annually on real estate property located in urban, suburban, or rural areas. It is levied on both improved and unimproved real estate; consequently, the taxpayers of this tax are the owners or holders of the real estate property.

The taxable base of this tax is the current cadastral value of the property, as adjusted for inflation. In some cities, such as Bogotá, the taxable base is the value of the property as appraised by the taxpayer directly.

Property tax rates depend upon the nature and usage of the property, and generally range between 0.5% and 1.2%.

This tax is fully deductible for CIT purposes, provided the same has a causal nexus with the income-producing activity of the taxpayer (e.g. where the tax is paid on rental property).

Stamp tax

The stamp tax rate is 0%.

Capital gains tax

The capital gains tax rate is 10%.

Financial transactions tax

The financial transactions tax is a permanent tax on financial transactions, the collection of which is the responsibility of regulated financial institutions and the Central Bank (*Banco de la República*).

The tax rate is 0.4%, and the taxable event is the carrying out of financial transactions that involve the disposal of resources deposited in checking or savings accounts as well as in deposit accounts with *Banco de la República* and the issuance of cashier's checks.

50% of the total tax paid is deductible for CIT purposes, regardless of whether or not the transactions have a causal nexus with the income-producing activity of the taxpayer.

The law establishes a series of operations and transactions that are exempted from this tax.

Payroll taxes and social security contributions

There are three major payroll taxes and contributions.

- General pensions system.
- Health social security system.
- General system of professional risks.

The basis for contributions is determined by the monthly salary (excluding non-salary items) earned by the employee, which may not be, for ordinary salaried employees, less than the minimum legal monthly salary (COP 781,242 in FY 2018) and may not exceed 25 minimum legal monthly salaries (COP 19,531,050 in FY 2018).

For employees who earn an integral salary, the basis for pension contributions will be the lower of 25 minimum legal monthly salaries or 70% of such integral salary.

Amounts of contributions

In the two regimes (public and private), the amounts of contributions are currently 28.5% of the monthly salary.

Out of this percentage, 75% (approximately 20.5% of the monthly salary) must be borne by the employer and 25% (approximately 8% of the monthly salary) must be borne by the employee.

However, employees who earn more than four minimum legal monthly salaries must contribute an additional 1%, which will be destined to the pension solidarity fund, created by law to cover the risks of workers with scarce resources. Also, employees who earn more than 16 minimum monthly salaries must contribute an additional percentage (between 0.2% and 1%), depending on the amount of salary received.

For professional risks (*Aportes de Riesgos Profesionales*), the employer must pay a contribution ranging from 0.522% to 6.96% of the monthly salary, which is an insurance that covers risks of labour-related illnesses or accidents, permanent disability, death, and incapacity also derived from the employee's activity.

In addition, for employees with salaries higher than ten minimum monthly wages, employers must pay a payroll tax of 9% on salary items only, the basis of which is 100% for ordinary salaried employees and 70% for integral salaried employees.

Plastic bags tax

The triggering event for the plastic bags tax is the use of plastic bags, and the collections must be made by the commercial establishments selling the goods or products to be carried in the bags. During 2018, each plastic bag will cost COP 30, and this rate will increase to COP 40 in 2019 and COP 50 in 2020.

This tax cannot be treated as a cost, deduction, or credit for any other tax.

Medicinal cannabis tax

Medicinal cannabis tax is applicable to the sale, freely or onerously, of transformed products based on psychoactive or non-psychoactive cannabis. The rate to be applied is 16%, and this tax cannot be credited against VAT.

Industry and trade tax

The industry and trade tax is a municipal tax that is imposed on revenue obtained from the exercise of industrial, commercial, or service activities in any Colombian municipal jurisdiction. It can be viewed as a special form of a turnover tax.

The industry and trade tax rates are determined by each municipality, and, as a rule, they range between 0.2% and 1%. All of this tax can be deducted for CIT purposes when it is effectively accrued and as long as it is paid before the submission of the income tax return.

Branch income

Branch income is taxed at 33%. Additional income tax surcharge is applicable for FY 2018 at a rate of 4% when the taxpayer’s net taxable income is equal to or higher than COP 800 million.

The branch taxable base is limited to domestic income.

Branches are required to prepare an attribution study (in addition to transfer pricing compliance requirements) with a functional and technical analysis of the assets, liabilities, capital, risks, income, cost, and expenses attributable to its business in Colombia.

In addition, the branch must, for tax purposes, prepare separate accounts for purposes of the attribution of income and capital gains.

Branch profit distribution is categorised as a dividend; consequently, if profits are taxed at the branch level, only 5% dividend tax is applicable. If not, 35% and 5% rates are applicable upon dividend distribution. The above-mentioned treatment could be changed if treaty relief is available (to be reviewed on a case-by-case basis).

Income determination

Inventory valuation

The value of inventories, which includes all expenses and direct and indirect charges necessary to put an item in a position to use or sell, must be determined using one of the methods allowed under IFRS rules. For goods of a similar nature, the allowed methods are first in first out (FIFO) or weighted average. For inventories of diverse natures or usages, a different methodology can be used, as long as such has a recognised technical value.

Capital gains

Capital gains are taxed separately from income. *See Capital gains tax in the Other taxes section for more information*.

Dividend income

According to Law 1819 of 2016, shareholders of Colombian companies (except other Colombian resident companies) are subject to a dividend tax.

From FY 2017 onwards, dividend distribution is taxed; this means that only dividends paid out of profits obtained in FY 2017 onwards should be subject to the dividend tax.

This tax is applied regardless of the profits being taxed or not at the distributing company level, and the rates differ depending on the residence of the beneficiary, as follows:

For Colombian resident beneficiaries

A 0% to 10% rate is applicable if the dividend is distributed out of taxed or untaxed profits. The distribution will be taxed to a greater extent if the dividend was paid out from non-taxed profits, as the Colombian beneficiary will assume an income tax withholding of 35%, which will be applied before the dividend tax rate.

The before-mentioned treatment could be changed if treaty relief is available (to be reviewed on a case-by-case basis).

For non-resident beneficiaries

A 5% rate is applicable if the dividend is distributed out of taxed or untaxed profits. On the other hand, the applicable rate for dividends distributed out of non-taxed profits is 35%, which will be applied before the dividend tax rate.

The before-mentioned treatment could be changed if treaty relief is available (to be reviewed on a case-by-case basis).

Interest income

Interest income derived from activities in Colombia is considered part of the CIT base for Colombian entities; however, if interest is paid or accrued to a non-resident that is not compelled to file CIT in Colombia, a WHT is accrued over the payment or deposit at a rate of 15%. Note that there are some special conditions derived from double tax treaties (DTTs) that may decrease the WHT rate.

An exemption is in place for principal, interest, and commissions related to lending, insurance, re-insurance, and other finance trade by governmental financial entities for countries with which cooperation agreements have been executed over these areas.

A reduced 5% WHT rate is available for interest income earned by non-residents on loans or bond-like instruments with terms of eight years or longer, the proceeds of which are used for certain government/private-run infrastructure projects.

Interest on government external debt is exempted from Colombian taxes. It is not clear whether this exemption will remain after FY 2018 since the wording on exempt income rules established that as from that year the only exempt income accepted is indicated in Section 235-2 of the Colombian Tax Code and government external debt interest is included in Section 218 of the Colombian Tax Code.

Royalty income

Royalties paid in favour of a Colombian entity are subject to taxes in Colombia; consequently, such royalty payments are part of the CIT base. If royalties are paid in favour of a non-resident (i.e. in favour of an entity that is not compelled to file CIT in Colombia), WHT is generally accrued over the payment or deposit at a rate of 15%, except in the case of software licensing, which will be taxed at a 33% rate upon 80% of the total royalty payment.

Certain DTTs offer limited relief for the WHT on royalties (e.g. 10%).

Foreign income

The following cases, among others, qualify as foreign-source income:

- Income from certain loans, such as short-term loans emerging from import of goods or those disbursed to Colombian financial entities. Additionally, the expense derived from this concept will be 100% deductible.
- Income from the sale of goods stored in certain logistic spots aimed exclusively for international distribution.
- Income derived from technical services of repair and maintenance of equipment carried out abroad.
- Income arising from air and sea international transport rendered by Colombian-resident companies.

It should be noted that income triggered by other technical services, as well as consulting services, technical assistance, and administrative services rendered by a related party in the last case, will be regarded as Colombian-source income, regardless if rendered in Colombia or abroad, and subject to a 15% WHT.

Deductions

In Colombia, the customary costs and expenses of a business are generally acceptable as deductible expenditure for CIT purposes, provided they are necessary, reasonable, and have been realised during the relevant tax year under the accrual method of accounting. Examples of common (and not so common) deductions include the items below.

Depreciation

Assets held during 2016 and previous years

Assets acquired and reported as of 31 December 2016 will be depreciated following the fiscally accepted methodologies for 2016 and previous years. In regard to those assets, the normal estimated useful lives are as follows:

Asset	Useful life (years)
Buildings and pipelines	20
Machinery and equipment, office furniture, and fixtures	10
Vehicles and computer equipment	5

The acceptable methods for depreciation are:

- Straight-line: The straight-line method is the easiest and most commonly used method of depreciation by companies; it is calculated by dividing the value of the asset by the asset's useful life.
- Declining-balance: This method takes into consideration an accelerated rate of depreciation and is useful for those assets in which a higher value is lost during the beginning years of usage. Under the declining-balance tax depreciation method, in no case will a residual value lower than 10% of the asset's cost be allowed nor will accelerated depreciation based on additional shifts be deductible.
- Any other method of recognised value in accordance with the opinion of the tax authorities.

Depreciation rates can be increased by 25% for each additional eight-hour shift of asset use (and *pro rata* for fractions thereof). When tax depreciation exceeds book depreciation, the taxpayer is required to establish a reserve equivalent to 70% of the difference. Recapture of depreciation on the sale of depreciated property is taxable for CIT.

Assets acquired during 2017 onwards

For assets acquired after 31 December 2016, IFRS rules apply. In accordance, such assets will be depreciated in consideration with the effective benefits that are expected to be obtained. Under IFRS rules, equipment will not only be seen as a whole; instead, each part of it could be recognised as unique, and its depreciation may vary as well.

Note that for fiscal purposes, both regulations (depreciation for 2016 and IFRS) will be valid at the same time depending on whether the asset was acquired in FY 2016 or FY 2017 onwards. Therefore, depreciation outstanding balances of fixed assets held as of 31 December 2016 must be depreciated during the lifespan of the asset using one of the accounting methodologies applicable before the tax bill enactment (*please see Assets held during 2016 and previous years above*).

For assets acquired from 2017 onwards, the depreciation rules under IFRS are accepted. For income tax purposes, taxpayers obligated to have accounting books are allowed to deduct the reasonable depreciation quantities recognised for assets used in businesses or activities yielding income during the taxable period. Nevertheless, the deduction for depreciation of assets is limited to the following percentages:

Depreciable assets	Annual fiscal rate for depreciation (%)
Constructions and buildings	2.22
Pipelines, plants, and networks	2.50
Communication routes	2.50
Fleet and airborne equipment	3.33
Fleet and iron equipment	5.00
Fleet and fluvial equipment	6.67
Weapon and surveillance equipment	10.00
Electrical equipment	10.00
Fleet and terrestrial transport equipment	10.00
Machinery and equipment	10.00
Movable goods and belongings	10.00
Scientific medical equipment	12.50
Bottles or recipients, packages, and tools	20.00
Computer equipment or hardware	20.00
Data processing network	20.00

Depreciable assets	Annual fiscal rate for depreciation (%)
Communication equipment	20.00

Note that depreciation rates can be increased by 25% for each additional 16 hour shift of asset use.

Amortisation of intangible assets

As a general rule, taxpayers can amortise, for CIT purposes, the cost of any acquired intangible asset over a period of five years using the straight-line method. The factor allowed per year as deductible is 20% of the fiscal cost.

Amortisation is available for intangible assets complying with the following requirements:

- The asset has a defined lifespan.
- The asset can be properly identified and measured in accordance with the accounting methodology.
- The asset acquisition generated taxable income complying with the commercial appraisal for its seller, whether Colombian resident or foreign.

Goodwill

Goodwill pending balances generated before 1 January 2017 will be deductible for CIT purposes, provided they are related to the business activity or income-producing activity. Goodwill must be amortised using the straight-line methodology within five years from 1 January 2017 onwards.

Goodwill generated from 2017 onwards will not be deductible for CIT purposes. Goodwill has been acknowledged as an intangible asset when formed or created by the enterprise. However, its tax basis will be zero.

Goodwill on share purchases

Goodwill on share purchases cannot be deducted via amortisation from 2017 onwards.

Start-up expenses

Start-up expenses are deductible for CIT purposes, provided they are necessary, reasonable, and have been realised during the relevant tax year under the accrual method of accounting.

Interest expenses

Taxpayers are generally entitled to deduct any interest paid to financial institutions or to third parties, provided certain requirements are met.

The Colombian Tax Regime has incorporated thin capitalisation rules (*see Thin capitalisation in the Group taxation section*).

Bad debt

Bad debt is deductible for CIT purposes, provided the debt is originated as a result of the development of an income-producing activity and complies with the quantities accepted by the regulation. Additionally, debts incurred between related parties, associated individuals, or between entities and its shareholders will not be allowed as deductible bad debts.

Provision of bad debt credits and provision of risk ratios generated during the taxable year by entities subject to surveillance of the Financial Superintendence can be deducted for CIT purposes. Additionally, provisions generated during the taxable year regarding assets received via payment in kind and leasing agreements to be developed in accordance with the current laws will be deductible.

Nevertheless, no deduction will be allowed for bad debt if:

- they exceed the limits required by law and the corresponding regulation in regard to entities subject to inspection and surveillance of the Financial Superintendence, or
- bad debt provisions were created willingly, even if suggested by the Financial Superintendence. Bear in mind that these provisions are mandatory for financial institutions.

Charitable contributions

Donations and charitable expenses are now creditable instead of deductible. To allow the credit, the taxpayer must be able to prove that the donation or charitable expense was made to certain institutions dedicated to development of health, education, culture, religion, sports, scientific and technological research, ecology and the protection of the environment, or to social development programs of general interest.

Expenses incurred abroad

As a general rule, the deduction of expenses incurred abroad for yielding national-source income is limited to 15% of the taxpayer's net income, when such expenses were not subject to WHT. The following exceptions are applicable:

- Payments where the WHT is mandatory and was applied.
- Expenses generating foreign-source income in accordance with Section 25 of the Colombian Tax Code.
- Payments or accruals performed in the acquisition of movable goods.
- Payments or accruals performed complying with a legal burden, such as payments for custom certification services.
- Interests upon credits granted to Colombian resident taxpayers by credit multilateral organisations, which act of establishment has been approved by Colombia, remains in force, and an income tax exception has been granted for the multilateral organisation.

Fines and penalties

Fines and penalties are not deductible for CIT purposes.

Taxes

It is important to mention that the current tax regulations state the following as the only taxes that can be claimed as a deductible expense:

- 100% of the industry and trade tax.
- 50% of the financial transactions tax.
- 100% of the property tax.
- The VAT that cannot be treated as output.
- Some local stamp taxes.

Special deductible items

Colombian income tax laws have established certain special deductible items, which include the following:

- 100% of acquisition costs are available as a tax amortisation or depreciation base.
- 100% of the investments made in certain scientific and/or technological projects or in professional training projects of governmental, public, or private institutions of higher education are deductible. Additionally, these taxpayers will be allowed to credit 25% of the investment against income tax to be paid in the period in which the investment took place.
- 25% of the investments made for the control and improvement of the environment are creditable.

Net operating losses

Net tax losses generated from 2017 onwards can be carried forward within the following 12-year period. Recovery of tax loss is uncertain for long-time projects.

Net tax losses generated through the end of 2016 and previous years can be carried forward without limitation. The value of such losses must be adjusted for inflation as of 31 December 2016, as no further adjustments are allowed.

In order to find out the total value of losses generated before 31 December 2016 that can be carried forward, a simple calculation must be made. In this calculation, CREE tax losses and CIT losses will be merged to define the final value to be carried forward (Section 123 of Law 1819 of 2016 explains further considerations in this regard).

Payments to foreign related parties

Royalties and similar charges

Royalties and the costs of exploitation or acquisition of all kinds of intangible property that are charged by foreign related parties are allowable as CIT deduction, provided that the corresponding WHT is collected at generally 15% (10% in the case of most DTTs). Other types of payments are subject to the general rules for expenses incurred abroad.

Royalties recognised to non-resident (or FTZ-located) related parties are not deductible if connected with an intangible created locally. Additionally, royalties paid for finished products are non-deductible.

Management overhead expenses

Management overhead expenses paid to a foreign related party (e.g. the parent company) are deductible, provided they meet the arm's-length test under transfer pricing regulations and provided the management services are duly substantiated and are specifically related to the income-producing activity of the local subsidiary that pays them. These expenses must also be carefully documented such that the local subsidiary can provide evidence to the authority of the fact that they are specifically related to its Colombian operations (i.e. to the planning and direction of the operations, the setting and implementation of management controls, the measurement of progress made toward specific business goals, the related financial results, etc.). Where these services are supplied outside or inside Colombia, a 15% WHT is also required to ensure deductibility.

Interest

Interest and related financial costs (including foreign exchange losses) paid to foreign related parties are deductible, provided they meet the arm's-length test under transfer pricing regulations and the thin capitalisation rules (*see the Group taxation section*). Furthermore, interest and the related financial costs paid on short-term financing relating to imports of merchandise and raw materials directly supplied by foreign related parties are also deductible for CIT purposes. Interest paid or accrued to a non-resident triggers WHT over the payment or accrual at a rate of 15%.

Financial and non-financial institutions registered with the Colombian Central Bank are permitted to extend loans into Colombia. *For further information, see Interest income in the Income determination section*.

Group taxation

Group taxation or group consolidation is not allowed for CIT purposes in Colombia.

Transfer pricing

In Colombia, transfer pricing rules are applicable to the transactions performed by local taxpayers with foreign related parties. Thus, for CIT purposes, Colombian taxpayers must determine their income, costs, expenses, assets, and liabilities on the basis of prices and profit margins used in comparable transactions entered into with or between independent or unrelated parties.

In general terms, the rules related to comparability criteria, supporting documents, and advanced pricing agreements (APAs) follow OECD transfer pricing standards. However, they introduce a wide definition of 'related companies' for transfer pricing purposes, including subordination and individual or joint control exercised by a foreign parent company or by individuals located in Colombia or abroad.

Transactions with foreign non-domiciled entities located in non-cooperative jurisdictions or places of null or minimum taxation (known also as 'tax havens') are subject to transfer pricing rules (*see Tax havens in the Corporate residence section*).

If (i) the gross equity (assets) of the local taxpayer on 31 December of each year is equal to or higher than the equivalent to TVU 100,000 (COP 3,315,900,000 for FY 2018) or (ii) the gross income obtained by the local taxpayer in a given year is equal to or higher than the equivalent to TVU 61,000 (COP 2,022,699,000 for FY 2018), it shall be required to prepare transfer pricing supporting documents (i.e. a transfer pricing study) and to file with the tax authority an informative return in connection with the transactions performed, during the corresponding year, with the foreign related parties.

If the local taxpayer does not file the transfer pricing return, there will be a penalty of 4% of the total value of operations subject to the transfer pricing regime developed during the taxable period, up to TVU 20,000 (COP 663,180,000 for FY 2018). There are other applicable penalties depending on the nature of the omission; all penalties impose costly burdens for the taxpayer.

Country-by-country (CbC) reporting

The CbC report contains information relative to the global allocation of income and taxes paid for a multinational group (MG), with certain indicators relative to its economic activity on a global scale.

It is an obligation that has to be submitted by the:

- parent company of an MG:
  - resident in Colombia
  - with foreign related parties or PEs abroad
  - not be subsidiaries
  - that consolidates financial statements, and
  - had income of the previous year of TVU 81,000,000 (approximately COP 2.7 trillion in FY 2018)
- the company designated by the Main House residing at the outside, or
- the Main House residing at the outside where:
  - the Main House owns 20% or more of the MG's consolidated income
  - the Main House has not filed the CbC report
  - the group has revenues equal to or greater than TVU 81,000,000 (approximately COP 2.7 trillion in FY 2018), and
  - if more than one MG entity complies with the requirements, it will present the report that possesses the largest equity at 31 December in Colombia.

Notification

Entity resident in Colombia belonging to the MG must inform to the DIAN if it is the controlling or designated entity. If not, the taxpayer must notify the identity and tax residence of the reporting entity.

Estimated delivery

2017: Second semester of 2018

Thin capitalisation

Thin capitalisation rules for CIT purposes are applied on a 3:1 basis to related or unrelated party debt, regardless of domestic or cross-border transactions.

Debt exceeding the ratio is any total average interest bearing debt for the year less three times the net (tax) equity as of 31 December of the preceding year.

The proportion of non-deductible interest is debt in excess of three times such net equity. That proportion is then applied to the total interest accrued or paid in the taxable year.

Thin capitalisation rules do not apply to taxpayers engaged in the factoring business.

Controlled foreign companies (CFCs)

An entity will be considered a CFC if it is controlled by a Colombian entity and also considered as a non-resident for tax purposes in Colombia.

Requirements to be considered a CFC:

- To be controlled by Colombian residents under the following terms:

  - If considered a subsidiary, according to local legislation. The considerations to be fulfilled to acknowledge a company as a subsidiary are included in the transfer pricing rules; such regulations are applicable for CFC purposes.
  - If it is a foreign economical related party, according to local legislation and transfer pricing regulations.
- The CFC has no fiscal residency in Colombia.

Investment vehicles are considered as CFCs in Colombia.

CFC rules will apply fully if the controlled entity is located in a tax haven. This consideration is set as a legal presumption.

If a CFC is proven to be controlled by Colombian tax residents, these will be obligated to comply with these rules if they directly or indirectly own shares equal to or higher than 10% of the entity's equity or its results.

Dividends, interests, rental income, gains from assets that generate passive income, technical services, etc. will be considered as passive income.

It is presumed that in case the passive income from the CFC represents 80% or more of its total income, all of the CFC income, costs, and deductions are passive income.

Tax credits and incentives

Foreign tax credit

Foreign income taxes are creditable against CIT, subject to certain limitations. Generally, the amount of the credit cannot exceed the sum of Colombian taxes imposed over the same income. DTTs provide for more comprehensive credit systems as well.

The foreign tax credit on dividend income is enhanced to include a third-tier of credit availability, subject to specific ownership requirements. A third-tier of credit means that Colombian entities can claim a tax credit not only for taxes paid by a company in which it has a direct investment, but also for taxes paid by a company in which it has an indirect investment.

The tax credit can be claimed in the year of payment or in any of the following four years.

CIT exemptions

As items of exempt income, the law has established the following:

- The principal and interest (as well as related commissions and fees) paid pursuant to public foreign debt operations.
- Income from the sale of electric power generated from wind, biomass, or agricultural waste, for a period of 15 years, provided the seller issues and negotiates Greenhouse Gas Reduction Certificates in accordance with Kyoto's Protocol and that 50% of the income obtained in the sale of the certificates is invested in social projects benefiting the region in which the generator operates.
- Income obtained from ecotourism services, for 20 years. This benefit has been repealed as of 1 January 2018 but is still in effect for those that qualified prior to 1 January 2018. The taxpayer will be subject to CIT at a 9% rate during the benefit period.

Colombia

- The gain obtained from the sale of shares registered in the Colombian stock exchange is not subject to CIT or capital gain as long as the sale does not exceed 10% of the shares in circulation of the respective company during the same taxable year.
- The gain in trading derivatives that are qualified as securities is not subject to CIT, provided that the underlying asset is stock traded in the Colombian stock exchange, indexes, or participations in funds tracking such stock.

Special CIT rate (9%)

A special CIT rate of 9% applies in the following cases:

- Income obtained from hotel services offered in new hotels that are built within 15 years counted from 2017, for a term of 30 years.
- Income obtained from hotel services offered in refurbished or enlarged hotel facilities, where the related work is started within 15 years counted from 2017, for a term of 30 years.

Special CIT rate for free trade zones (FTZs)

FTZ industrial users enjoy a special CIT rate. The FTZ industrial goods users and industrial service users pay CIT at a reduced rate of 20% on income earned from their FTZ operations. No surcharge will apply.

Note that capital gains are taxed at the standard capital gains tax rate of 10%.

Commercial users will apply the general CIT rate, which is 33%, and income tax surcharge will apply.

Reduction to the statutory CIT rate for small companies (grandfathered rules for small/medium-size companies)

Small companies (not exceeding approximately COP 3.4 trillion in total assets or 50 employees for FY 2018) are subject to CIT at the following reduced rates for five years from the moment in which they started their operation or from the moment in which they obtain taxable income:

Years	Income tax rate **
1	9% + (GT - 9%) * 0
2	9% + (GT - 9%) * 0
3	9% + (GT - 9%) * 0.25
4	9% + (GT - 9%) * 0.50
5	9% + (GT - 9%) * 0.75
6 and on	GT

** GT: General income tax tariff for fiscal year.

Tax credit on payroll fees paid

A tax credit is granted to employers hiring employees under 28 years old; women above 40 years old that have not been legally employed in the previous year; low-income workers earning less than 1.5 times the minimum monthly wage (approximately COP 1,171,863 for FY 2018); and disabled, reintegrated (from armed conflict), or displaced (as victims of armed conflict) workers, subject to certain requisites and time limitations (two to three years).

Vallejo Plan for raw materials

The Vallejo Plan (drawback) allows for the total or partial suspension of customs duties upon receipt, within the national customs territory, of specific goods destined to be totally or partially exported within a certain period of time, after having undergone transformation, manufacture, or repair, including the materials needed for these operations. As of 20 January 2017, Ruling 108 included a total of 636 new custom tariffs that can be awarded with the Vallejo Plan benefits.

Withholding taxes

The Colombian tax system provides for WHT as a general mechanism of advance tax collection. Under the law, as a general rule, all corporate entities are required to collect or withhold taxes from payments made to third parties. The WHT collection agents must collect the applicable WHT amounts, deposit the withheld amounts with the authority, file monthly WHT returns, and issue WHT certificates to the payees. The payees who are also CIT return filers credit the withheld taxes against the annual CIT liability computed on their returns.

Foreign non-resident persons are taxed on their Colombian-source income only. Generally, the full tax liability accruing on payments made to foreign non-resident persons is satisfied via the collection of the applicable WHT. The WHT rate on payments made to foreign non-resident persons for overhead, royalties, and taxable interest is 15%. On payments made for consulting, technical assistance, and technical services, the WHT rate is 15% (whether supplied inside or outside Colombia). On payments made for software licences, the WHT rate is 26.4% (33% upon 80% of the total amount to be paid). *For the WHT rate on dividends, see the description of Dividend income in the Income determination section*.

However, domestic income earned by non-resident entities that is not attributable to branches and PEs will be taxed at 33% + 4% surcharge in FY 2018, and 33% in future years. Also, for foreign individuals obtaining national-source income not subject to WHT, the general rate will be 35%.

On other types of payments that give rise to Colombian-source income, the general WHT rate is 15%, with the foreign non-resident payee being required to file a CIT return in Colombia to report the final CIT liability, at the rates mentioned before on net income (and being entitled to a refund where the final liability is less than the amount withheld at the 15% rate or being required to pay the deficit should the case be the opposite).

WHT returns do not need to be filed where there are no taxes to declare or pay.

Offsetting of WHT

WHT returns filed on a non-payment basis will be treated as not filed, except if the filer has a refundable tax credit balance equal to or higher than two times the outstanding payment. A six-month deadline applies for the taxpayer to apply the offsetting of the credit balance. Otherwise, late filing penalties will apply.

The WHT return that has been filed without full payment before the expiration of the due date to be submitted will have legal effects, as long as the total payment of the withholding is made within the two following months counted as from the due date to submission of the tax return.

Self-withholding on some exports

There is a 1% self-withholding tax on exports for the mining, oil, and gas industry. The self-withholding is creditable against the CIT liability.

WHT on interest

Interest payments made abroad on loans or cross-border leasing agreements are subject to a 15% WHT. If the loan or cross-border agreement has a term equal to or greater than eight years and it is destined to financing government/private-run infrastructure projects under the conditions set in Law 1508 of 2012, a 5% WHT is triggered.

However, lease agreements for aircraft, ships, and the like, or parts thereof, are subject to a 1% WHT.

Summary WHT chart for payments to non-Colombian entities

Type of payment	WHT rate (%)
Dividends (if paid out of untaxed earnings)	35 plus 5
Taxable interest	5 or 15
Royalties	15
Royalties on software licences	26.4
Technical assistance, consulting, and technical services	15
Other types of payments	10 or 15

DTT rates

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (3)**
Non-treaty	5/35 plus 5 (8)	5/15 (9)	15/26.4 (10)
Treaty:			
Canada	5/15	10	10
Chile	0/7/35	5/15	10
Czech Republic	5/25	0/10	10
France (4)	0/5/15	0/10	10 (6)
India	5/15	0/10	10
Mexico	0/33	5/10	10
Portugal	5/33	10	10
South Korea	0/5/15	0/10	10
Spain	0/5/35	0/10	10
Switzerland	0/15/35	0/10	10 (7)
United Arab Emirates (5)	0/5/35	0/10	10
United Kingdom (4)	0/5/15	0/10	10

Notes

1. The treaty rate depends on the participation of the shareholder in the Colombian company that distributed the dividends and some other requirements.
2. The rate depends on whether the lender is a financial entity or not.
3. If services are locally untaxed, there is no WHT; otherwise, a 10% WHT will apply.
4. Both treaties (France and the United Kingdom) will presumably apply from 2019 onwards. The internal approval phases are not completed yet.

5. The treaty (United Arab Emirates) will presumably apply from 2020 onwards. The internal approval phases are nor completed yet.
6. In the treaty with France, the definition of royalties does not include technical services and consulting services, which might be considered as business profits not subject to withholding. This consideration might be applied in other DTTs as it triggers the 'most favoured nation' clause.
7. In the treaty with Switzerland, the rental/leasing of technical equipment is considered as a royalty; however, it might, under the most favoured nation clause, be considered as a business profit based on the tax treatment provided in the DTT.
8. 5% for profits taxed at the level of the entity making the distribution. 35% + 5% for profits untaxed at the level of the entity making the distribution.
9. 15% in general or 5% for interest income earned by non-residents on loans or bond-like instruments with terms of eight years or longer, the proceeds of which are used for certain government/private-run infrastructure projects.
10. 15% in general or 26.4% for software licences.

Tax administration

Taxable period

For CIT purposes, the taxable period is the calendar year, with no exceptions being admissible.

Tax returns

CIT return filing due dates are set by the government every year. Usually, they fall in the month of April.

Payment of tax

For CIT purposes, corporate taxpayers are divided into 'large taxpayers' and 'other taxpayers'. Large taxpayers pay their estimated outstanding CIT liability (outstanding after deducting applicable WHT from the estimated final liability) in three instalments over the year in which they file their annual CIT return (usually in February, April, and June). The due date varies according to the last digits of its NIT (Number of Tax Identification).

Other taxpayers pay their estimated outstanding CIT liability in two instalments over the year in which they file their annual CIT return (usually in April and June). The due date varies according to the last digit of its NIT.

Tax audit process

The audit cycle corresponds to the taxable period, which for the case of CIT is one year.

Statute of limitations

The standard statute of limitations is three years (up from two years), from the due date or the date in which the return has been filed if extemporary.

Returns where losses are incurred will have a statute of limitations of 12 years (up from five years). An additional three years statute of limitations is applicable if losses are used in the last two years (loss used in the 11th or 12th year). Returns where losses are used will have a statute of limitations of six years.

The statute of limitations of returns filed by taxpayers subject to the transfer pricing regime will be six years from its filing due date.

The new statute of limitations (three years, six years, or more) should not impact filings made prior to the end of 2016.

Topics of focus for tax authorities

While there are no specific topics to be observed by the tax authorities when performing an audit, usually they look at the formal compliance requirements, the correct application and deductibility of cost and expenses, and the inclusion of all assets of the taxpayer.

Note that income taxpayers subject to taxation on a worldwide basis are required to present an annual return to disclose and identify any form of assets held outside Colombia.

Anti-abuse regulations

Colombian regulations establish some anti-abuse provisions, which allow the tax authority to disregard the transactions considered not to have a valid commercial or business purpose and which tend to modify, reduce, eliminate, or defer the applicable tax consequences.

Under the anti-abuse provisions, the tax authority is allowed to re-classify the nature of the transaction performed by the taxpayer and to assign the tax consequences applicable to the 'real' transaction.

There are special proceeding rules that must be applied if the Colombian Tax Authority defines that a taxpayer has incurred abusive practices. Such proceeding includes issuing an official requirement stating the reasons why the administration considers the taxpayer's practice as abusive and it will only require at least summary/slight/hint evidence. The taxpayer will have a term of three months to reply to the assessment. If the argument is not satisfactory for the administration, another official statement must be issued where the Colombian Tax Authority explains the amendments that must be made to the taxpayer returns and which is, in the authorities opinion, the 'real' transaction.

Other issues

International treaties

Colombia has entered into OECD-modelled tax conventions with Canada, Chile, Czech Republic, France, India, Mexico, Portugal, South Korea, Spain, Switzerland, the United Arab Emirates, and the United Kingdom (the treaties with France, the United Arab Emirates, and the United Kingdom are not yet in force).

Colombia has also entered into an intergovernmental agreement (IGA) for the implementation of the Foreign Account Tax Compliance Act (FATCA) with the United States. Agreements for the interchange of tax information have also been entered into with other nations.

Base Erosion and Profit Shifting (BEPS)

Action 1

Import of services rules expanded to be in scope, including all services (save for exception established by law), provided that the purchaser or beneficiary of the service is a Colombian tax resident, or has a domicile, PE, or place of economic activity in Colombia.

From 1 July 2018, purchasers of digital services should be registered before the Colombian Tax Office, enact invoices, and pay VAT. Otherwise, VAT WHT should be made by the financial institutions over the payments made with debit or credit card or another prepayment method.

Action 3

A CFC regime was introduced in the last tax reform. This regime pretends to have a tax control on the income generated by foreign entities, which are managed by one or more tax residents in Colombia, that also meet the requirements to be considered as a controlled company: (i) Is a subordinated or controlled company according to the commercial regulations and (ii) is considered a foreign related party.

The CFC applies if the Colombian tax resident owns at least a 10% participation, directly or indirectly, in the company abroad.

If a Colombian tax residents owns a CFC, it will be taxed currently on their proportionate share of the CFC's income (including passive income), costs, expenses, and deductions.

Action 5

Colombia has signed both the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA). It is intended that automatic exchange of tax information in Colombia began in September 2017.

Also, according to Section 631-4 of the Colombian Tax Code, the Tax Office must issue a Resolution to identify the entities subject to reporting to fulfil the international commitments towards the Automatic Exchange of Information (AEOI) agreements currently in force. Resolution 119 of 2015 set the requirements to be met by the local financial institutions for AEOI purposes.

Actions 8 to 10

Colombian transfer pricing rules are based on OECD Transfer Pricing Guidelines. In the Colombian Tax Code, the following were introduced: (i) rules regarding transactions re-characterisation (Section 260-4), and (ii) best method rule (comparable uncontrolled price or CUP) for commodities and raw materials (Section 260-3 (1)). No further changes are foreseeable in the future.

Action 13

Transfer pricing informative return: If caps are exceeded, all transactions (no materiality applicable) are subject to disclosure.

Master File: Mandatory if caps are exceeded, it follows the suggested contents issue by the OECD and is generally prepared by the ultimate parent company. At the date of this summary, it is estimated that it may be filed in English; however, if required by the tax authority, an official translations should be provided within the following 20 working days of said request.

Local File: There is an obligation to prepare and file the Local File for transactions per type of transaction (not on a stand-alone basis) exceeding approximately 494,000 United States dollars (USD) per type of transaction.

Colombia

Country-by-country (CbC) report: Not applicable for subsidiaries; however, it will be require to present a form disclosing if parent is obligated to CbC reporting in its domicile country (*see Country-by-country [CbC] reporting in the Group taxation section*).

Multilateral Instrument (MLI)

In July 2017, Colombia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) aimed to amend its DTTs aligned to the BEPS recommendations. The MLI will be enforceable when the internal procedures has been completed by the Colombian Congress, Constitutional Court, and the government (expected in FY 2020).

Colombia included as Covered Tax Agreements whole of the DTTs in force and the DTTs signed with France.

Common Reporting Standard (CRS)

The CRS is the standard for AEOI developed by the OECD.

CRS is a very broad reporting regime that relies extensively on the intergovernmental exchange used for the implementation of FATCA.

Similar to FATCA, the CRS requires financial institutions resident in participating jurisdictions to implement due diligence processes to document and identify accounts that must be reported according to the CRS, as well as establish a wide-ranging reporting process.

Colombia has signed both the MAC and the MCAA. Automatic exchange of tax information in Colombia started in September 2017.

Choice of business entity

The most common type of company used in Colombia is the simplified stock company or simplified corporation, known as an SAS (*sociedad por acciones simplificada*). Besides SAS, foreign investors also use branch offices of an offshore entity as their investment vehicles in Colombia.

As a general rule, from a high-level perspective, there are no major differences between a branch office and a subsidiary (such as an SAS) as far as Colombian taxation is concerned.

All the taxes discussed in this summary would apply equally to a branch operation or a subsidiary operation. However, from a commercial perspective, and specifically from the perspective of corporate liability, operating through a branch office means that the head office is exposed to direct liability for all the obligations of the branch, tax obligations included. Operating through a subsidiary means that only the subsidiary is liable for its obligations as a general rule, that is to say that the shareholders are not liable for company obligations. Of corporations, the advisable choice would be an SAS, which is very flexible in nature, easy to incorporate, and can be held by one single shareholder (regular corporations require a minimum of five shareholders).

Mergers/De-mergers

Mergers and de-mergers are tax free, subject to limitations as follows:

- The surviving or the beneficiary entity must be a resident.

- De-mergers must be over units of business/going concern (substance requirement).
- If merger/de-merger participants are unrelated, shareholders owning at least 75% (85% where participants are related) must receive, as a result, shares proportional in value to what they had prior to the merger or de-merger.
- Shareholders must receive at least 90% of value in shares (99% if participants are related).
- Shareholders selling shares received within two years of the merger/de-merger must increase any income tax due on the sale by 30%.

Mergers/de-mergers failing to meet these standards will be treated as taxable dispositions. Where participants are not residents, the tax-free status is available if assets held in Colombia represent 20% or less of the worldwide aggregate of assets of the group.

Congo, Democratic Republic of the

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Significant developments

Finance Law for 2018

The Finance Law for 2018 entered into force as of 1 January 2018.

The main changes enacted are as follows:

Major overhaul of the concept of permanent or fixed establishment

The Finance Act broadens the scope of permanent or fixed establishments by taking inspiration from Organisation for Economic Co-operation and Development (OECD) models, notably by specifying that mines, oil or gas wells, quarries, or any other place of exploration and extraction of natural resources constitute physical facilities considered to be permanent or fixed establishments.

In addition, the following are now considered to have a permanent establishment (PE) in the Democratic Republic of the Congo (DRC):

- Any foreign company operating in the Democratic Republic of the Congo through a person who contracts on its behalf in the usual way. The same applies if, in the absence of signing authority, that person habitually keeps in the Democratic Republic of the Congo a stock of goods on which one regularly takes goods for delivery on behalf of the foreign company.
- An insurance company of a foreign country, except in case of reinsurance, that receives premiums in the territory of the Democratic Republic of the Congo or insures risks that are incurred through the intermediary of a person.

However, the activities carried out by an agent enjoying an independent status acting in the ordinary course of one's activity (e.g. broker, general commissioner) do not constitute a PE.

Exemption from value-added tax (VAT) for new businesses

Import of capital goods intended for creative investments made by new companies are exempted from VAT under the conditions determined by regulation.

Mining, oil, and heavy investment companies

Exclusion of VAT exemption on importation and acquisition of goods during the exploitation phase is maintained for mining companies (including mining sub-contractors). Nevertheless, in order to avoid VAT credits, exporting mining companies, oil production companies, and companies that have made heavy investments that are in the implementation phase are allowed, as far as their local acquisitions are concerned, to be invoiced free of tax on goods and services for their operating or investment needs. A certificate must be obtained from the tax authorities for this purpose.

Withholding of VAT charged to mining companies

The Finance Act extends the withholding of VAT invoiced by public institutions to mining companies. Indeed, only VAT invoiced by public companies entirely owned by the state were previously targeted. A specific return is used.

Deduction of VAT on the purchase of petroleum products

Previously, only VAT on the following petroleum products was deductible:

- Those intended for resale by wholesalers.
- Those acquired for the production of electricity to be resold.
- Fuel used by fixed appliances as fuels in industrial companies or aircraft by airlines. From now on, this deduction is limited to 50%.

It seems that the intention of the Legislator, as mentioned in the preparatory work, was to extend this right to deduct other petroleum products. A point has therefore been added to Article 41 of the VAT Law in order to allow deduction, up to 50%, of VAT on the purchase of petroleum products for cases other than those referred to above. Nevertheless, the literal reading of this point has the opposite effect by restricting the right to deduction.

VAT electronic device planned for 1 January 2019

The measure concerning the electronic fiscal device to which taxable persons will have to register and intended for the collection of VAT data as of 2019 is maintained.

Updated Mining Code

The Law n° 18/001 dated 9 March 2018 amending the Law n° 007/2002 dated 11 July 2002 relating to the Mining Code has been published in the DRC official Gazette on 28 March 2018.

New Excise Code

On 13 March 2018, the president of the Republic promulgated the new Law pertaining to the Excise Code.

The new Excise Code extends the list of excise duty products from 14 products to 76 products as well as 4 services provided by means of signals transmitted or conveyed by telecommunications processes.

Taxes on corporate income

Corporate income tax (CIT) is paid on profits realised by a company or an individual that carries out any operational activity in the country.

The Democratic Republic of the Congo levies taxes on resident companies and individuals on a territorial basis (or source basis) of taxation. Foreign-sourced profits (e.g. dividends received from a foreign subsidiary) are thus exempt from CIT.

Non-resident companies or individuals that carry out an activity in the Democratic Republic of the Congo are taxable on profits they realise through PEs or fixed establishments that are located in the Democratic Republic of the Congo.

The CIT rate is 35% (30% for mining companies).

Minimum income tax

There is a minimum tax of 1% of the yearly turnover for companies other than micro-sized and small-sized companies (*see below for the rates for micro-sized and small-sized companies*).

The minimum tax applies to loss-making companies as well as companies with CIT of less than 1% of turnover. Companies that carry on business but realise no turnover in a concerned year are also subject to the minimum income tax as follows:

- 2.5 million Congolese francs (CDF) for large companies.
- CDF 750,000 for medium-sized companies.
- CDF 30,000 for small-sized companies.

Note that turnover includes, *inter alia*, all profits and interest received, as well as exceptional profits, in essence, any credits on the income statement that have the nature of income or gain, as well as capital gain.

Micro-sized and small-sized companies

Micro-sized companies are those whose annual turnover is less than CDF 10 million, and small-sized companies are those whose annual turnover is between CDF 10 million and CDF 80 million.

Micro-sized companies are subject to an annual lump-sum tax amounting to CDF 50,000.

Small-sized companies are subject to CIT at the following rates:

- 1% of turnover for the supply of goods.
- 2% of turnover for the supply of services.

Business termination

In the event of business termination, companies pay a lump-sum amount as follows:

- CDF 500,000 for large companies.
- CDF 250,000 for medium-sized companies.
- CDF 30,000 for small-sized companies.

Tax on rental income

Rental income related to buildings, houses, offices, premises, warehouses, etc. is administered at the level of every provincial tax authority. Gross rental income is subject to tax at a flat rate of 22% in the province of Kinshasa.

In order to secure the payment of this tax, the Tax Code has put into practice a withholding tax (WHT) system. In the province of Kinshasa, the tenant is liable to withhold 20% of the rentals paid and to remit this tax to the authority. The tax authority may challenge rentals that are not at arm's length by referring to the rental prices of similar houses.

The rent of buildings and land owned by real estate companies is subject to CIT.

Local income taxes

There are no local or provincial government direct taxes on income (except for the tax on rental income that is administered at the level of provinces).

Corporate residence

Companies incorporated in the Democratic Republic of the Congo are considered resident companies, regardless of where they are managed and controlled.

Permanent establishment (PE)

A non-resident company is deemed to have a PE in the Democratic Republic of the Congo in either of the following cases:

- It has a material place of business (e.g. head office, branch) or any other fixed or permanent installations producing revenues in the Democratic Republic of the Congo.
- Without having a material place of business, it carries out a professional activity under its own name during a period of at least six months.
- Any foreign company operating in the Democratic Republic of the Congo through a person who contracts on its behalf in the usual way. The same applies if, in the absence of signing authority, that person habitually keeps in the Democratic Republic of the Congo a stock of goods on which one regularly takes goods for delivery on behalf of the foreign company.
- An insurance company of a foreign country, except in case of reinsurance, that receives premiums in the territory of the Democratic Republic of the Congo or insures risks that are incurred through the intermediary of a person.

Other taxes

Value-added tax (VAT)

VAT rates

The VAT base includes whatever sums, amounts, goods, or services that are received as compensation for an operation; this involves subsidies as well as any other costs, taxes, rights, or any related levies, whatever their nature, excluding the VAT itself. For imports, VAT is normally charged on the customs value of the goods concerned, plus the customs duty and import-related expenses. There are two rates:

- A standard rate of 16%.
- A rate of 0% on exports and assimilated transactions.

VAT exemptions

The main exempted activities include some banking and financial services, education, medical services, charitable and social activities, and transactions that are subject to a specific taxation.

The import of wheat flour, corn, and corn flour; the local sale of bread, wheat flour, corn, and corn flour; the domestic sales of animals; and the import and sale of inputs for agriculture are also VAT-exempt.

Application to non-residents

A non-resident having no PE in the Democratic Republic of the Congo but who raises an invoice on a DRC resident is required to appoint a VAT representative who is based in the Democratic Republic of the Congo and who will be accountable for the payments and collections that rest with the non-resident supplier. Failing to appoint a representative will result in the authorities holding the DRC resident customer liable for the payment of VAT that is due by application of a reverse-charge mechanism.

Mechanisms of VAT

An entrepreneur is entitled to offset VAT paid on purchase of goods and services used for business purposes against VAT charged on sales of goods and/or services. Businesses exempted from VAT on part of their sales are, in principle, entitled to deduct VAT paid on a *pro rata* basis (i.e. the ratio between the turnover related to VATable activities and the global turnover).

No VAT credit is allowed for expenditures not necessary for business purposes, nor on some specific expenditure (e.g. except in some specific circumstances, fuel, accommodation or entertainment for directors and employees, gifts, company cars).

VAT returns must be filed by the 15th day of each month in respect of transactions made the previous month. The net amount of VAT payable must be remitted to the tax authorities together with the return. If VAT paid exceeds VAT charged, the resulting VAT credit can be carried forward.

Refund of VAT can only be requested in some very specific circumstances.

Customs duties

Customs duty on imports

Customs duty on imports is calculated on the cost, insurance, and freight (CIF) value of the goods. The customs tariff on imports is the following:

Example of goods	Customs tariff rate (%)
Chemical products	
Machine tools	5
Material for transport of merchandise	
Flour	
Aggregate	10
Petrol, diesel, kerosene	
Clothing	
Furniture	20
Cigarettes	

Imported goods are also subject to the following levies at the time of border crossing:

- VAT on imports (wheat flour, corn, and corn flour are exempt from VAT).
- For certain goods, consumption and excise duties.
- Various para-fiscal levies.

Customs regulation also allows for certain suspensive rates, such as temporary admission.

Customs duty on exports

Customs duty on exports applies to certain categories of products produced locally, which are:

- Crude coffee.
- Electric current.
- Mineral products and their concentrates.
- Mineral oils.
- Timber.
- Scrap metals.

The bond value on exports of the said goods is fixed either by ministerial decree upon suggestion of the customs administration, or in the absence of a decree, by reference to the value of the goods when they leave the Democratic Republic of the Congo.

The rates of customs duties on exports are the following:

Example of goods	Customs duty rate (%)
Coffee Electrical energy	1.0
Diamond (small-scale mining) Gold (small-scale mining)	1.5
Diamond (industrial mining) Gold (industrial mining)	3.0
Minerals (copper, nickel, lead, etc.)	5.0
Timber	6.0
Silver Platinum	10.0

Consumption and excise duties

Scope

The following goods are affected by consumption and excise duties:

- Alcohol and alcoholic drinks.
- Carbonated drinks.
- Mineral oils (petrol, oil, jet A1, diesel, etc.).
- Lubricating oil and lubricant.
- Liquid for hydraulic brakes and other liquids for hydraulic transmissions.
- Perfumes.
- Cosmetics and make-up products.
- Hair preparations.
- Soaps, organic surface-active agents, lubricating preparations, polish, and creams for footwear.
- Plastic articles.
- Rubber articles.
- Tobacco.
- Vehicles.
- Telecommunications industry’s products, etc.

Applicability and tax base

Consumption and excise duty is applicable to:

- the production in the Democratic Republic of the Congo of consumer goods subject to duty and
- the import of these products to the Democratic Republic of the Congo.

Consumption and excise duties accrue on imports, as do customs duties and VAT.

On imports, the tax base on consumption and excise duties is the raised CIF value of the customs duties, except for mineral oils, for which the tax base is the average fiscal threshold price.

Rates

The rates of consumption and excise duties vary from 5% to 80%.

Para-fiscal taxes

Various para-fiscal taxes shall be collected at the time of the import and/or export of goods in the Democratic Republic of the Congo.

The main applicable levies include the following:

- Administrative payment: 2% of the CIF value.
- Congolese Control Office (OCC) payments: 1.5% of the CIF value, plus various other administrative charges (Laboratory and analysis charges: 30 United States dollars [USD] maximum per test).
- *Office de Gestion du Fret Maritime* (OGEFREM) payment: 0.58% of the CIF value.
- Funds for the Promotion of Industry (FPI) charge: 2% of the CIF value.
- Cost of inspection from the Bureau of Inspection, Valuation, Assessment, and Control (BIVAC): 1.5% of the free on board (FOB) value.

Property tax (IF)

Scope

IF is applicable to constructions (i.e. villas, apartments, and other buildings) and land located in the Democratic Republic of the Congo.

The person subject to this tax is the owner (bearer of title deed, holding, long leasehold, mining) of the construction on 1 January of the tax year.

The following types of property are exempt from IF:

- The public administrations of states, provinces, and towns, and public businesses disposing of no other resources than those coming from budgetary grants.
- Licensed religious, scientific, or philanthropic institutions.
- Private non-profit-making organisations involved in religious, scientific, or philanthropic works and having obtained civil personality.
- Foreign states as far as embassy offices, consulates, or lodgings of diplomats or consuls are concerned (upon condition of reciprocity).

Some constructions and land are, notwithstanding, exempt from IF, notably depending on the status of their owner. From this perspective, the following are exempt from the property tax on goods:

- Constructions and land allocated by the owner exclusively for agriculture or farming, including constructions serving to prepare agricultural or farming products, on the condition that at least 80% of these derive from the farming of the property owner concerned.
- Constructions and land allocated by the owner for non-profit purposes:
  - for the execution of a public service, teaching, scientific research, the setting up of hospitals, hospices, clinics, free clinics, or other similar charitable institutions
  - for chambers of commerce having obtained civil personality, or
  - for social activity of mutual companies and professional unions (syndicates) having obtained civil personality, with the exception of locales providing accommodation, a public house, or any business.

Tax base

The tax rates vary according to the nature of the goods (villas, buildings of more than one floor, flats, and other buildings) and locality ranks.

For villas, rates are fixed per square metre of area (between USD 0.3 and USD 1.5), while for other taxable items the contribution is determined on an inclusive basis (by floor, by flat, by unused land - in Kinshasa, the rate for one floor is USD 75).

Transfer tax

The transfer of a building in the Democratic Republic of the Congo gives rise to the payment, by the purchaser, of a registration duty amounting to 3% of the building's value for a normal sale.

Stamp taxes

There are no stamp taxes in the Democratic Republic of the Congo.

Payroll taxes

The tax on wages is withheld at source by the employer.

Professional salaries tax (Impôt professionnel sur les remunerations or IPR)

Any remuneration paid by a third party, whether public or private, provided it is not part of a service contract, and remuneration paid to executive shareholders, other than those involved in joint stock companies, are subject to payroll taxes and social contributions.

These remunerations includes salaries, wages, fees, benefits that do not represent reimbursement of professional expenses, gratuities, bonuses, and all other payments, fixed or variable, whatever their qualification.

All benefits, except for housing, transport, family allowances, and medical expenses, to the extent that they are legal or reasonable, are added to remunerations.

The taxable basis of the IPR for expatriate employees must not be lesser than the equivalent minimum wage applied in their home country.

The IPR is computed by applying a progressive tax scale. The overall tax shall not exceed, in any case, 30% of the taxable income.

It should be noted that there are other applicable rates depending on the activity or the nature of the compensations paid as remuneration:

- Proportional (10%): Applicable on severance pay.
- Proportional (15%): Applicable on income of casual or temporary workers.

A rebate of 2% applies on the tax amount in terms of the number of the dependants.

Exceptional salaries tax (Impôt exceptionnel sur les rémunérations or IER)

Employers of expatriate employees are subject to a tax of 25% on the expatriates' remuneration (10% for mining companies). This amount is not deductible for corporate tax purposes, except for mining companies. This tax was established to discourage employers from hiring expatriate staff. Expatriate staff are comprised of employees from countries other than those bordering the Democratic Republic of the Congo.

Filing and payment obligations for IER are identical as for IPR. Employers are required to file a return for payroll taxes on the 15th day of the month following the payment of the salaries. An annual payroll tax return also needs to be submitted on the 15th day of the year following the year of the payment of the salaries.

Failure or default or delay in paying due taxes gives rise to:

- Tax penalties: 20% to 40% of the tax amount due.
- Tax interest: 4% per month of the tax amount due for late payment.

Social and employment contributions

Social and employment contributions are as follows:

- National insurance fund (*Institut National de Sécurité Sociale* or INSS): 3.5% for the employees' share (withheld at source by the employer) and 9% for the employer's share.
- National office for professional training (*Institut National de Préparation Professionnelle* or INPP): INPP contribution is paid only by the employer at:
  - 3% for state-owned companies and private companies with up to 50 employees.
  - 2% for private companies with 51 to 300 employees.
  - 1% for private companies with over 300 employees.
- National office of employment (*Office National de l'Emploi* or ONEM): ONEM contribution is paid only by the employer at 0.2%.

The deadline to file and pay INSS, INPP, and ONEM return is the 15th day of the month following the month where the salary has been paid. In this regard, a single return is filed.

Business tax on pension capital

The Finance Act 2016 has introduced a business tax of 10% based on pension capital. This tax applies to companies that implement a supplementary pension scheme in favour of employees of a certain category. The tax is triggered by the actual payment of the pension to the retired person and not at the time of their constitution (administrative position).

Branch income

Tax rates on branch profits are the same as on corporate profits. However, the costs incurred abroad by the head office of the branch are not deductible in the Democratic Republic of the Congo, and the branch is liable for taxation of deemed distributed profits on top of the CIT. On profits realised, a branch will pay both the 35% CIT and a 20% tax based on 50% of the net profits after deduction of CIT.

Income determination

Taxable income consists of profits from any industrial, commercial, agricultural, or real estate operations entered into by a taxpayer in the Democratic Republic of the Congo, as well as any increases in the net assets as a result of such activities and any increases derived from capital gains, either realised or not, of any nature and origin.

Inventory valuation

Since adhesion of the Democratic Republic of the Congo into the Organisation for the Harmonisation of Business Law in Africa (OHADA) law treaty effective from 12 September 2012, or as from 1 January 2015 as far as accounting matters are involved, the inventory valuation methods permitted are as follows:

- The weighted average cost method.
- Last in first out (LIFO).

Capital gains

There is no specific tax regime applicable to capital gains in DRC Tax Law.

Capital gains are included in the corporate taxable basis of the local entity benefitting from the capital gain and, as such, subject to the 35% CIT (30% for mining companies).

However, new rules have been enacted by the updated Mining Code as regards capital gain realised by non-resident entities when selling shares. Indeed, capital gain recognised at the level of the legal entity that sold shares and is deemed to be of Congolese origin to the extent that the assets of the legal person whose shares were sold are located in the Democratic Republic of Congo. The tax is deducted at source by the assignee legal person who pays it according to the terms of payment of taxes due to the Treasury.

Dividend income

Local-sourced dividends received by a local company are subject to a 20% income tax rate under standard law. Of the gross dividends received by resident companies, 90% are excluded from the CIT base, provided that such dividends have been subject to the 20% WHT.

Interest income

Local-sourced interest received by local companies is subject to the standard CIT regime.

Royalty income

The DRC Tax Law defines royalties as any kind of remuneration paid for the use, or for the concession, of a copyright on art works, scientific works, film works, brands, charts, any design or formula, or any secret process or recipe, as well as for the use of industrial, commercial, or scientific equipment and for intellectual property (IP) in any industrial, commercial, or scientific field.

The net amount of royalties is subject to WHT at the rate of 20%.

The tax base of royalties is calculated by deducting 30% from the royalties invoiced (i.e. the taxable basis will be 70% of the royalties invoiced).

Foreign income

If an income is considered as foreign-sourced, by application of the territoriality principle, it is not taxable in the Democratic Republic of the Congo.

Deductions

To arrive at taxable income, a taxpayer may deduct all costs actually incurred and which have served in the production of income of the company during the year.

Depreciation

Depreciation of fixed assets used in the company's operations may be deducted. Depreciation rates are as follows:

Nature of the good	Depreciation rate (%)
Buildings	2 to 5 (depending on the materials used)
Machinery and equipment	10
Vehicles	20 to 25 (depending on its use)
Fixtures, facilities	10

Item's nature	Useful lives adopted (years)
Building - general purpose or heavy equipment	20 to 25
Building - specific purpose	8
Computer equipment	3 to 5
Software	3 to 5
Motor vehicles	4 or 5
Furniture and fittings	8 or 10
Office equipment	10

As per the OHADA accounting law, however, assets should be depreciated as per the practice of the specific industry so as to depreciate each category of asset over the related normal expected useful life.

Goodwill

There is no specific provision relating to depreciation of goodwill in DRC Tax Law.

However, it is generally agreed that taxpayers can amortise goodwill in accordance with the linear system. The amortisation of goodwill rate is at the discretion of the taxpayer, but with the risk that the tax authorities can assess the rate otherwise.

Start-up expenses

Start-up expenses are deductible, provided they are staggered over three or four years.

Interest expenses

Interest costs on funds borrowed from third parties and invested in the company's operations are, in principle, deductible. Further to the tax authorities, the deduction, in principle, requires an effective payment.

Please note that if the borrower is a private limited company and the lender is one of its shareholders, the interests on loans paid are not deductible from the CIT basis.

Moreover, assuming the terms of the loan are at arm's length, the interest expense will be tax deductible in the Democratic Republic of the Congo provided that (i) the interest rate applied is less than the average international interbank market rate in the month the payment of the principal is made and (ii) the repayment of the principal takes place within five years from when it has been made available.

Bad debt

As a general rule, any kind of provisions (e.g. for bad debts) may not be deducted to arrive at taxable income.

However, provisions constituted by credit institutions in respect of doubtful debts can be deducted from CIT under certain conditions

Charitable contributions

Charitable contributions or donations are not deductible.

Fines and penalties

Legal or administrative fines of any nature are not deductible.

Taxes

Income taxes are not deductible.

Other significant items

The following are examples of other expenses that may be deducted to arrive at taxable income:

- Rents actually paid and rental expenses linked to buildings or parts of buildings used in the exercise of the activity and any overhead derived from their maintenance, lighting, etc.
- Overhead costs from maintenance of furniture and equipment used in connection with the company's activities.
- Wages, salaries, bonuses, and allowances of employees and workers used in the operation, as well as benefits in kind if these have been added to remunerations paid.
- Professional expenses incurred for the purpose of acquiring or maintaining income or earnings.

The following are examples of other expenses that may not be deducted to arrive at taxable income:

- Expenses of a personal nature (i.e. for private purposes), such as accommodation, school fees, leave indemnities, and any other expenses not necessarily incurred in the business.

- Expenses linked to rental properties as a landlord as well as related depreciation expenses.

Net operating losses

The Finance Act for 2016 significantly amended the rules applicable to the offsetting and carryover of business losses. Henceforth, the new wording of Article 42-1° of the legislative-order n° 69/009, dated 10 February 1969, pertaining to the scheduled income taxes:

- repeals the prior authorisation of the tax administration to the offsetting of the losses carried over, but
- limits the offsetting to 60% of the tax profits made in the tax period prior to applying the deduction of said business losses, and
- no longer fixes a time limit for carrying over business losses.

There is no carryback loss regime in the Democratic Republic of the Congo.

Payments to foreign affiliates

As a general rule, payments to foreign affiliates should be at arm's length and transfer pricing documentation must be provided.

In respect of payments made by a local company to a foreign company for services (e.g. management services, technical assistance services), such expenses are deductible, provided that:

- the services rendered can be clearly identified
- the services cannot be rendered by a local company, and
- the amount paid for the service is not overstated and is commensurate to the nature of the service itself.

Under the notion of abnormal acts of management, in addition to expenses, any form of benefits or aid granted to third parties without equivalent consideration for the company will be taxable, such as:

- Payments in the form of mark-ups or markdowns of purchases or sales.
- Payments of excessive royalties without any equivalent consideration.
- Income waivers (sales at a reduced price, free supply of services, grant of interest-free loans or loans bearing insufficient interest).
- Debt or commission waivers.
- Debt forgiveness.
- Benefits disproportionate to the service rendered.

Benefits or aids granted to companies within the same group may be deemed as normal acts of management, provided that the company shows the existence of its own interest in granting such benefits or aids. The sole general interest of the group is not sufficient to justify such practices.

Group taxation

There is no group taxation regime per the DRC tax legislation.

Transfer pricing

The following specific transfer pricing requirements are provided by the Tax Code:

- Interests on loans are not considered as deductible expenses for the borrower if the borrower is a private limited company and the lender is a shareholder.
- Where a local company is directly or indirectly controlled by a foreign company, any abnormal advantage given to the latter or related person is considered as an indirect distribution of profits and is then added back to the profits of the local company.
- In respect of payments made by a local company to a foreign company, for services (management services, technical assistance services), the Tax Code provides that such expenses may be deductible if (i) the services rendered can be clearly identified, (ii) the services cannot be rendered by a local company, and (iii) the amount paid for the service is not overstated and is commensurate to the nature of the service itself.

Finance Law 2015 imposes an obligation for companies established in the Democratic Republic of the Congo to have transfer pricing documentation on operating transactions with their affiliated companies located abroad. However, Finance Law 2015 only provides general guidelines for the information to be provided (i.e. structure of the group, selection of the most appropriate transfer pricing method).

Companies established in the Democratic Republic of the Congo that are dependent, in law or in fact, on companies or groups of companies established outside the Democratic Republic of the Congo and whose annual turnover, excluding tax, is within an amount determined by regulation shall submit either a paper or an electronic declaration containing a simplified documentation on the transfer pricing in accordance with the tax administration's template. Such declaration has to be made within six months from the deadline to file the CIT return.

Thin capitalisation

There are no thin capitalisation rules in the DRC tax legislation. However, it is provided in the Mining Code, from a general perspective, that, for the holder of a mining licence, the ratio of the funds borrowed against the amount of own funds should not exceed 75/25.

Moreover, the OHADA Treaty provides that shareholders' equity should be above half of the company's authorised share capital.

Controlled foreign companies (CFCs)

No specific provision relating to CFCs are provided for in DRC law.

Tax credits and incentives

Investment Code

The Investments Code allows for a certain number of tax, customs, and general order measures designed to favour direct investments (notably a CIT holiday during a defined investment period that would differ depending on the location of the investments). The preferential tax treatment measures of the Investments Code apply to direct investments and/or to entities that carry them out.

The regime of the Investments Code does not apply to numerous sectors, notably:

- Mining and hydrocarbon.
- Banking and insurance.
- Trade.

In order to take advantage of the provisions of the Investments Code, the following conditions must be fulfilled by the investor:

- The investor must be a Congolese legal entity.
- The investment must be at least USD 200,000.
- The investing company must comply with the rules and regulations relating to the environment.
- The investing company must undertake to train local personnel in technical and executive duties.
- The investing company must undertake to create an added value of 35% of its initial investment (within a stipulated time period to be agreed).

The application file is examined by the National Agency for the Promotion of Investments in the Democratic Republic of the Congo (ANAPI) and then sent to the Minister of Finance, who decides on the grant of the advantages foreseen in the Investments Code to the applicant, by the way of a Ministerial Order.

Mining

The Mining Code, completed by the Mining Regulations, sets out a preferential customs and fiscal regime that deviates on some important points from the standard regime.

The tax rules set up by the Mining Code are supposed to be exhaustive, exclusive (it provides for all the taxes and customs duties owed to the Treasury by eligible entities, to the exclusion of any other form of taxation), and stable. This regime applies to all holders of a mining title or career, or for which a mining title or career is established, as well as to (i) affiliated companies carrying out mining activities and (ii) sub-contractors carrying out mining activities resulting exclusively from contracts concluded with the bearer of the mining title.

Among other tax preferential features of the Mining Code, the following apply:

- A reduced CIT rate of 30%.
- Absence, under conditions, of WHT on interest paid in relation to loans denominated in foreign currency and concluded abroad.
- A reduced 10% WHT rate for dividends.
- A reduced 10% exceptional tax for expatriates' remuneration.
- A possibility to deduct some specific provisions.

The holder of a mining licence is also liable to mining royalties, computed on the basis of the amount of sales minus the cost of transport, analysis in relation to the quality control of the commercial product for sale, insurance, and cost relating to the sale transaction.

Hydrocarbons

The tax regime of oil companies is mainly provided in the production-sharing contracts as well as in the Ordinance-Law 081-013 of 2 April 1981 bearing general regulations regarding Mining and Hydrocarbon.

The tax regime of oil companies is defined by the Law 15/012, dated 1 August 2015, pertaining to the general regime of Hydrocarbon.

Foreign tax credit

No specific provision relating to foreign tax credits is provided for in DRC law.

The tax treaties for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on incomes between the Democratic Republic of the Congo and South Africa, and between the Democratic Republic of the Congo and Belgium, have been effectively implemented.

Withholding taxes

The following DRC-sourced payments are subject to a WHT in the Democratic Republic of the Congo:

- Dividends.
- Royalties.
- Interest. Note that if the interest is paid to a local company, the WHT does not apply since the interest is included in the taxable income of the company charging such interest.
- Directorship fees.
- Service fees paid to foreign individuals or entities not established in the Democratic Republic of the Congo.

WHT rate and payments

The standard rate of WHT on dividends, royalties, interest, and directorship fees is 20%, which is based on the gross amount of sums paid.

If the payee does not withhold the tax from the amount invoiced and pays the tax of 20% directly, then the tax authorities consider that the basis of the 20% tax is composed of the amount invoiced plus the amount of the tax.

Consequently, in the case that the DRC company takes in charge the corresponding WHT, the WHT rate will be 25% (20/80) and the amount of tax will not be tax-deductible.

For royalties, the WHT is charged on the net amount of the royalties paid. The tax authorities consider that the net amount of royalties is calculated by deducting 30% from the royalties invoiced (i.e. the taxable basis will be 70% of the royalties invoiced).

The rate of WHT on amounts paid as compensation for services provided by foreign individuals/entities is 14%, which is based on the gross amount of sums paid.

The tax treaties for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on incomes between the Democratic Republic of the Congo and South Africa, and between the Democratic Republic of the Congo and Belgium, have been effectively implemented.

These treaties provide for reduced rates for dividends, interest, and royalties. It is also generally agreed that, by application of treaty, services furnished by providers being tax resident of those countries and being not established in the Democratic Republic of the Congo should not be subject to the 14% services fees WHT.

The table below provides a summary of different WHT rates:

	WHT (%)			
Recipient	Dividends (1)	Interest	Royalties	Services
Resident	10/20	N/A	20	N/A
Non-resident (not established)	10/20	0/20 (3)	20	14
Treaty:				
Belgium	10/15	0/10 (5)	10	N/A
South Africa	5/15 (2)	0/10	10	0/14 (4)

Notes

1. A reduced 10% WHT rate for dividends is applied in the mining sector.
2. The WHT charged shall not exceed 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
3. Interest paid by mining companies for loans borrowed in foreign currency abroad are exempt from WHT.
4. The term 'permanent establishment' likewise encompasses: the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the contracting state for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned.
5. As for the Treaty with Belgium, it is provided that interests shall be exempted from tax in the state of origin in the case of interests on commercial receivables, as well as interest on receivables or loans not represented by bearer securities.

Tax administration

Taxable period

The taxable period is 1 January to 31 December. This duration can be less than 12 months for the first accounting period beginning in the course of the first half of the calendar year. The same duration can also be more than 12 months for the first accounting period beginning in the course of the second half of the calendar year.

Tax returns

The yearly CIT return is due by 30 April of the following year.

Payment of tax

Final payment of CIT is required when submitting the yearly tax return, which is due by 30 April of the following year.

CIT is payable in local currency through a DRC bank account by a wire transfer to the bank account of the Public Treasury. Consequently, in order to operate in the Democratic Republic of the Congo, the opening of a bank account in a DRC bank is mandatory. Moreover, the tax authorities require the bank account number of the applicant in order to grant a taxpayer number.

The collection of CIT is performed on an instalment basis. Collection by way of prepayment has been abrogated.

Instalments of corporate tax

Instalments, in respect of CIT, apply to taxpayers who come under the supervision of two specific kinds of tax departments: the Directorate General (DGE), the department of the tax authorities in charge of the most important taxpayers, and the *Centre des Impôts* (CDI), tax centres.

These taxpayers have to pay two instalments each representing 40% of the CIT paid during the previous fiscal year (including the amounts assessed by the tax authorities). This, therefore, totals 80% of the CIT actually paid in the previous year. The first instalment must be paid before 1 August, and the second instalment before 1 December. Both payments are offset against the final CIT due for the fiscal year. The balance is paid when the tax return is submitted.

Small-sized companies shall make an advance payment amounting to 60% no later than on 31 January of the year following the one of the realisation of the concerned income. The balance payment is henceforth to be made no later than on 30 April. As a reminder, the rate of the CIT applicable to small-sized companies is 1% based on the turnover for enterprises selling goods and 2% for enterprises providing services.

Micro-sized companies shall pay an annual lump-sum tax amounting to CDF 50,000, no later than on 30 April of the year following the one of the realisation of the income.

Tax audit process

In practice, there is a tax audit every year.

Also, it happens that a taxpayer is subject to several controls (punctual, general, counter-verification).

Statute of limitations

A company may get audited up to four years after submission of a tax return.

Topics of focus for tax authorities

The tax authorities shall discuss any relevant topic in relation to any tax.

There is no general statutory system of advance rulings.

Congo, Republic of

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Significant developments

Further to the promulgation of the 2018 Finance Act, the following new measures have been introduced:

- Restoration of the non-deductibility of the expenses paid in cash higher than or equal to 500,000 CFA francs (XAF) erroneously deleted by the 2014 Finances Law.
- Reinstatement into the taxable income of expenses not paid within two years from their accounting registration in the first financial year subject to tax audit, even if the financial year is statute-barred or has already been audited.
- Strengthening of sanctions applicable for failure to comply with transfer pricing requirements: Reinstatement of a third of sums invoiced by the foreign companies that are considered not to reflect the arm's-lenth condition.
- Insertion of new methods of assessement of the taxes on built and unbuilt properties.
- Obligation for taxpayers to file a copy of the contentious claim with the Minister in charge of Finance when the amounts challenged by a taxpayer exceed XAF 500 million.
- Extension of the means of payment of taxes (by bank transfer, certified cheque payable to the public treasury, and in cash).
- Reduction of the registration fees on sales of immovable properties (from 10% to 8%) of the price stated in the deed and setting up of flat-rate duties for the registration of immovable properties.
- Institution of flat-rate zone fees for the registration of real estate properties for the period from 1 January 2018 to 31 December 2020.
- Setting up of an XAF 5,000 annual stamp duty on motor vehicles in circulation in Congolese territory, including those registered in the port area collected by the insurance companies, at the time of the subscription of the liability insurance policy.
- Removal of goods subject to the 5% reduced rate of value-added tax (VAT), such as pasta, household soaps, corrugated sheets, rebars, spikes, and cement from Appendix 5 of the VAT Law, and their submission to VAT at the standard rate of 18%.
- Modification of the proportional rate of the rent tax (now equal to 1/12 of the rents to be paid during the year).
- Increase of the special tax on insurance contracts applicable rate from 10% to 15%.
- Premiums transferred abroad in reinsurance and collected by companies not domiciled in the CIMA member states are subject to the 20% withholding tax (WHT).
- Institution of a fine of XAF 10,000 for any omission or inaccuracy in the:
    - quarterly declaration of oil subcontractors or oil companies, or
    - monthly declaration of remunerations paid to petroleum subcontractors, and
    - taxes withheld on these remunerations made by oil companies.

- The submission to the business tax (equal to 25% of the amount of the business tax paid the previous year) of taxpayers without contracts, in stand by, or having incurred no operating expenses in the Republic of Congo.
- The reporting of the nil or incomplete annual statement of remunerations paid to third parties by oil subcontractors is punished by a fine equal to one and a half of the average monthly corporate income tax (CIT) paid during the past financial year.
- The tax basis and the assessement of the specific tax on beverages and tobacco fall under the competence of the customs administrations for imported products and the tax administrations for products made locally.
- The amendment of tax on electronic communications traffic's applicable rates (XAF 0.06 per second for voice instead of XAF 0.05, XAF 0.11 per megabit for data traffic instead of XAF 0.10).
- The good standing tax certificate (*certificat de moralité fiscale*) is now issued against the payment of an XAF 10,000 fee.
- Institution of a no tax charge certificate (a valid certificate for a quarter) issued to all individuals and legal entities domiciled or usually residing in the Republic of Congo against the payment of an XAF 3,000 fee by the head of the tax residence in which the head office of the company or its principal establishment is located.

Taxes on corporate income

Congolese-registered companies are taxed on the territoriality principle. As a result, Congolese companies engaged in business outside of the Republic of Congo are not taxed in the Republic of Congo on the related profits.

In the absence of a tax treaty stating otherwise, a non-resident company is liable for CIT on income realised in the Republic of Congo or derived from or resulting from work/services of any nature supplied or used in the Republic of Congo.

The standard CIT rate in the Republic of Congo is 30%, with certain exceptions.

A WHT of 15% or 20% is imposed on income sourced in the Republic of Congo that is derived by foreign companies not necessarily engaged in activities in the Republic of Congo (*see the Withholding taxes section for more information*).

Minimum tax

The minimum tax payable is 1% of the annual turnover and cannot be less than XAF 1 million (XAF 500,000 if annual turnover is less than XAF 10 million).

A 2% minimum tax is payable by companies showing losses during two consecutive fiscal years. The 2% rate is applied to the sum of gross turnovers, products, and benefits realised by the company in the most recent year in which it earned a profit. The 2% tax is not deductible for CIT purposes. However, in a company's first profit-making year after incurring the losses, half of the 2% tax is deductible.

Industry specific rates

Companies in the following sectors are exempt from CIT:

- Agriculture.
- Agro pastoral.
- Poultry or fishing.

A CIT rate of 25% applies for microfinance companies and private schools organised as a company.

A CIT rate of 30% applies for mining companies and real estate companies.

A CIT rate of 35% is applied on a deemed profit equal to 22% of the total gross remuneration (i.e. an effective tax rate of 7.70% of the taxable turnover made in the Republic of Congo) derived from services rendered by:

- Foreign companies that qualify for this simplified tax regime.
- Local companies and branches that realise more than 70% of their annual turnover with oil companies and oil services companies (in this case, the deemed profit tax is regarded as a final burden).
- Catering activities performed or delivered on petroleum sites.

Note that these companies revert to the general taxation regime the second year after the turnover realised with oil and gas sector companies becomes less than 70% of their annual turnover.

A substantiated request shall be made to the Director General of Taxation between 10 October and 20 October of the second year, who shall reply, at the latest, by 15 December of the same year.

Headquarters operations of foreign companies

The headquarters operations of foreign enterprises taxation regime is subject to prior approval by the tax authorities.

If enacted, headquarters operations of foreign enterprises and international groups will be granted a favourable tax status in the Republic of Congo. For those that qualify, CIT is charged on a deemed profit equivalent to a prescribed percentage of headquarters expenses, the percentage of which is currently unknown.

To qualify, the headquarters must be registered under the form of a public limited company or branch and must act solely for the benefit of the group in the area of management, control, or coordination.

Global flat taxation

The global flat tax is at 7% (of the annual turnover) or 10% (of the annual margin) and applies in lieu of the standard CIT rate. It is calculated on the annual turnover of very small and small enterprises taxable under the flat rate regime, whose turnover does not exceed XAF 100 million.

Local income taxes

See Business tax in the Other taxes section.

Corporate residence

A company is considered resident in the Republic of Congo if it has its registered office or principal office for all its activities in the Republic of Congo.

Permanent establishment (PE)

There is no general definition for a PE. However, a PE has been defined by the double tax treaties (DTTs) signed between the Republic of Congo and France and between the states of the Customs and Economic Union of Central Africa (UDEAC) to include a place of management, a branch, an office, a factory, a workshop, and a mine, oil or gas well, quarry, or other place of extraction of natural resources.

Other taxes

Value-added tax (VAT)

The Congolese VAT rate is 18%. In addition to VAT, a surtax calculated at the rate of 5% applies to the amount of VAT, which must be invoiced and paid at the same time as the VAT. Therefore, the VAT rate is globally 18.9%. The surtax is not deductible (final cost).

A reduced VAT at the rate of 5% is levied on importation.

Under the provisions of the VAT Law, all economic activities conducted in the Republic of Congo are subject to VAT, regardless of their purpose, profitability, or the legal status of the business performing them, and irrespective of whether these activities are habitual, occasional, or originate in the Republic of Congo or from a foreign country. Therefore, any person, natural or legal, engaged in an industrial, commercial, or professional activity is subject to VAT unless specifically exempt by law.

Section 8 of the VAT Law states that a service is considered as provided in the Republic of Congo when the service is used or exploited in the Republic of Congo.

In principle, an entrepreneur is entitled to credit the VAT paid on purchases of goods, equipment, and services for use in business (input VAT) against the total of the tax charges to one's customers for deliveries made and services rendered (output VAT).

Taxpayers not exclusively carrying out transactions giving rise to a VAT deduction shall deduct VAT proportionally on the portion of the income pertaining to taxable transactions.

VAT payers carrying structural VAT credit have the obligation to do inventories in the presence of tax administration representatives for companies in October, failure to which the VAT credit shall be cancelled.

VAT payers have the obligation to provide an excerpt of their VAT trial balance of each account on VAT in accordance with the accounting system used by the company, failure to which all VAT deductions shall be added back.

Taxpayers without a Tax Identification Number (NIU) will lose the right to deduct the VAT on custom clearance duties on goods.

Exporters subject to VAT who realise more than 80% of their sale transactions abroad are obligated to withhold VAT paid on the purchases of goods and services (the list of exporters entitled to withhold VAT will be published by the tax authorities).

VAT resulting from tax assessment is not deductible.

VAT paid in cash in connection with invoices exceeding XAF 500,000 is not deductible.

A VAT return must be filed on a monthly basis before the 20th day of every month.

Customs duties

When applicable, import duties are payable at rates ranging from 5% to 30% on the customs value of imported goods. Customs value is calculated on the cost, insurance, and freight (CIF) level.

Customs duties rates

Group	Rates (%)
Basic necessities	5
Raw materials and capital goods	10
Intermediate and miscellaneous goods	20
Consumer goods	30

Additional entry taxes

Additional entry taxes apply on the importation of goods, such as:

- Economic and Monetary Community of Central Africa (CEMAC) integration tax: 1% on CIF value.
- The African integration contribution: 0.2% on CIF value.
- Statistic tax: 0.2% on CIF value.
- Organisation for the Harmonisation of Business Law in Africa (OHADA) contribution: 0.05% on CIF value.
- Economic Community of Central African States (CEEAC) contribution: 0.04% on CIF value.

Reduced rate and exemption incentives

Imports of agricultural, horticultural, forestry, or fishery equipment and machinery, as well as fertilizers and other agricultural inputs, are exempt from VAT and customs duties.

The 2018 Finance Act provides for the application of a reduced rate of VAT to the customs border. Imports of products benefiting from the reduced rate of 5% (gas oil and lubricants imported from Cameroon by logging companies established in the Republic of Congo) or the overall reduced rate of customs duties, as well as imports of butane gas, are now subject to reduced VAT rate of 5% at the customs border.

Imported butane gas is exceptionally subject to the computer royalty at the rate of 1%.

Imports of wheat flour or of products similarly referenced for custom duties purposes are now subject to customs duties at the standard rate of 30%.

The forestry tax now applies to exports of resin and other exudates extracted from trees in natural forests and plantations, as follows:

Products	Units	XAF
Pine resin	Kg	2.765
Rubber latex	Kg	5.700
Other exudates	Kg	1.700

Resin exports from natural forests and plantation trees are now subject to a 3% customs duty upon their export, on the free on board (FOB) value declared.

Computer royalty

A 2% computer royalty, to cover expenses incurred by the Customs Administration on computer data processing, is applicable without exception or exemption to all importation and exportation of goods. The royalty applies on the customs taxable value of any imported or exported goods in the Republic of Congo.

Imports of agricultural, horticultural, forestry, or fishery equipment and machinery, as well as fertilizers and other agricultural inputs, are subject to the computer royalty and the community taxes.

Excise taxes

Excise duties on all locally made products are due at the rate of 10%, while imported goods are subject to excise duty at the rate of 25% and imports of used vehicles, tractors, trailers, and semi-trailers over 15 years old at the rate of 12%.

Imported non-alcoholic beverages are subject to excise duties following specific customs classification.

Land tax on built properties

Land tax is payable annually on built properties and is due from the owner. However, properties built for the purpose of accommodation are exempt for ten years, and properties built for business purposes are exempt for five years.

The effective rate for properties built for business purposes is determined every year by the local council. In this circumstance, the land tax is levied on the rental value after a deduction of 75% (decline, maintenance, and repair expenses).

Regarding properties built for acomodation purposes, the effective rate of the tax is determined based on the cadastral value, which is equal to the price per square metre multiplied by the land area. The price per square metre for these properties, which is halved for each floor, in the case of level buildings, is determined as follows:

- Zone 1 (downtown of full-function municipalities): XAF 250.
- Zone 2 (the districts of the said municipalities and the head of departments): XAF 150.
- Zone 3 (district main-towns): XAF 25.
- Zone 4 (other localities): XAF 12.5.

Land tax on non-built properties

Land tax is payable annually on non-built properties and is due from the owner. However, properties intended for plantations and breeding are temporarily exempt for a three to ten year range. The effective rate of the tax is determined based on the cadastral value, which is equal to the price per square metre multiplied by the land area. The price per square metre for these properties is determined as follows:

- Zone 1 (downtown of full-function municipalities): XAF 125.
- Zone 2 (the districts of the said municipalities and the head of departments): XAF 75.
- Zone 3 (district main-towns): XAF 12.5.

- Zone 4 (other localities): XAF 6.25.

Rent tax

Rent tax is at the rate of 1/12 of the annual rent, paid either quarterly by 20 March, 20 June, 20 September, and 20 December of each year or annually.

For new lease agreements, the rent tax is due at the end of the quarter (*as above*) following the date of use calculated on the proportion of the rents due until the end of the year.

The rent tax is imposed on the occupant of the premises (whether the occupant is the owner, a tenant, or a subtenant).

The rent tax is paid by the tenant on behalf of the owner, or by the subtenant on behalf of the tenant. The tenant/subtenant has the legal obligation to pay this tax on behalf of the lessor. Tenant and subtenants make a quarterly deduction in March, June, September, and December from all the rents due to the owner.

A 50% fine, assessed on the amount of the tax, is due for any late payment of the rent tax.

Registration fees and stamp duties

Lease agreement registration fees amount to 3% of the value of the annual rent paid during the tax year, including premises charges if any. 'Additional centimes' also apply at a 5% rate of the registration fees. Stamp duties and registration fees should be paid for the total duration of the lease agreement. In the case where the lease agreement is renewed, stamp duties and registration fees should be paid for the renewable period.

Stamp duty ranges from XAF 200 to XAF 20,000 on certain documents.

Examples of documents that are subject to stamp duty include:

- Letters of agreement and other letters that are prepared for use as evidence of act, fact, or condition of civil nature.
- Notarial deeds and their copies.
- Visas and flight tickets.

The following fees for the registration of contracts are due within three months from date of signature:

- Purchase orders for public contracts at the rate of 2% for contracts with a value exceeding XAF 10 million.
- Subcontracts in the building construction and public work sector at a fixed fee of XAF 100,000.
- Insurance contracts are registered free of charge and failure to register such contracts will be subject to penalty at the fixed fee of XAF 3 million.
- A fixed fee of XAF 1 million for the registration of every oil services contract with foreign companies and their sub-contractors before the execution of the contract.
- All insurance policies carried out by oil, mining, and telephone companies are subject to registration free of charge; failure to register will result in penalties that total XAF 3 million.
- Registration fee on lease of movables and immovables used for habitation or commercial purposes at the rate of 3%.

- Registration fee on the transfer of rights in a lease at the rate of 10%.

Private contracts, as well as contracts signed abroad or in jurisdictions where registration is not required, do not have to be registered within three months after their signature. They can be registered at any time.

Insurance contracts shall be registered and tax on insurance paid on the 20th day of the month following the insurance subscription. All importers have an obligation to insure imported equipment with local insurance companies.

Transfer of company shares are subject to a 5% registration fee.

The direct or indirect transfer of assets or social rights of Congolese companies is also subject to a registration duty of 5% calculated on the value of the assets transferred and social rights of these companies. This registration duty is also due in the event of change of control of the company by a change of at least 60% shareholding.

Real state properties for the period from 1 January 2018 to 31 December 2020 are subject to registration based on the flat-rate zone fees, summarised as follows:

- Zone 1 (downtown of full-function municipalities): XAF 1 million.
- Zone 2 (districts of said municipalities and head of departments): XAF 300,000.
- Zone 3 (district main towns): XAF 100,000.
- Zone 4 (other localities): XAF 25,000.

Payroll taxes

Single tax on remuneration

A single tax, at the rate of 7.5% on the gross salary of resident employees and non-resident seafarers' employees, shall be borne by the employer. The tax is 6% on the gross salary of non-resident, non-seafarers' employees. This tax is payable on the 20th day of the following month after the remunerations were due.

Social contributions

The employer shall be liable for the following social contributions:

- Family allowance fixed at the rate of 10.035% of gross salary, benefits in kind inclusive, capped at XAF 7.2 million annually.
- Work accident contribution fixed at the rate of 2.25% on gross salary, benefits in kind inclusive, capped at XAF 7.2 million annually.
- Old age, invalidity, and death insurance fixed at the rate of 8% of gross salary, benefits in kind inclusive, capped at XAF 14.4 million annually.

Oil and gas

Specific rules and caps apply for the upstream (production) oil and gas industry.

Tax on pollution

The tax on pollution is payable by petroleum and mining extracting companies in the production phase, at the rate of 0.2% on the annual turnover.

This tax constitutes a non-deductible expense for the extracting mining/hydrocarbon company in the production phase.

This tax is due in the course of the year and payable quarterly by instalment, proportionally to the production realised during the just-ended quarter and not later than the 20th day of the month following the end of the quarter.

Business tax

The business tax ('patente', in French) is a tax collected for local communities.

Legal entities that carry out, in the Republic of Congo, a commercial activity, industrial activity, or any other activity not included in the statutory exemptions are subject to business tax.

The taxable basis of the business tax is:

- For taxpayers under the general regime: The annual turnover, excluding taxes of the previous fiscal year declared or assessed by the administration, for fiscal years ended on 31 December of the year N-1 and to be filed to the tax administration between 10 April and 20 April of the year N.
- For taxpayers that do not realise turnover: All operating expenses in the Republic of Congo.

Newly registered companies in their first calendar year are exempt from paying business tax.

Foreign companies subject to the deemed profit tax regime are taxed for the entire year from the start of operations in the Republic of Congo on the basis of the estimated contract value of their services.

The business tax is payable on the basis of graduated rates as follows:

Annual turnover (XAF)	Rate
Below 1,000,000	XAF 10,000
1,000,001 to 20,000,000	0.75%
20,000,001 to 40,000,000	0.65%
40,000,001 to 100,000,000	0.45%
100,000,001 to 300,000,000	0.20%
300,000,001 to 500,000,000	0.15%
500,000,001 to 1,000,000,000	0.14%
1,000,000,001 to 3,000,000,000	0.135%
3,000,000,001 to 20,000,000,000	0.125%
Above 20,000,000,000	0.045%

Business tax is due for the 12-month period from 1 January to 31 December of the taxation year and must be paid in full by the taxpayer, not later than 20 April of each year. Beyond this date, the taxpayer is liable to a penalty of 100% of the amount in excess of the principal amount.

Business tax due by foreign companies subject to the deemed profit tax is payable within 15 days after the beginning of activities. Otherwise, a penalty of 100% is applied.

Until now, the situation of taxpayers having no turnover or operating expense in the Republic of Congo was not dealt with. With the Finance Act 2018, taxpayers having no commercial contract or operating expense in the Republic of Congo will be subject to a 25% business tax, applied on the amount of the last business tax paid normally.

Business tax paid to the Inland Revenue is not refundable.

Tax on company-owned cars

The tax on company-owned cars applies to the previous fiscal year company-owned cars and is due on 20 March at the latest.

With the exception of estate cars, private cars of companies falling into the category of own use cars for the issuance of vehicle registration documents are subject to tax.

The tax rates vary from XAF 200,000 for engine ratings not over nine horsepower, to XAF 500,000 for the rest.

Cars registered more than ten years ago are exempt from tax.

Branch income

70% of the net profits made by branch offices and foreign companies carrying out business are automatically considered as distributed profits and subject to tax on dividends at the rate of 15%.

Income determination

Taxable income is based on financial statements prepared according to standard statements of the OHADA treaty.

Business expenses are generally deductible, unless specifically excluded by law.

Inventory valuation

Stocks are valued at cost price. However, if the market price is lower than the cost price, the undertaking shall make provisions for depreciation of inventory.

Capital gains

Capital gains are treated as ordinary business income and are taxed at the standard CIT rate of 30%. However, a capital gain realised on the disposal of a fixed asset in the course of trading is excluded from income for a period of three years if the taxpayer reinvests the gain in new fixed assets for the business.

If the business is totally or partially transferred or discontinued, only half of the net capital gain is taxed if the event occurs less than five years after the start-up or purchase of the business and only one-third of the gain is taxed if the event occurs five years or more after the business is started or purchased. However, the total gain is taxed if the business is not carried on in any form.

Capital gains realised by non-residents on transfers of shares of Congolese companies are subject to taxation at the rate of 20%. This tax shall be paid upon registration of the deed of transfer of the considered shares. Under such sale transactions, the seller, the buyer, and the company whose shares are transferred are jointly and severally liable for the levied tax.

Net capital gains realised as part of a direct or indirect transfer of social assets and/or rights resulting in a change of control of a Congolese company become subject to CIT.

Dividend income

Dividends are treated as ordinary business income and are taxed at the standard CIT rate of 30% for resident corporations.

After three years, profits credited to the non-compulsory reserve are considered to be dividends and are, accordingly, subject to the 15% WHT on dividends.

Amounts claimed as a result of a tax adjustment and added back to revenue, if not invested in the company, are subject to tax on dividend.

Inter-company dividends

Dividends received from a Congolese company (DivCo) by a commercial company incorporated in the Republic of Congo (HoldCo) are exempt from CIT and subject to a final 15% WHT if the following conditions are met:

- HoldCo and DivCo are incorporated in the CEMAC.
- HoldCo holds 25% of the capital of DivCo.
- HoldCo holds the shares for at least two years from the date of purchase.

However, 10% of dividends that are deemed to represent the share of cost and expenses are included in the taxable profits of HoldCo and liable for the CIT.

If the above conditions are not met, dividends received from a Congolese company by another Congolese company are subject to a 15% WHT, which is an advance payment of the recipient's CIT.

Interest income

Interest received constitutes taxable income subject to CIT at the rate of 30%.

Subject to any specific provisions, interest paid or deemed to be paid is subject to a WHT at the rate of 20% of the interest paid.

The interest paid is deductible for CIT purposes for the Congolese company to the limit of 20% of the taxable profit before deduction of the expenses in question.

Royalty income

Royalties received constitute taxable income subject to CIT at the rate of 30%.

Subject to any specific provisions, royalties paid or deemed to be paid are subject to a WHT at the rate of 20% of the royalties paid.

The royalties paid are deductible for CIT purposes for the Congolese company to the limit of 20% of the taxable profit before deduction of the expenses in question.

Foreign income

Resident companies are taxed only on income (except for dividends received abroad) derived from their activities carried out in the Republic of Congo.

Deductions

Generally, a deduction is allowed for all expenditures incurred to obtain, collect, and maintain business profits. To be deductible, expenses should be incurred necessarily for the normal purposes of the business and be supported by suitable evidence.

Depreciation and depletion

In general, all types of fixed assets, except land, are depreciable for tax purposes as long as they can be shown to have been acquired for business purposes of the corporation. Depreciation must be calculated on the original purchase price. The straight-line method is used, and the Congolese General Tax Code sets forth maximum rates of depreciation. Goods costing less than XAF 500,000 per item may be written-off at purchase as expenses.

Depreciation recorded when the company is in a loss position may be carried forward without limitation and deducted from the first available taxable profits, provided it was appropriately disclosed in the annual CIT return.

Recoverable and identifiable packaging is regarded as a fixed asset and is recorded in a fixed asset account at the time of purchase. This packaging is regarded as returnable packaging when the supplier intends to act as the sole owner of the packaging.

Unrecoverable packaging is recorded as an expense and is deductible for tax purposes.

Exceptional accelerated depreciation may be authorised in certain circumstances for heavy equipment with a value of more than XAF 40 million. This special accelerated depreciation does not apply to private vehicles owned by the enterprises.

The following list contains maximum rates of depreciation as set forth in the General Tax Code:

Assets	Rates per year (%)
Construction	5 to 20
Fixed devices and equipment	5 to 25
Movable equipment	10 to 100
Transport materials	5 to 33.33
Furniture, fittings, and other equipment	10 to 33.33
Fishing equipment	10 to 20
Hotels, bars, and restaurants	10 to 50
Plastic equipment (moulding)	10 to 33.33
Equipment subject to chemical action	20

Exceptional depreciation method

The exceptional depreciation method is an accelerated depreciation method.

Companies may elect the accelerated depreciation method for heavy materials and equipment that:

- are purchased new for a value higher than XAF 40 million
- have a useful life of at least three years
- are used for manufacturing, processing, transport, and handling, and
- are bound to an intensive use.

The application for the accelerated depreciation method must be submitted to the head office of taxes within three months of the purchase of the assets to be depreciated. The option is granted upon approval of the Ministry of Finances. If the administration fails to respond to the application for accelerated depreciation within three months, the application is tacitly granted.

Under the exceptional depreciation method, a 40% deduction may be taken in the year of acquisition of the previously mentioned assets, increased by the normal rate calculated on the residual value after application of the accelerated depreciation. These assets are depreciated on a straight-line basis thereafter.

Goodwill

There is no specific provision relating to amortisation of goodwill in the Republic of Congo.

Start-up expenses

There is no specific provision in the Congolese General Tax Code on the deduction of start-up expenses. Start-up expenses that occurred in the first year of incorporation (N) are deductible in the second year of operation (N+1).

According to the OHADA Uniform Act relating to Accounting Systems and Accountancy, start-up expenses can be amortised either in one year (in such a case, they are booked in the deductible expenses during the first fiscal year) or in two years (50% during the first fiscal year and 50% during the second fiscal year).

Interest expenses

Interest is deductible, subject to the following conditions:

- General limit: Regardless of the form under which a legal entity is registered, the deduction is allowed with an interest rate limited to the rate of the advances in current accounts on states funds of the Bank of the States of Central Africa (BEAC) raised by two points. Currently, the ceiling for the deduction of interest is 4.95%.
- For private limited companies and public limited companies, the deduction is allowed according to the status of control over the management of the enterprise, as follows:
  - For shareholders who have control over the company *de facto* or *de jure*, the deduction is allowed only to the extent that the sums paid do not exceed, for the shareholders as a whole, half of the paid-up capital and are within the limit sets forth in the 'general limit'.
  - For other shareholders, the 'general limit' applies.

Bad debt

Expenses and debts not recovered within two years after their account recording shall be added back to the taxable basis of the first fiscal year, subject to general accounting audit even if the fiscal year is statute barred.

Charitable contributions

Donations and gifts made to beneficiaries in the Republic of Congo are deductible from CIT basis at a limit of 0.5‰. The limit is 0.5% as regards donations and subsidies made for the support and development of sport. 50% of amounts of donations and payments upon the occurrence of a natural disaster or accidental disaster are deductible.

Fines and penalties

Penalties relating to violation of regulations are not deductible.

Taxes

Taxes, other than income taxes, are usually deductible. Examples of deductible taxes include customs duties, excise duties, payroll taxes, business tax and accessory taxes, registration taxes, and unrecoverable VAT.

CIT itself is not deductible, nor is the special tax on company-owned cars.

Taxes withheld on remuneration, paid to third parties (third parties taxes), and remitted to the tax office by a Congolese enterprise are not deductible.

Net operating losses

For tax purposes, losses may be carried forward to offset profits earned in the three succeeding fiscal years. Carryback losses are not permissible.

As mentioned above, depreciation recorded when the company is in a loss position may be carried forward without limitation.

Payments to foreign affiliates

Allowable deductions include sums paid abroad to foreign companies for:

- actual services, notably overhead for the operations made for the benefit of a company based in the Republic of Congo, including costs of studies; technical, financial, and accounting assistance; commissions and fees; and interests, and
- use of patents, licences, trademarks, drawings, manufacturing processes, patterns, and similar rights to the extent the payer proves they correspond to actual operations, and they are neither abnormal nor excessive.

Subject to the provisions of tax treaties (France, Italy, Mauritius, and CEMAC), the deduction is allowed within a limit of 20% of taxable profits before deduction of the expenses in question. For specific activities, such as, namely, public works business, the limitation of deductibility is capped at 2% of turnover.

In the event of losses, the rate is applied on the results of the last profit period that is not statutory limited. In the absence of profits during the period out of statutory limitation, the sums paid are not allowed as tax deductions.

When the sums are not allowed, as a whole or in part, in the deductible expenses, they are deemed to be paid benefits and are subject to tax on the dividends at the rate of 15%.

Royalties for the transfer or concession of patents, trademarks, drawings, and other similar titles are deductible to the extent the payer proves they are still valid. When these royalties benefit an enterprise contributing in the management or share capital of an enterprise in the Republic of Congo, they are deemed to be paid benefits and are subject to tax on the dividends at the rate of 15%.

Commission or brokerages relating to goods purchased on behalf of enterprises based in the Republic of Congo are allowable tax deductions at up to 5% of the purchase amount made by the central purchasing office, the head office, or the intermediaries.

The reductions shall benefit enterprises based in the Republic of Congo. An original supplier's invoice must be attached to the intermediary's invoice.

The payer shall prove that:

- the purchases necessitated the interventions of a broker or intermediary
- the commissions provided better supply conditions compared with the actual situations on the market, and
- the commissions are not excessive compared with the nature of the services.

Group taxation

There is specific group taxation within the CEMAC area.

Where a joint stock company and a private limited company own either registered stock in a joint stock company or shares in a private limited company, the net proceeds of the share in the second company paid to the first during the financial year shall be deducted from the total net profit of the latter, less a percentage for costs and charges. This percentage is fixed at 10% of the total amount of the proceeds. This system shall apply when all of the following conditions are met:

- The stocks or shares owned by the parent company represent at least 25% of the capital of the subsidiary company.
- The parent company and subsidiary companies have a registered office in the CEMAC state (Cameroon, Central Africa Republic, Chad, Gabon, Equatorial Guinea, and Republic of Congo).
- The stocks or shares allotted at the time of issue are still registered in the name of the participating company, which undertakes to retain them for at least two consecutive years in registered form.

Another group taxation regime is also available upon option and under certain conditions, wherein the taxable profits of the group's companies can be consolidated at the level of the holding company, which will pay the tax due.

Transfer pricing

Companies registered in the Republic of Congo with gross annual turnover net of taxes equal to or exceeding XAF 500 million must keep transfer pricing documentation at the reach of the tax administration so as to justify the transfer pricing policy used in all transactions with legally related entities outside the Republic of Congo.

Targeted companies are required to spontaneously and annually provide to the tax administration a lighter transfer pricing documentation within six months from filing their summary financial statements. Companies that fail to comply with this requirement will be fined at XAF 5 million.

In additon, the 2018 Finance Act strengthen the applicable sanctions for failure to comply with transfer pricing requirements. Indeed, the sums invoiced by a foreign company that are considered as not reflecting arm's-length conditions must now be reintegrated in the Congolese company's financial year's result, for a third of their amount.

To justify transfer pricing policy, companies shall ensure that the prices of the transactions are in conformity with the five different methods to set up the arm's-length principle (derived from Organisation for Economic Co-operation and Development [OECD] recommendations).

Thin capitalisation

There are no specific thin capitalisation rules in the Republic of Congo.

Holding companies

A taxation regime applies to incorporated holding companies complying with certain conditions.

Within this regime, capital gains on shares are:

- subject to CIT at standard rate if the shares transferred have been held during less than two years
- subject to a reduced CIT rate (25% of the standard rate, i.e. 7.5%) if the shares transferred have been held during more than two years, and
- tax exempted if (i) the shares transferred have been held for more than two years and (ii) the shares held include at least 60% of shares of CEMAC resident companies.

In addition, these companies benefit from other tax advantages, such as a WHT exemption on certain types of interest as well as a reduced WHT on dividends paid (i.e. 50% of applicable rate).

Controlled foreign companies (CFCs)

There is no provision under Congolese tax law related to CFCs.

Tax credits and incentives

The current investment regime in the Republic of Congo was set out by Law No. 6-2003 of 18 January 2003, which established the investment charter. The charter's application, Decree No. 2004-30 of 18 February 2004, established modes of business registration.

- Scope: The following may be registered under the investment charter:
  - Businesses wishing to pursue an activity in the Republic of Congo, except for activities such as brokerage, trade, import, and production of arms, and import or processing of toxic waste and by products.
  - Under certain conditions, commercial activities linked to collection, storage, distribution, and export of locally produced products, except alcoholic beverages and tobacco.
  - New activities (as opposed to pre-existing activities).
  - Forestry businesses benefiting from a forestry permit called the forestry development unit.
  - New companies coming from the redemption of a registered company.
- Conditions of eligibility for the investment charter: To be eligible, a company must satisfy the following conditions:
  - Be registered with the Trade and Personal Credit Registry in the Republic of Congo.

    - Create permanent employment, to be carried out over a minimum of 280 days per year.
    - Maintain company share capital equal to or greater than 20% of investments.
    - Primarily use local principal materials necessary for the production of the finished or semi-finished product, when available, with equal conditions concerning price, quality, and time of delivery to outside, in the case of industry.
    - Primarily use local business services, when available, with equal conditions concerning quality, price, and time of realisation regarding payments to external businesses, for the case of service businesses.
    - Be registered at the Congolese National Welfare Fund.
    - Open an account at a local bank or any other financial, savings, or credit establishment.
    - Primarily use a local workforce, when available, with the same expertise as the foreign workforce.
- Registration procedure: Entitlement to the benefits prescribed by the charter is subject to obtaining a registration agreement, provided by the National Investment Commission.
- Fiscal and customs benefits set out by the Investment Charter: These benefits vary according to privileged regimes, motivation measures, and in a general manner.

Privileged regimes

The charter sets out three privileged regimes:

- General regime (G).
- Special regime (S).
- Preferential development zone regime.

General regime (G)

The general regime applies to businesses that fulfil the aforementioned general requirements and carry out investments greater than or equal to XAF 100 million.

Special advantages are conferred according to the period of activity of the registered business.

During the set-up period and the first three exploitation tax years, the company receives several benefits, as follows:

- In customs matters, the company benefits from the provisions of the CEMAC customs code relative to asset improvement mechanisms for export activity and from the suspension of customs duty in the form of temporary admission or franchise for natural resource research activities.
- In fiscal matters, the company benefits from the 50% reduction of registration fees for business foundation, increases in capital, company mergers, and transfer of company stocks and shares.

For the three first exploitation tax years and from the first year of sale or first service, the following fiscal benefits are added with the aforementioned reduction of registration duties:

- Total exemption from the tax on company earnings.
    - Companies that are subject to CIT because of their size or activity will be exempt from CIT.

  - Businesses that are subject to personal income tax (PIT) because of their size or activity will be exempt from PIT.
- The authorisation to proceed to accelerated depreciation.
- The authorisation to carry forward losses for the first three tax years.
- The application of zero-rate VAT on exported products.

Special regime (S)

The special regime applies to businesses that fulfil the aforementioned general requirements and carry out investments between XAF 30 million and XAF 100 million.

In addition to the advantages of the aforementioned (G) regime, businesses registered under the (S) regime benefit during the set-up period and the first three exploitation tax years from the moderation of registration duties for the incorporation of the business, increases in capital, company mergers, and transfer of company stocks and shares.

This moderation of registration duties is granted exclusively by decree of the Minister in charge of the Economy and Finances upon a decision of the National Investment Commission.

Preferential development zone regime

All exporting businesses registered under the investment charter are eligible for the preferential development zone system, including free-trade zones.

The institution, organisation, and function of the preferential development zone are fixed by a specific text.

Incentives to set up in remote areas

All new businesses registered under (G) or (S) regimes that are located in a remote area benefit from a reduction of 50% on the tax on company earnings in the fourth and fifth year following the first three tax years for which the business benefited from total exemption from the tax on earnings or PIT.

The business is considered as belonging to a remote area from the moment its production units are set-up and 90% of the production unit workforce is working in the remote location.

The appraisal of a zone's location results from the exclusive competency of the National Investment Commission.

Incentives for social and cultural investment

All new businesses registered under (G) or (S) regimes carrying out investments of a social and cultural character may benefit from a fiscal reduction by ministerial decree of the Minister in charge of Finance and the Economy, upon the decision of the National Investment Commission.

These benefits may not, however, be added to those mentioned above and allocated to remote areas, even if the business concerned is set-up in such a location.

General measures

For the duration of the privileged regime, and subject to current texts, the company shall enjoy fiscal stability in terms of local and state taxes.

Privileged regimes (G) and (S) are allocated only once and are not renewable. The business may receive fiscal and customs advantages pertaining to the set-up period.

Fiscal advantages concerning the exploitation period are applicable only after the set-up period.

The end of the set-up period is certified by decision of the Minister in charge of Finance and the Economy after the adoption of the verification report by the National Investment Commission.

Respect of the aforementioned general requirements set out by the charter is a prerequisite for benefiting from these motivation measures.

Export incentives

A measure is reserved for businesses that export at least 20% of their production.

The benefits are as follows:

- The provisions of the CEMAC customs code, relating to asset improvement mechanisms.
- Exemption from customs duties and taxes on manufactured products, except computing fees and statistic tax.
- Application of a zero-rate VAT on exported products.

Non-manufactured goods remain subject to the common law export system.

Incentive to reinvest earnings

A measure is reserved for businesses that carry out new investments of at least one-third of existing assets.

The benefit conferred consists of a 50% reduction of the tax on company earnings for the three years following the realisation of the investment.

Notwithstanding, this benefit is granted upon the following conditions:

- The business declares to the permanent secretary of the National Investment Commission its investments, planned investment, and the state of existing capital assets.
- The National Investment Commission, on the report of checking teams, verifies if the new investments correspond to one-third of the preceding capital assets.
- All investments are realised within one year.
- Investments generate new employment.
- Investments increase capacity of production by at least 10%.
- The business has sound ethical concerns.

Institution of preferential tax regime for special economic and industrial zones and health free zones

The 2014 Finance Act provides for incentives in special economic zones as follows:

- CIT and dividend tax exemptions for six years.
- From seven to ten years: CIT and dividend tax rate of 5%.
- Beyond ten years: CIT rate of 15% and dividend tax rate of 10%, permanently.
- Single tax on remuneration rate of 2.5%, permanently.

- Exemption from registration fees for company creation and 50% reduced rates on transfer deeds.

The 2014 Finance Act provides for incentives in industrial zones as follows:

- CIT and dividend tax exemption for five years.
- From six to ten years: CIT rate of 10% and dividend tax rate at 5%.
- Beyond ten years: CIT rate of 20% and dividend tax rate of 10%, permanently.
- Single tax on remuneration rate of 2.5%, permanently.
- Exemption from registration fees for company creation and 50% reduced rates on transfer deeds.

The 2014 Finance Act provides for incentives in health free zones, as follows:

- CIT total exemption.
- Dividend tax rate of 5%.
- Single tax on remuneration rate of 2.5%.

It should be noted that eligibility requirements for the preferential regimes described above have not been set yet.

Foreign tax credit

There are no specific rules relating to foreign tax credits in the Republic of Congo.

Withholding taxes

Services, dividends, and attendance fees

Services

Services rendered by foreign suppliers are subject to a 20% WHT.

In addition, companies that have no tax residence in the Republic of Congo are subject to a 20% WHT if they earn revenues realised in the Republic of Congo or coming from the Republic of Congo, and which come from works or services of any nature performed or used in the Republic of Congo. This 20% WHT also includes premiums transferred abroad in reinsurance and collected by companies not domiciled in the CIMA member states (Benin, Burkina Faso, Cameroon, Republic of Congo, Cote d'Ivoire, Gabon, Guinea Bissau, Equatorial Guinea, Mali, Niger, Central Africa Republic, Senegal, and Togo).

WHT does not apply to resident suppliers of a country that has signed an international tax treaty with the Republic of Congo, provided certain conditions are met.

Payments made by building and public work companies to their sub-contractors

WHT is applicable on payments made by building and public work companies to their sub-contractors, including to engineering offices, at the following rates:

- 3% for sub-contractors taxable on their net profit.
- 10% for sub-contractors taxable on a deemed profit (*Régime du forfait*).

Non-observances, omissions, or underpayments are sanctioned by an XAF 5 million fine and by the non-deductibility of the amounts so paid. Late payments are sanctioned by a 2% penalty per month or portion of month, with a maximum penalty of 100%.

For the considered sub-contractors, said withholding is considered as an instalment of tax.

Dividends

Dividends distributed by a Congolese company are subject to a 15% WHT unless a different rate applies under an international tax treaty (e.g. France, Italy, Mauritius, CEMAC). The same rate applies for dividends distributed to a resident shareholder.

Under the tax treaties between France and the Republic of Congo and between Italy and the Republic of Congo, the applicable WHT rate is 15%.

Under the tax treaty between Mauritius and the Republic of Congo, the applicable WHT rate is 5%.

There is no specific rate defined in the CEMAC tax treaty.

Attendance fees

Attendance fees are subject to a 17% WHT unless a different rate applies under an international tax treaty (e.g. France, Italy, CEMAC).

Payments to local independent contractors

Payments to local independent contractors (self-employed contractors, i.e. those not registered with the Congolese Trade Registry) are subject to a WHT at the rate of 5% from such payments, to be remitted to the Public Treasury.

Late remittance of the WHT is subject to a late payment penalty of 50% within the first two months and 100% if the late payment exceeds two months.

The application of the 5% WHT also applies to companies regrouping professionals and increases penalties in case of non-payment (200% penalty, plus 5% interest per month for late payment).

Revenues of legal entities subject to CIT are excluded from the application of the WHT of 5%.

WHT rates summary

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations	15	0	0
Resident individuals	15	0	0
Non-resident corporations and individuals (Non-treaty)	15	20	20
Treaty with:			
France	15	0	15
Italy	15	0	10
Mauritius	5	0	0
CEMAC	20	0	0

Tax administration

Taxable period

The taxable period is the calendar year.

Tax returns

Companies are required to use the single tax return to file monthly taxes.

The annual CIT return is a specific form (*Déclaration Statistique et Fiscale* or DSF) that should be prepared in accordance with OHADA accounting principles. The form cannot be completed electronically.

Companies have to use the CEMAC CIT return form, which has been modified to be compliant with Congolese tax law (new form for the determination of the CIT basis and new tax balances for debts and liabilities).

The books must be maintained in French and in CFA francs. This accounting system must follow the OHADA chart of accounts. All entries have to be booked under OHADA standards throughout the year.

The annual CIT return must be filed on 20 May at the latest.

Payment of tax

Resident companies are required to pay quarterly instalments of tax (20 February, 20 May, 20 August, and 20 November), and these quarterly instalments are generally calculated with reference to the most recent CIT return. Special calculations of instalments apply to new taxpayers.

Based on the self-assessment system, when submitting annual tax returns due by 20 May every year, taxpayers must pay the amount of tax calculated in the annual tax return to the extent this amount exceeds tax instalments paid during the year.

Non-resident companies and individuals shall appoint tax representatives in the Republic of Congo. The Congolese resident shall be considered as tax representative if the non-resident person fails to appoint a tax representative.

Tax audit process

Tax audits are usually announced by a letter from the tax authorities to the entity concerned of their intention to audit, while stating the period to be audited and the taxes that will be covered by the audit.

The tax authorities may organise meetings with the taxpayer to inform the taxpayer of the preliminary outcomes of the audit, and the taxpayer has the possibility to make counter remarks.

Thereafter, the tax authorities notify the taxpayer, in writing, of their proposed tax adjustments, and the taxpayer makes counter remarks in writing within 30 days from date of receipt of the tax adjustment notice.

Based on whether the tax authorities find the counter remarks from the taxpayer grounded or not, a letter confirming the tax adjustments or renouncing the proposed tax adjustments shall be sent to the taxpayer, who has the choice to either pay the taxes claimed, negotiate for a reduction of fines, or open up a tax litigation process.

The taxpayer may negotiate the taxes, fines, and the mode of payment of the tax claimed by the tax authorities thereby renouncing one's right to open up tax litigation.

The taxpayer has the right to request from the Director General of Taxation and Real Estate a transactional mode of payment of fines or payment of tax by friendly settlement. If the taxpayer opts for the transaction, the taxpayer loses the right to object to the outcome of the transaction and is obligated to immediately pay the taxes due (principal and penalties) according to the agreement.

To open up a tax litigation process, the taxpayer will pay a prior deposit of 10% of the sum contested as guarantee (or a banking guarantee as security for litigation) and 5‰ (5 per thousand) of the sum contested for the treatment of the tax claim file and will submit the tax claim file to the Tax Head Office if the amount of the claim exceed XAF 30 million and to the Director of Tax Department if the amount claimed is less than XAF 30 million.

When the amounts challenged by a taxpayer, in the context of a contentious claim, exceed XAF 500 million, the said taxpayer must file a copy of one's claim with the Minister in charge of Finance.

The tax authorities will respond to the tax counter claim of the taxpayer, who, if not satisfied, could open a court claim.

Statute of limitations

Generally, the statute of limitations period for CIT is four years following the year in which the tax was due. However, this rule does not apply in the case of fraudulent acts reported by the tax administration.

Topics of focus for tax authorities

The tax authorities particularly focus on aspects such as:

- Compliance of deductible expenses.
- CIT compliance.

Costa Rica

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Significant developments

In February 2018, the Congress of the Republic of Costa Rica agreed to give a fast track of approval to the file 20580 called the 'Law of Strengthening of Public Finances', which is a proposal raised by the previous government (which is also the government of the day) through which some measures are intended to be established to try to alleviate the increase in the fiscal deficit, which in recent years has been growing steadily and threatening a short-term economic crisis.

The bill is made up of four bills that can be summarised as follows:

- Transformation of the general sales tax to a value-added tax (VAT).
- Reform of the Income Tax Law to subject capital gains to a special rate.
- Reforms to public employment that seek to grant order and social justice.
- The introduction of a fiscal rule, which seeks to establish a limit to the growth of the budget, depending on the level of indebtedness of the Central Government.

With the impulse given to this project by a new government (which entered into practice on 8 May 2018), a good environment was augured for its approval; however, the change in the Congressmen as a result of the new legislature, coupled with the opposition of some political sectors of the country and the unions of public workers, has generated an impasse in its approval.

Taxes on corporate income

The Costa Rican tax system is based on the principle of territoriality, according to which any business that carries on industrial, agricultural, or commercial activity in Costa Rica is subject to income taxation on local income in the same way as a registered business, irrespective of the place of incorporation. Such corporations doing business in Costa Rica are subject to the permanent establishment (PE) rules.

Under the Costa Rican Income Tax Law, income from transactions carried out abroad may be regarded as non-Costa Rican-source income and is not subject to income taxes.

In addition, it is important to bear in mind that Costa Rican income tax applies specifically to those incomes that directly originate in the lucrative activities carried out by the taxpayer within the country's territory.

Corporate income is taxed at a 30% rate. However, the law establishes special regulations for small companies whose gross income does not exceed 105,872,000 Costa Rican colones (CRC). For this category, the following rates apply:

- 10% for companies with gross income up to CRC 53,113,000.
- 20% for companies with gross income of more than CRC 53,113,000 but not more than CRC 106,835,000.
- 30% for companies with gross income over CRC 106,835,000.

Please note that these corporate income tax (CIT) brackets are adjusted yearly, effective 1 October to 30 September of the following year. The tax brackets listed are for the 2018 fiscal year (i.e. 1 October 2017 to 30 September 2018).

Local income taxes

There are no provincial income taxes in Costa Rica; however, there is a municipal tax. The rate depends on the municipality in which the company is located, but most apply a percentage of net income or sales.

Corporate residence

In most cases, the place where a company is incorporated is regarded by Costa Rican authorities as the corporate residence.

Permanent establishment (PE)

According to Costa Rica's tax system, a PE of non-domiciled persons in the country is every office, factory, building, or any other real estate; plantation, mining, forest, agricultural, and farming development; warehouse or any other permanent business centre, included the temporary use of warehouse facilities as well as the ones destined to the purchase and sale of merchandise and products inside the country; and any other company property of non-domiciled persons that develops commercial and lucrative activities in Costa Rica.

The Costa Rican Tax Administration has manifested that the essential characteristic of a PE is given by a territorial criteria, according to which the income and earnings generated in Costa Rica as well as the assets located in it are taxable, not taking into consideration the nationality or domicile of its owner.

The Tax Administration also applies the criteria of the Organisation for Economic and Co-operation and Development (OECD) to determine when a person can be considered a PE of a company in a determined state. Accordingly, the Tax Administration takes into consideration the following conditions to determine the existence of a PE:

- The existence of a business centre (i.e. facilities such as an office or business centre or, in certain cases, machinery).
- Said business centre must be permanent (i.e. must be established in a determined place with a significant level of permanence).
- The company has to develop its essential activity through this permanent centre (i.e. the persons who depend in a way or another on the company [the staff] must develop the company's business inside the country on which the permanent centre is located).

Note that the Costa Rican Tax Administration uses these OECD criteria to support and base its administrative resolutions; consequently, they hold a significant importance for the Costa Rican tax system. Regarding these criteria, the OECD has established as a generally accepted principle that a company will be treated as the owner of a PE in a determined state if a person acts on behalf of that company under certain circumstances, even if they are not in the presence of a permanent business centre in said state. These circumstances are as follows:

- The person has to be an agent on account of the non-domiciled company: A dependent agent, individual, or company, under an employment regime or outside of this, that, due to the nature of its activities or to the scope of its faculties, involves the non-domiciled company in commercial activities of certain significance.
- The person or local company has to be a dependent agent with enough faculties to celebrate and subscribe agreements on behalf of the non-domiciled company. The faculties of the person or local company have to be sufficient to involve the non-domiciled company in business activities inside the country on which the person or local company are situated.
- The agent has to be authorised to negotiate all elements and details of agreements on which the non-domiciled company is involved and obligated, even if said agreement is signed by another person in the country on which the non-domiciled company is located. In other words, it isn't simply a mere authorisation to sign the agreement.
- The faculty to subscribe agreements must include those agreements that are part of the main commercial activity of the company.
- The agent has to take risks on behalf of the abroad domiciled company.
- The agent has to act according to detailed instructions or general control of the abroad domiciled company.
- The concept of PE under this context implies that this agent uses its authority on a repeated basis and not only on isolated cases. The faculties must be exercised regularly in the country on which the agent is located, a characteristic that is determined according to the real commercial situation. A person or company whose activities are limited to the following conditions and circumstances is not considered a PE:
  - Its activities consist only in storage, expose, or delivery of goods and merchandise that belong to the company domiciled in another country.
  - Its activity consists only in purchase of goods or merchandise or compiling information for the abroad domiciled company.
  - Its activity consists only in developing any other auxiliary or preparatory activity for the company.
- To consider a person as a PE of a company in a state, it has to be determined if the activities that this person develops are, by themselves, an essential and significant part of the activities of the company as a whole, which is why every case must be studied and analysed according to its own particular circumstances.

Other taxes

Sales tax

A fixed sales tax rate of 13% is applied at all stages of the sale of merchandise or the invoicing of certain limited services. The tax is levied on (i) sales of merchandise within the national territory (except sales of land, buildings, exports, and certain basic necessity items, such as basic foodstuffs, certain medicines, and veterinary products);

(ii) the value of services performed by restaurants, bars, motels, printing companies, social and recreational clubs, painting and repair shops, and others; and (iii) imports consisting of merchandise for personal use or consumption or to satisfy commercial needs.

Selective consumption tax

The selective consumption tax may be applied at a rate of up to 100% and is levied on goods that are considered non-essential. The tax base is the cost, insurance, and freight (CIF) price plus import duties for imported items or the sales value for items produced in Costa Rica. The tax is levied at only one stage in the sale of merchandise. Payment of the tax is required at the time of importation or, for articles produced in Costa Rica, within 15 days of the month of the sale.

Customs duties/import tariffs

In Costa Rica, all importation of goods and merchandise, with certain exemptions, are liable for corresponding import tariffs and customs duties. Other taxes (e.g. sales tax, selective consumption tax) are also levied on the importation of said goods and merchandise.

The most important legal instruments for customs regulations are the Central American Uniformed Customs Code, the Customs Law and its rulings, and other administrative rulings that are periodically issued by the Customs Authority.

Property tax

Each local municipal government is in charge of real estate appraisal. The annual property tax to be applied throughout the Costa Rican territory is 0.25% of the appraised value, registered in the respective municipality where the tax liability originates.

Real estate transfer tax

Real estate transfer tax is calculated as 1.5% of the selling price of the real estate or its property tax value, whichever is greater. The tax is triggered by the direct sale of the real estate or through the indirect transfer of real estate when there is a modification in the control of the entity holding the real estate.

Stamp duties

Stamp duties in Costa Rica are determined according to the transaction that is carried out (e.g. property transactions, service contracts, movable assets transactions).

Franchise tax

The payments realised abroad for the use of a franchise will be subject to remittances abroad with a 25% withholding tax (WHT).

Withholdings on salary

Companies are required to withhold from employees the amount corresponding to the tax on salary according to the following progressive table on a monthly basis:

Salary (CRC)	Withholding rate (%)
Up to 799,000	0
799,000 to 1,199,000	10
Over 1,199,000	15

Social security contributions

Companies must withhold the monthly contribution to social security and submit its own contribution calculated as a percentage of the monthly income received by the employee:

Social security contribution	Contribution rate (%)
Employee`s contribution	10.34
Employer`s contribution	26.33

Branch income

Branch income is subject to tax at the same rates as corporate income.

There is a WHT of 15% on dividends distributed within the country and a 15% tax, in lieu of a dividend WHT, on profits transferred abroad.

Income determination

Inventory valuation

Inventories are generally stated at cost and can be valued using the compound average-cost method, first in first out (FIFO), retailer method, or specific identification method. Since all entities must keep legal records, any adjustment resulting from different methods of inventory valuation for tax and financial purposes should be recorded.

Capital gains

There is no capital gain tax on the sale of real estate or securities when such sales are not a habitual activity. There is a capital gain tax, at the regular rate, on the sale of depreciable assets when their sale price is higher than their adjusted basis (book value).

Dividend income

Dividends are subject to a 15% WHT if the stock is not listed in an officially recognised stock exchange or 5% if the stock is registered in a stock exchange officially recognised by the Costa Rican government.

Dividends between domestic subsidiaries and other domestic corporations are not subject to taxes. There are no ownership requirements to qualify for this exclusion.

Stock dividends

Dividends paid in the form of stock of the distributing company are allowed and are exempt from taxes.

Interest income

Interest income coming from sources related to normal business activities is taxable. Interest income coming from investments on financial entities included in the National Banking System is subject to an 8% withholding on the source as definitive tax.

Interest coming from investments abroad is considered non-Costa Rican-source income and is not taxable.

Royalty income

Royalty income coming from sources related to normal business activities is taxable.

Foreign income

Foreign-source income is not taxable in Costa Rica.

Deductions

In general, any costs and expenses that are useful, necessary, and pertinent for the production of actual or potentially taxable income will be deductible from the company's gross income, as long as they are duly supported by documentation authorised by the law and they comply with the following requirements:

- They are necessary expenses to obtain actual or potential income, taxed under the law.
- Any withholding obligations, as stated in other sections of the law, have been carried out.
- The supporting documentation has been authorised by the Tax Administration.

However, the Tax Administration may reject or disregard, in whole or in part, any expenses that it considers excessive, inadmissible, or not indispensable to obtain taxable income.

Depreciation

The straight-line and sum-of-the-years-digits methods of depreciation are allowed over the following useful lives:

Assets	Useful life (years)
Buildings	50
Machinery and equipment	10
Furniture and fixtures	10
Vehicles	10
Agricultural plantations	2 to 10

The Tax Administration, at the request of the taxpayer, can adopt technically acceptable special depreciation methods in cases duly justified by the taxpayer. In addition, the Tax Administration can authorise, through general resolution, accelerated depreciation methods on new assets acquired by corporations with monetary activities requiring constant technological updates, higher installed production capacity, and productive reconversion processes in order to maintain and strengthen their competitive advantage.

Goodwill

If the intangible asset can be amortised, the gain is considered taxable and the loss is considered deductible from the income tax base. However, if the intangible asset is not amortisable, the gain is not taxable and the loss is not deductible.

Start-up expenses

A company's organisational expenses may be deducted in the tax year in which they are paid or credited, or, if they accumulate, in five consecutive tax years, starting from the date of start of productive operations, until the balance is exhausted. Organisational expenses will be considered to be those costs and expenses that are necessary to initiate the production of taxable income that, in accordance with the law, are deducted from gross income.

Interest expenses

Interest and other financial expenses paid or incurred by the taxpayer during the fiscal year directly related to the management of their business and the creation of taxable income are deductible from gross income, as long as those interest expenses are not capitalised.

Note that those interest expenses with rates that exceed the usual market rates will not be considered deductible expenses by the Tax Administration.

Bad debt

Manifestly uncollectible unpaid debt will be deductible as long as this debt is originated in habitual operations from the taxpayer's business and all legal actions towards its collection have been exercised.

Charitable contributions

All donations duly supported by documentation that are given to the government, public institutions, municipal corporations, public universities, to the Social Protection Board, to the Educational Boards, to the Costa Rican Red Cross, and other institutions, such as those foundations and associations with non-charitable, scientific, and cultural ends that are authorised by the Tax Administration to receive deductible donations, among other entities, will be deductible from gross income.

Taxes

With the exception of sales tax, selective consumption tax, specific taxes over consumption and special duties established by law, penalties and interest paid over any tax obligation, and the income tax itself, all other taxes that affect the goods, services, and negotiations of the company's habitual commercial activity will be considered deductible.

Net operating losses

Losses incurred by industrial and agricultural enterprises may be carried forward and deducted from the taxable profits for the following three years for industrial enterprises and five years for agricultural enterprises. Loss carrybacks are not allowed.

Payments to foreign affiliates

Corporations may claim deductions for royalties, technical and management service fees, and interest charges paid to foreign affiliates, provided that a tax of 25% for royalties, franchises, and other services, and a tax of 15% for interest, is withheld. However, the deductions for technical, management service fees, and royalties may not exceed 10% of gross sales in the aggregate if paid to the parent company.

Group taxation

There is no group taxation in Costa Rica.

Transfer pricing

Under Decree No. 37898-H 'Provisions on Transfer Pricing', published on 13 September 2013, taxpayers are forced to evaluate the prices agreed upon in operations of goods or services sold to related companies, locally and abroad, considering the prices that will be agreed between independent parties and in compliance with the Principle of Free Competition and Economic Reality.

Additionally, the Decree indicates, in the definition of this principle, that taxpayers must "determine their income considering costs and deductions for these operations using the prices and amounts of considerations that would be agreed upon between individuals or independent entities in comparable operations".

According to the definition related to 'binding parties', legal or natural persons that directly or indirectly participate in the address, control, or capital of the taxpayer, or due to another cause may systematically influence their pricing decisions, shall be deemed to be related. Also, those persons or entities residing in jurisdictions without sufficient powers to exchange tax information are presumed to be related parties. In addition, there are other specific conditions for a person or an entity to be qualified as a binding party.

The Decree establishes the need for an Analysis of Comparability (Functional Analysis) to consider the following elements:

- Characteristics of the operations, products, or services.
- Functions or activities, including assets and assumed risk.
- Contract terms and conditions.
- Economic circumstances.
- Business strategies.
- Identification of prices and comparable transactions (internal and external).

Also, the methods for the determination of prices in comparable operations are established and mentioned in the following list:

- Non-controlled comparable price.
- Additional cost.
- Resale price.
- Split profit.
- Net margin of the transaction.

The Decree authorises the Tax Administration to check the assessment of prices with related parties made by the taxpayer; however, when as a result of the application of a convention for the avoidance of double taxation, an adjustment to the Costa Rican company is generated, the company may request verification of the origin of the adjustment.

The Tax Administration shall dictate the general documentation guidelines that the taxpayer must comply with in relation to the valuation of its transactions with related parties; however, the Decree establishes that it must be made available for the Tax Administration in Spanish and that it must be kept for five years according to the provisions of Article 109 of the Code of Norms and Tax Procedures. Likewise, a list of the information and documentation (formal obligations) that the taxpayer must keep has been established, which includes the details of the activities and functions, organisational structure, registration information from the parties, financial statements, and method used.

In addition, the Decree establishes an annual informative return for taxpayers who are engaged in transactions with related parties and for large taxpayers, large territorial taxpayers, and companies located within a free zone.

Lastly, the Decree allows the application of advance pricing agreements (APAs) between the taxpayer and the Tax Administration, which will be valid for three years once approved.

The Tax Administration is currently working on a resolution for expanding upon the features and requirements of APAs.

In April 2017, the Tax Administration issued the ruling number DGT-R-16-2017 that regulates the procedures that taxpayers must follow regarding the transfer pricing documentation related to the Master File and the Local File.

Country-by-country (CbC) reporting

According with the Resolution N° DGT-R-001-2018, the CbC report applies for the following companies or entities whose global and accumulated gross revenues are equal to or higher than 750 million euros (EUR) or its equivalent in the local currency during the reporting tax year:

- Each ultimate parent entity (parent company or controlling company) of a group or a multinational group that is a tax resident in Costa Rica; an 'ultimate parent entity' is defined as a parent or controlling company that holds sufficient direct or indirect interest in one or more group entities, and is required to prepare consolidated financial statements under applicable accounting standards, or would be required to do so if the share interest were listed on a stock exchange in its country of tax residence.
- A surrogate parent entity (when designated as a sole substitute by the ultimate parent) if the surrogate parent entity is a constituent entity and tax resident in Costa Rica; 'surrogate parent entity' refers to an entity of the group designated as a sole substitute of the ultimate parent entity for purposes of presenting the CbC report in the tax jurisdiction of the surrogate parent entity on behalf of the group.

The CbC report should include the following information:

- A general overview of the revenues, taxes, and economic activities by tax jurisdiction.
- A list of all the entities that belong to the multinational group by tax jurisdiction.
- Additional information or explanation necessary for a better understanding of the mandatory information requested.

The CbC report must be submitted to the Tax Administration through an XML file that complies with the standard structure established by the OECD, which can be downloaded from the official website. The electronic portal that will be enabled for reception of the XML file will be announced at least one month in advance of the date of presentation of the report.

The information corresponding to the CbC report required in this Resolution must be provided annually. The deadline for submitting the information required in the CbC report will be as indicated below:

- The group or multinational group, regardless of the month of the closing of the fiscal period, must present its first CbC report no later than 31 December 2018 with information corresponding to the operations of the 2017 tax period.
- For the following fiscal periods following the operations of the 2017 tax period, the group or multinational group must present the CbC report on 31 December of the year following the end of the corresponding fiscal period (e.g. the information on the operations of the tax period 2018 must be submitted by 31 December 2019).

Additionally, the failure to supply the information required in the Resolution corresponding to the CbC report will be punished in accordance with Article 83 of the Code of Norms and Tax Procedures.

Thin capitalisation

In Costa Rican legislation, there is no mention of thin capitalisation rules. However, as with transfer pricing, the Tax Administration applies general rules and principles for the treatment of these types of situations. For instance, the Income Tax Law gives the Tax Administration the faculty of reviewing and rejecting all expenses that it may consider excessive, not proportional, or unreasonable.

Controlled foreign companies (CFCs)

In Costa Rican legislation, there is no mention of CFC rules.

Tax credits and incentives

Foreign tax credit

Costa Rica's tax system does not allow for the possibility of foreign tax credits.

Free zones

Entities covered by the Free Trade Zone Law may enjoy exemption from import duties on goods, income tax, sales tax, export tax, selective consumption tax, real estate transfer tax, and WHT on payments abroad, as well as the discretionary use of foreign currency generated abroad. However, these incentives will be affected by the rules established by the World Trade Organization (WTO) in force in the year 2015, which required for a modification of the Free Trade Zone Law, now enforced, in which it was a requisite by manufacturing companies to be mainly dedicated to exportation. Now, it is possible for manufacturing companies to apply to the Free Trade Zone Regime whether the sale of their products is in Costa Rica or outside Costa Rica as long as they comply with the requisites established in the Law. For service companies, the requirement to be devoted mainly to the export of services is still a must.

Drawback industries

Special benefits exist for industries that import semi-manufactured materials for assembly in Costa Rica and export finished products. Benefits consist of duty-free imports of raw materials for subsequent export as manufactured products. Machinery for these industries may also be imported duty-free.

Tourism development

The Incentive Law for Tourism Development grants several tax benefits, such as exemption from import duties on certain tourism service-related goods and from property tax for companies dedicated to tourism, but only for those with a signed tourism agreement.

Withholding taxes

Payments to non-domiciled foreign corporations or individuals

Regarding payments to non-domiciled foreign corporations or individuals, taxes are withheld as follows:

Payment	WHT rate (%)
Dividends (1)	5/15
Interest and other financial expenses (2)	5.5/15
Royalties, patents, trademarks, franchises, and formulas	25
Technical service and management fees	25
Personal services from a Costa Rican source:	
Employees	10
Directors	15
Others	30
Transportation and communication services	8.5

Notes

1. 5% if the stock is registered in a stock exchange officially recognised by the Costa Rican government.
2. Interest paid from a financial entity supervised in Costa Rica to a financial entity outside Costa Rica subject to supervision is subject to a withholding of 5.5%. The payments to multilateral entities for development are not subject to withholding.

Double taxation treaties (DTTs)

Summary of the reduced WHT rates established by DTTs:

	WHT (%)			
Recipient	Dividends	Interest, commission, and financial expense	Financial technical advisory, patents, formulas, trademarks, franchises, royalties	Personal independent work
Treaty:				
Germany	5/15 (1)	5 (2)	10	(3)
Spain	5/12 (4)	5/10 (5)	10	10

Notes

1. 5% of the gross amount of dividends if the beneficiary is a company (excluding consortiums) that directly holds at least 20% of the capital of the company that pays the dividends. 15% of the gross amount of dividends in all other cases.
2. If the beneficiary of the interest is a resident of the other contracting state, the WHT shall not exceed 5% of the gross amount of interest.
3. Taxed in the state in which the income is generated.
4. The 5% withholding applies when the beneficiary directly has at least 20% of the shareholder's equity of the paying company. In all other cases, the withholding is 12%.
5. The 5% withholding applies when the loan has a duration of no more than five years. In all other cases, the withholding is 10%.

Tax administration

Taxable period

The tax year in Costa Rica is a 12-month period from 1 October to 30 September. Current legislation contemplates that another fiscal year (equal to a natural year) may be adopted with the prior approval of the Tax Administration.

Tax returns

With certain exceptions, all corporations must file a tax return by 15 December on the basis of a fiscal year-end of 30 September. The general rule is that all companies must file the tax return two and a half months after its fiscal closing. Entities with an operating period of less than four months may present a return together with the following year's tax return.

The tax system is one of self-assessment with occasional auditing by the Tax Administration.

Payment of tax

In March, June, and September, all corporations and taxpayers with a 30 September fiscal year-end must prepay instalments that total 75% of the average income taxes paid in the past three fiscal years, or the amount paid in the prior year, whichever is greater. Failure to pay on these dates results in the accrual of interest unless the taxpayer has requested, on a timely basis, that the Tax Administration eliminate the corresponding payments. Any amount owed in excess of the instalments should be paid by 15 December. For the corporations and taxpayers that have a special fiscal year authorised by the Tax Administration, the first advance payment must be provided six months after their fiscal closure is authorised. If the amount of tax due is determined to be greater than the sum of the instalment payments on the date the taxpayer files the tax return, the taxpayer must pay the difference no later than 15 December, along with the tax return.

For taxpayers with a special fiscal year authorised by the Tax Administration, the first advance payment must be provided within six months of the authorised fiscal year-end.

Tax audit process

For a tax audit to begin, it is necessary that the Tax Administration send a notification to the taxpayer to be audited. The taxpayer is selected according to one of the selection criteria previously established, and this should be indicated in the communication at the beginning of the tax audit. The Tax Administration must start the audit within two months of the communication to the taxpayer.

Once the audit is completed, the auditors hold a meeting with the company and invite them to correct the issues found.

If the company does not accept the correction, it can start the described procedure and pay the respective tax until that procedure has finished along with the corresponding interest.

Statute of limitations

The action of the Tax Administration to determine a tax liability will be under the statute of limitations of four years. The same term is valid to demand the payment of the tax and its interests.

The aforementioned term is extended to ten years for taxpayers non-recorded before the Tax Administration, those that are recorded but have filed returns qualified as frauds, or those that have not filed the sworn returns.

The term of the statute of limitations should be counted as of the first day of the month following the date when the tax should be paid.

Topics of focus for tax authorities

Important topics for tax audits are transfer pricing, sales tax credits, gross margin on sales, employee benefits, and income tax.

Other issues

Common Reporting Standard (CRS) regimen

Costa Rica has made important steps to comply with the CRS developed by the OECD.

The first step was the reform through Law No. 9296 of 18 May 2015 to article 106 quater to the Code of Tax Rules and Procedures through which the procedure called 'Procedure to request financial information for the exchange with other jurisdictions by virtue of an international agreement', which empowers the Costa Rican Tax Administration to implement the automatic exchange of information that is foreseeably relevant for tax purposes in cases in which an international agreement for the exchange of tax information is executed, and establishes that, for the purpose of implementation of the automatic exchange of information, the Tax Administration will define, by means of a general resolution, the time and manner in which financial entities and any other entity that, even without being classified as financial, carry out some type of financial activity will supply the information.

Taking into consideration that Costa Rica acceded to the Convention on Mutual Administrative Assistance in Tax Matters through Law No. 9118 of 7 February 2013, and by virtue of the adhesion of Costa Rica to the Declaration on the Automatic Exchange of Information in Matter Prosecutor of the OECD, signed in May 2014, Costa Rica has implemented the Standard for the Automatic Exchange of Financial Information in Tax Matters as the tool through which Costa Rica will exchange information automatically with other jurisdictions, annually.

Because one of the core issues that the OECD has recorded in the Multilateral Agreement between Competent Authorities on the Automatic Exchange of Information on Financial Accounts is the implementation of the 'Standard for the Automatic Exchange of Information on Financial Accounts in Tax Matters' or 'Common Reporting Standard for Financial Accounts', known as the Common Reporting Standard (CRS), which establishes that the financial institutions of the countries committed to the exchange of information that is the subject of the mentioned Convention must apply the due diligence procedure to identify the financial accounts that will be subject to the report, and in order to comply with the aforementioned international agreement, the Ministry of Finance of the Government of Costa Rica issued Resolutions No. DGT-R-006-2017 and No. DGT-R-006-2018, referring to the due diligence in the supply of information of the financial and non-financial entities for the automatic exchange of tax information according to the OECD CRS rules.

In these resolutions, the Costa Rican tax authorities define the individuals, terms, procedures, and compliance deadlines that must be complied with by entities required to provide the information foreseeably relevant for tax purposes referred to in the financial accounts that they must report, as established by the CRS. The obligation of the institutions of the financial system to submit to the Tax Administration the information referring to the accounts and payments according to the Standard for the Automatic Exchange of Information on Financial Accounts in Tax Matters, adopted by the Council of the OECD, is established and indicates the general requirements of the obligation to report by Costa Rican financial institutions, with respect to each foreign account, the general due diligence requirements, the review procedures for pre-existing accounts of individuals, review procedures for new accounts of individuals, review procedures for pre-existing entity accounts, review procedures for new entity accounts, special due diligence rules, and a series of definitions.

Tax information exchange agreements (TIEAs)

Costa Rica has a TIEA with the United States (US), effective since 12 February 1991, whereby both countries agree to exchange information, from and/or in relation to public and private entities and individuals, at the request of the party's corresponding authority in relation to any tax relevant issue.

In April 2018, with the objective of meeting the current standard of fiscal transparency established by the OECD with respect to the exchange of information for fiscal purposes and mutual assistance, the governments of Costa Rica and the United States signed a new information exchange agreement between both countries. The agreement was signed but must be submitted to the Legislative Assembly for ratification.

Under this agreement, both countries will offer assistance through the exchange of information in order to determine, settle, and collect taxes, as well as to collect and execute tax claims, or to investigate or prosecute tax matters. All this information will be treated confidentially between both parties.

This new agreement shows the commitment of Costa Rica to carry out an effective exchange of information in accordance with the standards of the Global Forum of Transparency and Exchange of Information of the OECD.

Currently, Costa Rica has valid TIEAs with Argentina, Australia, Canada, Denmark, Ecuador, El Salvador, Faroe Islands, Finland, France, Greenland, Guatemala, Holland, Honduras, Iceland, Mexico, Nicaragua, Norway, South Africa, Spain, and Sweden.

In addition, Costa Rica also signed, in 2013, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, thanks to which Costa Rica can exchange tax information with all the countries that have this convention in force; currently, 117 countries have signed it.

Foreign Account Tax Compliance Act (FATCA) agreement

In November 2013, Costa Rica`s Treasury Department and the Deputy in charge of negotiations of the US embassy in Costa Rica signed an intergovernmental agreement (IGA) in which they committed to share financial information, with the objective of guaranteeing transparency in financial transactions that US citizens perform in Costa Rica, with the aim of justifying and supporting the application of the policy established in the FATCA Law. The IGA will allow Costa Rica`s financial entities to comply with the provisions established in FATCA. The IGA was chosen under Model 1, in which each entity must submit a report to the Treasury Department, and it will be this entity that is in charge of the transfer of information to the United States Treasury Department.

By means of Law No. 9296 of 18 May 2015, a vehicle by which the IGA can be implemented in Costa Rica was created. Under such Law, the Tax Code was modified to include an article 106 quater in which the obligation was established for financial entities (and any other entity that, even without being classified as such, runs any type of financial activity) to provide the Tax Administration with all the information of its clients that is foreseeably relevant for tax purposes and that is required for the implementation of international instruments that contemplate the exchange of information on tax matters in any of its modalities. Thus, such financial information may be transferred by the Tax Administration to jurisdictions with which international instruments have been subscribed that contemplate the exchange of information on tax matters.

In order to obtain said information, the judicial authorisation procedure contained in article 106 ter of this Code, or the authorisation established in article 615 of the Commercial Code of Costa Rica, will not be required.

By means of Law No. 9416 of 14 November 2016, penalties were established for those financial entities that fail to comply with the provision of the pertinent information, and it was also established that said information must be handled in a confidential manner by the tax authorities.

Free-trade bilateral treaties

Costa Rica is a full member of the Central American Common Market, which guarantees free trade among the countries of the area. It also has a free-trade bilateral treaty in force with Canada, the Caribbean Community (CARICOM), Chile, China, Colombia, the Dominican Republic, the European Free Trade Association (EFTA), Mexico, Panama, Peru, and Singapore. The US-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) entered into force on 1 January 2009. Additionally, there is a free commerce and cooperation agreement with the European Union (EU) in force since 2013. These agreements aim to provide favourable conditions for the exchange of merchandise between contracting parties.

Croatia

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Significant developments

There have been no significant corporate tax developments in Croatia during the past year.

Taxes on corporate income

Corporate income tax (CIT) is generally paid at a rate of 18%. For taxpayers with revenues in the tax period lower than 3 million Croatian kuna (HRK), the rate of 12% is applied. This is applicable for the tax years starting from 1 January 2017 (previously, the CIT rate was a flat 20%). The CIT payers are enterprises engaged in independent activities on a long-term basis for the purpose of deriving profit, branches of foreign enterprises, enterprises that control shares in capital (unless the object of investment itself pays CIT), and natural persons who choose to pay CIT instead of personal income tax (PIT).

The CIT base is the accounting profit adjusted for deductions and disallowed items. Croatian residents pay CIT on profit derived in Croatia and abroad, and non-residents (e.g. branches) pay CIT only on profits derived in Croatia. The tax base also includes gains arising from liquidation, sale, change of legal form, and division of the taxpayer if it is determined at the market values.

Payments into voluntarily pension funds paid by an employer for an employee under certain conditions prescribed by the CIT Act are also considered as deductible expenditures.

Expenditures are not considered to be deductible expenditures if they are not related to the taxpayer's business activity.

Taxpayers who realise less than HRK 3 million in revenues can determine the tax base according to the cash principle.

The CIT base is reduced by the following items:

- Income from dividends and profit sharing (i.e. dividends and shares in capital that are paid by the company that pays CIT that is identical to Croatian CIT, has a prescribed legal form, and which the payer didn't use as recognised cost [i.e. deduction] in one's CIT return).
- Unrealised gains from value adjustments of shares (increase of financial asset value) if they were included as income in the profit and loss (P&L) account in the current year and offset previously recognised tax non-deductible unrealised losses from the same financial asset.

- Income from collected written-off claims that were included in the tax base in the previous tax periods but not excluded from the tax base as recognised expenditure.
- The amount of depreciation not recognised in previous tax periods, up to the amount prescribed by the CIT Act.
- The amount of tax relief or tax exemption in line with special regulations (i.e. costs of education, costs of research and development [R&D], and costs of a new employee's salary).

The CIT base is increased by the following items:

- Unrealised losses from value adjustments of shares (decrease of financial asset value) if they were included as expenses in the P&L account and do not offset previously recognised unrealised gains from value adjustments from the same financial asset.
- The amount of depreciation in excess of the amounts prescribed by the CIT Act.
- 50% of entertainment costs (food and drink, gifts with or without the printed firm logo or product brand, and expenses for vacation, sport, recreation, renting cars, vessels, airplanes, and holiday cottages). Entertainment costs do not include the costs of goods and merchandise adapted by a taxpayer for business entertainment purposes, labelled 'not for sale', and other promotional objects with the name of the firm or merchandise or other advertising objects (e.g. glasses, ashtrays, table cloths, mats, pencils, business diaries, cigarette lighters, tags) put to use in the selling area of the purchaser and given to consumers, provided that their value does not exceed HRK 160 per item.
- 50% of the costs, except insurance and interest costs, incurred in connection with owned or rented motor vehicles or other means of personal transportation (e.g. personal car, vessel, helicopter, airplane) used by managerial, supervisory, and other employees, provided that the use of means of personal transportation is not defined as salary. Please note that the percentage of 50% non-deductible expenses incurred in relation to personal cars is applicable as of 1 January 2018 (previously, 30% of these expenses were non-deductible).
- Asset shortages exceeding the amount prescribed by the Croatian Chamber of Economy or Croatian Chamber of Trades and Crafts, in accordance with the Value-added Tax (VAT) Act and on the basis of which no PIT was paid.
- The costs of forced collection of taxes and other levies.
- Fines imposed by competent bodies.
- Late payment interest charged between associated persons.
- Privileges and other economic benefits granted to natural or legal persons for the purpose of causing or preventing a certain event in favour of the company (generally related to commissions paid to parties acting on behalf of the taxpayer).
- Donations in excess of the amounts prescribed by the CIT Act.
- Interest that is not tax deductible according to the CIT Act.
- Expenditures identified during tax authority's audit, including VAT and contributions related to hidden profit payments and withdrawals from shareholders, company members, and physical persons performing independent activities taxable by CIT.
- Any other expenditure not directly related to profit earning, as well as other increases in the tax base, which were not included in the tax base.

Local income taxes

There are no significant county or local taxes on income.

Corporate residence

In terms of the CIT Act, residents are legal or natural persons whose seat is recorded in the Register of Companies or other register in Croatia, or whose place of effective management and control of business is in Croatia. Residents are also entrepreneurs/natural persons with domicile or habitual residence in Croatia whose business activity is recorded in a register or other records.

A non-resident is any person who does not satisfy one of the requirements referred to above.

Permanent establishment (PE)

The definition of a business unit of a non-resident is based on the Organisation for Economic Co-operation and Development (OECD) guidelines, which provides that a non-resident's business unit is a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources or construction site or project for a period longer than six months, including agents acting in its name, having the right to conclude contracts or hold stock of products that it distributes on the Croatian market in the name of a foreign entrepreneur. The business unit of a non-resident also includes the performance of services (i.e. advisory and business consulting services) for the same or a related project, which lasts for more than three months in a 12-month period.

Other taxes

Value-added tax (VAT)

The Croatian VAT system is in line with the provisions of the European Union (EU) VAT Directive.

VAT is payable on sales of goods and supply of services, import of goods, and intra-Community acquisition of goods.

Croatia has not introduced any VAT grouping rules.

VAT rates

The general VAT rate is 25%.

A reduced rate of 13% is applicable for:

- Organised stays (accommodation or accommodation with breakfast, full or half board, in all kinds of commercial hospitality facilities).
- Newspapers and magazines of a publisher that has a statute of media and newspapers and magazines for which there is no obligation of adoption of the statute of media according to a special law (with the exception of those that consist entirely of advertisements or are used mainly for advertising purposes).
- Edible oils and fat of animal and vegetable origin.
- Child seats for cars and children's food and processed cereal-based foods for infants and small children.
- Water delivery, except for water in bottles and other packaging on the market, in terms of public water supply and public drainage system according to a special law.
- Concert tickets.

- Supply of electric energy to another supplier or end user, including fees related to that supply.
- Public service of mixed municipal waste, biodegradable municipal waste, and separate waste collection according to a special law.
- Urns and caskets.
- Seedlings and seeds.
- Fertilisers and pesticides and other agrochemical products.
- Animal food, other than pet food.

A reduced rate of 5% is applicable for:

- Bread and milk, including baby food used as a substitute for mother's milk.
- Books of a scholarly, scientific, artistic, cultural, and educational character, as well as school textbooks (primary, secondary, and tertiary education, on all kinds of media).
- Certain medicines and medical equipment and accessories.
- Scientific journals.
- Cinema tickets.
- Daily newspapers of a publisher that has a statute of media (with the exception of those that consist entirely of advertisements or are used mainly for advertising purposes).

Reporting obligations

Taxpayers have to electronically file monthly VAT returns by the 20th day of the month following the reporting month. Exceptionally, taxpayers who do not have any transactions with EU taxpayers (inbound or outbound) and whose aggregate value of goods delivered and services provided in the previous year does not exceed HRK 800,000 can submit the VAT return quarterly.

Any annual adjustments are made in the VAT return for December, which is the last monthly VAT return in a financial year.

In addition, both intra-Community acquisitions and supplies, as well as services provided to or received from an EU-registered taxpayer, have to be reported in a recapitulative statement, submitted by the 20th day of the month following the reporting month.

Where the amount of input tax credits exceeds the entity's VAT liability, a taxpayer is entitled to a refund of the difference or may choose to use the difference as a VAT prepayment.

VAT registration

VAT payers are defined as entrepreneurs that deliver goods or perform services in Croatia. An 'entrepreneur' is a legal entity or a natural person that continuously and independently performs an activity for the purpose of deriving profit. In addition to those that may be regarded as 'normal' taxpayers, domestic enterprises receiving services from foreign enterprises and legal entities and individuals that issue invoices or receipts including VAT without authorisation are also liable to pay VAT.

Companies have to obtain a Croatian VAT ID number in case of EU acquisition of goods in Croatia and EU supplies of goods from Croatia. Export also triggers VAT registration obligation.

Domestic companies performing or receiving services to/from the European Union also have to obtain a VAT ID number.

Foreign companies that supply goods within Croatia or perform land-related services in Croatia do not have to register if the recipient is a Croatian company or holds a Croatian VAT ID number, since Croatia has implemented Art. 194 of the VAT Directive.

A taxpayer is required to enter into the VAT system when the value of supplies in the previous year exceeded HRK 300,000 (prior to 1 January 2018, the threshold was HRK 230,000). Voluntary registration is also possible.

Reclaiming of input VAT is granted to EU-registered VAT payers. No tax representative is required.

Entrepreneurs registered in third countries can apply for a VAT refund, provided reciprocity agreements are in place and a tax representative is used.

Determination of VAT base

The VAT base for the supply of goods and services is the consideration that includes everything that the supplier has received or is supposed to receive from the buyer or a third person in connection to the supply, including the subventions directly related to price of goods and services supplied.

Where no consideration is provided, for instance where goods are exchanged, the VAT base is considered to be the market value of the goods or services. The VAT base of imports is the customs value as prescribed by customs regulations, increased by customs duties, import duties, special taxes, and other fees paid during customs clearing.

VAT-exempt supplies

VAT-exempt supplies include rental of residential property (with some exceptions); granting of credits and credit guarantees; transactions related to bank accounts, interest, winnings from special games of chance in casinos, slot machine clubs, and other forms of gambling; supplies of domestic and foreign legal tender, securities, and shares; and supply of land (other than construction land).

Other exemptions, for example, include the following:

- Services and deliveries of goods by public institutions in the field of culture, such as museums, galleries, archives, libraries, theatres, religious communities and institutions, primary and secondary schools, universities, and student catering and boarding institutions.
- Postal services.
- Public radio and television activities.
- Medical services, including services conducted by doctors, dentists, nurses, physiotherapists, and biochemistry laboratories engaged in private practices; services of medical care performed in healthcare institutions; and services performed by social care institutions and child and adolescent care institutions.
- Services closely linked to sports.

- Supplies (transfers) of real estate (land, buildings, parts of buildings, housing premises, and other structures), with the exception of 'newly built buildings'. 'Newly built buildings' subject to VAT are buildings that have not been used for more than two years. Buildings not subject to VAT are subject to real estate transfer tax (RETT).

Customs duties

Croatian customs legislation and policies have been fully harmonised with the EU legislation. Goods imported from non-EU countries are subject to import customs clearance, and goods exported from the EU customs territory must be declared for export customs clearance. For performance of customs clearance procedures, each person has to be identified by an Economic Operator Registration and Identification (EORI) number, which is issued by the Customs office upon request.

Excise duties

There are a number of excise duties and special taxes levied on specific products. They are levied at a fixed amount and are payable by the producer or importer. VAT is applied first, after which the fixed amounts are added.

Excise taxes

Product	Excise tax rate
Oil derivatives	From HRK 100 to HRK 4,500 per 1,000 l/kg
Natural gas	HRK 4.05 per MWh for business purpose heating
	HRK 8.10 per MWh for non-business purpose heating
Cole and coke	HRK 2.30 per Gj
Electricity	HRK 3.75 per MWh for business use
	HRK 7.5 per MWh for non-business use
Tobacco products:	
Cigarettes	Specific excise duty: HRK 310 per 1,000 pieces
	Proportional excise duty: 34% of the retail price
	But not less than HRK 696 per 1,000 pieces
Cigars and cigarillos	HRK 600 per 1,000 pieces
Fine-cut tobacco	HRK 600 per kg
Other tobacco for smoking	HRK 600 per kg
Beer	HRK 40 per 1 volume percentage alcohol in 1 hectolitre (hl)
Alcohol:	
At 15% alcohol or higher	HRK 800 per hl
Less than 15% alcohol	HRK 500 per hl
Ethyl alcohol	HRK 5,300 per hl

Special taxes

Product	Special taxes
Coffee and soft drinks:	
Roasted coffee	HRK 6 per kg
Coffee extracts, essence, and concentrates	HRK 20 per kg
Roasted coffee contained in finished products	HRK 6 per kg of coffee net mass
Coffee extracts, essence, and concentrates in finished products	HRK 20 per kg of coffee net mass
Sugar or sweetener added water, aromatised water (mineral water and fruit juices exempt)	HRK 40 per hl

Product	Special taxes
Other drinks with max 1.2% alcohol (mixture of beer and soft drinks with more than 0.5% alcohol exempt)	HRK 40 per hl
Syrups and concentrates for soft drinks preparation	HRK 240 per hl
Powders and granules for soft drinks preparation	HRK 400 per 100 kg
Motor vehicles on which special tax was not already paid for the use on public roads:	Determined on the basis of purchase price of the motor vehicle, carbon dioxide (CO_2) emissions expressed in g/km, engine power in kW, volume of the engine in cm^3, and the level of emission of exhaust gases
Motor vehicles on diesel fuel	From 5% to 21% depending on the purchase price, from HRK 55 to HRK 1,450 depending on 1 g/km CO_2
Motor vehicles on petrol, liquefied petroleum gas, natural gas, and other fuels except diesel fuel	From 5% to 21% depending on the purchase price, from HRK 35 to HRK 1,300 depending on 1 g/km CO_2
Motorcycles, mopeds, bicycles and 'ATV' vehicles	Determined on the basis of calculation of the volume of the engine in cm3 multiplied by the engine volume ratio increased by 5, 10, or 15 depending on the level of emission of exhaust gases (EURO III, EURO II, EURO I)
Fully electric vehicles, motor vehicles with 0 g/km CO2, and motor vehicles produced 30 years ago and older ('olditimers')	Not subject to taxation
Producers, dealers, and dealers of used motor vehicles	Obligated to register in the registry of motor vehicle producers and dealers eight days before the beginning of the activities. Also, they are obligated to deposit a security instrument for the payment of special taxes.
Acquisition of used motor vehicles on which special tax on motor vehicles was paid, which applies if supply was not subject to VAT, gift, or inheritance tax	Administrative fee payable in HRK/kW, depending on the age of the used motor vehicle according to the special legislation
Liability and comprehensive road vehicle insurance premiums	15% of the contractual amount for obligatory motor vehicle insurance premium
	10% of the contractual amount for comprehensive motor vehicle insurance premium

Property taxes

There are no property taxes in Croatia.

Real estate transfer tax (RETT)

The acquisition of real estate is subject to taxation. 'Real estate' generally includes agricultural, construction, and other land, as well as residential, commercial, and other buildings. Transactions include the sale, exchange, and any other means of acquiring real estate for consideration. The acquisition of real estate on which the VAT is paid is not subject to the RETT.

Tax is charged at 4% of the market value of the real estate on the contract date and is paid by the acquirer.

Stamp tax

There are no stamp taxation provisions in Croatia.

Payroll taxes

Employers are required to withhold a percentage of their employees' salaries and benefits as a payment on account of their PIT. The rate of withholding is a progressive rate between 24% and 36%, depending on the employee's personal circumstances and income.

Social security contributions

The Croatian social security system covers pension, health, and unemployment insurance. In case of dependently employed individuals, social security charges are borne by the employee and employer.

Employers make social contributions at the rate of 17.2% for the following social security benefits:

- Health insurance: 15%.
- Health insurance for health protection while at work: 0.5%.
- Unemployment insurance: 1.7%.

The basis for payment of employer's social security contributions is gross salary, which is not capped.

Employers have certain obligations with respect to disabled individuals. Apart from some exceptions, employers employing 20 or more employees are obligated to employ a prescribed number of disabled individuals. The number depends on the total number of employees and nature of activities the employer carries out but it cannot be lower than 2% or higher than 6% of the total number of employees.

Employers who do not comply with prescribed requirements are obligated to pay a monthly fee amounting to 30% of minimal salary (minimal salary for 2017 amounts to HRK 3,276) for each disabled individual that employer was due to employ.

Chamber of Commerce contribution

Employers pay a mandatory contribution to the Croatian Chamber of Commerce. The amount varies between HRK 42 and HRK 3,973, depending on company size.

Branch income

Foreign corporations carrying on business in Croatia are taxed on their Croatian-source income at the rate of 18% or 12%, depending on the amount of realised revenues.

Income determination

Inventory valuation

Inventories are generally valued at the lower of their acquisition cost or net realisable value. Taking into consideration the accounting principles set out in the Accounting Act and the International Financial Reporting Standards (IFRS) or Croatian Financial Reporting Standards (CFRS), a company can choose to adopt the most favourable method.

Capital gains

Capital gains or losses are covered by the CIT regime. They are either an increasing or decreasing item to the CIT base.

Dividend income

Dividend and profit shares payments made to resident companies are not taxable. Dividends and profit shares paid to non-resident companies are taxed at the withholding tax (WHT) rate of 12%. *Please see the Withholding taxes section for more information*.

Interest income

Interest income is taxable at the applicable CIT rate, as a part of total income stated in the P&L account. Interest paid to non-resident companies can be taxed at the WHT rate of 15%. *Please see the Withholding taxes section for more information*.

Interest income on loans between related companies has to be determined at the minimum interest rate prescribed by the Ministry of Finance as calculated and published by the Croatian National Bank (4.55% as of 1 January 2018). An alternative approach (instead of the interest rate prescribed by the Ministry of Finance) is the interest rate determined according to the transfer pricing rules, if applied to all contracts.

Royalty income

Royalty income is taxable at the applicable CIT rate, as a part of total income stated in the P&L account. Royalties paid to non-resident companies can be taxed at the WHT rate of 15%. *Please see the Withholding taxes section for more information*.

Foreign income

The tax base of a resident taxpayer subject to CIT is the profit earned both in Croatia and abroad, excluding the case where the taxpayer has registered a branch office abroad and taking into account the provisions of respective double tax treaties (DTTs).

Deductions

Depreciation

Most companies depreciate assets on a straight-line basis; this is because depreciation calculated this way, at the prescribed rates, is recognised for tax purposes. Companies are, however, free to use any depreciation method defined in the IFRS or CFRS and to estimate the useful lives of all fixed assets in accordance with their accounting policies.

Prescribed annual depreciation rates are as follows:

Assets	Depreciation period (years)	Depreciation rate (%)
Buildings and ships of over 1,000 gross registered tonnage (GRT)	20	5
Basic herd and personal cars	5	20
Intangible assets, equipment, vehicles (except personal cars), and machinery	4	25
Computers, computer hardware and software, mobile telephones, and computer network accessories	2	50

Assets	Depreciation period (years)	Depreciation rate (%)
Other non-mentioned assets	10	10

However, depreciation expenses in excess of the amount allowed for tax purposes are taxable. The value adjustment expenses of tangible fixed assets are non-deductible if such expenses exceed the amount of expense calculated by using the prescribed depreciation rate.

The cost of depreciation of assets that are not used for business purposes is not deductible.

Plant and equipment are considered to be acquired in the period in which installed or ready for use. Plant and equipment includes tools of trade, information technology infrastructure (including software), furniture and fittings, and motor vehicles (excluding vehicles for personal use).

If the taxpayer writes off a portion of a depreciable asset, the remaining undepreciated portion will be depreciated at the rate prescribed by law. According to the CIT Act, the taxpayer can double the depreciation rates.

Land and forests (renewable resources) are not depreciated.

Financial assets, cultural monuments, and art work are not depreciated.

Depreciation of vessels, aircraft, condominiums, and vacation houses can be tax deductible only if certain conditions are met.

Goodwill

Goodwill is usually the difference between the consideration paid and the fair value of acquired identifiable net assets. If the taxpayer applies CFRS for its financial reporting, then goodwill must be amortised over five years.

The amortisation of goodwill is not recognised for tax purposes.

If the taxpayer applies IFRS for its financial reporting, goodwill impairment (if any) is considered as a non-deductible expense for tax purposes.

Start-up expenses

Generally, start-up expenses are considered to be expenses in the financial year in which they are incurred. As no special rule is provided for tax purposes, they are considered as tax deductible expenses for CIT purposes in the year in which they are incurred.

Interest expenses

According to the CIT Act, late payment interests are tax deductible, unless those interests are due to related companies, regardless of whether the late payment interests are charged by resident or non-resident related parties.

Interest expenses on loans between related companies is also deductible, up to the amount prescribed by the Ministry of Finance as calculated and published by the Croatian National Bank (4.55% for 2018) and if compliant with thin capitalisation rules (4:1 ratio). An alternative approach (instead of the interest rate prescribed by the Ministry of Finance) is the interest rate determined according to the transfer pricing rules, if applied to all contracts.

See Thin capitalisation and Interest rate charged between related parties in the Group taxation section.

Bad debt

Value adjustments arising from the adjustment of the value of claims against customers for goods delivered and services rendered are recognised as deductible expenses if more than 60 days elapsed between the maturity of the claim and the end of the tax period, and if the claims were not collected up to 15 days before filing the CIT return. The claim needs to be recorded in the business books as revenue, and all measures for debt collection have to be taken (legal actions) in accordance with best management practices.

These expenses are permanently deductible if a settlement has been reached with the debtor CIT payer who is not a related person, in case of bankruptcy, arbitration, or conciliation, based on a special regulation.

In addition, the law introduces a possibility of permanent tax deductibility of expenses from write-offs of receivables recognised from an unrelated person. It applies if a taxpayer proves that costs of initiating a procedure to collect the receivable are higher than the amount of the receivable itself. It also applies if it proves that it took the necessary actions with due care and diligence of a prudent businessperson with the aim of collecting the receivable, whereby one determined the final inability to collect the amount of the receivable being written off.

Moreover, for the purpose of accelerating the debt reduction procedure, the new regulations introduced a provision encouraging credit institutions to implement the debt reduction procedure during 2017. This relates to bad debt or difficult-to-collect receivables determined as on 31 December 2015, whereby the total expense of a write-off of the receivable, without initiating court or enforcement proceedings, or other proceedings aimed at receivable collection, is recognised as a tax deductible expense. This measure could be applied only in the tax return for 2017 (or for the tax period which begins in 2017 for taxpayers whose fiscal year is different than the calendar year). In other words, it is a one-off measure.

Charitable contributions

Donations in a form of gifts in kind or cash for cultural, scientific, educational, health, humanitarian, sports, religious, environmental, or other socially beneficial purposes are tax deductible by 2% of the revenues generated in the previous year. Exceptionally, the amount may exceed 2% of the revenues generated in the previous year, provided that it is granted pursuant to the decisions of competent ministries on the financing of special programs and activities.

The donations of food to prescribed persons for social, humanitarian, and other purposes, and to people affected by natural disasters, made by taxpayers that are food producers and food traders can also be considered as tax deductible (provided the donations are in line with the relevant regulations of the Ministry of Agriculture).

Fines and penalties

Fines and penalties prescribed by Croatian administrative and judicial authorities are considered to be non-deductible expenses.

Taxes

There are no provisions for tax treatment of taxes paid/accrued. *For foreign tax credits, please see the Tax credits and incentives section*.

Net operating losses

Tax losses may be carried forward and utilised within five years following the year in which the losses were incurred and must be utilised in the order in which they occurred. The losses may not be transferred to any third party except in the case of merger, de-merger, or acquisition. Tax losses cannot be carried back.

Utilisation of tax losses from previous years in case of statutory changes of legal entities is prescribed in detail in the CIT Act, limiting the entitlement where the legal predecessor is inactive and in case of a significant change in business activity or ownership structure.

Payments to foreign affiliates

The treatment of payments made to foreign affiliates is dealt with through the mechanism of the CIT base. The CIT base is increased for any concealed profit payments made. The tax authorities may audit the expenditure of non-resident taxpayers, examining expenditure on goods and services abroad as well as management, intellectual property (IP), and other fees and payments that may have the character of a profit transfer. If the tax authorities discover that transactions have been used to conceal profit transfers, the difference between the declared price/fee and the average market price/fee will be added back into the taxpayer's tax base.

Group taxation

There are no group taxation provisions in Croatia.

Transfer pricing

Prices between a Croatian entity and its foreign related parties must be set at fair market value (the arm's-length principle). Provisions on transfer pricing and interests are also introduced in transactions between resident related parties if one of the parties has:

- beneficial tax status (i.e. reduced tax rates) or
- entitlement to carry forward tax losses from previous years.

If the prices between related entities are different than those between non-related resident and non-resident entities, the tax base must be calculated with prices that would be charged between unrelated companies. In order to determine the market value of the related party's transaction, the following methods can be used:

- Comparable uncontrolled price.
- Resale price.
- Cost plus.
- Profit split.

- Net profit.

Advance pricing agreements (APAs)

The possibility of concluding an APA between the taxpayer and the tax administration and administrative bodies of other states where related entities involved in transactions with domestic taxpayers are residing is available. The APA determines certain criteria (e.g. methods, comparables, adjustments, key assumptions) applicable to future transactions in order to determine transfer prices for such transactions during a certain period.

Country-by-country (CbC) reporting

Croatia has taken its first steps in harmonising its legislation with Action 13 of the OECD's Base Erosion and Profit Shifting (BEPS) plan by introducing CbC reporting requirements. The new provisions are implemented in the Act on administrative cooperation in the tax field (Official Gazette 115/16) and in the Rulebook on automatic exchange of information in the tax area (NN 18/2017). On the basis of the Act (Article 34) and Rulebook (Articles 101-122), taxpayers (members of multinational enterprises whose global consolidated turnover exceeded 750 million euros [EUR] in 2016) are required, for tax periods beginning 1 January 2016 or after that date, to submit to the tax authorities the following reports and information:

- CbC report notification, or
- CbC report.

In the majority of cases, local companies/branches that are not ultimate parents are obligated to notify the tax authorities that they are not the ultimate parent company and:

- whether they are a surrogate parent company that will file a CbC report instead of the ultimate parent company, or
- they are a constituent entity of the group.

This is done through CbC report notification, which also includes information on the taxpayer responsible for submission of the CbC report (either the ultimate parent or surrogate parent), its identity, and its tax residence.

CbC report notification is submitted to the tax authorities together with the annual CIT return, and the deadline to file the notification is the same as for a CIT return.

In addition, there are some specific cases where a constituent entity of the group (besides the ultimate parent or surrogate parent companies) could become liable to file a CbC report, which are:

- if the ultimate parent company is not required to file a CbC report per its country of residence legislation (we assume that it is not required to nor will it voluntarily file the report via a surrogate parent company)
- the Multilateral Competent Authority Agreement on the Automatic Exchange of Information in the Field of Taxation (the Agreement) between Croatia and the country of residency of the entity that will file the CbC report did not enter into force, or
- due to an error in the exchange of information system.

Thin capitalisation

Interest on loans from a shareholder or a member of a company holding at least 25% of shares or voting power of the taxpayer will not be recognised for tax purposes in relation to the amount of the loan that exceeds four times the amount of the shareholder's share in the capital or their voting power. Interest on loans obtained from financial institutions is exempt from this provision. Loans from a shareholder or a member of a company are considered to be:

- Third-party loans if guaranteed by a shareholder.
- Loans from related parties.

Interest rate charged between related parties

It is possible for the taxpayer to determine the interest charged between related parties in a way stipulated for determining the fees agreed between unrelated parties in general (i.e. in accordance with the arm's-length principle), under the condition that the same modality of determining interest applies to all financial agreements that taxpayer has with related parties. This possibility is very beneficial to taxpayers since it allows them to determine on their own what the market interest rate is in the relations between related entities, which is in accordance with requirements on the application of the arm's-length principle in business activities with related taxpayers. Previously, the regulations stipulated the deemed market interest rate in relations between related entities, and that interest rate did not necessarily correspond to actual market interest rates.

Controlled foreign companies (CFCs)

No CFC regulations exist in Croatia.

Tax credits and incentives

The Act on Investment Incentives provides the following relief and incentives for taxpayers.

Investment promotion incentives

Incentive measures for investment projects in Croatia are regulated by the Act on Investment Promotion and pertain to investment projects in:

- Manufacturing and processing activities.
- Development and innovation activities.
- Business support activities.
- High added value services.

Incentive measures can be used by enterprises registered in Croatia investing in fixed assets the minimum amount of:

- EUR 50,000 together with creating at least three new jobs for micro enterprises.
- EUR 150,000 together with creating at least five new jobs for small, medium, and large enterprises.
- EUR 50,000 together with creating at least ten new jobs for ICT system and software development centres.

The amount of aid shall be calculated as a percentage of investment value, which is determined on the basis of eligible investment costs. Eligible investment costs are:

- tangible (value of land/buildings and plant/machinery) and intangible assets (patent rights, licences, know-how), or
- gross wage calculated over a period of two years.

The larger of these two amounts constitutes the baseline for calculating the amount of aid.

The percentage of investment value used for calculating the aid amount for large enterprises is 40%, for medium enterprises 50%, and for small and micro enterprises is 60%.

The minimum period for maintaining the investment and newly created jobs linked to an investment is five years for large enterprises, and three years for small and medium-sized enterprises, but no less than the period of use of the incentive measures.

The following incentive measures are available:

- Tax incentives.
- Employment incentives.
- Incentives for education and training.
- Incentives for investments in development and innovation activities.
- Incentives for the capital expenses of investment projects.
- Incentives for labour intensive investment projects.
- Incentives for investment projects through economic activation of inactive property owned by Croatia.

Tax incentives

Tax incentives decrease the CIT rate, depending on the amount of the investment and the number of new jobs created.

Tax incentives for micro entrepreneurs require a minimum investment of EUR 50,000 and allow tax incentives in the form of a 50% decrease of the tax rate over a period of five years, with a minimum of creating three new jobs. Tax incentives for small, medium, and large entrepreneurs can be obtained under the following conditions:

Investment amount (EUR)	Number of newly employed persons	CIT rate reduction (%)
150,000 to 1,000,000	5	50
1,000,000 to 3,000,000	10	75
More than 3,000,000	15	100

Employment incentives

Employment subsidies are incentives for creating new jobs in relation to the investment project. Non-refundable subsidy for eligible costs of new jobs created depends on the unemployment rate in the county in which the investment is located. The incentive rate is applied to eligible costs of jobs creation.

County unemployment rate	Incentive rate
Up to 10%	10% (maximum EUR 3,000 per employee)

County unemployment rate	Incentive rate
10% to 20%	20% (maximum EUR 6,000 per employee)
More than 20%	30% (maximum EUR 9,000 per employee)

The specified amount of the grant refers to employment of persons that are the long-term unemployed, regardless of length of service and level of education, who are registered as unemployed with Croatian Employment Service that are either: unemployed for at least 6 months, older than 50 years, or persons without work experience. Grant also applies to persons whose contract was cancelled because of the bankruptcy proceedings.

For other categories of workers, the incentive rate is 40% of the amount presented in the table.

The incentive rate is increased by 50% for development and innovation activities and 25% for business support activities and high added value activities.

Incentives for education and training

The non-refundable subsidy shall not exceed 50% of the eligible costs. It may be increased, up to a maximum aid intensity of 70% of the eligible costs, as follows:

- By 10 percentage points if the training is given to workers with disabilities or disadvantaged workers.
- By 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small and micro enterprises.

Incentives for investments in development and innovation activities

For investment in development and innovation activities, a non-refundable grant shall be approved for the purchase of plant/machinery amounting to 20% of the actual eligible costs for purchasing plant/machinery, in the maximum amount of EUR 500,000, provided that the purchased plant/machinery represents high technology equipment.

Incentives for the capital expenses of investment projects

An incentive can be granted for the investment project if the minimum investment in fixed assets is EUR 5 million and 50 new jobs are created within a three-year period from the start of the project.

Those projects can benefit from additional non-refundable subsidies between 10% and 20% of the eligible costs of investments for:

- Construction of a new factory, production facility, or tourist facility.
- Buying of new machines (i.e. production equipment).

The percentage of non-refundable subsidies depend on the unemployment rate of the county where investment is located.

The non-refundable subsidies could be up to EUR 1 million, depending on the applied percentage of the eligible costs, with the condition that the part of investment in the machines/equipment equals at least 40% of the investment and that at least 50% of those machines/equipment are of high technology.

Incentives for the labour intensive investment projects

Labour intensive investment projects in fixed assets are those with at least 100 new jobs created within a three-year period from the start of the project.

Initial employment incentives can be increased by an additional 25% for up to 300 new jobs, 50% for a minimum of 300 new jobs, and up to 100% for minimum 500 new jobs.

Incentives for investment projects through economic activation of inactive property owned by Croatia

Requirement for this incentive is invested amount of at least EUR 3 million in the fixed assets and 15 new jobs created within a three-year period from the start of the project.

Incentive is free lease of inactive property for up to ten years from the start of investment.

In addition, investor has to achieve a 50% increase in the value of the inactive property within three years in relation to the estimated value of the inactive property at the time of starting the lease.

Foreign tax credit

If a domestic taxpayer has paid tax abroad on profit derived abroad, the tax paid can be included in its CIT return, up to the CIT rate in Croatia. The amount of paid tax abroad, which can be offset with the domestic tax, is calculated in the following way:

- The domestic tax rate is charged on the revenues/profit derived from abroad, and the result represents the highest amount of tax that can be offset with the domestic tax.

In practice, it means that if the amount of tax paid abroad was charged at a rate equal to or lower than 18%, only the actual amount of foreign tax paid can be offset with the domestic tax.

Withholding taxes

General rules

Taxpayers who pay fees for the use of IP rights (the right to reproduction, patents, licences, copyrights, designs or models, manufacturing procedures, production formulas, blueprints, plans, industrial or scientific experience, and such other rights); fees for market research services, tax consulting services, business consulting services, or auditing services; or interest to foreign legal entities, natural persons excluded, shall, when making the payment, calculate and withhold tax at a rate of 15%.

Interest payments are subject to WHT at a 15% rate, unless they relate to the following:

- Commodity loans for the purchase of goods used for carrying out a taxpayer's business activity.
- Loans granted by a non-resident bank or other financial institution.
- Holders of government or corporate bonds who are non-resident legal persons.

Exceptionally, WHT on dividends and profit shares are taxed at the rate of 12%. If the company uses a tax allowance for reinvested profit, other than that earned in the banking or the financial non-banking sector, WHT on such dividends and profit shares is not applied. WHT does not apply on dividends and profit shares if they are paid out from the profit realised before 29 February 2012.

Generally, taxpayers who pay fees for the use of IP rights, pay interest, or pay out dividends and shares in profit to natural persons have to withhold 24% in the case of IP rights, 12% for interest, and 12% for dividends and shares in profit.

EU Directives

The CIT Act provisions and certain EU Directives provide special treatment for dividends, interest, and royalties paid to related companies in EU member states.

Regarding interest and royalty payments, full exemption only applies to payments between related companies if:

- there is a direct minimum holding of 25% for an uninterrupted period of at least two years, and
- the beneficial owner of the interest or royalties is a company of another member state or a PE situated in another member state of a company of a member state.

Regarding dividend and profit shares payments, full exemption applies when dividends and shares of profits are distributed to a parent company of different EU member state, provided that:

- the recipient of the dividend or profit share has a minimum holding of 10% in the capital of a company distributing the dividend or profit share, and
- the minimum holding is held for an uninterrupted period of at least two years.

The recipient of a dividend or profit share is any company:

- that takes one of the forms that are subject to the common system of taxation applicable to parent companies and subsidiaries of different EU member states
- resident in a member state for tax purposes and, under the terms of a DTT concluded with a third state, not considered to be resident for tax purposes outside the European Union, and
- subject to one of the taxes in the common system of taxation applicable to parent companies and subsidiaries of different EU member states, without the possibility of an option or of being exempt.

Treaty rates

If a country has a DTT signed with Croatia, WHT rates are lowered if the treaty rate is lower than the non-treaty rate. There are specific applications that need to be fulfilled in order to benefit from a DTT between countries.

The following countries have a DTT with Croatia:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	12	15	15
Treaty:			
Albania	10	0/10 (23)	10
Armenia	0/10 (15)	10	5

Recipient	WHT (%) Dividends	Interest	Royalties
Austria	0/15 (1)	5	0
Azerbaijan	5/10 (16)	0/10 (36)	10
Belarus	5/15 (2)	10	10
Belgium	5/15 (3)	0/10 (24)	0
Bosnia and Herzegovina	5/10 (4)	10	10
Bulgaria	5	5	0
Canada	5/15 (5)	10	10
Chile	5/15 (6)	5/15 (25)	5/10 (38)
China	5	0/10 (26)	10
Czech Republic	5	0	10
Denmark	5/10 (18)	5	10
Estonia	5/15 (8)	0/10 (27)	10
Finland	5/15 (2)	0	10
France	0/15 (9)	0	0
Georgia	5	0/5 (37)	5
Germany	5/15 (8)	0	0
Greece	5/10 (4)	10	10
Hungary	5/10 (4)	0	0
Iceland	5/10 (12)	0/10 (27)	10
India	5/15 (39)	10	10
Indonesia	10	0/10 (28)	10
Iran	5/10 (4)	5	5
Ireland	5/10 (10)	0	10
Italy	15	0/10 (29)	5
Israel	5/10/15 (14)	0/5/10 (30)	5
Jordan	5/10 (11)	10	10
Korea	5/10 (4)	5	0
Kosovo *	5/10 (45)	5	5
Kuwait	0	0	10
Latvia	5/10 (4)	0/10 (27)	10
Lithuania	5/15 (8)	0/10 (27)	10
Luxembourg	5/15 (42)	0/10 (43)	5
Macedonia	5/15 (2)	0/10 (26)	10
Malaysia	5/10 (12)	10	10
Malta	5 (19)	0	0
Mauritius	0	0	0
Moldova	5/10 (4)	5	10
Montenegro	5/10 (4)	10	10
Morocco	8/10 (17)	0/10 (31)	10
Netherlands	0/15 (1)	0	0
Norway	15	0	10
Oman	0	0/5 (32)	10
Poland	5/15 (2)	0/10 (26)	10
Portugal	5/10 (40)	10	10
Qatar	0	0	10
Romania	5	0/10 (26)	10
Russia	5/10 (20)	10	10
San Marino	5/10 (4)	0/10 (33)	5
Serbia	5/10 (4)	10	10

Croatia

Recipient	WHT (%) Dividends	Interest	Royalties
Slovakia	5/10 (4)	10	10
Slovenia	5	0/5 (34)	5
South Africa	5/10 (21)	0	5
Spain (35)	0/15 (13)	0	0
Sweden	5/15 (7)	0	0
Switzerland	5/15 (2)	5	0
Syria	5/10 (10)	10	12
Turkey	10	10	10
Turkmenistan	10	0/10 (41)	10
Ukraine	5/10 (4)	10	10
United Kingdom	5/10/15 (22)	0/5 (44)	5

* DTT is applicable as of 1 January 2018.

Notes

1. The 0% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
2. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 15% rate applies to other dividends.
3. The 5% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
4. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 10% rate applies to other dividends.
5. The 5% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly controls at least 10% of the voting power of the payer, or directly holds at least 25% of the capital of the payer. The 15% rate applies to dividends paid by an investment corporation resident of Canada that is owned by a non-resident and in all other cases.
6. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 20% of the capital of the payer. The 15% applies to other dividends.
7. The 5% rate applies if the recipient is an entity that directly holds at least 25% of the voting power of the payer. The 15% applies to other dividends.
8. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
9. The 0% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
10. The 5% rate applies if the recipient (beneficial owner) is an entity that directly controls at least 10% of the voting power of the payer. The 10% rate applies to other dividends.
11. The 5% rate applies if the recipient (beneficial owner) is an entity that holds at least 25% of the capital of the payer, provided that ownership is not achieved for the purposes of exploiting these provisions. The 10% rate applies to other dividends.
12. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 10% of the capital of the payer. The 10% rate applies to other dividends.
13. The 0% rate applies if the recipient is an entity that directly holds at least 25% of the capital of the payer. The 15% rate applies to other dividends.
14. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 10% rate applies if the recipient is an entity (beneficial owner) that directly holds at least 10% of the capital of the payer, which is a resident of Israel and dividends are paid out of the profit that is subject to lower corporate tax rate than usual. The 15% rate applies to other dividends.
15. The 0% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly holds at least 25% of the capital of the payer and if the dividends aren't subject to CIT in the other contracting state. The 10% rate applies to other dividends.
16. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer and has invested in the payer at least EUR 150,000. The 10% rate applies to other dividends.
17. The 8% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 10% rate applies to other dividends.
18. The 5% rate applies if the recipient (beneficial owner) is an entity (except a partnership) that directly holds at least 25% of the capital of the payer if dividends are held for at least one year without interruption and are published within this period. The 5% also applies if the beneficial owner is a pension fund or other similar institution. The 10% rate applies to other dividends.

19. The 5% rate applies if dividends are paid from a Croatian resident to a resident in Malta. If a resident from Malta pays dividends to a Croatian resident the rate cannot be higher than the CIT on profit from which dividends are paid out.
20. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer and that share shall be at least 100,000 United States dollars (USD). The 10% rate applies to other dividends.
21. The 5% rate applies if the recipient (beneficial owner) is an entity that holds at least 25% of the capital of the payer. The 10% rate applies to other dividends.
22. The 5% rate applies if the recipient of dividends (beneficial owner) is an entity that directly or indirectly holds at least 25% of the capital of the payer. The 15% rate applies for the dividends that are paid out of the profit derived directly or indirectly from the real estate from an investment company (that distributes most of the profit on an annual basis and when income from such real estate is not taxable). The 10% rate applies to other dividends.
23. Interest to the government, local authority, and the Central Bank is exempt from WHT.
24. Interest on commercial claims for debts, interest on an issued, guaranteed, or insured loan or credit with the purpose of promotion of export, interest on loan from banks, interest on deposits held in banks, and interest that is paid to the state or local authority is exempt from WHT.
25. The 5% rate applies to interests on loans granted by bank and insurance companies. The 15% rate applies to other interest.
26. Interest arising in a contracting state and derived by the government of the other contracting state, a local authority, and the Central Bank thereof or any financial institution wholly owned by that government, or by any resident of that other contracting state with respect to debt and claims indirectly financed by the government of that other contracting state, or the local authority, or the Central Bank thereof or any financial institution wholly owned by the government is exempt from WHT.
27. Interest arising in a contracting state and derived by the government of the other contracting state, local authority, and the Central Bank thereof or any financial institution wholly owned by that government, or interest on loans from the government is exempt from WHT.
28. Interest arising in the contracting state and derived by the government of the other contracting state, local authority, the Central Bank, or any other financial institution wholly owned by the government is exempt from WHT.
29. Interest is exempt from WHT when the payer of interest is the government or local authority in the contracting state or when interest is paid to the government, local authority, or agency of the other contracting state that is wholly owned by the government or local authority, or when interest is paid to any other agency on loans arising from the application of contracts between contracting states.
30. The 5% rate applies to interest on all type of loans granted by banks. The rate of 10% applies to other interest. Interest arising in a contracting state and derived by the government of the other contracting state, a local authority, and the Central Bank thereof, or on a loan that is approved, guaranteed, or insured by an insurance institution, or financing of international business transactions to the extent that it acts on behalf of the other contracting state is exempt from WHT. Interest arising in a contracting state and paid to a resident of the other contracting state who is the beneficial owner is also exempt from WHT to the extent that such interest is paid to the seller of any industrial, commercial, or scientific equipment or other property that is sold on credit.
31. Interest paid to the government or Central Bank of the other contracting state is exempt from WHT.
32. Interest paid to the government is exempt from WHT.
33. Interest is exempt from WHT when the payer is the government or local authority, when the receiver is the government, local authority, or body wholly owned by the government or the local authority, and when interest is paid in the name of the government to the other bodies (including financial institutions) related with a loan that the government received under the agreement between the governments of the contracting states.
34. Interest on loans that give, approve, or guarantee the government, local authority, Central Bank, or institution authorised for insurance and financing of international business transactions is exempt from WHT.
35. Reduced WHT rates or exemptions are not levied/applied if the income is paid to a company resident in a contracting state more than 50% of whose shares are directly or indirectly held by non-residents. This clause will not apply if the company can prove that it carries out important industrial or commercial activities and does not merely manage or hold shares.
36. Interest arising in a contracting state and derived by the government of the other contracting state, a local authority, and the Central Bank thereof, or on a loan that is approved, guaranteed, or insured by the government of the contracting state, Central Bank, or the agency (including financial institution) that is owned or controlled by the government is exempt from WHT.
37. Interest is exempt from WHT when the payer of interest is the government, Central Bank, or government agency or institution.
38. The 5% rate applies on royalties for use or the right to use any type of industrial, commercial, or scientific equipment. The 10% rate applies to other royalties.
39. The 5% rate applies if the recipient of dividends (beneficial owner) (except partnership) is an entity that directly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
40. The 5% rate applies if the recipient of dividends (beneficial owner) (except partnership) is an entity that directly holds at least 10% of the assets of the payer. The 10% rate applies to other dividends.
41. Interest is exempt from WHT when sourced in one contracting party and paid to another contracting party or to central bank of the contracting party.
42. The 5% rate applies if the recipient of dividends (beneficial owner), except a partnership, is an entity that directly holds at least 10% of the assets of the payer. The 15% rate applies to other dividends.

43. Interest is exempt from WHT when paid by the government, Central Bank, or local authority if interest is paid by the country, local authority, or official body in which interest occurs, if interest is paid on loan or receivables owned or guaranteed by that country, local authority, or export financial agency, or if paid to a financial institution or subject for joint investment.
44. Interest is exempt from WHT when paid regarding the sale on credit of industrial, commercial, and scientific equipment, the sale on credit of any commodity between two companies, or on bank loans.
45. The 5% rate applies if the recipient of dividends (beneficial owner) (except partnership) is an entity that directly holds at least 25% of the assets of the payer. The 10% rate applies to other dividends.

In addition to the current WHT rates of 15% and 12%, an increased rate of 20% applies to all services not listed under 'General rules' (*see above*) paid to foreign entities whose place of seat or management is in countries considered to be tax havens or financial centres on the list of countries published by the Ministry of Finance. This provision does not apply to EU member countries and countries with which Croatia has signed a DTT.

Countries listed by the Ministry of Finance are as follows:

- Andorra
- Anguilla
- Antigua and Barbuda
- Aruba
- Bahamas
- Bahrain
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Brunei Darussalam
- Cayman Islands
- Christmas Island
- Cook Islands
- Dominica, Commonwealth of
- Dominican Republic
- Falkland Islands
- Fiji
- Gibraltar
- Grenada
- Guam
- Guernsey
- Guyana
- Hong Kong
- Isle of Man
- Jersey
- Liberia
- Liechtenstein
- Macau
- Maldives
- Marshall Islands
- Monaco
- Monserrat
- Nauru
- Netherlands Antilles
- Niue
- Palau
- Panama
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- Seychelles
- Solomon Islands
- Tonga
- Trinidad and Tobago
- Turks and Caicos Islands
- Tuvalu
- United States (US) Virgin Islands
- Vanuatu

Tax administration

Taxable period

The CIT shall be assessed for a period that is normally a calendar year. The tax authorities may agree, at the request of a taxpayer, that the tax period should not correspond with the calendar year, where the tax period may not exceed 12 months. The chosen tax period cannot be changed for three years.

Tax returns

All CIT payers are obligated to submit an annual CIT return to the tax authorities no later than four months after the end of the tax period for which CIT is assessed.

The Ministry of Finance administers taxation matters through the tax administration. These organisations have responsibilities and powers defined by law.

Payment of tax

Every taxpayer is required to pay monthly CIT advances (by the end of the month for the previous month) on the basis of the previous year's tax return.

In the first year of operation, taxpayers are not obligated to pay any CIT advances.

CIT is assessed at the end of the tax period, and the assessed amount, less any instalments made, is payable by the day of submission of the tax return.

Tax audit process

The Inspection Sector of the Croatian tax authority performs a tax audit of a taxpayer.

The tax audit process is usually performed as follows:

- Notification of a tax audit is sent to the taxpayer.
- Tax audit is conducted.
- Minutes of the tax audit are issued.
- Taxpayer can object to the minutes within a prescribed filing deadline. If objection shows new facts and evidence, the tax inspector will prepare supplementary minutes.
- Resolution of the tax audit is issued within 60 days as of the day (supplementary) minutes have been provided to the taxpayer.
- Appeal against the resolution can be filed within 30 days as of the day the taxpayer received the resolution. It needs to be replied to within two months as of the day the appeal has been filed.
- After a rejected appeal, the taxpayer can initiate court litigation procedures.

Statute of limitations

The Croatian tax authority is entitled to review the tax returns of a company within six years following the end of the year in which the tax return is submitted.

Topic of focus for tax authorities

Tax authorities are focusing on business relations with related parties. Also, after the accession of Croatia to the European Union, transactions between member states within the European Union are of focus for the tax authorities. In this regard, the tax authority stipulated the obligation of preparation of a report on transactions with related parties (PD-IPO form) in case the taxpayer recorded transactions with related parties in its business ledgers during the tax period, and to deliver that report along with the CIT return (PD form).

Binding opinions

Opinions and instructions issued by tax authority central offices are binding for all tax authority regional offices, and the goal is to ensure uniformity of the tax authority representatives' treatment of taxpayers.

Other issues

US Foreign Account Tax Compliance Act (FATCA)

On 2 April 2014, the US Treasury announced that an intergovernmental agreement (IGA) was 'in effect', and, on 20 March 2015, the US Treasury and Croatia signed and released the IGA. The FATCA Agreement entered into force on 27 December 2016 (as published in the Official Gazette).

Base erosion and profit shifting (BEPS)

Even though Croatia is not a member of the OECD, a BEPS plan will become applicable according to the EU Directives. For example, Action 13 of the BEPS plan is incorporated in the Croatian legislation and applicable as of the beginning of 2017.

Cyprus

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Significant developments

Cyprus is expanding and updating its double tax treaty (DTT) network. New DTTs with Barbados, Ethiopia, Iran, and Jersey entered into force in 2017 and are effective for Cyprus as of 1 January 2018. New/amended DTTs with Luxembourg and Mauritius entered into force in 2018 and are effective for Cyprus as of 1 January 2019. New/amended DTTs with Andorra, San Marino, Saudi Arabia, and Ukraine have been signed and are awaiting entry into force.

Cyprus signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) on 7 June 2017. This is now pending ratification.

On 26 May 2017, the Cyprus Minister of Finance issued a Decree (replacing a Decree issued on 30 December 2016) introducing mandatory country-by-country (CbC) reporting in line with the relevant amendment to the European Union (EU) Directive on Administrative Cooperation (DAC) in the Field of Taxation, known as DAC4, and the G20/Organisation for Economic Co-operation and Development (OECD) BEPS Action 13 CbC reporting requirements. Earlier, on 1 November 2016, Cyprus signed the Multilateral Competent Authority Agreement on the exchange of CbC reports (MCAA) (*see the Group taxation section for more information*).

Cyprus has also enacted the law implementing Council Directive 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of cross-border tax rulings within the European Union as of 1 January 2017, known as DAC3.

Further, the below-mentioned tax-related Directives of the European Union will be transposed into Cyprus tax law:

- The DAC amendment known as DAC5, which allows tax authorities to access anti-money laundering (AML) information held by entities pursuant to the 4th AML Directive of the European Union.
- The DAC amendment known as DAC6, which provides for mandatory automatic exchange of information in relation to reportable cross-border arrangements (RCBAs), pursuant to Directive 2011/16/EU.
- The Anti-Tax Avoidance Directives (ATAD I & II), which set out minimum standards that EU member states need to have in their corporate tax laws in the following areas:
  - (Net) interest expense limitation.
  - Exit taxation.
  - A general anti-abuse rule (GAAR).
  - Controlled foreign company (CFC) rules.

- Hybrid mismatch rules.

On 14 November 2017, the Cyprus Tax Authorities (CTA) launched a public consultation on Cyprus' transposition into national law of the two EU Directives on anti-tax avoidance, which is a first step towards implementing the ATADs. The Consultation Document reflects effective dates for the proposals that are not earlier than what is required by the ATADs; these effective dates are:

- Interest limitation rule, CFC rule, GAAR: 1 January 2019.
- Exit taxation provisions: 1 January 2020.
- Hybrid mismatch rules: 1 January 2020 (exception: certain reverse-hybrid mismatch provisions: 1 January 2022).

It is anticipated that final legislative proposals and voting by the Cyprus Parliament will take place within 2018.

Finally, on 30 June 2017, the CTA issued a Circular providing guidance for the tax treatment of intra-group financing transactions (IGFTs). The Circular closely follows the application of the arm's-length principle of the OECD, and it is effective as of 1 July 2017 for all existing and future IGFTs (no grandfathering provisions are included). In accordance with the Circular, all IGFTs have to be supported by transfer pricing studies (*see the Group taxation section for more information*).

Taxes on corporate income

Corporate income tax (CIT)

All companies that are tax residents of Cyprus are taxed on their income accrued or derived from all sources in Cyprus and abroad. A non-Cyprus tax resident company is taxed on income accrued or derived from business activity that is carried out through a permanent establishment (PE) in Cyprus and on certain other income arising from sources in Cyprus.

The standard CIT rate in Cyprus is 12.5%.

The Cyprus CIT law explicitly provides for a number of exemptions for many and varied types of incomes, profits, and gains (*see the Income determination section for more information*).

Special Defence Contribution (SDC)

SDC is imposed only on non-exempt dividend income, 'passive' interest income, and rental income earned by Cyprus tax residents. Non-tax residents of Cyprus are exempt from SDC.

Dividends generally are exempt from SDC, subject to certain rarely applicable limitations (*see Dividend income in the Income determination section*).

Interest received by close-ended or open-ended collective investment schemes (CISs) is never subject to SDC as it is considered as 'active' interest income. Such interest is only taxed under CIT (after deducting allowable expenses) at the standard CIT rate of 12.5%.

Interest received by companies in the ordinary course of their business, including interest closely connected to the ordinary course of business, is also considered as 'active' interest income and is only taxed under CIT (after deducting allowable expenses) at the standard CIT rate of 12.5%.

When companies receive interest that does not satisfy the conditions prescribed immediately above, the interest is considered to be 'passive' interest income, which is subject to SDC (without expense deduction) at the rate of 30%. Such 'passive' nature interest is, however, exempt from CIT.

Gross rental income reduced by 25% is also subject to SDC at the rate of 3% (i.e. effective rate of 2.25%) in addition to CIT (after deducting allowable expenses) of 12.5%.

Tonnage tax

For ship-owning companies, the profits derived by the owner of a ship registered in the European Union or European Economic Area (EEA) (as well as other foreign jurisdictions, subject to conditions) from its operation/charter out are fully exempt from all direct taxes. The term 'owner' includes a bareboat charterer of a non-Cyprus flag vessel parallel registered in Cyprus. A similar exemption applies to charterers and ship managers.

Instead of CIT, ship owners, charterers, and managers pay tonnage tax on the net tonnage of the ships they own, charter, or manage. In addition, there is no tax on dividends paid at all levels of distribution by the above persons out of profits subject to tonnage tax and there is no taxation on the sale or transfer of a ship, share in a ship, or shares in a ship-owning company and their distributions. The same legislation also provides for income tax exemption of the salaries and benefits of the captain, the officers, and the crew aboard a Cyprus flag vessel.

This treatment applies until 2020 and is compulsory for Cyprus flag ship owners, but optional for other ship owners, charterers, and ship managers.

Local income taxes

There are no local government taxes on income in Cyprus.

Corporate residence

Only companies managed and controlled in Cyprus are treated as tax residents of Cyprus.

Permanent establishment (PE)

Cyprus domestic income tax legislation explicitly provides for the determination of a taxable Cyprus PE of a non-Cyprus tax resident company. These specific legislative provisions are broadly in line with the relevant article of the 2014 OECD model DTT, with the addition of offshore activities relating to the exploration, extraction, or exploitation of the seabed, subsoil, and natural resources, as well as the installation and exploitation of pipelines and other installations on the seabed.

Other taxes

Value-added tax (VAT)

VAT is imposed on the provision of goods and services in Cyprus as well as on the acquisition of goods from the European Union and the importation of goods into Cyprus. Taxable persons charge VAT on their taxable supplies (output tax) and are charged with VAT on goods or services that they receive (input tax).

The standard VAT rate in Cyprus is 19%. Two reduced VAT rates, a 9% rate and a 5% rate, apply in Cyprus:

- The reduced VAT rate of 9% applies on accommodation, restaurant and catering services, as well as on certain local passenger transport services. The term 'restaurant and catering services' includes the supplies of prepared and unprepared foodstuffs and beverages that are accompanied by sufficient support services that enable the immediate consumption of the foodstuffs and beverages supplied.
- The reduced rate of 5% applies on foodstuffs, pharmaceutical products, books and newspapers, as well as on a variety of other goods and services that are beyond the scope of this summary.
- A reduced rate of 5% applies on the first 200 square metres of the buildable area of a property that qualifies as a new building/house acquired by individuals/ eligible persons, as this is determined on the building coefficient of the residence in accordance with the architectural plans filed with the competent authorities. This is on the condition that the property will be used as their primary and main residence for ten years. On the remaining square metres, the standard VAT rate of 19% is applied. In addition, based on the amendment, persons who have already acquired a residence on which the reduced VAT rate was imposed can re-apply and acquire a new residence on which the reduced VAT rate will be imposed, irrespective of whether the ten year prohibition period for using the residence provided for in the legislation has lapsed or not. A condition for this to apply is that in case the ten-year period of using the residence as the main and permanent place of residence has not lapsed, the persons must pay back to the Tax Department the difference in the VAT between the standard and reduced VAT rates applicable at the time of the acquisition or construction of the residence.
- The 5% reduced rate also applies to renovation and repair of all private residences that are considered as being old (i.e. a period of at least three years has elapsed from their first use), excluding the materials that comprise of more than 50% of the value of the services.

Exports from Cyprus are zero-rated (i.e. no VAT must be charged on the export, and the company is entitled to recover the relevant input VAT suffered). The services for the international transport of passengers as well as the transportation of goods either from or to countries outside the European Union are also zero-rated.

Supplies of goods to businesses resident in other EU member states are outside the scope of Cyprus VAT.

Certain education services, as well as the majority of financial, insurance, and medical services, are exempt from Cyprus VAT. Supplies of buildings also are exempt from VAT unless the supply relates to new buildings before first use.

A number of recent amendments to Cyprus VAT legislation concerning transactions in real estate were enacted during 2017. These amendments comprise of:

- Imposition of VAT on leasing of immovable property (land and commercial buildings, other than residential buildings) when used by the lessee in making taxable supplies. The lessor has the right to opt not to impose VAT on the specific property. The option is irrevocable.
- The imposition of 19% VAT on the sale of non-developed building land, as of 2 January 2018, which is defined as land intended for the construction of one or more structures in the course of carrying out a business activity. No VAT will be imposed on the purchase or sale of land located in a livestock zone or areas that are not intended for development, such as environmental protection, archaeological, and agricultural zone/areas.
- The application of reverse charge on transactions relating to transfers of immovable property during the process of loan restructuring and for compulsory transfer to the lender, as of 2 January 2018.

The long-term leasing of immovable property will be regarded as supply of goods for VAT purposes as of 1 September 2018.

VAT registration

VAT registration is compulsory for business with:

- turnover in excess of 15,600 euros (EUR) during the 12 preceding months or
- an expected turnover in excess of EUR 15,600 within the next 30 days.

Businesses with turnover of less than EUR 15,600, or with supplies that are outside the scope of VAT but for which the right to claim the amount of the related input VAT is granted, have the option to register on a voluntary basis.

An obligation for registration also arises for businesses that:

- make acquisitions of goods from other EU member states in excess of EUR 10,251.61 during any calendar year, or
- are engaged in the provision of intra-Community services or supplies of goods for which the recipient must account for VAT under the reverse-charge provisions. No registration threshold exists for the provision of intra-Community supplies of goods and services.

Furthermore, an obligation for VAT registration arises for businesses carrying out economic activities as a result of the receipt of services from abroad for which an obligation to account for Cyprus VAT under the reverse-charge provision exists, subject to the registration threshold of EUR 15,600 per any consecutive 12-month period.

Exempted products and services, and disposals of items of capital nature, are not taken into account for determining annual turnover for registration purposes.

Registration is effected by completing the appropriate application form.

VAT declaration and payment/return of VAT

VAT returns must be submitted quarterly, and the payment of VAT must be made by the tenth day of the second month that follows the month in which the VAT period ends.

VAT-registered persons have the right to request for a different filing period. Approval of the VAT authorities is required. The VAT Commissioner also has the right to request for a taxable person to file one's VAT returns for a different period.

Where, in a quarter, input VAT is higher than output VAT, the difference is refunded (subject to certain conditions) or is transferred for set-off against the VAT payable of the next VAT returns.

As of 19 February 2013, taxpayers who make a claim for VAT refund will be entitled to repayment of the principal amounts together with interest in the event that the repayment is delayed for a period exceeding four months from the date of the submission of the claim.

The grace period for the Tax Department to repay the refundable amounts is extended by another four months (i.e. eight months in total) in the event that the Commissioner of Taxation is carrying out an investigation in relation to the submitted claim.

Customs duties

Customs duties may be imposed upon the importation of goods into Cyprus. The customs duties are imposed in accordance with the provisions of the applicable legislation.

Whether customs duties are imposed depends on the nature of the goods and the respective customs duty codes.

Excise taxes

Excise taxes are imposed on certain products, including means of transport, petroleum, tobacco products, and alcoholic drinks.

Immovable property tax (IPT)

IPT has been abolished as of 1 January 2017.

Stamp duty

The general rule is that Cyprus stamp duty is imposed only on written instruments relating to assets located in Cyprus or to matters that will take place in Cyprus. The applicable rates are based on the value stipulated in each instrument and are nil for values up to EUR 5,000, 0.15% for values from EUR 5,001 up to EUR 170,000, and 0.2% for values above EUR 170,000, subject to an overall maximum amount of stamp duty of EUR 20,000. Exemption from stamp duty applies in the case of a qualifying reorganisation scheme.

Capital duty

Upon incorporation of a Cyprus company

Upon incorporation of a Cyprus company, capital duty is due on the authorised share capital at EUR 105 plus 0.6% on the authorised share capital. It is important to note that the 0.6% rate applies only to the nominal value of the authorised share capital and not to any share premium.

As for the issued share capital, there is no stamp duty payable if the shares are issued at their nominal value. There is a flat duty of EUR 20 if the shares are issued at any premium.

Upon subsequent increases

Upon subsequent increases, capital duty is due on the authorised share capital at 0.6% of the nominal value of the additional share capital. Again, the 0.6% rate applies only to the nominal value of the authorised share capital and not to any share premium.

As for the issued share capital, EUR 20 is due on every issue batch, whether the shares are issued at a premium or not and irrespective of the number of shares issued in the batch.

Capital gains tax (CGT)

CGT applies only to gains relating to Cyprus-situated immovable property when the disposal is not subject to CIT.

Disposal for the purposes of CGT specifically includes sale, exchange, lease, gifting, abandoning use of right, granting of right to purchase, and any sums received upon cancellation of disposals.

CGT at the rate of 20% is imposed on gains arising from the disposal of immovable property situated in Cyprus or the disposal of shares in companies that own Cyprus-situated immovable property. CGT is also imposed on disposals of shares in companies that indirectly own immovable property situated in Cyprus where at least 50% of the market value of the said shares derives from Cyprus-situated immovable property. Shares listed on any recognised stock exchange are excluded from CGT.

In the case of disposal of company shares, the gain is calculated exclusively on the basis of the gain relating to Cyprus-situated immovable property. The value of the immovable property will be its market value at the time the shares were disposed of.

The taxable gain is generally calculated as the difference between the disposal proceeds and the original cost of the property plus any improvements as adjusted for inflation up to the date of disposal on the basis of the consumer price index in Cyprus. In the case of property acquired before 1 January 1980, the original cost is deemed to be the value of the property as at 1 January 1980 on the basis of the general valuation conducted by the Land Registry Office under the Immovable Property Law.

Other expenses that relate to the acquisition and disposal of immovable property are also deducted from the gain, subject to certain conditions (e.g. interest costs on related loans, transfer fees, legal expenses).

It is important to note that, subject to conditions, land and buildings acquired from unrelated parties in the period 16 July 2015 to 31 December 2016 are exempt from CGT upon their future disposal.

Finally, certain disposals are totally exempt from CGT based on their nature (e.g. gifts from parents to children or between spouses).

Immovable property transfer fees

The fees charged by the Department of Land and Surveys to the acquirer for transfers of Cyprus-situated immovable property are as follows:

Market value (EUR)	Rate (%)	Fee (EUR)	Accumulated fee (EUR)
Up to 85,000	3	2,550	2,550

Market value (EUR)	Rate (%)	Fee (EUR)	Accumulated fee (EUR)
85,001 to 170,000	5	4,250	6,800
Over 170,000	8		

It is important to note that:

- No transfer fees are payable if VAT is applicable upon purchasing the immovable property.
- The above transfer fees are reduced by 50% in case the purchase of immovable property is not subject to VAT.

Mortgage registration fees are 1% of the current market value.

In the case of companies' reorganisations, transfers of immovable property are not subject to transfer fees or mortgage registration fees.

Payroll taxes

In addition to the payroll taxes charged on employers, employers are also responsible to withhold from employees' earnings the employees' contributions to the social insurance fund (*see below*) and employees' personal income tax (PIT) burden through the pay-as-you-earn (PAYE) system.

Social security contributions

Employed persons are compulsorily insured under a state-administered social insurance fund. Contributions to the fund are borne by both employer and employee. The employer's contributions are calculated as a percentage of the employee's earnings. The employer also contributes to other funds as set out in the table below:

Funds	Employer contribution (% of employee's earnings) (1)
Social insurance fund	7.8 (2, 3)
Redundancy fund	1.2
Training development fund	0.5
Social cohesion fund	2.0
Holiday fund (if not exempt)	8.0

Notes

1. With the exception of the social cohesion fund, the maximum amount of monthly earnings on which the contributions are paid is EUR 4,533 for 2018 (as with 2017). This maximum is usually adjusted for inflation annually at the beginning of each calendar year.
2. The rate of 7.8% is applicable up to 31 December 2018.
3. The employee must also contribute at the same rate as the employer to the social insurance fund, but not to the other funds. It is the employer's responsibility to withhold this contribution upon payment of employee's earnings.

Branch income

The rate of tax on Cyprus branch profits is the same as on corporate profits (12.5%). No further tax is withheld on transfers of profits or funds to a foreign head office.

Income determination

Inventory valuation

Inventories generally are stated at the lower of cost and net realisable value. Last in first out (LIFO) is not permitted for taxation purposes. First in first out (FIFO) is permitted. Conformity between book and tax reporting is not required.

Capital gains

Profits from disposals of corporate 'titles' are unconditionally exempt from CIT. 'Titles' is defined as shares, bonds, debentures, founders' shares, and other titles of companies or other legal persons incorporated in Cyprus or abroad and options thereon. According to a circular issued by the CTA, the term includes, *inter alia*, futures/forwards on titles, short positions on titles, swaps on titles, depositary receipts on titles, repos on titles, units in open or close CISs, international collective investment schemes (ICISs), undertakings for collective investment in transferable securities (UCITS), investment trusts and funds, mutual funds, real estate investment trusts (REITs), and units in stock exchange indices on titles.

Capital gains on Cyprus-situated immovable property (and on non-quoted shares directly or indirectly holding such Cyprus-situated immovable property) are taxed separately in Cyprus. *See Capital gains tax in the Other taxes section for more information*.

Dividend income

Dividends received from other Cyprus tax resident companies are exempt from all taxes, subject to certain anti-avoidance provisions.

Dividends earned from foreign investments are exempt from CIT in Cyprus, with the exception of dividends that are deductible for tax purposes for the paying company. Such deductible foreign dividends are subject to CIT and are exempt from SDC. Other (i.e. non-deductible) foreign dividend income is also exempt (participation exemption) from SDC unless:

- more than 50% of the foreign paying company's activities directly or indirectly result in investment income, and
- the foreign tax is significantly lower than the tax burden in Cyprus (i.e. an effective tax rate of less than 6.25%).

In those cases where the above-mentioned Cyprus participation exemption on foreign dividend income is not available, any foreign withholding tax (WHT) imposition on dividends paid to the Cyprus company will be credited against the Cyprus flat SDC rate of 17% on such dividends, without the need for a DTT to be in place with the paying jurisdiction. Furthermore, in some cases, a credit for underlying foreign tax (i.e. foreign tax on the paying company's profits) is also available.

Stock dividends

A Cyprus corporation can distribute tax-free dividends of common stock (bonus shares) proportionately to all common stock shareholders.

Interest income

See Special Defence Contribution (SDC) in the Taxes on corporate income section for a description of the tax treatment of interest income.

Royalty income

Royalty income is taxed under CIT, after deducting allowable expenses, at the rate of 12.5%.

Cyprus has an intellectual property (IP) box fully aligned with the provisions of the OECD BEPS Action 5 report (modified) nexus approach as well as a grandfathered IP box (*see Intellectual property [IP] box in the Tax credits and incentives section for more information*).

Rental income

See Special Defence Contribution (SDC) in the Taxes on corporate income section for a description of the tax treatment of rental income.

Foreign currency exchange (forex) differences

Forex differences are tax neutral for CIT purposes (i.e. forex gains are not taxable and forex losses are not deductible). However, forex differences arising from trading in foreign currencies (and related derivatives) are subject to CIT.

Foreign income

Resident corporations are subject to tax on their worldwide income. However, foreign PE income (*see below*), as well as most dividend and capital gains income from abroad (*see Dividend income above*), may be exempt from taxation in Cyprus.

Profits from a PE abroad are exempt from CIT, subject to anti-avoidance rules set out below.

The PE exemption is applicable, unless the below anti-avoidance rules apply:

- more than 50% of the foreign PE's activities directly or indirectly result in investment income, and
- the foreign tax on the income of the foreign PE is significantly lower than the tax burden in Cyprus (i.e. an effective tax rate of less than 6.25%).

Losses from an exempt foreign PE are eligible to be offset with other profits of the Cyprus company in Cyprus (and via group relief, *see the Group taxation section*). In such a case, future profits of an exempt PE abroad become taxable up to the amount of losses previously allowed.

Taxpayers may irrevocably elect to subject to CIT foreign PE profits (and utilise foreign PE losses).

Where foreign income is taxed in Cyprus, double taxation is avoided through granting tax credits for the foreign taxes, without the need for a DTT to be in place with the foreign jurisdiction. Transitional rules apply in certain cases on the granting of foreign tax credits where a foreign PE was previously exempt from taxation and subsequently a taxpayer elects to be subject to CIT on foreign PE profits.

Deductions

Generally, expenditure wholly and exclusively incurred for the generation of taxable income is deductible against the company's taxable income. Such expenditure should be supported by invoices and relevant receipts or other supporting documents.

Depreciation and amortisation

For tangible assets, depreciation is computed on a straight-line basis at set rates that vary, depending on the type of asset. On the sale of such depreciated property, tax depreciation may be recaptured and taxed as ordinary income, depending upon the level of sale proceeds.

Property and equipment acquired during the tax years 2012 through 2018 are eligible for accelerated tax depreciation at the rate of 20% *per annum* (excluding assets that are already eligible for a higher annual rate of tax depreciation).

Industrial and hotel buildings acquired during the tax years 2012 through 2018 are eligible for accelerated tax depreciation at the rate of 7% *per annum*.

Land does not attract tax depreciation.

Tax amortisation on any expenditure of a capital nature for the acquisition or development of IP is introduced with effect from 1 July 2016 and is allocated over the lifetime of the IP, in accordance with accepted accounting principles, with a maximum period of 20 years (excluding goodwill and IPs falling under the transitional rules of the old Cyprus IP box, which continue with that box's tax amortisation). A taxpayer may elect not to claim all or part of the available tax amortisation for a particular tax year.

Goodwill

Any amounts paid for the acquisition of trading goodwill should be deductible upon the subsequent sale of such trading goodwill.

Start-up expenses

Start-up expenses, such as formation expenses, are generally not tax deductible in the computation of the company's taxable income.

Research and development (R&D) expenses

Any expenditure on scientific research of a capital nature for which no tax depreciation is granted is deductible from taxable income and spread equally over the year in which it has been incurred and the five subsequent years. Scientific research expenditure of a revenue nature is deducted in the year incurred.

See Intellectual property (IP) regime in the Tax credits and incentives section as well.

Interest expenses

Generally, interest expenses incurred by the company for the generation of taxable income should be deductible in the company's tax computation.

Interest financing assets that generate tax-exempt income is not deductible in the first seven years of ownership of such assets. Interest expense associated with such assets held beyond seven years becomes tax deductible from thereon.

Interest expense financing the acquisition of 100% shareholdings in subsidiaries that are directly or indirectly trading is deductible, provided that the acquisition was made on or after 1 January 2012.

See the Significant developments section in relation to a proposed EU Anti-Tax Avoidance Directive (ATAD).

Bad debts

Bad debts of any business should generally be deductible, provided they are write-offs/provisions against specific trading receivables and the taxpayer can evidently prove that sufficient steps were taken beforehand to recover them.

Charitable contributions

Charitable donations or contributions made for educational, cultural, or other charitable purposes to the Republic of Cyprus (including local authorities), or to approved charitable institutions, are wholly deductible, provided that these expenses are supported with relevant vouchers.

Fines and penalties

Fines and penalties are generally not deductible in the computation of the taxable income of the company.

Taxes

Taxes that are deducted in computing profits for CIT purposes include VAT not recovered and the employer's share of contributions to the social insurance and other employee-related funds.

Net operating losses

Tax losses can be carried forward (from the end of the tax year in which the loss occurred) and set-off against taxable profits of the next five years. Carryback of tax losses is not permitted. Under certain conditions, they may also be eligible for group relief (*see the Group taxation section*).

Payments to foreign affiliates

A Cyprus corporation can claim a deduction for royalties and interest charges paid to foreign affiliates, and a reasonable amount of head office expenses of an overseas company, provided such expenditures can be justified as having been incurred in the production of the income and subject to the rules generally applicable for the deduction of such expenditure.

In the case of insurance companies, the amount of head office expenses should not exceed 3% of the net premiums in Cyprus for the general insurance business and 2% for the life insurance business.

Group taxation

Group relief provisions allow, subject to certain conditions, companies of the same group to transfer tax losses from loss-making group companies to profitable group companies. A group includes a Cyprus company directly or indirectly holding at least a 75% interest in another Cyprus company or two or more Cyprus companies directly or indirectly held at least 75% by a third company.

The interposition of a non-Cyprus tax resident company(ies) will not affect the eligibility for group relief as long as such company(ies) is tax resident in either another EU member state or a country with which Cyprus has in place a DTT or an exchange of information agreement (which may be bilateral or multilateral).

Further, a Cyprus tax resident company may also claim the tax losses of a group company that is tax resident in another EU member state, provided such EU company firstly exhausts all possibilities available to utilise its losses in its EU member state of residence or in the EU member state of any intermediary EU holding company.

Transfer pricing

Transactions between related parties should be carried out at pure commercial terms (i.e. at arm's length). If not carried out at pure commercial terms, the CTA has the powers within the tax legislation to adjust results for tax purposes to those that would apply at pure commercial terms. Therefore, the taxpayer should be able to support the arm's-length nature of transactions.

The CTA has communicated that the transfer of shares of companies within a group at a value different than the market value should not have any adverse Cyprus tax implications in certain circumstances.

On 30 June 2017, the CTA issued a Circular providing guidance for the tax treatment of intra-group financing transactions (IGFTs). The Circular, effective as of 1 July 2017, closely follows the application of the arm's-length principle of the OECD Transfer Pricing Guidelines. It applies for all relevant existing and future IGFTs. No grandfathering provisions have been provided for existing IGFTs, and any rulings previously issued on transactions within the scope of the Circular are no longer valid as of 1 July 2017.

The Circular requires the carrying out of a comparability analysis for the purpose of describing (delineating) the IGFT and determining the applicable arm's-length remuneration. Of particular note in the comparability analysis are the requirements for (i) sufficient equity level and (ii) adequate substance in Cyprus, relating to the IGFTs. Under certain conditions, taxpayers carrying out a purely intermediary intra-group financing activity may opt for a Simplification Measure (resulting in a minimum 2% after-tax return on assets).

Country-by-country (CbC) reporting

On 26 May 2017, the Cyprus Minister of Finance issued a Decree (replacing a Decree issued on 30 December 2016) introducing mandatory CbC reporting in line with the relevant amendment to the EU Directive on Administrative Cooperation (DAC) in the Field of Taxation, known as DAC4, and the G20/Organisation for Economic Co-operation and Development BEPS Action 13 CbC reporting requirements for multinational enterprise groups generating consolidated annual turnover exceeding EUR 750 million (MNE groups).

MNE groups with an ultimate Cyprus tax resident parent are required to file, on an annual basis, a CbC report, which includes specific financial data covering income, taxes, and other key measures of economic activity by territory. Under certain conditions, a CbC reporting requirement may also apply for Cyprus tax resident entities belonging to an MNE group.

Per the Decree, Cyprus tax resident constituent entities of an MNE group should notify the CTA as to whether they are the reporting entity and, if they are not, the details of the MNE group's reporting entity. For financial year 2017, the deadline for the notification submission of the CbC report was 15 January 2018 (28 February 2018 for 2016).

In line with the relevant EU Directive and the OECD's Multilateral Competent Authority Agreement on the Exchange of CbC reports (MCAA), the CTA will apply the automatic exchange of information mechanism to exchange CbC reports filed by MNE groups in Cyprus. The reports will be exchanged with the tax authorities of the other EU member states in which the MNE group operates and all other jurisdictions that have signed the MCAA.

Thin capitalisation

There are no thin capitalisation provisions in the Cyprus tax law.

See the Significant developments section in relation to a proposed EU Anti-Tax Avoidance Directive (ATAD).

Controlled foreign companies (CFCs)

There are no CFC provisions in the Cyprus tax law.

See the Significant developments section in relation to a proposed EU Anti-Tax Avoidance Directive (ATAD).

Tax credits and incentives

Foreign tax

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

The Cyprus holding company

Exemptions for:

- dividends received from abroad (*see Dividend income in the Income determination section*),
- foreign PE trading profits (*see Foreign income in the Income determination section*), and
- profits from transactions in titles (*see Capital gains in the Income determination section*),

together with the fact that Cyprus does not withhold taxes on payments abroad of dividend, interest, and royalty (unless right is used in Cyprus) and its extensive DTT network, as well as full adoption and access to all EU Directives, make Cyprus an ideal 'holding company' EU jurisdiction.

The Cyprus financing company

The low headline CIT rate of 12.5% imposed on interest incomes, coupled with other tax law provisions, make Cyprus a very competitive 'financing company' EU jurisdiction.

Please also refer to Transfer pricing in the Group taxation section for recent developments regarding IGFTs.

Notional interest deduction (NID) on corporate equity

Equity introduced to a Cyprus tax resident company post 31 December 2014 ('new equity') in the form of paid-up share capital or share premium may be eligible for an annual NID for tax purposes, calculated as new equity x NID interest rate. New equity may be settled in cash or with assets contributed in kind. The NID is also applicable to Cyprus PEs of non-Cyprus tax resident companies.

NID calculated on new equity is deductible for tax purposes in a similar manner as for actual interest expense (*see the Deductions section for more information*); the NID cannot, however, exceed 80% of the taxable profit generated by the activities financed by the new equity (as calculated prior to the NID). Any NID deduction that is restricted due to the cap of 80% is not available to be utilised by way of carryforward to future tax years or otherwise. A taxpayer may elect not to claim all or part of the available NID for a particular tax year.

The NID interest rate used in the calculation is the yield on ten-year government bonds (as at 31 December of the prior tax year) of the country where the funds are employed in the business of the company plus a 3% premium. This is subject to a minimum amount, which is the yield of the ten-year Cyprus government bond (as at the same date) plus a 3% premium. Accordingly, the minimum NID interest rate is 4.881% for 2018 (6.489% for 2017).

In order to tackle possible abuse of the NID, the NID provisions include specific anti-avoidance provisions and a general anti-avoidance provision for non-commercial transactions.

Intellectual property (IP) box

The CIT IP box provisions have been aligned with the conclusions of the OECD BEPS Action 5 report on the (modified) nexus approach. The new Cyprus IP box applies with retrospective effect from 1 July 2016, and the initial ('old') Cyprus IP box was closed on 30 June 2016 and is subject to transitional/grandfathering rules.

New Cyprus IP box

The new Cyprus IP box allows for a deductible notional expense calculated as 80% x qualifying profits from qualifying IP.

For the purposes of the 80% deduction, qualifying IP may be legally or economically owned and comprise:

- patents
- copyrighted software
- utility models, IP assets that grant protection to plants and genetic material, orphan drug designations, extensions of patent protection, and
- other IP that are non-obvious, useful, and novel, that are certified as such by a designated authority, and where the taxpayer satisfies size criteria (i.e. annual IP related revenue does not exceed EUR 7.5 million for the taxpayer, and group total annual revenue does not exceed EUR 50 million, using a five-year average for both calculations).

Marketing-related IP, such as trademarks, do not qualify.

Qualifying profits include, *inter alia*:

- royalties or other amounts in relation to the use of qualifying IP
- amounts for the grant of a licence for the exploitation of qualifying IP
- amounts derived from insurance/compensation in relation to the qualifying IP
- trading income from the sale of qualifying IP (note that capital gains on IP are excluded; as such, capital gains are not subject to taxation in Cyprus), and
- IP income embedded in the sale of products, services, or the use of processes directly related with qualifying IP assets.

In calculating the amount of the qualifying IP profits entitled to the 80% deduction, a fraction is applied to the above IP profits based on R&D activity of the taxpayer; the higher the amount of R&D undertaken by the taxpayer itself (or via a taxable foreign PE or via unrelated third party outsourcing), the higher the amount of R&D fraction (modified nexus fraction).

Old Cyprus IP box

The old Cyprus IP box closed from 30 June 2016. Under transitional/grandfathering rules, taxpayers with IPs that were already included in the old Cyprus IP box as of 30 June 2016 continue to apply the old Cyprus IP box provisions for a further five years (i.e. until 30 June 2021) for that IP.

A much shorter transitional/grandfathering period to 31 December 2016 applied in the case of IPs acquired directly or indirectly from related parties during the period 2 January 2016 to 30 June 2016, unless at the time of acquisition such IPs were already benefiting from an IP box (including the Cyprus IP box) or were not acquired with the main purpose (or one of the main purposes) being tax avoidance.

Embedded income and income earned from IPs economically but not legally owned will only qualify in the relevant transitional/grandfathering period if earned from those type of IPs that would qualify for the new Cyprus IP box (i.e. patents, copyrighted software, etc.).

Any expenditure of a capital nature incurred for the acquisition or development of such IPs may be claimed as a tax deduction in the year in which it was incurred and the immediate four following years on a straight-line basis.

In line with BEPS Action 5 recommendations, it is expected that Cyprus will spontaneously exchange information (under existing international agreements) on taxpayers who benefit from the transitional/grandfathering arrangements of the old IP box if the IP entered the old IP box in the period 7 February 2015 to 30 June 2016 for the particular taxpayer.

Exemption from CGT on acquired Cyprus immovable property

Land and land with buildings acquired at market value (excluding exchanges and donations) from unrelated parties in the period 16 July 2015 to 31 December 2016 is exempted from CGT upon a future disposal.

The Cyprus Alternative Investment Funds (AIFs) and Undertakings for Collective Investment in Transferable Securities (UCITS)

Law 131(I)/2014, as amended (hereinafter, the 'AIF Law') defines alternative investment funds as any collective investment undertakings, including investment compartments thereof, which, collectively:

- raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and
- do not require authorisation pursuant to section 9 of Law 78(I)/2012, as amended (hereinafter, the 'UCI Law'), or pursuant to the legislation of another member state that harmonises the provisions of the Directive 2009/65/EC, as amended.

The AIF Law allows for two types of AIFs to be registered in Cyprus:

- Alternative Investment Funds with Limited Number of Persons (75) (AIFLNPs).
- Alternative Investment Funds with Unlimited Number of Persons (AIFs).

The various legal forms in which either type of AIFs can manifest in are as follows:

AIF with Limited Number of Investors:

- Variable capital investment company (VCIC).
- Fixed capital investment company (FCIC).
- Limited partnership (LP).

AIF with Unlimited Number of Investors:

- VCIC.
- FCIC.
- LP.
- Common fund (CF).

UCITS

The UCI Law defines UCITS as undertakings the sole object of which is the collective investment in transferable securities and/or other liquid financial instruments as referred to in section 40 (1) of the UCI Law, of capital raised from the public, which operate on the principle of risk-spreading, and the units of which are, at the request of investors, redeemed or repurchased, directly or indirectly, out of these undertakings' assets.

UCITS can take the following legal forms:

- VCIC.
- CF.

AIFs and UCITS are liable to tax or not depending on their legal status.

Under certain conditions, management fees charged for the management of AIFs and UCITS funds can be exempt from VAT.

Withholding taxes

Cyprus does not levy a WHT on dividends, interests, and royalties paid to non-residents of Cyprus except in the case of royalties earned on rights used within Cyprus, which are subject to WHT of 10% (5% in the case of cinematograph films). Such Cyprus WHT on royalties for rights used within Cyprus may be reduced or eliminated by DTTs entered into by Cyprus or by the EU Interest and Royalty Directive as transposed into the Cyprus tax legislation.

WHT on other types of income

Cyprus levies a 10% WHT on technical services performed by non-residents in Cyprus. No such WHT is levied if such services are performed via a PE in Cyprus or between 'associated' companies as defined by the EU Interest and Royalty Directive as enacted into the Cyprus tax legislation.

Cyprus also levies a 10% WHT on the gross income/receipts derived from the exercise in Cyprus by a non-resident individual of any profession or vocation and the remuneration of non-resident public entertainers (e.g. theatrical, musical, football clubs, other athletic missions).

Further, a 5% WHT is levied on gross income derived from within Cyprus by non-residents with no local PE for services in regards to the exploration, extraction, or exploitation of the continental shelf, as well as the establishment and use of pipelines and other installations on the ground, on the seabed, and on the surface of the sea.

WHT on dividend, interest, and royalties table

In the table below, we illustrate the applicable Cyprus WHT rates outbound for dividend, interest, and royalty payments.

	WHT (%)			
Recipient	**Dividends (1)**	**Interest (1)**	**Royalties rights not used within Cyprus**	**Royalties rights used within Cyprus**
Non-treaty	0	0	0	5/10 (2)
Treaty:				
Armenia	0	0	0	5
Austria	0	0	0	0
Bahrain	0	0	0	0
Barbados (13)	0	0	0	0
Belarus	0	0	0	5
Belgium	0	0	0	0
Bosnia (7)	0	0	0	5/10 (5)
Bulgaria	0	0	0	5/10 (5)
Canada	0	0	0	0/5/10 (4, 5)
China, People's Republic of	0	0	0	5/10 (5)
Czech Republic	0	0	0	0/10 (11)
Denmark	0	0	0	0
Egypt	0	0	0	5/10 (5)
Estonia	0	0	0	0
Ethiopia (14)	0	0	0	5
Finland	0	0	0	0

Recipient	Dividends (1)	Interest (1)	WHT (%) Royalties rights not used within Cyprus	Royalties rights used within Cyprus
France	0	0	0	0/5 (3)
Georgia	0	0	0	0
Germany	0	0	0	0
Greece	0	0	0	0/5 (5)
Guernsey	0	0	0	0
Hungary	0	0	0	0
Iceland	0	0	0	5
India	0	0	0	5/10 (5)
Iran (13)	0	0	0	5/6 (5)
Ireland, Republic of	0	0	0	0/5 (5)
Italy	0	0	0	0
Jersey (13)	0	0	0	0
Kuwait	0	0	0	5
Latvia	0	0	0	0/5 (12)
Lebanon	0	0	0	0
Lithuania	0	0	0	5
Luxembourg (15)	0	0	0	0
Malta	0	0	0	5/10 (5)
Mauritius	0	0	0	0
Moldova	0	0	0	5
Montenegro (7)	0	0	0	5/10 (5)
Norway	0	0	0	0
Poland	0	0	0	5
Portugal	0	0	0	5/10 (5)
Qatar	0	0	0	5
Romania	0	0	0	0/5 (10)
Russia	0	0	0	0
San Marino	0	0	0	0
Serbia (7)	0	0	0	5/10 (5)
Seychelles	0	0	0	5
Singapore	0	0	0	5/10 (5)
Slovak Republic (9)	0	0	0	0/5 (10)
Slovenia	0	0	0	5
South Africa	0	0	0	0
Spain	0	0	0	0
Sweden	0	0	0	0
Switzerland	0	0	0	0
Syria	0	0	0	5/10 (5)
Thailand	0	0	0	5/10 (6)
Ukraine	0	0	0	5/10 (8)
United Arab Emirates	0	0	0	0
United Kingdom	0	0	0	0/5 (3)
United States	0	0	0	0

Notes

1. Under Cyprus legislation, there is no WHT on dividends and interest paid to non-residents of Cyprus. Further, there is also no WHT on royalties paid to non-residents of Cyprus for rights not used within Cyprus.
2. Royalties earned on rights used within Cyprus are subject to WHT of 10% (except royalties relating to cinematographic films, where the WHT rate is 5%).
3. A WHT rate of 5% is applicable on cinematographic films, including films and videotape for television.
4. 0% on literary, dramatic, musical, or artistic work (excluding motion picture films and works on film or videotape for use in connection with television).
5. The WHT rate of 5% is applicable on cinematographic film royalties.
6. 5% WHT applies for any copyright of literary, dramatic, musical, artistic, or scientific work.
7. Bosnia, Montenegro, and Serbia apply the Yugoslavia/Cyprus treaty.
8. A 5% WHT rate will be levied on payment of royalties in respect of any copyright of scientific work, any patent, trademark, secret formula, process, or information concerning industrial, commercial, or scientific experience and cinematographic films.
9. The Cyprus-Czechoslovakia treaty applies with the Slovak Republic.
10. 5% WHT rate applies for patents, trademarks, designs or models, plans, secret formulas, or processes, or any industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
11. 10% WHT rate applies for patent, trademark, design, or model, plan, secret formula or process, computer software or industrial, commercial, or scientific equipment, or for information concerning industrial commercial, or scientific experience.
12. 0% WHT rate applies if the payer is a company that is a resident in Cyprus and the beneficial owner of the income is a company (other than partnership) that is a resident in Latvia. 5% WHT rate applies for all other cases.
13. The treaty is effective as of 1 January 2018.
14. The treaty is effective as of 1 January 2018 for Cyprus.
15. The treaty is effective as of 1 January 2019.

Tax administration

Taxable period

In Cyprus, the tax year is the calendar year.

Tax returns

Business organisations are required to prepare audited accounts based on generally accepted auditing standards. Tax returns are completed based on these accounts on a calendar-year basis.

Electronic submission

Companies should be registered online and submit their annual tax returns electronically. In this respect, the submission deadline of the 2017 corporate tax return is 31 March 2019.

Payment of tax

Corporate entities must pay provisional tax on the current year's income. Such provisional tax payment is made in two equal instalments on 31 July and 31 December of the tax year. A final balancing payment must be made on or before 1 August of the following year on a self-assessment basis to bring the total payments of tax to the total actually due according to the tax return.

Tax audit process

The Cyprus tax process is one of self-assessment. Following the filing of a tax return, the CTA has six years from the end of the relevant tax year to raise an enquiry (12 years in cases of established fraud or wilful default). These can range from simple information requests to detailed technical challenges over treatments adopted in the tax return.

Any enquires are often conducted between the taxpayer and the CTA by exchange of information via correspondence and meetings. Where agreement cannot be reached, litigation may be necessary.

A taxpayer may also proactively request that the CTA review the company's 'open' tax years if the taxpayer requires a tax clearance certificate (e.g. upon commencement of voluntary liquidation).

For companies in a tax-loss position per the self-assessment return, the CTA is not restricted to the above-mentioned six-year (or 12-year) period; however, outside of this period, any adjustments may only reduce or nullify a loss.

Topics of focus for tax authorities

Tax authorities generally focus on the tax statements being computed based on generally accepted auditing standards prepared and audited financial statements and on the principles of taxation as per the tax laws and their issued circulars.

Other issues

Business combinations

Transfers of assets and liabilities between companies can occur without tax implications within the framework of a tax-exempt qualified reorganisation. Reorganisations include mergers, demergers, partial divisions, transfers of divisions of activities, exchanges of shares, and transfers of registered office of a European company (SE) or a European cooperative company (SCE).

Intergovernmental agreements (IGAs) and cooperation

Alongside DTTs, Cyprus is a signatory to the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and is an early adopter of the Common Reporting Standard (CRS) on automatic exchange of information. Cyprus has also signed a Model 1 IGA with the United States (US) for the US Financial Account Tax Compliance Act (FATCA) initiative on automatic exchange of information.

Cyprus is a member of the *ad-hoc* group for the multilateral instrument implementing BEPS tax treaty measures. In November 2016, the group adopted the BEPS Action 15 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion', which was signed on 7 June 2017.

On 1 November 2016, Cyprus signed the Multilateral Competent Authority Agreement, which implements the G20/OECD BEPS Action 13 CbC reporting requirements (*see the Group taxation section for more information*).

Cyprus, as a member state of the European Union, incorporates all EU Directives in its domestic Laws.

Cyprus is in cooperation with the European Commission (EC) regarding the EC's recent focus into fiscal state aid and tax rulings. To date, the European Commission has not raised any specific investigations regarding Cyprus.

Czech Republic

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Significant developments

A new amendment to the income tax law became effective in July 2017. The amendment, *inter alia*, introduces deductibility of tax loss from sale of shares in trading portfolio for Czech tax non-residents and a possibility of permanent establishments (PEs) of non-residents to request for a binding ruling regarding their tax base determination.

Due to European Union (EU) activities, the Czech Republic is obligated to incorporate the provisions of the EU Anti-Tax Avoidance Directives with effect from 2019 (the exact form of incorporation has not been announced yet). Exit charge, as an exception, may be introduced with effect from 2020.

Taxes on corporate income

Corporate income tax (CIT) applies to the profits generated by all companies, including branches of foreign companies. Corporate partners in general partnerships (i.e. unlimited) and corporate general partners (i.e. unlimited) in a limited partnership are subject to CIT on their share of the profits in the partnership.

Czech resident companies are required to pay CIT on income derived from worldwide sources. Non-resident companies are required to pay CIT on income sourced in the Czech Republic.

The 19% CIT rate applies to all business profits, including capital gains from the sale of shares (if not exempt under the participation exemption regime).

There is a special tax rate of 15% levied on dividend income of Czech tax resident entities from non-resident entities (unless subject to participation exemption).

A 5% CIT rate applies to income of defined investments, and a 0% CIT rate applies to pension funds.

Local income taxes

There are no regional or local income taxes in the Czech Republic.

Corporate residence

A company is resident in the Czech Republic for CIT purposes if it is registered in, or has a place of management located in, the Czech Republic.

Permanent establishment (PE)

Under domestic law, the creation of a PE of a foreign tax resident in the Czech Republic is triggered by a fixed place available for carrying out business activities, long-term provision of services (for more than six months in any 12 consecutive months), or presence of a dependent agent, unless an applicable double taxation treaty (DTT) stipulates otherwise. For interpretation purposes, the Organisation for Economic Co-operation and Development (OECD) Model Tax Commentary is followed. The Czech Republic tends to have a service PE clause included in its DTTs.

From 2018, it is possible to request the tax authority for a legally binding ruling confirming a chosen method of the income tax base determination.

Other taxes

Value-added tax (VAT)

VAT is generally charged at 21% on supplies of goods and services within the Czech Republic. Certain supplies (such as groceries and accommodation, restaurant, and transport services) are taxed at a rate of 15%, and a second reduced rate of 10% is applicable for specified categories of goods (some medicaments, books, and baby food).

Exports are generally exempt from VAT with a credit. Some supplies are exempt without a credit, including the lease of real estate (with certain exceptions), financial and insurance services, education, health, and welfare.

VAT registration

Companies seated in the Czech Republic whose turnover exceeds 1 million Czech korun (CZK) in any consecutive 12-month period must register as a VAT payer with the tax authorities.

For non-resident companies, there is no registration threshold, but they must register as a VAT payer if they:

- make any supply subject to Czech VAT (unless the liability to declare and pay VAT is shifted to the recipient of the supply), or
- supply goods from the Czech Republic to another EU member state.

A company can register as a VAT payer voluntarily even if its turnover does not reach the threshold if it renders or is going to render taxable supplies or VAT exempt supplies with credit in the Czech Republic.

Under certain circumstances, companies not registered for VAT to whom VAT liability arises due to acquired goods or services become persons identified for VAT. A person identified for VAT only pays VAT from received supplies without being entitled to recover related input VAT in its VAT return.

VAT returns and payments

The VAT return must be filed and tax paid within 25 days after the end of the taxable period. The taxable period is a calendar month (or calendar quarter under certain circumstances). All VAT payers registered in the Czech Republic have to submit a report, a so-called ‘control statement’. In the control statement, the VAT payers have to give detailed evidence of data from invoices that have been issued and received, so that the Czech Financial Administration can compare and check transactions with business partners. The control statement does not substitute for a VAT return. Legal entities have to file the report every calendar month, and the deadline for submission of the control statement is no later than 25 days after the taxable period. VAT payers have to submit all VAT reports to the Czech tax authorities electronically.

Customs duties

The Czech Republic is an EU member state; consequently, the EU customs code applies.

Excise taxes

Excise tax is charged on the production or import of certain products, such as tobacco and tobacco products, wines, semi-products, spirits and pure ethanol, beer, fuel, and mineral oils.

Energy taxes

Energy tax is charged on natural gas and certain other gases, solid fuels, and on electricity sold to final customers in the Czech Republic.

Real estate tax

Real estate tax is payable annually by the owner of land or buildings. The amount of the tax is dependent on area, location, and usage of the land or buildings. Paved areas used for business purposes (such as concrete areas in logistics centres) are taxable, with taxpayers obligated to self-assess the tax. However, some areas (e.g. publicly accessible parking lands in shopping malls) are not taxable.

Real estate transfer tax

The real estate transfer tax rate is 4% and applies to the greater of the transaction price or the officially appraised value of the real estate transferred. The taxpayer is the acquirer of the real estate.

Stamp duties

There are no stamp duties in the Czech Republic. Certain business operations in which a notary has to be involved by operation of law are subject to notarial fee.

Payroll taxes

Employers (including economic employers and certain types of PEs) in the Czech Republic are obligated to submit monthly withholdings and an annual reconciliation in respect of their employees. The withholdings include personal income tax (PIT) plus solidarity surcharge and statutory social security and health insurance.

Social security and health insurance contributions

Employers contribute 34% of the employee’s gross salary to the state health and social security funds. A cap on only the social security premium is available.

Road tax

Road tax is payable annually with respect to vehicles (including private vehicles) used for commercial purposes. Rates vary depending on engine capacity and vehicle size.

Branch income

A foreign company can trade in the Czech Republic through a Czech branch. A branch usually creates a Czech PE of the foreign entity for CIT purposes (depending on the character of the activities carried out through the branch). The basis of taxation is the same as for corporations (i.e. tax base is calculated as taxable revenues less tax-deductible costs).

A branch is liable for tax on its attributable profits at the standard CIT rate. From 2018, branches of foreign companies may request for a binding ruling on the tax base determination.

Income determination

The starting point for the calculation of the CIT base is the accounting result as per the Czech accounting standards. The tax non-deductible costs are then added and non-taxable revenues deducted from the accounting result.

Inventory valuation

Stock (i.e. inventory) is valued at cost. Czech legislation specifically provides for the use of the arithmetical average cost and first in first out (FIFO) methods to value stock. Last in first out (LIFO) and the replacement-cost methods (except for livestock) may not be used.

Capital gains

No separate capital gains tax is levied in the Czech Republic. Capital gains are included in the CIT base and taxed as ordinary income in the year in which they arise.

Capital gains from the sale of shares may be exempt from Czech taxation if all of the following conditions are met:

- The Czech or EU parent holds at least 10% of the shares of the subsidiary for at least 12 months.
- The subsidiary is a tax resident of the Czech Republic or another EU member state.
- Both the parent and the subsidiary have one of the legal forms listed in the Annex to the EU Parent/Subsidiary Directive.
- The parent or the subsidiary are not exempt from corporate taxation or may not choose to be exempt, and the tax rate applicable to their income is greater than 0%.

If the subsidiary is not a tax resident of the Czech Republic or another EU member state, the exemption may be applied, provided that the subsidiary is a tax resident of a country where there is a DTT in place with the Czech Republic, it has a legal form similar to a limited liability company or a joint stock company, it is subject to CIT at the nominal rate of at least 12% in a year when dividends are paid, and the time test of 10% for at least 12 calendar months is met. The time test may be met both prospectively and retrospectively.

Dividend income

Dividends received by Czech tax resident corporations from non-resident entities are subject to a special tax rate of 15%, unless exempt under the participation exemption regime *described below*.

Dividends paid by Czech tax resident corporations to Czech resident entities are subject to 15% final withholding tax (WHT), unless exempt under the participation exemption regime.

Dividends paid by Czech tax resident corporations to Czech non-resident entities are subject to 15% final WHT, unless exempt under the participation exemption regime or decreased under the relevant DTT. Dividends paid to entities that are residents of countries outside of the European Union and European Economic Area (EEA), and countries with which the Czech Republic does not have an enforceable DTT or tax information exchange agreement (TIEA), are subject to 35% WHT.

Participation exemption regime

Dividend income may be exempt from Czech taxation (i.e. WHT when a Czech company is paying dividends, CIT when a Czech company is receiving dividends) if all of the following conditions are met:

- The Czech or EU parent holds at least 10% of the shares of the subsidiary for at least 12 months.
- The subsidiary is a tax resident of the Czech Republic or another EU member state.
- Both the parent and the subsidiary have one of the legal forms listed in the Annex to the EU Parent/Subsidiary Directive.
- The parent or the subsidiary are not exempt from corporate taxation or may not choose to be exempt, and the tax rate applicable to their income is greater than 0%.

Regarding dividends paid, provided that the conditions above are met, the exemption also applies when dividends are paid by a Czech subsidiary to a parent in Switzerland, Norway, or Iceland.

Regarding dividends received, if the subsidiary is not a tax resident of the Czech Republic or another EU member state, exemption on dividends received by a Czech resident may be applied, provided that the subsidiary is a tax resident of a country where a DTT with the Czech Republic is in place, it has a legal form similar to a limited liability company or a joint stock company, it is subject to CIT at the nominal rate of at least 12% in a year when dividends are paid, and the time test of at least 10% for at least 12 consecutive calendar months is met.

Interest and royalty income

Interest and royalties received by Czech tax residents are included in the standard tax base subject to the 19% CIT rate.

Czech-source interest and royalty income received by Czech tax non-residents is subject to 15% WHT, unless subject to domestic exemption or a DTT stipulates otherwise. Interest and royalties paid by Czech tax residents to entities that are residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, are subject to 35% WHT.

Under domestic law, interest and/or royalty income is exempt if it is paid by a Czech resident to an EU resident recipient who is a beneficial owner of the interest and/or royalty income, provided that for at least 24 months before the payment:

- the payer is in at least a 25% parent-subsidiary or at least a 25% direct sister relation to the recipient of the income and
- the interest and/or royalty is not attributable to a Czech PE of the recipient.

The exemption is applicable subject to approval by the tax authorities.

Exchange gains and losses

Realised foreign exchange gains and losses are accounted for in profit and loss accounts and represent taxable revenues or tax-deductible costs, respectively. The same treatment applies to unrealised foreign exchange differences; however, there are court cases dated 2012 concluding that unrealised foreign exchange income is not taxable as it is only virtual income rather than a real increase of the taxpayer's property.

The default functional currency is the Czech koruna. A Czech company cannot opt for any foreign currency to be the functional currency for tax purposes.

Foreign income

Companies resident in the Czech Republic are taxed on their worldwide income. A Czech corporation is taxed on its foreign branch income when earned (accrual basis) and on foreign dividends when approved by general meeting.

The participation exemption regime *described above* may be applicable.

There is no controlled foreign company (CFC) legislation in the Czech Republic. However, under the EU Anti-Tax Avoidance Directive, the Czech Republic is obligated to implement CFC legislation by the beginning of 2019.

Deductions

Depreciation and amortisation

Methods of tax depreciation are prescribed by tax legislation and are independent from depreciation methods for accounting purposes. Tax depreciation is calculated on an asset-by-asset basis, applying the straight-line or accelerated basis methods of depreciation at statutory rates. Under both methods, depreciation expense in the first year is lower than for subsequent years. The company may choose which method to apply to a new asset, but once the choice is made, it cannot be altered. All assets are classified into six groups, which determine the number of years over which the asset will be written off, as follows:

Depreciation group	Assets	Minimum depreciation period (years)
1	Office machines and computers, tools	3
2	Engines, motor vehicles, machines, audio-visual equipment	5
3	Elevators, escalators, turbines, air conditioning equipment, electric motors, and generators	10
4	Buildings made of wood and plastic, long-distance lines, and pipes	20
5	Buildings (except for those listed in groups 4 and 6), roads, bridges, tunnels	30
6	Administrative buildings, department stores, historical buildings, and hotels	50

'Tangible assets' (i.e. assets that are subject to tax depreciation) are defined by tax legislation generally as assets with economic useful lives of greater than one year and acquisition prices higher than CZK 40,000. Certain assets, such as buildings, are always considered tangible assets.

Taxpayers are generally not obligated to depreciate a tangible asset for tax purposes every year. Depreciation may be interrupted in any year and continued in a later year without a loss of depreciation potential.

Tangible assets are generally depreciated by the taxpayer with ownership title. Certain exceptions apply, for instance, technical appreciation of a rented asset carried out by a tenant or a subtenant may be depreciated by that tenant/subtenant, subject to certain conditions.

Depreciation can start only once the assets are put into use and comply with the requirements of specific laws.

Certain assets have special depreciation methods (e.g. moulds are depreciated based on expected life or number of products).

The value to be used as the basis for tax depreciation depends on how the asset is acquired, for example:

- Acquisition cost (construction and equipment costs, architect fees, legal fees, notary's fees, etc.) if the asset is acquired for consideration.
- Internal costs incurred if the asset is acquired or produced internally.

'Intangible assets' are defined by tax legislation as software, valuable rights, intangible results of research and development (R&D), and other assets regarded as assets for accounting purposes, provided that they:

- were acquired from a third party or developed internally for the purpose of trading with them
- have an acquisition price of more than CZK 60,000, and
- have a useful life of greater than one year.

Intangible assets are amortised for tax purposes based on the number of years that the taxpayer has a licence for the assets if the licence is for a limited number of years. Otherwise, amortisation for tax purposes will vary depending on the asset (e.g. audio-visual work is amortised over at least 18 months, results of R&D and software are amortised over at least 36 months).

Goodwill

Goodwill arisen as a result of the purchase of a business (or its part) as a going concern may be evenly amortised for 180 months. Any other goodwill (e.g. arisen within a merger) is disregarded for tax purposes.

Start-up expenses

Start-up expenses are directly deductible.

Interest expenses

Interest as accrued and duly accounted for under Czech generally accepted accounting principles (GAAP) is generally tax deductible, with the following exceptions:

- Interest disallowed based on the thin capitalisation restriction (*please refer to Thin capitalisation in the Group taxation section*).
- Interest disallowed for its relation to income that is tax exempt or taxed outside the standard tax base.
- Interest disallowed due to its relation to holding a subsidiary.
- Profit-dependent interest.

Under the EU Anti-Tax Avoidance Directive, the Czech Republic has an obligation to implement, by the end of 2018, a new interest stripping rule limiting tax deductibility of net interest expenses (calculated as the difference between interest expenses and interest revenue) to 30% of earnings before interest, tax, depreciation, and amortisation (EBITDA) of a company. The interest stripping rule will apply to interest expenses arising in connection with debt instruments from related and also from unrelated parties.

Bad debt

Doubtful or bad receivables that have not yet become statute-barred may be provisioned for under special rules. Generally, provisions may be created for trade receivables overdue for more than 18 months. Provisions of 100% may be created for debts overdue for 30 months. For receivables, banks, insurance companies, and defined financial institutions have their specific system for provisioning.

Charitable contributions

Certain charitable donations are deductible. The minimum deductible donation is CZK 2,000 and the maximum deductible donation is 10% of the tax base.

Travel expenses and meal allowances

Payments for travel expenses and meal allowances that are made to employees may generally be tax-deductible.

Fines and penalties

Contractual fines and penalties are generally tax deductible on a cash basis. Non-contractual fines are not tax deductible.

Taxes

Road tax, real estate tax, and most other taxes, with the exception of income taxes, are deductible, as are social security contributions paid by an employer with respect to employees.

Other significant items

Fees paid to members of other statutory bodies of companies (i.e. board of directors of joint stock companies and cooperatives) for their services are deductible for tax purposes.

Net operating losses

Losses incurred in a tax year may be carried forward to offset taxable profits generated in the following five tax years. Losses may not be carried back. The possibility to utilise tax loss carried forward has been extended even to cross-border mergers (subject to certain limitations).

Payments to foreign affiliates

Generally, deductions may be claimed for royalties, management service fees, and interest charges paid to foreign affiliates, provided such amounts are at arm's length.

Group taxation

Currently, the Czech Republic does not permit group taxation. Each company in a group is taxed individually. Consolidated tax base applies only for the general partners and their shares in profit of their general partnership.

Transfer pricing

For tax purposes, prices agreed between related parties have to meet the definition of the arm's-length principle, and these prices are often subject to tax audits by tax authorities. The consequences of incorrect transfer pricing adjustments are tax exposure and penalties. In the case of companies receiving investment incentives, incorrect transfer pricing can cause a loss of the investment incentives. Generally, pricing methods as described in OECD guidelines should be followed.

Although there is no legal requirement to keep transfer pricing documentation, in practice it is strongly recommended to keep it as the taxpayer bears the burden of proof upon challenge of prices by tax authorities.

Taxpayers may request the tax administrators to issue an advance pricing agreement (APA) regarding progressing or future transactions between related parties.

Country-by-country (CbC) reporting

The CbC report is an outcome of the Action Plan for Base Erosion and Profit Shifting (BEPS) by the OECD that was implemented to the Czech legislation based on the EU Directive DAC IV. The CbC report is a transparent report disclosing the income, earnings, taxes paid, and other information on the economic activity of multinational groups reporting consolidated revenues of over 750 million euros (EUR).

Czech entities that are part of a multinational group reporting annual consolidated revenues of over EUR 750 million were obligated to submit a one-off Notification. The Czech ultimate parents submitted the CbC report by 31 December 2017 for the first time. The report must be submitted every year within 12 months after the close of the relevant fiscal year.

Thin capitalisation

Thin capitalisation rules apply in the Czech Republic and may limit the tax deductibility of interest payments on debt financing from related parties as well as in certain cases from third parties (e.g. back-to-back financing with a bank interposed between two related parties).

Below is a brief summary of the thin capitalisation rules:

- The tax-deductibility test applies not only to interest but also to all so-called 'financial costs' on loans (e.g. interest plus other related costs, such as bank fees).

- Thin capitalisation applies only to related-party loans.
- The debt-to-equity ratio for related-party loans is 4:1 (6:1 for financial services industry), i.e. interest on such part of the related-party loans by which the principal of these loans exceeds four times the accounting equity (based on Czech GAAP) of the borrower is tax non-deductible.
- Unrelated-party loans (e.g. bank loans) guaranteed by a related party are not considered related-party loans for thin capitalisation purposes. If, however, a bank provides a back-to-back loan to a Czech entity where the loan is provided to the bank by a related party, such a bank loan to the Czech entity is considered a related-party loan.
- Interest on profit-p,articipating loans is not deductible for tax purposes.

Controlled foreign companies (CFCs)

There is no CFC legislation in the Czech Republic.

Tax credits and incentives

Foreign tax credit

Foreign tax credits are available only under tax treaties. If credit is not available under a treaty, CIT paid abroad may be deducted as an expense in the following year, provided it is imposed on the income included in Czech taxable income.

Investment incentives

Investment incentives are available only to Czech entities (including Czech subsidiaries of foreign companies). Incentives include income and real estate tax relief, financial support for the creation of new jobs, financial support for training or retraining of employees, cash grant on capital expenditures, and a transfer of land at a specially reduced price.

Investment incentives are available in the manufacturing industry and also for support of technology centres, strategic services, data centres, and customer support centres.

Research and development (R&D) allowance

Up to 100% of specific R&D expenses (or costs) incurred in a given tax year may be deducted from the tax base as a special tax allowance. These costs are deducted twice for tax purposes: once as a normal tax-deductible cost and then again as a special tax allowance. An additional 10% may be applied as an allowance from the difference by which the current year qualifying costs exceed those of the prior period.

The following costs can be included in the R&D tax allowance:

- Direct costs (e.g. personnel costs of R&D engineers, consumed materials).
- Tax depreciation of fixed assets used for R&D activities.
- Other operational expenses directly related to the realisation of R&D activities (e.g. telecommunications fees, electricity, water, gas).

Only qualifying expenses are deductible for tax purposes and must be separately identified from other expenses (or costs). This allowance does not apply to costs of purchased services or intangible results of R&D acquired from other entities, except for expenses (or costs) incurred from an R&D organisation. In addition, expenses that were supported from public sources are also excluded.

Any non-utilised R&D allowance may be carried forward for three subsequent years.

A taxpayer may request a binding ruling with respect to R&D costs from the respective tax office in the event that the taxpayer is unsure of whether certain R&D costs are eligible for the allowance.

Withholding taxes

Czech corporations are required to withhold tax on payments of dividends, interest, and royalties as follows:

	WHT (%)		
Recipient	**Dividend (1)**	**Interest (2)**	**Royalties (3)**
Resident corporations	15	0	0
Resident individuals	15	0	0
Non-resident corporations and individuals:			
Non-treaty	15/35	15/35	15/35
Treaty:			
Albania	5/15	0/5	10
Armenia	10	5/10	5/10
Australia	5/15	10	10
Austria	0/10	0	5
Azerbaijan	8	5/10	10
Bahrain	5	0	10
Barbados	5/15	5	5/10
Belarus	5/10	0/5	5
Belgium	5/15	10	0/10
Bosnia	5	0	0/10
Brazil	15	10/15	15/25
Bulgaria	10	0/10	10
Canada	5/15	0/10	0/10
Chile	15	5/15	5/10
China, People's Republic of	5/10	7.5	10
Colombia	5/15/25	0/10	10
Croatia	5	0	10
Cyprus	0/5	0	0/10
Democratic People's Republic of Korea	0/10	0/10	0/10
Denmark	0/15	0	10
Egypt	5/15	0/15	15
Estonia	5/15	0/10	10
Ethiopia	10	0/10	10
Finland	5/15	0	0/1/5/10
France	10	0	0/5/10
Georgia	5/10	0/8	5/10
Germany	5/15	0	5
Greece	Local rates	0/10	0/10
Hong Kong	5	0	10
Hungary	5/15	0	10
Iceland	5/15	0	10
India	10	0/10	10

Recipient	WHT (%) Dividend (1)	Interest (2)	Royalties (3)
Indonesia	10/15	0/12.5	12.5
Iran	5	5	8
Ireland, Republic of	5/15	0	10
Israel	5/15	0/10	5
Italy	15	0	0/5
Japan	10/15	0/10	0/10
Jordan	10	0/10	10
Kazakhstan	10	0/10	10
Korea, Republic of	5/10	0/10	0/10
Kuwait	0/5	0	0/10
Latvia	5/15	0/10	10
Lebanon	5	0	5/10
Liechtenstein	0/15	0	10
Lithuania	5/15	0/10	10
Luxembourg	0/10	0	0/10
Macedonia	5/15	0	0/10
Malaysia	0/10	0/12	12
Malta	5	0	5
Mexico	10	0/10	10
Moldova	5/15	5	10
Mongolia	10	0/10	10
Morocco	0/10	0/10	0/10
Netherlands	0/10	0	5
New Zealand	15	0/10	10
Nigeria	12.5/15	0/15	15
Norway	0/15	0	0/5/10
Pakistan	5/15	0/10	10
Panama	0/10	0/5/10	0/10
Philippines	10/15	0/10	10/15
Poland	5	0/5	10
Portugal	10/15	0/10	10
Romania	10	0/7	10
Russia	10	0	10
Saudi Arabia	5	0	10
Serbia and Montenegro	0/10	0/10	0/5/10
Singapore	5	0	10
Slovak Republic	5/15	0	0/10
Slovenia	5/15	0/5	10
South Africa	5/15	0	10
Spain	5/15	0	0/5
Sri Lanka	15	0/10	0/10
Sweden	0/10	0	0/5
Switzerland	0/15	0	10
Syria	10	10	12
Tajikistan	5	0/7	10
Thailand	10	0/10	5/10/15
Tunisia	10/15	0/12	5/15
Turkey	0/10	0/10	0/10
Ukraine	5/15	5	10

Recipient	WHT (%) Dividend (1)	Interest (2)	Royalties (3)
United Arab Emirates	0/5	0	10
United Kingdom	5/15	0	0/10
United States	5/15	0	0/10
Uzbekistan	5/10	0/5	10
Venezuela	5/10	0/10	12
Vietnam	10	0/10	10

Notes

1. The lower rate applies if the recipient is a company that owns at least a certain amount of the capital or a certain amount of the voting shares of the company paying the dividend directly. Non-treaty residents: Dividends paid to residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, are subject to 35% WHT.
2. The lower rate applies mostly in situations when the interest is received by the government or a state-owned institution or is paid by the government. Non-treaty residents: Interest paid to residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, is subject to 35% WHT.
3. The lower rate applies mostly to cultural royalties. Non-treaty residents: Royalties paid to residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, are subject to 35% WHT.

Apart from dividends, interest, and royalties, Czech tax residents or Czech PEs are obligated to withhold tax *vis-a-vis* non-residents, *inter alia*, in the following cases:

- Payments for services provided by a non-resident in the Czech Republic.
- Provision of gifts and similar consideration-free transfers.

This treatment has to be applied unless an applicable DTT stipulates otherwise.

Tax administration

Taxable period

A corporation may choose either a calendar year or an accounting year as its tax year.

Tax returns

Returns must be filed within three months of the end of the tax period.

A three-month extension of the filing deadline is available if a taxpayer is represented by a registered tax advisor or if the taxpayer is subject to a statutory accounting audit.

In some special cases, a filing deadline of less than three months may apply (e.g. upon merger or liquidation). This shorter deadline may, however, be extended if approved by the tax office.

Payment of tax

Tax payments are due on the same day as the filing deadline.

A company is obligated to make CIT advances based on its last known tax liability. The tax advances are paid semi-annually or quarterly, depending on the amount of the last known tax liability.

Upon filing a tax return, tax advances paid during the year for which the tax return is filed will offset the tax liability declared in the tax return. Any outstanding amount must be paid on the date the tax return is due. Any overpayment will be refunded upon request or may be credited against future tax liabilities.

Tax audit process

There is no statutory tax audit cycle. Entities are picked by the tax authorities based on selected criteria (e.g. tax loss position, huge marketing costs) or randomly.

Statute of limitations

The tax may be assessed within three years after the deadline for regular tax return filing. In certain cases (e.g. filing of supplementary tax return), such assessment period may be prolonged by one year, maximally up to ten years. Tax liability arisen as result of criminal action may be assessed any time within two years after the year of the relevant penal court decision becoming effective.

Topics of focus for tax authorities

The tax authorities seem to focus on marketing costs, management fees, transfer pricing in intra-group relations, entities in a tax loss position, entities with tax investment incentives, and entities with an R&D allowance. More and more attention is drawn to the topic of tax law abuse.

Other issues

International agreements

In 2014, the United States and the Czech Republic signed an intergovernmental agreement (IGA) implementing the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA). The deadline for the annual reporting is 30 June for the preceding calendar year.

The Common Reporting Standard (CRS), whereby financial institutions report certain information on the accounts they keep, was implemented into Czech legislation in 2017. The deadline for the annual reporting is 30 June for the preceding calendar year.

The Czech Republic has an effective bilateral TIEA with the following countries: Andorra, Aruba, Bahamas, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Guernsey, Isle of Man, Jersey, Monaco, and San Marino.

The Czech Republic is also a party to the multilateral OECD Convention on Mutual Administrative Assistance in Tax Matters.

As regards the OECD's BEPS initiative, the Czech Republic will implement the minimum standards requirements only. In this respect, the Czech Republic will implement into its DTTs a principal purpose test provision, a new wording of preamble, and a Mutual Agreement Procedure. Nevertheless, in the future, the Czech Republic is prepared to implement new BEPS provisions into its network of DTTs through bilateral negotiation.

Denmark

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Significant developments

On 15 November 2017, a proposal was set forth by the Danish Parliament to amend existing tax law regarding the deduction of payroll costs.

A ruling from the Supreme Court in 2017 stated that it be required that payroll costs be separated into costs that are incurred in connection with the operations of the company and those that are incurred in connection with acquisitions/restructurings. Costs in connection with acquisitions/restructurings are non-deductible.

The proposed bill seeks to amend this, so that all payroll costs incurred by a company in regards to its own employees will become deductible. The bill was adopted with effect from 1 January 2018, and salary expenses should therefore generally be tax deductible. The change applies retroactively until the tax year of 2008.

Following up on Action 5 of the base erosion and profit shifting (BEPS) initiative, Denmark has also agreed to participate in the compulsory spontaneous exchange of information. This will include (i) binding tax rulings related to beneficiary tax regimes, (ii) cross-border advance pricing agreements (APAs) and all types of cross-border binding rulings related to transfer pricing, (iii) cross-border binding rulings whereby a one-sided reduction of the taxable income has been made without this being reflected in the taxpayer's financial statements, (iv) binding rulings regarding permanent establishments (PEs), and (v) binding rulings regarding conduit companies.

The information is to be exchanged with all Organisation for Economic Co-operation and Development (OECD) and G20 countries, as well as any other countries that adopt the BEPS initiatives. However, the exchange will only take place if the exchange of information is mutual with the other country. Information on cross-border binding rulings or pre-approved pricing schemes amended or renewed after 31 December 2016 must be exchanged within three months after the end of the half of the calendar year with which it relates to (i.e. deadlines are 30 March and 30 September). Information that is amended or renewed within a period of five years before 1 January 2017 must be exchanged before 1 January 2018, subject to certain exceptions. Taxpayers will be informed prior to exchange.

With effect from 1 January 2017, companies filing complaints against Danish Tax Authorities will now have the right to cost compensation. The cost compensation scheme helps to increase legal certainty, and the proposal therefore reinstated that there should be 100% cost compensation where the company has been compliant, while it is possible to be compensated for 50% of the costs if the case is lost.

For most companies, 31 December 2017 was the first reporting deadline in regards to transfer pricing documentation. The new requirements include an obligation to structure the documentation in a master file and local files. In addition, groups with a consolidated turnover of 5.6 billion Danish kroner (DKK) are required to file a country-by-country (CbC) report, which will provide an overview of the economic activities of the group as well as the taxes paid. If the group is not filing in Denmark, but instead in another country, the group must inform the Danish Tax Authorities of which company in the group is reporting and which country this company is tax resident. The reporting may be done digitally.

On 21 April 2015, the Danish Parliament adopted a proposal to include an international circumvention provision in Danish tax law. This provision has had effect since 1 May 2015, and applies to arrangements or series of arrangements and transactions relating to obtaining benefits through tax treaties, regardless of when the treaties have been entered into force. The provision was an implementation of the amendment to the Parent-Subsidiary Directive, but was extended to apply to the Interest-Royalty Directive and Tax Merger Directive and all double tax treaties (DTTs). In the comments to the provision, it is stated that the provision is meant to correspond to the wording of the Parent-Subsidiary Directive, and the Danish provision should be strictly interpreted in accordance with this and any case law from the European Court of Justice (ECJ).

There have since been a few cases where the above-mentioned provision has been tested. In SKM.2017.333.SR, the Tax Council found that the main purpose of the relocation of the parent company from the Bahamas to Luxembourg, immediately before a planned relocation of a Danish subsidiary to Luxembourg, was to obtain a tax benefit that counteracted the aim and purpose of the Parent-Subsidiary Directive. However, in a more recent case, SKM.2017.626.SR, the Tax Council found that the provision did not apply, and indeed the liquidation proceeds distributed from a Danish subsidiary to a Dutch parent company (owned by a trust in Jersey and Guernsey, which was owned by an individual) should not be subject to Danish taxation. The Authorities highlighted that the establishment of the Dutch parent company could not in itself be considered abuse of benefits in relation to the Parent-Subsidiary Directive. This was partially due to the fact that the operative companies that were owned by the Danish company were also based in the Netherlands and also due to the fact that the individual owning the trust would not be receiving any distributions, but instead the trust would be making donations to charitable organisations.

On 28 November 2017, the Danish Parliament adopted a new temporary tax credit regime for oil and gas companies, advancing the time of deduction and increasing depreciation on production assets to 20% and uplift to 6.5% in six years (39% in total), in order to encourage investments in the Danish part of the North Sea.

Taxes on corporate income

Companies are subject to tax on all income and are only allowed deductions on expenses that are related to the operations of the company.

According to Danish tax law, a territoriality principle prevails with respect to PEs and real estate. Hence, a Danish company is not taxed on its worldwide income. Instead, income from a PE outside Denmark or from real estate located abroad is excluded from taxable income. Non-resident companies are taxed only on profits distributed from income sourced in Denmark. The corporate income tax (CIT) rate is 22%.

Hydrocarbon income tax

The ordinary CIT rate of 22% does not apply to Danish oil and gas upstream activities. Instead, there are two 'ring fenced' taxes on Danish oil and gas upstream activities. One very similar to the ordinary CIT; however, the tax rate is 25% instead of 22% and the income is ring fenced (i.e. no tax losses from other income can be deducted in income from the Danish oil and gas upstream activities). In addition to the 25% tax, a special income tax, labelled 'hydrocarbon tax', is levied on profits from the exploration and extraction of oil and gas on the Danish continental shelf at a rate of 52%. The 25% tax is deductible in computing the hydrocarbon tax, resulting in an effective tax rate of 64%.

Annual tax depreciation of platforms, wells, and inter-platform installations is allowed with up to 15% on a declining balance. Pipelines and other infrastructure assets can be depreciated with up to 7%.

Exploration costs can either be expensed or capitalised for tax purposes. If capitalised, the costs shall be amortised over five years with 20% annually from the year of first oil.

The following assets, which are subject to the special hydrocarbon tax (52%), qualify for an uplift of 5% in six years (30% in total):

- Exploration costs; however, only if capitalised, and only on exploration costs before declaration of commerciality on a specific field. After first oil in company, exploration costs can no longer be capitalised and thus no uplift can be claimed. Appraisal wells are regarded as exploration costs, and not a fixed asset as, for example, production wells.
- Platforms, wells, inter-platform installations, pipelines, and other fixed assets; however, only if the company owns the fixed assets, and not on leased or rented assets.

No uplift is granted under Chapter 2 (25%).

Temporary tax incentive regime

A new voluntary and temporary tax incentive regime for oil and gas companies has been adopted (Chapter 3B).

The new regime increases depreciation of production assets subject to hydrocarbon tax to 20% and uplift to 6.5% in six years (39% in total). Furthermore, it advances depreciation, as well as uplift, to time of payment. No accelerated depreciation/uplift applies to Chapter 2.

Chapter 3B is applicable to investments submitted for approval during the 'investment window' from 1 January 2017 until 31 December 2025 and finally approved by the Danish Energy Agency and completed no later than 31 December 2026. A decision to enter into the 3B regime should be made when filing the tax return for the first year the regime shall apply.

If the average annual oil price increases to 75 United States dollars (USD)/USD 85 per barrel, from 2022 a 5%/10% surtax will apply to income from upstream oil and gas production before interest and tax (Chapter 2) capped to 20.1% of capital expenditure investments made during the investment window. The surtax is deductible in the hydrocarbon tax. Any repayment obligation expires in 2037.

Related activities

Activity connected to the prospecting, exploration, or exploitation of oil and gas is taxed at 22%; however, it is taxable under a more aggressive regime than non-oil/gas activity. Any activity connected to oil and gas (e.g. drilling, seismic surveying, oilfield services) is taxable, regardless of whether a PE exists or not. This may be tempered by provisions in applicable DTTs.

Tonnage Tax Scheme

Danish tax law provides for a special tax scheme for shipping entities.

The main principle of the Tonnage Tax Scheme is that qualifying shipping entities are not taxed on the basis of their actual income derived from their business but on a fictitious income based on the net tons (NT) carrying capability of their fleet used for purposes covered by the Tonnage Tax Act.

The Tonnage Tax Scheme is available to:

- Danish shipping entities organised as limited liability companies (*Aktieselskab* [A/S] or *Anpartsselskab* [ApS])
- foreign shipping companies with the place of management and control in Denmark, and
- European Union (EU) shipping companies with a PE in Denmark.

A decision to enter into the scheme should be made in the first income year where the entity qualifies for the Tonnage Tax Scheme, and the decision is binding for a period of ten years.

As a general rule, group-related shipping companies based in Denmark must make the same choice regarding the Tonnage Tax Scheme. However, shipping companies that do not have the same management or operating organisation and do not conduct business in related fields may be exempt from the joint decision provision.

The Tonnage Tax Scheme is restricted to certain types of business activities. The entity must operate at least one vessel of minimum 20 GT used for commercial transportation of passengers or cargo between different destinations or hire out such vessels on time charter contracts for the same purpose. The ships must be owned or chartered on either 'bareboat' terms or one-to-seven year or time-charter contracts with a call/buy option by the company. Certain restrictions apply for ships chartered on a time-charter basis without a call/buy option. The ships must be strategically and commercially run from Denmark.

Income from activities that are carried out in close connection with this business, such as the usage of containers and loading facilities, etc. may also be included in the Tonnage Tax Scheme. Ships used for exploration, diving, fishing, towing, sand dredging, etc. are specifically exempt from the scheme. The same applies for certain types of ships, such as barges, floating docks, etc. However, EU or European Economic Community (EEC) registered ships used for towage activities at sea (i.e. not in and around ports) during at least 50% of their operating time during the income year may be included in the Tonnage Tax Scheme.

Ship management companies may also use the Tonnage Tax Scheme. A ship manager is defined as a company doing business with crew management and technical management of ships qualified for use in the Tonnage Tax Scheme. It is a requirement that the ship manager has taken over the full operating responsibility and all obligations and responsibilities according to the International Safety Management codex.

Taxable income

The taxable income for the part of the business that qualifies for the Tonnage Tax Scheme is determined for each ship as a fixed amount of Danish kroner per 100 NT per day according to the following:

	Fixed amount per day (DKK per 100 NT)	
Ship net ton (NT)	**2017**	**2018**
0 to 1,000	9.60	9.82
1,001 to 10,000	6.90	7.05
10,001 to 25,000	4.12	4.22
Over 25,000	2.71	2.77

The income is taxed at the ordinary CIT rate of 22%. No deduction for expenses related to tonnage-taxed income is allowed.

Income that does not qualify for the Tonnage Tax Scheme is taxed according to the general tax provisions in Denmark, thus expenses are deductible. Consequently, deduction for losses derived from other income can be offset against the income calculated under the Tonnage Tax Scheme.

Furthermore, losses from tax consolidation with group companies and, to a certain extent, financial expenses are deductible under the Tonnage Tax Scheme. However, deductibility for financial expenses is subject to various capping rules and implies that gains/losses are not derived from financial instruments entered into in order to secure the shipping income.

Depreciation

Shipping entities that apply the Tonnage Tax Scheme from the time of their establishment may not deduct depreciation for tax purposes. Special rules apply for shipping entities that were already in existence when they elected to become subject to the scheme and for entities that elect to include certain other assets at a later point in time that were not previously subject to the scheme.

Gains on the sale of ships

Gains on the sale of ships that have not been used in the scheme prior to 1 January 2007 are tax exempt. The same applies to gains on the sale of contracts on the delivery of ships if the ship was destined to be delivered after 1 January 2007. Gains on the sale of ships used in the scheme in prior years are taxable. The taxable gain is calculated as the sale price minus the purchase price plus improvements. Any losses on ships acquired and sold within the same income year as the income year in which a gain is realised may be offset against the gain.

New activities to be included

In December 2015 the Danish Parliament passed an amendment to the Tonnage Tax Act including more activities under the Tonnage Tax Scheme from fiscal year 2016; however, the expansion of the Danish Tonnage Tax Scheme still awaits final approval from the European Commission. The new activities that would be covered due to an expansion include the following:

Guard, supply, and construction vessels

The amendment to the Tonnage Tax Act includes revenue from guard service (e.g. in connection with cable laying and other non-fixed installations).

It is also proposed that all activities relating to supply services are included in the Tonnage Tax Scheme. This means that, for example, transportation of victuals or bunker fuel oil will be covered.

The Danish Tax Administration (SKAT) interprets the current rules in a way that does not allow for the inclusion of the above-mentioned activities. The explanation for this is that these activities are supposedly not carried out between different destinations.

Ice management vessels

Every kind of ice handling at sea is included in the amendment. This can be escorting of vessels through icy waters, protection of drilling units against floating icebergs in arctic waters, and actual ice breaking.

Offshore installation vessels

The amendment includes construction at sea, including the building, repair, and dismantling of wind farms at sea. These activities are typically carried out by wind farm service vessels.

Furthermore, the amendment includes the building, repair, and dismantling of other offshore installations, such as oil installations, wave-breaking installations, and other coast protection measures. In regards to oil installations, the building, repair, and dismantling of these is only included when the activities are carried out outside the Danish sea territory or continental shelf.

Also, the amendment includes the laying, inspection, and repair of pipelines and cables on the seabed. Specialised pipeline layers and cable layers typically carry out these activities.

Accommodation and support vessels (ASVs)

Income from the housing of employees, spare parts, or workshop facilities in connection to offshore operations is included in the amendment to the Tonnage Tax Act. Specialised ASVs typically carry out these activities. The vessels can be part of comprehensive and lengthy offshore works and form an integral and necessary part thereof.

Local income taxes

There is no local CIT or similar surcharge.

Corporate residence

A corporation is resident in Denmark for tax purposes if it is incorporated in Denmark and registered in the Companies Register as having a Danish place of business. Further, foreign companies having their actual place of management in Denmark are also tax resident in Denmark. The actual place of management is typically the place where the management decisions concerning the company's day-to-day operations are made.

Permanent establishment (PE)

Non-resident companies are liable to tax in Denmark on business profit if derived through a PE in Denmark. The existence of a PE is determined according to Danish tax law, which makes either a reference to a specific DTT or to text similar to Article 5 of the OECD Model Convention.

Denmark did not sign the multilateral instrument implementing BEPS action 7 regarding the new OECD definition of 'permanent establishment'. The OECD definition of 'permanent establishment' from 2017 is thus not implemented in Danish tax treaties.

Recent case law shows that the Danish Tax Authorities are increasingly determining that a home office constitutes a fixed place in Denmark, and, as such, the foreign company has a PE based on this criterion.

Other taxes

Value-added tax (VAT)

The general VAT rate is 25% of the price charged (exclusive of VAT).

Exemptions or a special reduced rate of 0% apply to a limited range of supplies (e.g. newspapers; hospital treatment; insurance and reinsurance services; most financial activities, including deposits of money and granting of loans).

Denmark was one of the first countries to introduce a VAT system. Since then, the VAT legislation in Denmark has undergone several changes. The most important changes have been modifications to bring the legislation in line with the Sixth EC VAT Directive (which, since 1 January 2007, is officially named the Council Directive 2006/112/EC on the common system of Value Added Tax) and the so-called EU VAT Package that entered into force on 1 January 2010.

The present Danish VAT Act (Momsloven) entered into force with effect from 1 July 1994. Compared to the Directive, the Danish VAT legislation includes minor deviations and the use of various discretionary provisions.

All supplies of goods and services by so-called 'taxable persons' (entrepreneurs who independently carry out economic activities) are subject to VAT, unless specifically exempted. Although the VAT exemptions are restricted to a limited range of services and goods, they are subject to a considerable number of binding rulings and administrative guidance with respect to their interpretation and application.

Transactions are subject to Danish VAT only when they are deemed to take place in Denmark. For the sake of tax neutrality, VAT is also levied on (i) imports (i.e. receipt of goods from non-EU territories), (ii) intra-Community acquisitions (i.e. receipt of goods from EU member states), and (iii) purchases of most services from foreign suppliers.

In order to avoid VAT being borne by anyone other than the final consumer, those who qualify as taxable persons can, with some exceptions, recover VAT charged by their suppliers according to the invoice/credit method, provided that the purchases relate to VATable transactions. VAT is recovered either via the periodical VAT return (as a deduction in VAT payable) or by filing a special application.

In principle, it is the supplier's responsibility to collect and report VAT on the supplies of goods and services in Denmark. However, a taxable customer/recipient is responsible for reporting VAT on the import or acquisition of goods from abroad as well as the purchase of most types of services from foreign suppliers.

Special payroll tax (Lønsumsafgift)

Companies that provide VAT-exempt services may be liable to pay special payroll tax (in Danish 'lønsumsafgift') in Denmark, which is calculated on the total payroll, including any type of wages and bonuses that the employee has received. There are four different calculation methods; which method should be applied depends of the activity and organisational structure. The method and percentage applied to calculate the special payroll tax depend on the ratio between VATable and VAT-exempt services supplied.

In case the VAT-exempt financial revenue is more than 50% of the total revenue, the company will be qualified as a financial services provider and the special payroll tax is then 14.5% (2018 rate) of the payroll used for the VAT-exempt activities. Please note that the rate will increase every year and end up at 15.3% in 2021.

This tax is deductible for income tax purposes.

Customs duties

Denmark is a member state of the European Union, and, according to EU's Common Customs Tariff, many goods imported into Denmark from outside the European Union are subject to customs duties. The rates of duty vary widely between goods.

Excise duties

According to Danish tax law, several excise duties are levied on different products. Some of the excise duties are enacted based on EU regulations while others are enacted according to domestic law only.

Excise duties are chargeable on a long list of goods, including hydrocarbon oil products, certain packaging, alcoholic drinks and tobacco, chocolate and sweets, coffee, etc.

The excise duty rates depend on the type of goods (e.g. chocolate, packaging) as well as, in some cases, the category of the goods (e.g. plastic bags, paper bags). Furthermore, many of the excise duty rates are regulated every year.

Only goods sold in Denmark (or taken into Denmark) are liable to the Danish excise duties. Companies importing goods into Denmark or companies producing goods in Denmark must be registered with the Danish tax authorities to settle the excise duties. This will often also be the case even though they are selling the goods on to other companies in Denmark.

The type of registration is decisive for when the companies must pay the excise duties. Companies just storing goods must register and settle excise duties in Denmark in spite of the fact that the goods are not being sold in Denmark.

As excise duties are a tax for national consumption in Denmark, a company can, in principle, obtain a reimbursement of the excise duties on products sold outside of

Denmark. Companies are entitled to a reimbursement even if the company is not registered for the excise duties in question and even if the excise duties have been paid by previous resellers, etc.

Property taxes

Owners of non-residential property must pay land tax annually. The land tax rate is set by the municipalities and must be between 1.6% and 3.4% of the value of the land. Municipalities may also levy a special coverage charge on certain non-residential properties at a maximum of 1% of the value of the property minus the value of the land and minus a property value threshold of DKK 50,000. Land tax and coverage charge are deductible from CIT.

Stamp tax

Stamp tax is payable on a few documents, such as a deed of transfer of real estate (DKK 1,660 plus 0.6% of the transfer sum). There is no stamp duty on transfer of shares.

Payroll taxes

There are no payroll taxes other than employer's tax (*see below*).

Employer's tax (social security charges)

The employer's contribution to *Arbejdsmarkedets Tillægspension* (ATP) (i.e. old-age pension) charges is DKK 2,272.20 (2018) *per annum* for a full-time employee.

Based on the ATP contribution, derived contributions will be due. Also, a mandatory Danish accidents at work insurance must be taken out. The total annual employer social security costs are approximately DKK 12,000 per employee depending on industry.

Employers that pay ATP contributions are also liable of making contributions to the Danish Labour Market Fund for Posted Workers, although this is not a social security contribution.

Companies that provide VAT-exempt services are liable to pay the employer's tax, which is calculated on the total annual salary cost. The rate can be as high as 14.5%, which is the rate for 2018 for banks and other financial institutions, the most significant sector paying the employer's tax. The rate will increase to 15.3% by the year 2021 for banks and other financial institutions. This tax is deductible for income tax purposes.

Environmental taxes/Energy taxes

Danish companies must pay environmental taxes, which were introduced to reduce companies' energy consumption, discharges of fluids with an environmental impact, and emission. These taxes are paid to the companies that provide the energy, who then pay the taxes to the Danish tax authorities. Most of the environmental tax rates are regulated every year.

In general, almost all VAT-registered companies in Denmark can obtain a reimbursement of some of the environmental taxes on energy (also called energy taxes). The size of the reimbursement of the energy taxes depends on the type of energy used and to what extent the companies can deduct VAT.

Branch income

PEs of foreign companies are taxed under the same rules and rates as Danish resident companies. There is no branch remittance tax or other similar tax on branch profits. As a branch is considered to be the same legal entity as the headquarters, interest paid from the branch to the headquarters is seen as an internal payment and therefore not tax deductible.

Income determination

Taxable income is generally calculated as income determined for accounting purposes that is adjusted and modified for several items, as prescribed by the tax laws. Typical timing differences include reserves, work in progress, and depreciation.

Inventory valuation

Inventory is valued at acquisition cost, current market value, or manufacturing cost (if manufactured by the company itself) according to a first in first out (FIFO) principle. The company may opt for different principles for each category of goods and may change principle from income year to income year, provided certain conditions are met.

Capital gains

Gains and losses realised on the sale of tangible and intangible assets, including goodwill, are generally included in taxable income. However, gains realised on the sale of shares are tax-exempt if the shares qualify as either 'subsidiary shares', 'group shares', or 'tax-exempt portfolio shares'.

The definition of 'subsidiary shares' are shares held by a corporate shareholder that holds a minimum of 10% of the share capital. With respect to a foreign subsidiary, it is a condition that the foreign subsidiary must be subject to CIT in its domicile state and the applicable CIT rate cannot be 0% or almost 0%. Furthermore, Denmark must hold an agreement to exchange tax information with the domicile state of the subsidiary. Such agreement must be in force at the time of distribution of dividends, etc.

'Group shares' are defined as shares in companies with which the shareholder is jointly taxed or could be jointly taxed. The definition of a group is therefore the same as in the joint taxation rules and generally corresponds to the definition of a group for accounting purposes. The location where the companies are registered is irrelevant, as long as the companies are affiliated.

If the shares do not constitute group shares, subsidiary shares, or treasury shares, they constitute portfolio shares. Portfolio shares are divided into two types: tax-exempt portfolio shares and taxable portfolio shares.

'Tax-exempt portfolio shares' consist of shareholdings less than 10% in unlisted companies.

The residual constitute taxable portfolio shares unless held by the company that has issued the shares (gains on 'treasury shares' are also tax exempt).

Gains on taxable portfolio shares are fully taxable regardless of holding period, whereas losses on the sale of taxable portfolio shares are generally tax-deductible.

Gains realised on the sale of real estate property are taxable. A loss realised on the sale of land and other buildings may be utilised only against taxable profits on the sale of real estate properties in the same year or may be carried forward infinitely.

A capital gain may, under certain conditions, be deferred if the capital gain is reinvested in properties. Reinvestment must be made no later than the income years following the income year of disposal.

For receivables, capital gains are, in general, taxable and losses are, in general, tax deductible. However, capital losses related to intra-group receivables are non-deductible for companies, and, correspondingly, capital gains on debt are not taxable for the debtor.

Capital gains and capital losses on receivables should be included in the taxable income using the mark-to-market principles. However, if the receivable relates an inter-company receivable or a trade receivable, the realisation principle applies but the company can chose to apply the mark-to-market principles on exchange rate changes and/or the receivable itself.

As a main rule, capital gains and capital losses on debt should be included in the taxable income using the realisation principle. However, the mark-to-market principle can be applied for exchange rate changes and/or the debt itself if the debt is listed. If the debt is unlisted, the mark-to-market principle can only be applied for exchange rate changes.

Special rules apply in relation to compositions, remission of debt, and conversion of debt. Special rules also apply for financial activities.

Gains and losses on financial instruments are generally included in taxable income, according to the mark-to-market principle, which is required. There are special rules for losses on certain share-based contracts.

Dividend income

Dividends received by a Danish parent company on ‘subsidiary shares’ or ‘group shares’ are tax exempt, regardless of the length of the ownership period.

Only 70% of the dividends received from unlisted portfolio shares by a Danish company should be included in the taxable income (i.e. effective tax rate of 15.4%), whereas dividends received on listed portfolio shares are fully included in taxable income.

Regardless of whether the shares qualify as ‘subsidiary shares’ or ‘group shares’ or ‘tax-exempt portfolio shares’, dividends are fully taxable if received from a foreign company that can deduct the dividends paid.

Stock dividends

Stock dividends may be distributed to shareholders free of tax, provided that the dividends are in proportion to the existing shareholdings (i.e. bonus shares).

Interest income

Interest income is generally included in the determination of taxable income.

Royalty income

Royalty income is generally included in the determination of taxable income.

Foreign income

As a general rule, foreign-source income, such as interest and royalty, is included in taxable income. However, income from a PE or real estate outside Denmark is excluded from taxable income due to the principal of territoriality.

The income of a foreign subsidiary may be taxed in the hands of its Danish parent company if the subsidiary constitutes a controlled foreign company (CFC). *See the Group taxation section for more information*.

Deductions

Depreciation, amortisation, and depletion

Tax depreciation need not be in conformity with book depreciation.

Annual depreciation allowances on machinery and equipment may be claimed under the diminishing-balance method at up to 25%. The depreciation base is the cost of fixed assets less sales proceeds from disposals and depreciation allowances previously claimed.

New machinery and equipment acquired between 30 May 2012 and 31 December 2013 could be included in the base with a supplement of 15%. Hence, 115% of costs of new fixed assets was added to the base and depreciated at up to 25% per year. If a company has applied this principle, the assets in question must be kept on a separate account until the end of the tax year 2017.

For ships, the depreciation rate is 20% in the year of construction and a 12% declining-balance basis in subsequent years.

Depreciation allowances on buildings (other than residential buildings and office buildings not adjoining an industrial building) may be claimed at up to 4% on the straight-line basis.

Airplanes, trains, and utility plants can be depreciated only at a 15% declining balance.

Rails, telecommunications facilities, and certain other long-life plant and equipment can be depreciated only at a 7% declining balance.

Depreciation allowances that are recaptured as part of a capital gain on the sale of an asset generally are fully taxable.

Acquired goodwill and other intangible property rights can be amortised at up to one-seventh per year on a straight-line basis. Costs related to the purchase of patents or know-how (including rights/licences to utilise patents or know-how) can either be fully expensed in the year of acquisition or amortised over a seven-year period on a straight-line basis.

Certain restrictions regarding the depreciable value of goodwill apply in the case of group transactions. Goodwill on the purchase of shares cannot be amortised for tax purposes.

Depletion of the cost of acquisition or exploitation of natural resources is subject to special rules.

Start-up expenses

No specific rules in Danish tax law govern the treatment of start-up expenses. Instead, these expenses are treated according to general tax law.

Companies may, under certain conditions, benefit from a scheme allowing for a cash payment equal to the tax value (22%) of negative taxable income, provided the negative income is created from research and development (R&D) costs (*see the Tax credits and incentives section*).

Interest expenses

See Thin capitalisation and interest relief limitations in the Group taxation section.

Bad debt

Companies may deduct loss on bad debt, which is not inter-company debt.

The main rule for calculation and taxation of companies' gains and losses on receivables for tax purposes will be the mark-to-market principle (i.e. taxation based on the difference in value at the beginning and end of the assessment year). Use of the mark-to-market principle means that recognition of losses on these types of receivables for tax purposes is not conditional on a final loss having been ascertained.

Special rules apply to gains and losses on trade and inter-company receivables, as these, as a main rule, should be calculated according to realisation principles. Companies may, however, opt for the mark-to-market principle for each category of receivables.

Charitable contributions

Companies may deduct a small amount in gifts to certain organisations approved by the Danish tax authorities and mentioned in the Danish tax authorities' guidelines. The deduction cannot exceed DKK 15,900 per year for tax year 2018.

Furthermore, companies may deduct gifts to cultural organisations that receive a maintenance grant for operating expenses from either the government or the municipality. According to these rules, there is no limitation in terms of value, but certain restrictions regarding the use of the gift are applicable.

Finally, gifts to certain charitable organisations within Denmark or the European Union may be deducted, provided the recipient uses the funds for research. Deductibility is conditioned upon the organisation being approved by the Danish tax authorities. No limitation in regards to amount is applicable.

Fines and penalties

Fines and penalties are, in general, not deductible, as these are not considered operational expenses.

Bribes, kickbacks, and illegal payments

Even if considered economically reasoned and custom in certain jurisdictions, amounts used for bribery of officials are not deductible.

Taxes

Taxes are non-deductible for CIT purposes, except for employer's tax, non-recoverable VAT, land tax, and coverage charge (*see the Other taxes section*).

Net operating losses

Tax losses may be carried forward indefinitely. However, the utilisation of tax losses carried forward may be restricted. According to the rules, taxable income up to DKK 8,205,000 for 2018 can always be eliminated by tax losses carried forward, whereas taxable income exceeding DKK 8,205,000 can merely be reduced by 60% as a result of tax losses carried forward. For Danish tax consolidation groups, the rules apply for the group collectively. If losses are restricted, the limitation must be allocated to each of the companies according to complex rules.

Certain restrictions on the right to carry tax losses forward apply when more than 50% of the share capital or 50% of the voting rights at the end of the financial year are owned by shareholders different from those that held control at the beginning of the income year in which the tax loss was incurred.

Similarly, under certain circumstances, tax losses are cancelled if a Danish company receives a debt forgiveness or comparable transaction. However, there are numerous exceptions (e.g. inter-company transactions).

Tax losses may not be carried back and utilised in previous income years.

Payments to foreign affiliates

A Danish corporation can claim a deduction for royalties, management fees, and similar payments made to foreign affiliates, provided that such amounts are made on an arm's-length basis and reflect services received. Interest at normal commercial rates paid to foreign affiliates will generally be allowed as a deduction but is subject to very complex thin capitalisation and interest relief limitation rules (*see Thin capitalisation and interest relief limitations in the Group taxation section*).

Group taxation

Mandatory Danish tax consolidation

A mandatory tax consolidation regime obligates all Danish resident companies and Danish branches that are members of the same Danish or international group to file a joint group tax return. The definition of a group generally corresponds with the definition of a group for accounting purposes. The tax consolidated income is equal to the sum of the taxable income of each individual Danish company and Danish branches of foreign companies that are a member of the consolidated group.

The top parent company participating in the Danish tax consolidation group will be appointed the role of a so-called 'management company'; this company is responsible for settling tax on account and final corporate tax payments of all group members.

Companies included in a mandatory tax consolidation are jointly and severally liable for payment of corporate taxes. Withholding taxes (WHTs) on dividends, interest, and royalty payments are also covered by the joint and several liability. For companies with external minority shareholders, the company has a reduced liability and is merely liable if none of the other jointly taxed companies are able to pay the taxes.

Elective cross-border tax consolidation

A non-Danish subsidiary may be included as a member to a Danish tax grouping, provided that the group includes all group companies and branches in the Danish tax grouping. In effect, this all-or-nothing provision rules out the possibility for major international groups to have their Danish subgroup file a Danish group tax return that includes only certain hand-picked (typically loss-making) foreign group members. Losses deducted in an elective cross-border tax consolidation will be recaptured either fully or to a limited extent.

If a general cross-border tax consolidation is established, it will be binding for ten years; however, there are certain possibilities of 'breaking' the ten-year period (e.g. in connection with takeovers). 'Breaking' the ten-year period will result in a full recapture of previously deducted tax losses.

The comments under Mandatory Danish tax consolidation with respect to the calculation of the tax consolidation income, 'management company', etc. generally also apply to international tax consolidation.

Transfer pricing

Danish transfer pricing rules apply to transactions between related parties (e.g. inter-group transactions), whether the transactions are made between residents or non-residents. The rules apply when a company or person directly or indirectly controls more than 50% ownership of the share capital or more than 50% of the voting power of an entity. Transactions with PEs are also considered subject to the rules, whether domestic or foreign.

Companies with inter-company transaction above DKK 5 million are obligated to disclose in the annual tax return certain information regarding type and volume of inter-company transactions. The submission should be submitted via form 05.022, including information about the type and volume of the taxpayer's controlled transactions, and is part of the electronic tax return.

Groups with a consolidated turnover of DKK 5.6 billion (approximately 750 million euros [EUR]) or more, based on previous year's revenue, must additionally prepare a country-by-country (CbC) report. The CbC report must contain a range of information for each country in which the group operates, including revenue, profit, tax, capital structure, assets, and employees. Furthermore, the group has to identify each entity within the group and specify the entities' tax residencies and the activities of each entity.

The deadline for submission of the report is 12 months after the end of the income year (i.e. for the financial year 2017, the deadline is the end of 2018). The rules apply for income years starting on 1 January 2016 or later. A Danish subsidiary, which is part of a multinational group, but is not the ultimate parent entity, will have to file the CbC report if certain requirements are met. However, this is only applicable for income years starting 1 January 2017 or later.

Additionally, Danish taxpayers must notify the Danish tax authorities about which group entity is obligated to file the CbC report. To notify the Danish tax authorities, the taxpayer must fill out form 05.034 and submit it electronically to the Danish tax authorities either through the Danish digital system (TastSelv) or the Danish tax authorities' website. Form 05.034 should be submitted before the year-end of the year covering the CbC report (e.g. if the CbC report will include information for the financial year ending 31 December 2018, form 05.034 must be submitted no later than 31 December 2018).

A group must prepare detailed and extensive transfer pricing documentation to substantiate that intra-group transactions are conducted in accordance with arm's-length principles if it employs 250 or more employees (calculated as the average number of full time employees during the income year).

If the group employs less than 250 employees, it will qualify for the small business exemption if it meets either of the following criteria: (i) has revenue under DKK 250 million, or (ii) has a balance sheet sum under DKK 125 million.

If the transfer pricing documentation is missing or declared inadequate, the Danish tax authorities can make an arbitrary assessment of the group's income.

The Danish tax authorities may impose a penalty of DKK 250,000 per year, per company where transfer pricing documentation is missing by the submission deadline or is declared inadequate by the Danish tax authorities. If adequate documentation is subsequently submitted, the penalty may be reduced by 50%.

Furthermore, if an upward income adjustment is issued (i.e. on the basis that inter-company prices were not at arm's length), the penalty may be increased with an amount equal to 10% of such adjustment. In addition, a surcharge and interest will be levied on underpaid tax related to any income increase.

The size of the penalty will be determined ultimately by the courts.

The overall purpose of the transfer pricing documentation is to give the Danish tax authorities an opportunity to assess the prices and conditions used in order to determine whether inter-company transactions are conducted in accordance with the arm's-length principle.

With the Executive Order no. 401 of 28 April 2016, Denmark is implementing the updated transfer guidelines (July 2017) from the OECD under which the following documentation must be prepared:

- Master file.
- Local file.

The master file must contain standardised information relevant for the entire group, whereas the local file(s) must contain specific information on the local affiliate(s). It follows from the Executive Order that a local file must be prepared for each legal entity even though the group has several entities in the same country.

The Danish tax authorities may request a group's transfer pricing documentation to be submitted within 60 days. This request may be made at any time after the tax return filing is due, and the deadline for submission cannot be extended.

The Danish tax authorities could request five years of documentation.

The Danish tax authorities may request the taxpayer to obtain an independent auditor's report. The Danish tax authorities can request the statement seven days after receiving the transfer pricing documentation. The circumstances for requesting an auditor's statement are:

- The group has controlled transactions with entities in countries outside the EU/ European Economic Area (EEA) or in countries without a DTT with Denmark.
- The group has had a negative average operating profit/earnings before interest and tax (EBIT) over the past four years.

The auditor's statement must conclude on awareness of facts that suggest that the group's transfer pricing documentation does not give an accurate portrayal of the actual terms and conditions of the controlled transactions. The deadline for submitting the statement to the Danish tax authorities is at least 90 days after the request. The Danish tax authorities are not bound by the conclusion of the statement.

Information submitted to the Danish tax authorities (e.g. CbC report, master file) can be exchanged automatically or spontaneously with countries that Denmark has concluded an exchange of information agreement with and has accepted confidentiality of the information. Correspondingly, the Danish tax authorities can receive information regarding Danish companies that are part of a group resident in another country.

Thin capitalisation and interest relief limitations

Danish resident companies and Danish branches of foreign companies are subject to three sets of restrictions, each of which may seriously limit or disallow Danish tax deductions for financing costs.

Firstly, there is the thin capitalisation rule. This rule works to disallow gross interest costs and capital losses on related company debt to the extent the overall debt-to-equity ratio based on market values exceeds 4:1. Related company debt includes external bank debt if group member companies have provided guarantees to the bank. This rule only applies if the controlled debt exceeds DKK 10 million. When calculating the 4:1 ratio, a special consolidation rule applies if two or more companies are considered affiliated (note that the definition of affiliated companies differs from the definition under the Danish rules on joint taxation). There is no recharacterisation of interest as dividends.

Secondly, there is an asset-based rule that applies in relation to financing costs that remain after the thin capitalisation limitation. To the extent a Danish company on a stand-alone basis or, if part of a joint tax group, together with group companies has net financing costs in excess of DKK 21.3 million, the deductibility of the remaining financing costs can be limited to an amount equal to 2.9% for tax year 2018 of the tax basis of certain assets of the group. Net financing costs consist of, among other things, interest income/expenses, taxable gains/losses on debt, receivables and financial contracts, taxable gains/losses on shares, and taxable dividends.

Thirdly, there is an EBIT-based rule that works to limit the deductibility of financing costs that remain after the thin capitalisation test and the asset-based rule to an amount equal to 80% of the Danish company's/tax group's taxable EBIT income. This rule applies the same definition of net financing costs as the asset-based rule, and it also allows for a minimum deduction of DKK 21.3 million. Financing costs that are limited in accordance to this rule do not lapse but can be carried forward to the next tax year.

If a Danish resident company has a debt to a non-Danish resident creditor (person or company) that considers the payments as dividends on a contributed capital (hybrid financing), the debt will also, in accordance with Danish rule, be requalified as equity. The Danish debtor company is then cut off from deducting the interest cost and/or capital losses on the requalified debt.

Controlled foreign companies (CFCs)

According to the Danish CFC rules, a Danish company has to include in its taxable income the total taxable income of a subsidiary, foreign or Danish, if such subsidiary qualifies as a CFC. A subsidiary qualifies as a CFC if all of the following criteria are met:

- The Danish company, together with other group member companies, directly or indirectly owns more than 50% of the capital or controls more than 50% of the voting rights in the subsidiary.
- More than half of the subsidiary's taxable profits, as hypothetically assessed under Danish tax laws, are predefined CFC income types (mainly interest, royalty, capital gains, etc.).
- During the income year, the subsidiary's CFC assets (assets, where the return is characterised as a CFC income type) make up more than 10% of the subsidiary's total assets.

There is no black or white list that exempts subsidiaries resident in certain countries.

Tax credits and incentives

Foreign tax credit

According to Danish tax law, relief is generally available to credit foreign tax paid on non-Danish source profits against the Danish tax on the same profits. As Danish companies are not taxed on income from foreign PEs or properties, the rules have limited application.

For shareholdings of 10% or more of the share capital in foreign companies, Denmark has further rules allowing 'underlying' tax relief in respect of foreign dividends, so that tax suffered at lower levels can be relieved where dividends flow to Denmark via a chain of companies. As Danish tax law, as a main rule, exempts dividends from companies resident in countries with which Denmark has a tax treaty in which the Danish recipient company holds 10% or more, this rule, as well, has a limited application.

Capital expenditure incentives

A small variety of tax incentives are available in the form of deductions for capital expenditures.

Danish tax law allows for an immediate write-off of capital expenditures for R&D. Alternatively, the taxpayer may choose to take tax depreciation in the same year and the following four years on a straight-line basis. Costs incurred in connection with the exploration for raw materials may also be fully deducted in the same year.

Companies in a loss making situation may not benefit from an immediate write-off of R&D costs. However, companies have been granted the opportunity to apply to the Danish tax authorities for a payment equal to the tax value (22%) of negative taxable income. It is a condition that the negative taxable income relates to R&D costs. The rule does not cover costs incurred in connection with exploration for raw materials.

Tax payment according to this rule cannot exceed an amount of DKK 5.5 million, corresponding to a tax loss of DKK 25 million. For companies participating in joint taxation, the limit applies for all companies in total.

Costs related to purchase of patents and know-how (including rights/licences to utilise patents or know-how) may either be fully expensed in the year of acquisition or amortised over a seven-year period on a straight-line basis.

Withholding taxes

WHTs on payments to foreign corporations and non-resident aliens

Dividends

Dividends paid to a parent company in another EU member state or a state with which Denmark has a DTT are exempt from WHT, provided that the shares qualify as subsidiary shares (and the taxation should be reduced/lapsed according to the DTT or EU Parent-Subsidiary Directive). The same applies for dividends paid on group shares (that are not also subsidiary shares, i.e. holdings below 10%), provided that the recipient company is resident within the EU/EEA.

However, the dividends are not exempt from WHT if they are regarded as a redistribution of tax-exempt dividends that the Danish company has received from a foreign subsidiary where the Danish company cannot be regarded as the beneficial owner.

As of 1 July 2016, the tax rate on dividends distributed from a Danish company to foreign corporate shareholders is 22%. For dividends distributed from Danish companies to shareholders situated in the EU/EEA, the tax rate has been reduced retrospectively and applies to dividends distributed on 1 January 2007 or later. For the income years 2007 to 2013, the applicable tax rate is 25%; for the income year 2014, it is 24.5%; and for the income year 2015, it is 23.5%. It should be noted that the WHT rate has not been reduced but remains 27%. The shareholders must reclaim the difference between the higher WHT rate and the lower tax rate. Specific transitional rules apply.

If the portfolio shareholder (shareholding below 10%) is situated in a country with which Denmark has a tax information exchange agreement (TIEA), the tax rate on the dividend is reduced to 15% and the difference between the higher WHT rate (27%) and the lower WHT rate may be reclaimed. However, the reduced rate does not apply if the shareholder is resident outside the European Union and together with related entities owns more than 10% of the capital in the Danish distributing company.

Interest

Interest is generally not subject to WHT unless paid to a foreign group member company that is tax resident outside the European Union and outside any of the states with which Denmark has concluded a tax treaty. In this situation, interest WHT is levied at 22%. Certain other exemptions apply, mainly relating to CFC taxation.

For recipients resident in countries within the European Union with which Denmark does not have a tax treaty, it is a condition that the paying company and the recipient company are associated as mentioned in the EU Interest/Royalty Directive.

Royalties

Royalties are subject to a 22% WHT. In most cases, the WHT rate can be reduced in accordance with the tax treaty applicable to the payee. Also, the EU Interest/Royalty Directive may provide an exemption from WHT if the payee is an immediate parent, sister, or subsidiary company resident in the European Union.

Treaty WHT rates

	WHT (%)			
	Dividend			
Recipient	Qualifying companies (1a+b)	Others	Interest (2)	Royalty
Resident corporations	0	22 (10)	22 (10)	22 (10)
Resident individuals		27/42 (10)	(10)	(10)
Non-treaty (4):				
Non-resident corporations	27 (11)	27 (11)	22 (3, 5, 9)	22 (5, 9)
Non-resident individuals		27 (11)	0	22 (9)
Treaty:				
Argentina	0 (1a)	15	0	3/5/10/15 (7)
Australia	0 (1a)	15	0	10
Austria	0 (1a+b)	15	0	0
Azerbaijan	5 (12)	15	8	5/10 (12)
Bangladesh	0 (1a)	15	0	10
Belgium	0 (1a+b)	15	0	0
Brazil	0 (1a)	25	0	15/25 (7, 9)
Bulgaria	0 (1a+b)	15	0	0
Canada	0 (1a)	15	0	0/10 (7)
Chile	0 (1a)	15	0	5/15 (7)
China, People's Republic of	0 (1a)	10	0	10
Croatia	0 (1a)	10	0	10
Cyprus	0 (1a+b)	15	0	0
Czech Republic	0 (1a+b)	15	0	5
Egypt	0 (1a)	20	0	20
Estonia	0 (1a+b)	15	0	5/10 (7)
Faroe Islands	0 (1a)	15	0	0
Finland	0 (1a+b)	15	0	0
Georgia	0 (1a)	10	0	0
Germany	0 (1a+b)	15	0	0
Ghana, Republic of	0 (1a+b)	5/15 (13)	0	8
Greece	0 (1a+b)	18	0	5
Greenland	0 (1a)	15	0	10
Hungary	0 (1a+b)	15	0	0
Iceland	0 (1a+b)	15	0	0
India	0 (1a)	25	0	20
Indonesia	0 (1a)	25	0	15
Ireland, Republic of	0 (1a+b)	15	0	0
Israel	0 (1a)	15	0	10

	WHT (%)			
	Dividend			
Recipient	Qualifying companies (1a+b)	Others	Interest (2)	Royalty
Italy	0 (1a+b)	15	0	5
Jamaica	0 (1a)	15	0	10
Japan	0 (1a)	15	0	10
Kenya	0 (1a)	28	0	20
Korea, Republic of	0 (1a)	15	0	10/15 (7)
Kuwait	0 (1a)	15	0	10
Kyrgyzstan	0 (1a)	15	0	0
Latvia	0 (1a+b)	15	0	5/10 (7)
Lithuania	0 (1a+b)	15	0	5/10 (7)
Luxembourg	0 (1a+b)	15	0	0
Macedonia	0 (1a)	15	0	10
Malaysia	0 (1a)	0	0	0
Malta	0 (1a+b)	15	0	0
Mexico	0 (1a)	15	0	10
Morocco	0 (1a)	25	0	10
Netherlands	0 (1a+b)	15	0	0
New Zealand	0 (1a)	15	0	10
Norway	0 (1a+b)	15	0	0
Pakistan	0 (1a)	15	0	12
Philippines	0 (1a)	15	0	15
Poland	0 (1a+b)	15	0	5
Portugal	0 (1a+b)	10	0	10
Romania	0 (1a+b)	15	0	4
Russia	0 (1a)	10	0	0
Serbia (6)	0 (1a)	15	0	10
Singapore	0 (1a)	10	0	10
Slovak Republic	0 (1a+b)	15	0	5
Slovenia	0 (1a+b)	15	0	5
South Africa	0 (1a)	15	0	0
Sri Lanka	0 (1a)	15	0	10
Sweden	0 (1a+b)	15	0	0
Switzerland	0 (1+a)	15	0	0
Taiwan	0 (1a)	10	0	10
Tanzania	0 (1a)	15	0	20
Thailand	0 (1a)	10	0	5/15 (7)
Trinidad and Tobago	0 (1a)	20	0	15
Tunisia	0 (1a)	15	0	15
Turkey	0 (1a)	20	0	10
Uganda	0 (1a)	15	0	10
Ukraine	0 (1a)	15	0	10
United Kingdom	0 (1a+b)	25	0	0
United States	0 (1a)	15	0	0
Venezuela	0 (1a)	15	0	5/10 (8)
Vietnam	0 (1a)	15	0	15
Zambia	0 (1a)	15	0	15

Denmark

Notes

1. Denmark does not operate a system of WHT on dividends when the parent company holds:
   a. at least 10% of the share capital of the distributing Danish company, provided the receiving company is resident in a EU/EEA member state or a state with which Denmark has entered into an agreement on exchange of information, and that the parent company is subject to tax without exemption in that state (subsidiary shares), and that Denmark is obligated to reduce or waive taxation according to the Parent/Subsidiary Directive or a DTT, or
   b. less than 10% of the share capital in the distributing company, provided the receiving company is an EU/EEA-resident, the distributing and the receiving company are affiliated companies (group shares), and that Denmark would have been obligated to reduce or waive taxation according to the Parent/Subsidiary Directive or a DTT.
2. Interest is generally not subject to WHT unless paid to a foreign group member company that is tax resident outside of the European Union and outside of any of the states with which Denmark has concluded a tax treaty. In this situation, interest WHT is levied at 22% for interest accrued or paid on 1 March 2015 or later (25% for interest that is accrued or paid before 1 March 2015).
3. Exemptions apply if the receiving company is directly or indirectly controlled by a Danish parent company or if the receiving company is controlled by a company resident in a state with which Denmark has a double tax convention and that company may be subject to CFC taxation. Finally, an exemption applies if the receiving company establishes that the foreign taxation of interest is not less than three-quarters of the Danish corporate taxation and that the interest is not paid to another foreign company subject to taxation that is less than three-quarters of the Danish corporate taxation.
4. Denmark has terminated its treaty with Spain and France with effect from 1 January 2009. The termination means that each country will tax the relevant income according to its domestic tax rules. New treaties are not expected to be agreed in the near future. Companies in Spain and France receiving dividends from a Danish company may, however, qualify for tax exempt dividends since they are EU member states.
5. The EU Interest/Royalty Directive may provide an exemption from WHT if the payee is an immediate parent, sister, or subsidiary company resident in the European Union.
6. Serbia has succeeded in the treaty between Denmark and Yugoslavia.
7. Different rates apply depending on the characteristics of the assets on which royalty is paid.
8. The 10% rate is applicable for royalties, whereas the 5% rate is applicable to fees for technical support.
9. The WHT rate is 25% for interest and royalties that are accrued or paid before 1 March 2015.
10. Dividends, interest, and royalties received by a company resident in Denmark are included in the taxable income and taxed in accordance with the current tax rate for companies (22%). It is possible to get credit for foreign taxes on the received dividends, interest, or royalties. For individuals resident in Denmark, received dividends are included in a special share income that is taxed at 27% of the first DKK 50,600 of share income and at 42% for the rest. Interest and royalties are included in the person's taxable income and are taxed in line with other taxable income.
11. As of 1 July 2016, the tax rate on dividends distributed from a Danish company to foreign corporate shareholders is 22%. For dividends distributed from Danish companies to shareholders situated in the EU/EEA, the tax rate has been reduced retrospectively and applies to dividends distributed on 1 January 2007 or later. For the income years 2007 to 2013, the applicable tax rate is 25%; for the income year 2014, it is 24.5%; and for the income year 2015, it is 23.5%. It should be noted that the WHT rate has not been reduced but remains 27%. The shareholders must reclaim the difference between the higher WHT rate and the lower tax rate. Specific transitional rules apply. If the portfolio shareholder is situated in a country with which Denmark has a TIEA, the tax rate on the dividend is reduced to 15% and the difference between the higher WHT rate and the lower WHT rate may be reclaimed. However, the reduced rate does not apply if the shareholder is resident outside the European Union and together with related entities owns more than 10% of the capital in the Danish distributing company.
12. According to the tax treaty with Azerbaijan, it is a requirement for the 5% WHT rate to apply on dividend payments that the parent company holds at least 20% of the shares in the subsidiary, and that the investment in the subsidiary amounts to EUR 1 million (or a corresponding amount in a different currency). With respect to royalties, the 5% WHT rate applies if the royalty is payment for the use of a patent (licence), design, secret formula, etc., or information about industrial, commercial, or scientific experiences. The 10% royalty WHT rate applies in any other case.
13. The 5% WHT rate applies if the parent company holds at least 10% of the shares in the subsidiary, or if the parent company is an institutional investor (specific types of institutional investors are mentioned in the treaty). In any other case, the 15% WHT rate applies.

Tax administration

Taxable period

Danish corporate taxpayers are taxed on an annual basis. Corporate taxpayers may choose a tax year that is different from the calendar year.

Tax returns

Tax returns are completed on the basis of financial accounts with adjustments for tax. Tax returns should be filed no later than six months following the end of the accounting year. Corporations with an accounting year-end that falls in the period from 1 February to 31 March must file a tax return no later than 1 August in the same calendar year.

Tax returns must be filed digitally. Companies can file the tax return themselves or grant their auditor/tax advisors access to file the tax return on their behalf.

The tax system, in practice, is based on self-assessment. Tax assessments are made automatically by the tax authorities on the basis of the tax return. However, the tax authorities may subsequently audit the tax return.

Payment of tax

CIT must be paid on a current-year basis in two equal instalments due on 20 March and 20 November. The authorities request payments of 50% of the average of the last three years' final income tax. In addition, voluntary additional payments may be made on the same dates. An allowance is granted in case of voluntary payment on 20 March, and voluntary payments on 20 November are subject to interest when set against the final tax bill. The allowance granted for voluntary payments on 20 March 2017 was 0%, and the interest for payments on 20 November 2017 was 0%.

The actual interest rates for the tax year 2017 were published in November 2017.

Companies may make a voluntary additional payment no later than 1 February following the assessment year (i.e. no later than 1 February 2018 for the tax year 2017). Such voluntary payment will be subject to an additional interest charge based on the interest rate of the underpaid tax for the period 20 November 2017 to 1 February 2018. This interest was 0.6% for the tax year 2017.

The final tax bill is settled by 20 November in the following year. Underpaid tax is then payable by 20 November with a surtax of 3.1% of the tax amount (for tax year 2017). Overpaid tax is refunded by November of the following year with interest of 0.1% (for tax year 2017).

Tax audit process

The Danish tax system is based on self-assessment. Companies are, in general, subject to audit on a random basis, but some large companies/groups are subject to annual audit by the Danish tax authorities.

Statute of limitations

The general statute of limitations is 1 May in the fourth calendar year after that of the end of the relevant accounting period. This limitation is extended for another two years with respect to inter-company (transfer pricing) issues and certain tax-exempt restructurings.

Topics of focus for tax authorities

Once a year, the Danish tax authorities publish a list of topics subject to increased focus by the tax administration during their audit. Transfer pricing issues are on top of this list.

In general, all aspects of transfer pricing are in focus. However, specific topics certainly seem to have caught the tax authorities' attention. These are mainly transactions with group companies resident in countries with which Denmark does not have a tax convention, use and transfer of intangible assets, restructurings, and companies making continuous losses. Also, the frequency of transfer pricing documentation penalties has risen. Those penalties are given if the documentation is deemed inadequate, non-contemporaneous, or the deadline of sending in the documentation upon request is not met.

Attention has also been drawn to whether Danish entities have complied with the WHT requirements regarding dividends and interest.

Last but not least, the tax authorities have increased their focus on tax deductions for costs related to the creation of tax-exempt income, such as dividends from and capital gains on certain shares.

Other issues

Tax-free restructuring

Restructuring (e.g. mergers, demergers, share exchanges, drop-down of assets) can, in many cases, be carried out tax-free under the provisions of the EU Mergers Directive as implemented into Danish law. These types of restructuring can be carried out in a tax-exempt manner without prior approval from the tax authorities. However, several objective conditions must be fulfilled. Formation, merger, reorganisation, and liquidation expenses are non-deductible if related to external assistance. However, if any costs related to the restructuring are incurred as employee wages within the group, the cost of the wages can be deducted.

Danish Intergovernmental Agreement (IGA) with the United States (US)

Denmark has entered into an Intergovernmental Agreement (IGA Model 1) with the United States on the Danish implementation of the Foreign Account Tax Compliance Act (FATCA). The IGA is implemented into Danish law and is, to a large extent, an overlay to existing Danish tax reporting rules applying to Danish banks. The scope of FATCA is, however, wider than the existing rules in terms of both entities and products covered and customer due diligence procedures. The IGA implies that Danish foreign financial institutions (FFIs) must report to the Danish tax authorities instead of directly to the US Internal Revenue Service (IRS). The Denmark-US IGA contains important exceptions for both the Danish mutual fund and pension savings industries.

Common Reporting Standard (CRS)

Denmark is among the 'early adopters' of the CRS, whereby the first exchange of information took place in 2017.

The Council Directive 2014/107/EU, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, has been fully implemented in Denmark and is effective from 1 January 2016.

Reporting under FATCA/CRS

The reporting financial institutions must submit the required information under FATCA/CRS through the online system solution of the Danish tax authorities. The reporting deadline is 1 May, and is the same under both regimes.

Dominica, Commonwealth of

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Significant developments

The Tax Information Exchange Agreements (TIEAs) with Sweden, New Zealand, and San Marino entered into force on 1 August 2017, 7 September 2017, and 8 September 2017, respectively.

Taxes on corporate income

Resident companies are taxed on gains or profits accrued directly or indirectly from all sources, whether in or out of Dominica, and are subject to tax at a flat rate of 25%.

Non-resident companies are taxed on Dominican-source income. The gross amount of such income is liable to 15% withholding tax (WHT).

Associations of underwriters are taxed at 25% on 10% of the gross premium arising in Dominica, and life insurance companies are taxed at 25% on 20% of the gross investment income arising in Dominica.

Corporate residence

Companies are regarded as resident if they are incorporated in Dominica or managed and controlled through a permanent establishment (PE) in Dominica.

Permanent establishment (PE)

A PE is defined in Dominica as a fixed place or premises through which the business is wholly or partly carried on. A PE includes:

- A place of management.
- A branch or office.
- A factory or workshop.
- Premises used as a sales outlet.
- A building site or construction or assembly project.
- The maintenance of plant and machinery for rental.

Other taxes

Value-added tax (VAT)

VAT applies to practically all supply of services and the import as well as domestic sale of goods or import of services, other than an exempt import. The tax is imposed at a rate of 15% of the value of every taxable supply by a taxable person in Dominica, except if the supply is classified as accommodations and diving activity, which carries a rate of 10%.

Persons operating under Dominica's VAT regime must be registered for VAT. The threshold for VAT registration is 250,000 East Caribbean dollars (XCD).

Certain transactions are zero-rated or exempt from VAT. Export sales by VAT-registered persons are zero-rated.

Certain supply of services is exempt from VAT, including services provided by financial intermediaries, schools, and medical practitioners. Exempt imports include goods imported by Dominicans returning home for permanent residence, motor vehicles imported by natural persons on change of permanent residence, unconditional gift of goods to an approved charitable organisation, other than for purposes of re-sale, etc.

Every registered person is required to file a tax return for each tax period with the Inland Revenue Division (IRD) within 20 calendar days after the end of the period, whether or not tax is payable in respect of that period. This return should be in the form prescribed by the IRD and should state the information necessary to calculate the tax.

Customs duties

Customs duties are charged on a wide range of imported goods. On approval by the Cabinet of Ministers (Cabinet), through the advice of Invest Dominica Authority, exemptions are granted for raw materials and plant and machinery used in manufacturing and for certain items imported by hotels under construction, extension, or refurbishing projects.

Excise taxes

Excise tax is imposed on taxable goods (other than taxable goods previously imported into Dominica) removed for consumption in Dominica from a warehouse of a manufacturer registered or required to be registered and taxable goods imported into Dominica. Excise taxes are calculated either on the chargeable value of the goods or via the authorised tariff code.

For importers, the tax is to be paid to the Comptroller of Customs before the goods are entered for use in Dominica. In the case of local manufacturers, the due date for payment is the 20th day of each calendar month.

Taxable goods include alcohol, cigarettes, petrol, and vehicles.

Tax rates are currently as follows:

Good	Excise tax rate
Stout/beer	XCD 1.2/litre
Wine	XCD 1.2/litre

Good	Excise tax rate
Shandy	XCD 0.28/litre
Brandy/ginger/vodka	XCD 8.5/litre
Whiskey	XCD 12.6/litre
Rum	XCD 2.6/litre
Cigarette	XCD 22/kilogram
Petrol (jet fuel, kerosene)	XCD 1.14/gallon
Petrol (diesel)	XCD 2.38/gallon
Petrol (gas)	XCD 3.00/gallon
Vehicles	15% and 28%
Liquor and cordial	XCD 2.6/litre

Property taxes

There are no property taxes administered by the IRD. However, there is municipal tax, which is collected by the city and village councils. The rate varies from district to district (e.g. 1.25% on the assessed value of the property).

Stamp taxes

Stamp tax is charged on any document that evidences a legal or contractual relationship between two or more parties. Additionally, many types of commercial and legal documents must be stamped, denoting the payment of taxes, which may be either at a fixed rate or at an *ad valorem* rate, depending, for example, on the value of the property transferred.

For a conveyance or transfer on sale of any property (except stock and debentures), a stamp duty of 6.5% on the value of the property, real or personal, transferred shall be paid, of which 2.5% shall be paid by the transferor and 4% by the transferee. A judicial fee of 2.5% and an assurance fee of 1% are also paid by the transferee. Stamp duty, as set out above, shall also be paid on any stock or shares of a company or corporation whose assets consist of 50% or more real property.

Payroll taxes

Other than employers' social security contributions (*see below*), there are no other payroll taxes, the burden of which falls on the employer. Employers are, however, responsible for deducting the employees' income tax liability at source, through the pay-as-you-earn (PAYE) system.

Social security contributions

An employer is required to remit a social security contribution (for retirement, sickness, and disability benefits) equal to 7% of an employee's gross income. The employee's share is 5%. The employer is responsible for remitting the total amount (12%) to the Dominica Social Security on or by the 14th day of the following month.

Branch income

The tax rate on branch income is the same as that on income earned by resident companies. Every non-resident company carrying on business in Dominica is liable to WHT of 15% on such part of the profits of the business for any year of assessment as is remitted out of Dominica.

Where a controlled company fails to make a sufficient distribution in relation to any year of assessment, it is liable to pay tax on the undistributed profits of that year of assessment at the rate of 15%. A 'controlled company' means a resident company that is owned by not more than five shareholders, excluding the government and any company that is not itself a controlled company.

In determining the amount of a sufficient distribution, the Comptroller of the IRD shall give regard to the nature of the sources of its income and the financial resources available to it and may, where satisfied that it would be detrimental to the business of the company to regard the whole of its chargeable income after deduction of the tax payable thereon as a sufficient distribution, direct that such proportion thereof as the Comptroller may specify (hereinafter referred to as 'a retention allowance') may be retained for the purpose of the business without liability to tax.

Income determination

Inventory valuation

Stocks generally are valued at the lower of cost or market value. The first in first out (FIFO) and average cost methods of valuation are generally used for book and tax purposes. Obsolescence is permitted where it occurs, but there are no provisions to account for monetary inflation on inventory valuation.

Capital gains

There is no tax on capital gains except in instances where such gains comprise a portion of the income-earning activities of the business. In such instances, the corporate tax rate applies.

Dividend income

Dividends may be subject to tax. However, there is a tax credit given that is equal to the amount by which the tax payable of a company has been increased by the inclusion of such dividend in its taxable income.

Interest income

The corporate tax rate applies to interest income. However, income earned on securities issued by member governments of the Eastern Caribbean Central Bank and any income accruing to the buyer, seller, or issuer from any transfer of securities that are listed on the Eastern Caribbean Securities Exchange through the facilities of that Exchange is tax exempt.

Any expenditure incurred for the purpose of producing exempt income is not deductible.

Royalty income

Royalties received by a corporation are taxable as income from a business or property. Royalties received from Caribbean Community (CARICOM) sources are normally exempt from the payment of corporate tax.

Foreign income

Resident companies are taxed on foreign branch income as earned. Double taxation is avoided by means of foreign tax credits. There are no provisions in Dominica for deferral of foreign-source income.

Deductions

Depreciation and amortisation

Capitals allowances are available in Dominica.

Annual allowances for wear and tear, ranging from 3% to 20%, are granted on the acquisition of industrial and commercial buildings; on plant and machinery, including motor vehicles and furniture; and on fixtures and equipment.

The Comptroller of the IRD may also grant, on application, a higher rate for annual allowance for assets that have higher or abnormal wear and tear.

Goodwill

Neither the amortisation of impaired goodwill nor the related write-off of it is an allowable deduction.

Start-up expenses

All expenditures incurred in connection with incorporation costs for the establishment of a company are deductible unless considered as capital expenditure.

Interest expenses

Interest on any loan, including interest payable on debentures, is an allowable deduction to the extent that the amount of such loan was used for the purpose of producing assessable income.

Bad debt

Bad debt expense is deductible, provided it has been brought to account in generating the company's assessable income for any income year.

Subscriptions or donations

Subscriptions or donations are an allowable deduction when made to a business or professional organisation approved by the Comptroller, where it is satisfied that the organisation is a non-profit body established with the object of maintaining and advancing the standards of the business or profession.

Contributions or donations to any charitable institution designated as an approved charity by the Order of the Cabinet are also allowable.

Fines and penalties

Fines and penalties are not allowable deductions.

Taxes

Taxes are not allowable deductions, except taxes imposed on any immovable property used for the purpose of producing assessable income.

Net operating losses

Net operating losses may be carried forward up to a maximum five years. In carrying losses forward, the amount that can be claimed in any subsequent year is the full amount of the available loss. Losses cannot be carried back.

Payments to foreign affiliates

There are no restrictions on the deductibility of interest paid to foreign affiliates if the transaction is carried out at arm's length and at commercial rates. However, deduction for management charges, which is subject to 15% WHT, is restricted to the lesser of such charges or 5% of all allowable deductions, excluding such charges and capital allowances.

Group taxation

Group tax filing is not allowed in Dominica.

Transfer pricing

Related party transactions are accepted if they are made on an arm's-length basis. The Comptroller of the IRD has the power, under the Income Tax Act, to make any adjustment deemed necessary to place such transaction at arm's length.

Thin capitalisation

No provision exists for thin capitalisation in Dominica.

Controlled foreign companies (CFCs)

Dominica does not have tax provisions relevant to CFCs.

Tax credits and incentives

Foreign tax credit

Dominica is signatory to the CARICOM Double Taxation Agreement (DTA) Order 2008, which provides relief against double taxation and seeks to prevent fiscal evasion with regard to taxes on income, profits, or gains. Where income has accrued to a resident and has been taxed in a foreign country with which there is no DTA, or is income to which a DTA, if there is one, does not relate, credit for tax on such income is allowed for the lesser of the tax payable in the foreign country or the tax charged under Dominican tax law.

Tax holidays

Tax holidays are available for various types of business activities, including manufacturing companies. In the case of a manufacturing company, the incentives are aimed at increasing the manufacturing base of Dominica, the level of exports, and the use of local materials and labour in production. An approved manufacturing enterprise will be granted a tax holiday up to a maximum of 15 years. In determining the length of the tax holiday, the extent of the local value added to approved products is taken into account.

Investment incentives

Income tax incentives and other fiscal concessions are provided under the Fiscal Incentives Act and other concessions granted by the Cabinet. The extent of the incentives and concessions granted are specific to the legislation or Cabinet conclusions and depend on the impact that the investment would have on local employment, exports, and the generation of foreign exchange earnings. The incentives granted include the following:

- Duty free importation of raw materials, machinery, components, and spare parts and other inputs used in manufacturing, and the duty-free importation of construction materials, equipment, and other inputs used in the construction and operation of hotels and other hospitality products.
- Income tax waivers of up to 100% of the taxable income of companies engaged in manufacturing, tourism, and agriculture and other employment generating activities, for periods of up to 15 years.
- Whole or partial waivers of stamp duties, Alien Landholding License fees, and WHT with respect to investments in specific areas, or in specific industries and activities.
- Export allowances for goods manufactured in Dominica and exported. Companies that engage in such activity are given tax exemption on the export of such goods up to a maximum of 10 to 15 years.

Withholding taxes

Resident corporations and persons that make certain payments of an income nature to non-residents are required to withhold tax on these payments:

Payment	WHT (%)
Dividend	15
Interest or discounts	15
Rental, lease, premium, or licence in relation to immovable property	15
Rental of plant, machinery, equipment, or other movable property	15
Royalty	15
Management charge	15
Commission or fee, not being in respect of employment	15
Annuities or other periodic payments	15
Distribution of income of a trust	15
Any other payment of an income nature	15
Profits of a non-resident company from carrying on business in Dominica that is remitted out of Dominica	15

There is a multilateral tax treaty in existence between the member states of CARICOM that limits the WHT on interest, royalties, and management fees to 15% at source. There is no WHT on CARICOM-sourced dividend income.

There are no WHTs on payments to residents.

Tax administration

Taxable period

Returns must cover a 12-month period, which may be changed only with the Comptroller's permission.

Tax returns

Tax returns must be filed within three months of the company's fiscal year-end. An extension of the filing date may be obtained.

Financial statements must be submitted with the returns, together with a schedule reconciling taxable income with book income and various other schedules of additional information.

The system is one of self-assessment. Upon receipt of the returns, the IRD examines the information provided and issues a notice of assessment at any time, subject to the statute of limitations. The IRD may also issue assessments in the absence of returns.

Payment of tax

Tax is payable in instalments on 31 March, 30 June, and 30 September in each income year (or the end of the third, sixth, and ninth month where the accounting year of the company is other than a calendar year), based on the tax payable in the preceding income year or the estimated tax payable for the current year. Any remainder is payable on or before 31 March of the subsequent year (or the end of the third month after the end of the accounting year where the accounting year of the company is other than a calendar year).

Tax audit process

The IRD carries out audits of a selection of tax returns, usually at the taxpayer's place of business. Audits may be carried out at any time prior to the expiration of the statute of limitations, whether or not notices of assessment have been issued. The IRD has wide powers in determining the information it requires for these audits.

Within 30 days after the date of service of a notice of assessment or reassessment, the taxpayer may submit a written objection to the IRD on any matters in such assessment or reassessment. If the IRD confirms its assessment, the taxpayer may file an appeal with the Appeal Commissioners, which comprises persons appointed by the Cabinet. A decision by that body may be further appealed to the High Court. An appeal against an order from this Court may be made to the Court of Appeal.

Statute of limitations

Assessments are not final until six years after the end of the income year, within which period assessments may be made at any time. In cases of misrepresentation or failure to disclose any material fact, a reassessment can be made at any time.

Topics of focus for tax authorities

The IRD does not have any specific compliance program; however, when an audit is done, the focus is on returns that may have an incidence of tax risk, such as returns with huge losses, large refunds, questionable reporting of tax liability, and omission of income.

Other issues

Tax Information Exchange Agreements (TIEAs)

TIEAs provide for the exchange of information on tax matters. TIEAs with Australia, Belgium, Canada, Denmark, Finland, France, Iceland, Ireland, the Netherlands, New Zealand, Norway, San Marino, Sweden, the United Kingdom (UK), and the United States (US) are in force.

US Foreign Account Tax Compliance Act (FATCA)

As of 19 June 2014, the United States and Dominica have reached an agreement in substance regarding FATCA, and Dominica has consented to disclose this status. In accordance with this status, the text of such intergovernmental agreement (IGA) has not been released, and financial institutions in Dominica are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

Common Reporting Standard (CRS)

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the Organisation for Economic Co-operation and Development (OECD). Under the CRS, foreign tax authorities will provide information to the IRD relating to financial accounts in their jurisdiction held by Dominica residents. The IRD will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Dominica. Dominica's first reporting year is to be 2018.

Dominican Republic

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Significant developments

There have been no significant corporate tax developments in the Dominican Republic during the past year.

Taxes on corporate income

The Dominican Republic follows a territorial concept (i.e. resident companies, branches, and permanent establishments [PEs] are generally subject to taxation on Dominican-source income only); consequently, the tax treatment for corporations, partnerships, and limited liability companies is similar in most aspects.

The corporate income tax (CIT) rate is 27%.

In addition, the 1% rate assets tax is considered an alternative minimal income tax, payable when the CIT is lower than the assets tax.

Dividends/profits remitted abroad or paid locally are subject to a withholding tax (WHT) of 10% as a definitive tax payment. Free trade zone (FTZ) entities should also make the 10% withholding on profit remittance (in case of branches) or dividend distribution (subsidiaries).

Local income taxes

In the Dominican Republic, provincial and local government income taxes do not apply.

Corporate residence

A company is considered resident when it is registered or incorporated under the laws of the Dominican Republic. Foreign entities are considered as domiciled when they are registered in the Dominican Republic as a branch or PE, and they are subject to local tax in the same manner.

Permanent establishment (PE)

According to local tax legislation, which follows the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital, a PE is defined as a fixed place of business where a foreign entity or individual performs all or part of its activities, such as:

- An address in the Dominican Republic.

- Office.
- Branches.
- Workshop.
- Mine.
- Petroleum or gas well.
- Quarry or any other natural resource extraction place.
- Assembly projects, including supervision activities of such projects.
- Construction/supervision activities derived from the sale of machinery and equipment when its cost exceeds 10% of the sale price of such equipment.
- Consulting services, provided these exceed six months within the same fiscal period.
- Representatives or dependent or independent agents, when these act on behalf of the entity.

Other taxes

Value-added tax (VAT)

Tax on the Transfer of Industrialised Goods and Services (ITBIS) is a VAT applied to industrialised goods (movable) and services at a rate between 16% and 18%, with exemptions established by law to certain goods and services.

Exempt goods include a wide variety of goods, among which are basic products (eggs, milk, grains, live animals, frozen meats), seeds for planting, fruits and vegetables, medicine, insecticide and pesticides, books/magazines, educational material, wheelchairs, and prosthesis.

Exempt services include educational, health, financial (including insurance), pensions, ground transportation of people and cargo, electricity, water and waste pick-up, housing rental and personal care, and exported services.

A 0% rate applies to exports, including sales to FTZs.

Tax on gross sales made by FTZs to local market

A 3.5% tax was created on the gross sales of goods and services made by companies in Dominican FTZs to individuals and legal entities in the local market.

Customs duties

Customs duties are assessed at various rates depending on the nature of the goods and their country of origin. Free trade agreements exist (e.g. the Central America-Dominican Republic-US Free Trade Agreement [DR-CAFTA]) that decrease the customs duty rates for goods imported from the member countries.

Selective consumption taxes (Impuesto Selectivo al Consumo or ISCs)

ISC is applied to the acquisition or import of certain goods and services.

There is an ISC for alcoholic goods and cigarettes, adjusted by inflation annually:

- Alcohol: Ranges from 498.40 Dominican pesos (DOP) to DOP 540.00 for every litre of pure alcohol.
- Cigarettes: DOP 50.15 for a 20 pack and DOP 25.00 for a 10 pack.

There is a 16% *ad valorem* ISC for fossil fuel and petroleum derivatives. A DOP 2 tax (adjustable by inflation on a quarterly basis) is charged per gallon of regular and premium fuel and diesel.

There are ISCs that vary based on the product, which range from:

- 10% on the transfer of alcoholic beverages, applied on the retail price. Imports and transfers made by local manufacturers are accountable for this tax.
- 50% on the transfer of 20 units of tobacco products and 25% on the transfer of 10 units of tobacco products, applied on the retail price. Imports and transfers by local manufacturers are accountable for this tax.
- 19.5% to 130% on the consumption of certain imported goods (listed in the law) that are considered to be non-essential.
- 10% on telecommunications services.
- 16% on insurance services.
- 0.0015% on the value of cheques or wire transfers made through financial entities (this tax does not apply to cash withdrawals or credit card use).

Real Property Transfer Tax

The Real Property Transfer Tax is assessed at a basic rate of 3% on any transfer of ownership of real estate.

Stamp taxes

Stamp taxes have been abolished in the Dominican Republic.

Payroll taxes

In addition to the social security contributions (*see below*), a 1% contribution from the payroll amount shall be made to the Governmental Training Institution (INFOTEP) on a monthly basis. This is paid solely by the employer (not subject to withholding). In addition, a 0.5% contribution shall be paid to INFOTEP, and the employer shall withhold said 0.5% contribution from employees' bonus (not salary).

Employers must share 10% of their net profits with their employees. The Dominican Labor Code, however, allows employers to cap the amount distributed as follows: an employee with less than three years on the job will receive a maximum of 45 days' salary; an employee with three years or more will receive a maximum of 60 days' salary.

Social security contributions

Pensions

Employers contribute 7.10% of salaries and withhold 2.87% from employees' salaries for pensions. The quotable salaries for contribution are 20 minimum wages.

Family healthcare

Employers contribute 7.09% of salaries and withhold 3.04% from employees' salaries for family healthcare. The quotable salaries for contribution are ten minimum wages.

Labour risks insurance

Employers contribute 1.2% of salaries for labour risks insurance. The quotable salaries for contribution are four minimum wages.

Branch income

Branch profits are taxed at the same rate as corporate profits. Tax Reform Law No. 253-12 imposes a 10% WHT as definite payment on remittances abroad. FTZ entities should also withhold this 10% WHT upon profit distribution.

Income determination

Inventory valuation

The last in first out (LIFO) method of inventory valuation is established for tax purposes. Other methods may be authorised upon request.

Conformity between book and tax reporting is not required.

Capital gains

Capital gains are added to ordinary taxable income and subject to the CIT rate. Capital gains are defined as the difference between the sale price of an asset and the acquisition or production price, adjusted for inflation.

Dividend income

Dividend distributions in cash are subject to a 10% WHT as a sole and definite payment.

Stock dividends

Stock dividends are not subject to taxation.

Interest income

Interest income is considered as part of taxable income; in the case of non-resident, non-domiciled taxpayers, the tax should be paid through WHT.

Royalty income

Royalty income is considered as part of taxable income; in the case of non-resident, non-domiciled taxpayers, the tax should be paid through WHT.

Foreign income

Dominican-resident companies, branches, and PEs are subject to taxation on income from Dominican sources and on income from foreign sources arising from investments and financial gains. Tax determined on income from foreign source is subject to a credit mechanism. Taxes paid in the country where the income is originated can be credited up to the amount of the tax payable in the Dominican Republic on the same income.

Deductions

Depreciation and amortisation

Depreciation allowances on fixed assets are determined by the declining-balance method at the following rates:

Assets	Depreciation rate (%)
Buildings	5
Office furniture, fixtures, computers, light vehicles, etc.	25

Assets	Depreciation rate (%)
Other assets not specified	15

The fiscal book value is adjusted by the annual inflation rate.

Amortisation of intangible assets (e.g. patents, author's rights, drawings, franchises, contracts without set expiration dates) is not deductible.

Goodwill

Goodwill is not deductible.

Start-up expenses

The Dominican tax legislation does not establish specific provisions regarding the deduction of start-up expenses. The general deductions rule is the accrual method.

Interest expenses

Interest expenses are deductible, provided they are associated with the acquisition, maintenance, and/or exploitation of taxable income generating assets.

The interest expense deduction is limited when the beneficiary is a non-resident located in a tax haven or in a low-taxation jurisdiction, or when the interest is not otherwise subject to tax by the recipient. Thin capitalisation rules may also limit the deduction (*see Thin capitalisation in the Group taxation section*).

Bad debt

Bad debts are deductible only in the year the loss is suffered. Authorisation may be obtained to use an alternative method, which consists of creating a provision allowing the deduction only in the year the bad debts qualify as doubtful, up to 4% of the balance of the accounts receivable at year-end.

Charitable contributions

Donations made are tax deductible in the Dominican Republic, up to 5% of the taxable income and if the beneficiaries are registered charitable contributions.

Fines and penalties

Fines and penalties are considered non-deductible expenses.

Taxes

Income taxes are not deductible. Other taxes can be deductible; however, interest and surcharges imposed on taxes are not deductible in general.

Other significant items

For tax purposes, the following significant items should be considered:

- Changes in methods are not allowed without prior approval.
- Bonuses paid to employees within 120 days after the end of the taxable year are deductible for the year just ended.

Net operating losses

The carryforward of losses of legal entities can be used to offset profits up to the fifth year following the year in which the losses were generated, with a maximum amortisation of 20% in each year. For the fourth year, the deduction allowed should not exceed 80% of the net taxable income. In the fifth year, the percentage is 70%.

There is no carryback loss mechanism in the Dominican Republic.

Payments to foreign affiliates

Payments to foreign affiliates for royalties, interest, or service fees are deductible, provided that the 27% WHT was paid (10% on interest).

Group taxation

Group taxation is not permitted in the Dominican Republic.

Transfer pricing

Per the Dominican Tax Code (DTC), related-party transactions carried out between Dominican companies, regardless of whether the companies are foreign-owned or not, or with companies located in areas of low or no taxation, must be carried out in accordance with the prices agreed in the transfer of goods or services between independent parties.

These provisions shall also apply to transactions carried out by Dominican companies with related companies located in the country that is benefiting from a favourable tax regime.

The tax authorities, following the procedures in the current tax laws in the exercise of its powers of determination, verification, or investigation, may challenge the values declared by taxpayers if such values:

- do not correspond to the economic reality of the operation involved, or
- differ substantially from independent companies under similar conditions.

Persons are considered related parties or related persons or entities, resident or not in the Dominican Republic, when among them there is a financial dependency or capital of both is mostly owned by one of them, following (but not limited to) these criteria:

- One party participates, directly or indirectly, in the management, control, or capital of the other.
- The same natural persons, companies, or firms participate, directly or indirectly, in the management, control, or capital of such parties.
- An individual, company, or companies have the ability to influence the business decisions of the company.
- When participation is defined in terms of the share capital or control of voting rights, a direct or indirect participation of at least 25% will be necessary in either case.

Regarding the advance pricing agreement (APA) regime, an APA may be requested from the tax authorities that sets the values of the transactions carried out between related parties if made prior to completion. Please note the following:

- The APA may be approved, denied, or modified by the tax authorities with customer acceptance and is valid within 36 months after approval.
- Subsequent agreements may be valid for up to 36 months; in cases in which it has expired and no new agreement exists, the existing agreement shall continue in effect until it is approved before a new APA.
- The tax authorities may challenge the taxpayers' declared values included within the APA when they do not correspond with the criteria agreed in the APA and apply the penalties established in the DTC.
- For economic sectors, whose business has particular ties or high linkage between the parties, the tax authorities may determine a minimum price or profit margin. Once such price or margin is set, according to the sector, the companies covered by the scheme will act as independent companies. The price or minimum tax profit margin of the taxpayer may be calculated taking into account the total income, the assets used in the business operations during the fiscal year, the total amount of costs and expenses, and/or other sector variables.

Finally, taxpayers must file an annual Informative Tax Return of transactions between related parties, which shall contain detailed information of each transaction, the related party's identification, transfer pricing method, etc.

Thin capitalisation

According to the thin capitalisation rule, the maximum debt-to-equity ratio allowed to taxpayers is 3:1; over this threshold, the deduction of interest expense is limited.

Controlled foreign companies (CFCs)

The Dominican Republic does not have provisions for CFCs.

Tax credits and incentives

In the Dominican Republic, tax incentive laws exist for the following.

Tourism incentives

Law 158-01 on the Promotion of Tourist Development for New or Low Development Locations in Provinces and Areas with Great Tourist Potential, and for the Creation of the Tourist Promotion Official Fund, enacted on 9 October 2001, establishes special incentives and benefits to individuals or companies, residing in the Dominican Republic, that promote or invest capital in any tourist activity described in said Law. In order to benefit from said Law, a special Resolution shall be obtained from the Council for the Promotion of Tourism. Law No. 195-13 added other areas that could benefit from the tax incentives established in Law 158-01.

Alternative energy incentives

Law 57-07 provides significant incentives for the use and development of renewable sources of energy. The renewable energy sources subject to this law include bio-fuel, bio-diesel, ethanol, and wind, solar, and other renewable energy.

Additionally, the credit on investment expense granted to self-power producers is 40%.

Industrial renovation and modernisation incentives

The main objective of Law 392-07 about competitive development and local industrial manufacture is to promote policies and support programs for industrial renovation and innovation in order to diversify local production, create industrial parks, and link the country to international markets. Main benefits include VAT exemption on import of machinery and materials, priority on imports granted at customs, and accelerated depreciation.

Industrial FTZ operations

Law 8-90 about Export FTZs was created to promote employment, production, and economic growth. Entities that would like to benefit from said Law shall be engaged in manufacture/service within a confined space (FTZ park). Special FTZ classification entities, which are entities located outside an FTZ park (e.g. call centres), were abolished with Law No. 253-12. In addition to this, Law 253-12 taxed dividends paid by FTZ entities.

Border development incentives

Law No. 28-01, dated 1 February 2001, creates a special development frontier zone for industrial, agro-industrial, agriculture/livestock, metalmechanic, FTZ, tourism, metallurgical, and energy companies that exist at the time of promulgation of said law, and those that may be installed in the future within the border of the Dominican Republic and Haiti. Main incentives include 100% exemption on CIT and VAT, as well as customs duties.

Foreign tax credit

Taxes paid abroad on foreign income taxed in the Dominican Republic may be credited up to the amount of the Dominican tax liability generated by such income. The credits should be determined on a case-by-case basis.

Withholding taxes

WHT on dividends

Dividends paid in cash to resident and non-resident individuals or corporations are subject to a WHT of 10%.

WHT on transfers of shares

There is a 1% WHT on the value of the transfer of shares received by the seller. Foreign entities are not exempt from this obligation. In this case, WHT may be made by a person appointed as WHT agent by the tax authorities.

Such WHT is a payment on account against capital gain tax, payable by the seller through the Form IR-2 (legal entities) or Form IR-1 (individuals), as applicable. However, if they can substantiate that the transaction will not generate a capital gain or that the 1% WHT would generate a capital loss, they may request of the tax authorities, no later than 30 days prior to withholding filing/payment's due date, to be exempt from this obligation.

This 1% WHT should be filed and paid to the tax authorities through the monthly WHT return (IR-17 Form) within the first ten days of the month following the payment to the seller. In case the purchaser is an individual, the 1% WHT is not applicable.

WHT on interest payments

Financial institutions are appointed as 1% WHT agents on the value paid or credited on account for interest payments of any nature to legal entities.

The interests paid by financial institutions will constitute a deductible expense for tax purposes, provided the WHT was made.

In addition, this rule obligates financial institutions to provide a monthly electronic file, directly to the tax authorities or through the Banks Superintendency, containing all the information related to the interest payment, including the date, value, and identity of the beneficiary.

WHT on payments to foreign corporations

The WHT on payments to foreign corporations, which are not permanently established in the Dominican Republic, are as follows:

	WHT (%)			
Recipient	**Dividends and interest**	**Royalties**	**Technical assistance**	**Other services**
Non-treaty	10	27	27	27
Treaty:				
Canada	0/10 (1)	18	27	27
Spain	0/10 (2)	Up to 10	N/A	Up to 10

Notes

1. 0% or 10% depending on the type of ownership since the Canada-Dominican Republic Treaty contains the more beneficiary treaty clause.
2. 0% or 10% depending on if the Spanish parent company has more than 75% participation in the Dominican subsidiary. Branches are not subject to profit remittance tax.

Tax administration

Taxable period

The DTC establishes as year-end one of the following: 31 December, 31 March, 30 June, or 30 September. Once the year-end is selected, any change should be authorised by the tax authorities.

Tax returns

The Corporate Annual Tax Return (Form IR-2) must be filed within 120 days after year-end. Tax authorities may allow extensions of up to 60 days, upon request.

Tax returns are based on self-assessment and must be filed on electronic forms supplied by the internal tax department.

Payment of tax

The balance of any tax due must be paid no later than the due date for filing the return. Corporations domiciled in the country and PEs of foreign enterprises shall be obligated to make advance payments on the 15th day of every month for tax related to the period in progress.

Tax audit process

The audit cycle is not established by law or practice. During the statute of limitations, tax authorities select the taxpayers subject to audit based on internal criterion.

Statute of limitations

The statute of limitations is three years, and five years if the entity has been notified of a tax audit, counting from the filing due date.

Topics of focus for tax authorities

Among the topics of focus for the tax authorities are: non-deductible expenses, withholdings, VAT, and proportionality of VAT credits.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

In December 2016, the Dominican Republic and United States signed an intergovernmental agreement (IGA) to improve the international tax compliance regarding FATCA, which is supported by a previous signed agreement between the United States and Dominican Republic referred to as 'Tax Information Exchange Agreement'. Additionally, local financial entities signed a bank information exchange agreement with the US income tax authorities on 15 July 2014.

Ecuador

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Significant developments

On 29 December 2017, the Ecuadorean government enacted the Law for the Reactivation of the Economy. The main corporate tax measures derived from this Law are as follows:

- Increase in the corporate income tax (CIT) rate from 22% to 25%, and from 25% to 28% in the case of companies with foreign shareholders located in jurisdictions qualified as tax havens, effective from 2018.
- CIT exemptions and benefits for small businesses and companies qualified as usual exporters.
- Limitations to the deduction of expenses related to accruals of employer's pension and eviction plans.

On 24 May 2018, the Ecuadorian government presented the project of law named 'Law for the incentive of production, attraction of investment, generation of employment and fiscal stability'. Broadly, the project of law includes several tax measures and reforms, including an amnesty program upon interests and fines before the Tax and Social Security Authorities, exemptions of CIT and remittance for new investments, and reforms on capital gains tax. The final and approved version of the Law is expected to be available by July 2018.

Taxes on corporate income

Resident entities are taxed on their worldwide income. Non-resident entities are subject to tax on Ecuadorian-source income only.

International Financial Reporting Standards (IFRS) are in force for all entities. Local tax authorities have established that for CIT purposes, and corresponding pre-payments, companies are obligated to follow these accounting principles.

Taxes on corporate income are levied at the following rates:

Type of income	CIT rate (%)
Distributed or undistributed profits of local corporations and branches	22 to 28
Reinvested profits of local corporations and branches	12 to 18

Ecuadorian companies owned by residents or non-residents located in non-tax-haven jurisdictions are subject to a 22% to 25% CIT rate. Companies with direct or indirect ownership/participation located in jurisdictions qualified as tax havens are subject to an increased CIT rate of 3%. Such increase is also applicable when the company's ownership structure is not duly disclosed before the Ecuadorian tax authorities.

See the Branch income section for a list of countries and territories considered as tax havens by the tax authorities.

Local income taxes

No local or provincial government taxes on income are imposed on companies.

Corporate residence

Corporate residence is determined by the place of incorporation. For foreign branches, it is the place stated in the domiciliary deed.

Permanent establishment (PE)

According to the local tax legislation, a company can be deemed to have a PE in Ecuador if it maintains any place or fixed centre, within the country, in which a foreign company develops all or part of its activities.

The corresponding regulations point out that a PE also exists when a foreign company maintains, within the country, a person or an entity that acts on its behalf and habitually exercises an economic activity. It contemplates several instances where this is applicable, among them:

- A person with legal representation, which is normally granted through a power of attorney or through a legalised decision by the company and includes the capacity to legally act on behalf of the company.
- A person working under a contractual relationship for a foreign company to carry out economic activities on behalf of that company.
- A centre for the direction of the activities of the foreign company.
- A branch, agency, or office that acts on behalf of the foreign company.
- An office for the provision of technical consultancy services related to contracts that are executed in the country.

Other taxes

Value-added tax (VAT)

VAT is levied at the rates of either 12% or 0% on the transfer of goods, import of goods, and the rendering of services, as well as on services rendered within the country or imported. Royalties and intangible property, imported or locally paid, are also levied with a 12% VAT.

The following transactions are exempt from VAT:

- In-kind contributions to capital of companies.
- Inheritance and assets obtained from liquidation of companies.
- Transfer of business as a whole, amalgamations, mergers, takeovers, and spin-offs.
- Donations to public entities and non-profit organisations.
- Transfers of shares and securities.

Goods and services that are subject to the 0% rate are explicitly listed in the law.

Among others, the following goods are taxed at a 0% rate upon either importation or local transfer of ownership:

- Most agricultural goods and foodstuff, when these remain in their natural state; this includes refrigerated or packaged goods that have not undergone further processing. Also included in this category are milk, meats, sugar, salt, bread, butter and margarine, flour, and cooking oil.
- Drugs, medicines, and other pharmaceutical products, including raw materials for their production.
- Fertilisers, insecticides, animal foods, and similar products, including the raw materials required for processing such goods.
- Agricultural machinery and equipment.
- Goods that are exported.
- Paper, books, magazines, and newspapers.

Among others, the following services are taxed at a 0% rate:

- Transportation of persons and cargo, except air transportation of persons and local air transportation of cargo.
- Book printing services.
- Housing rental.
- Water, electric, sewage, and other public services, including garbage collection.
- Exported services.

The 12% VAT paid on imports and local purchases can be deducted from the 12% VAT charged on sales or services rendered. VAT paid on raw materials, fixed assets, or components required for the production of goods or rendering of services is also creditable when the final product is considered taxable at 12%. On the other hand, VAT paid on raw materials, services, components, or fixed assets necessary for production of export goods is recoverable.

The 12% VAT paid in the acquisition of goods and services utilised for the production or rendering of services levied at 0% VAT is not creditable. Therefore, it should be considered as part of the cost.

Companies appointed as ‘special taxpayers’ are required to withhold 30% and 70% of VAT paid on the purchase of goods and services, respectively. On purchases made to professionals, 100% VAT must be withheld.

When the transaction is carried out between two ‘special taxpayers’, VAT withholding rates are reduced to 10% (goods) and 20% (services).

For importation of services, 12% VAT must be self-assessed and withheld at 100% by the local entity. This VAT is creditable.

Customs duties

Since Ecuador is a member of the Andean Community, goods to be imported are classified under the Common Nomenclature of the Andean Countries participating in the Cartagena’s Agreement (NANDINA) Pact, which is based on the Customs Cooperation Council Nomenclature (also known as the Brussels tariff nomenclature). Most consumer good imports pay 25%, while intermediate goods are usually imported at a 10% or 15% rate. Raw materials and capital goods generally pay 0% to 5%. Ecuador has negotiated exceptions under the Andean common tariff that allow lower duties on certain capital goods and industrial inputs. There is duty-free import of agricultural goods and equipment.

The price listed on the commercial bill or invoice is the basis for the assessment of duties, except when the Central Bank of Ecuador (CBE) considers the listed price unreasonable, in which case market prices in arm's-length transactions will be used. The burden of proof lies with the importer.

In addition to import duties, all imports are subject to 12% VAT and other minor taxes that do not exceed 1%. Charges are based on the cost, insurance, and freight (CIF) value of the merchandise.

All Ecuadorian imports and exports are subject to inspection by authorised international verification companies operating in the country (there are some imports exempt from verification). Goods are appraised for value, quantity, quality, and weight at the port of origin.

Special consumption tax (Impuesto a los Consumos Especiales or ICE)

ICE is imposed on domestic and imported goods that are explicitly listed in the law, including sugared, non-alcoholic and carbonated drinks. This tax is levied at a progressive rate from 5% to 35% on certain automobiles and 15% on airplanes, helicopters, and boats. The taxable basis on cigarettes and alcoholic beverages is obtained by the number of produced or imported cigarettes or degrees of alcohol, respectively.

Foreign assets tax (Impuesto a los Activos en el Exterior)

The tax base for the foreign assets tax is the average monthly balance of cash deposits held in foreign entities by private entities registered in the stock market and regulated by the Superintendent of Banks and Companies. The monthly tax rate is 0.25% (0.35% for assets held in tax haven jurisdictions).

Remittance tax (Impuesto a la Salida de Divisas)

Remittance tax of 5% is imposed on the transfer of money abroad in cash or through cheques, transfers, or courier of any nature carried out with or without the mediation of the Ecuadorian financial system, including transfer from foreign bank accounts. Dividends are exempt from this tax, under certain considerations.

Stamp taxes

No stamp taxes are levied in Ecuador.

Payroll taxes

There are no additional payroll taxes applicable other than Social Security contributions (*see below*).

Social Security contributions

Employers and employees pay contributions to the Social Security at the rates of 12.15% and 9.45%, respectively, on the minimum monthly taxable wages as established for the different contributing categories by the Social Security. Such categories are revised annually.

Labour profit sharing

Although it is not considered a tax, companies are obligated to pay 15% of their pre-tax earnings to their employees. This payment is considered a deductible expense for CIT computation purposes.

Redeemable Tax on Non-Returnable Plastic Bottles

A tax is levied on the bottling of beverages in non-returnable plastic bottles utilised for containing alcoholic and non-alcoholic drinks, beverages, soft drinks, and water. In the case of imported beverages, this tax is levied upon their customs clearance for home use.

For each plastic bottle levied with this tax, the rate is up to 0.02 United States dollars (USD). This amount is fully reimbursed to whoever collects, delivers, and returns the bottles.

Taxpayers of this tax are the bottlers of drinks contained in plastic bottles and importers of drinks in plastic bottles.

Milk products and medicines filled in plastic bottles are exempt from this tax.

This tax is not considered as a deductible expense for CIT purposes.

Environmental Tax on Vehicle Pollution (ETVP)

ETVP is levied to offset environmental pollution caused by the use of ground transportation motor vehicles.

Taxpayers of ETVP are individuals, undivided inheritances, and national or foreign corporations who are proprietors of ground transportation motor vehicles.

There are several vehicles exempt from this tax, including government vehicles, public transportation of passengers, school buses, taxis, ambulances, moving hospitals, vehicles regarded as 'classical', electric vehicles, and those destined for the use and transportation of handicapped individuals.

The taxable base of the ETVP corresponds to the cylinder capacity of the vehicle motor, expressed in cubic centimetres, and a percentage related to the potential level of environmental pollution provoked by motorised vehicles in connection with the vehicle´s motor´s years of antiquity.

Municipal taxes

Municipal asset tax

The municipal asset tax is levied on all individuals and companies required to keep accounting records in accordance with Ecuadorian tax legislation. This tax is levied annually at a rate of 1.5 per thousand (or 0.15%) of total assets less current and contingent liabilities, as shown on the balance sheet.

Municipal real estate tax

The city governments assess an annual municipal property tax , which ranges between 0.25 per thousand and 5 per thousand (0.025% to 0.5%) of the commercial value of the property, as determined by valuation carried out by the city government, for both urban and rural properties (rural property is taxed at a maximum of 0.3%).

Branch income

Distributed or retained branch profits are taxed at a rate between 22% and 28% (*see the Taxes on corporate income section*). No further taxes are payable when profits are remitted to headquarters, except if located in a tax haven country. Re-invested profits are levied at a 12% or 18% CIT rate. Companies must increase their share capital within the following fiscal year to be beneficiaries of the CIT rate reduction.

Countries and territories considered as tax havens by tax authorities

Besides the tax haven list published by the tax authorities shown below, 'low-tax jurisdictions' shall be subject to the same tax treatment. 'Low-tax jurisdictions' are defined as a territory where the effective rate of income tax or taxes of an identical or similar nature is less than 60% of the applicable rate in Ecuador. Additional considerations are also taken by the tax authorities for determination of low-tax jurisdictions/preferential tax regimes.

- Albania
- American Samoa
- Andorra
- Angola
- Anguilla
- Antigua and Barbuda
- Aruba
- Ascension Island
- Azores Islands
- Bahamas
- Bahrain
- Barbados
- Belize
- Bermuda
- Bonaire, Saba, and St. Eustatius
- Brunei Darussalam
- Bulgaria
- Cabo Verde
- Campione D´italia
- Cayman Islands
- Channel Islands (Guernsey, Jersey, Alderney, Greater Sark, Herm, Little Sark, Brechou, Jethou, Lihou)
- Christmas Islands
- Cocos (Keeling) Islands
- Cook Islands
- Curaçao
- Cyprus
- Djibouti
- Dominica, Commonwealth of
- French Polynesia
- Gibraltar
- Granada
- Greenland
- Guam
- Guyana
- Hong Kong
- Isle of Man
- Jordan
- Kiribati
- Kuwait
- Labuan
- Liberia
- Liechtenstein
- Luxembourg
- Macao
- Macedonia
- Madeira (Portugal)
- Maldives
- Malta
- Marshall Islands
- Mauritius
- Monaco
- Montenegro
- Montserrat (UK)
- Myanmar
- Nauru
- Nigeria
- Niue
- Norfolk Islands
- Oman
- Ostrava
- Palau
- Panama
- Pitcairn
- Puerto Rico
- Qeshm Islands
- Saint Kitts and Nevis Islands
- Saint Lucia
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- San Marino
- Santa Elena
- Serbia
- Seychelles
- Solomon Islands
- Sri Lanka
- Svalbard Islands
- Swaziland
- Tokelau
- Tonga
- Trieste (Italy)
- Trinidad and Tobago
- Tristan Da Cunha
- Tunisia
- Turks and Caicos Islands
- Tuvalu
- United Arab Emirates
- Vanuatu
- Virgin Islands (British)
- Virgin Islands of the United States
- Western Samoa
- Yemen

Certain tax regimes from Costa Rica, the Netherlands, New Zealand, and the United Kingdom may be considered as preferential tax regimes.

Income determination

Inventory valuation

The valuation of inventories is not specifically treated in the tax law. IFRS must be applied.

Capital gains

Gains from stock/shares sales and gains from investment funds and investment trusts are levied with income tax. Gains on the sale of fixed assets are added to the taxable base and levied at regular CIT rates, except gains derived from occasional sales of real estate, which are tax exempt.

Dividend income

Dividends received by a resident company or foreign company, not domiciled in a tax haven, from a resident company are tax exempt.

Interest income

In general terms, interest income is considered as part of the CIT base for Ecuadorian entities.

Royalty income

In general terms, royalty income is considered as part of the CIT base for Ecuadorian entities.

Foreign income

Foreign-source income is considered exempt for tax purposes if the company demonstrates that the income tax was paid abroad. Income generated in tax haven jurisdictions is not considered to be part of this exemption and should be added to regular income.

Deductions

As a general rule, payments on operations that exceed USD 1,000 should be made through an institution of the financial system; otherwise, such operations will become non-deductible.

Depreciation and amortisation

Straight-line depreciation applies at rates specified by law. The director of the Internal Revenue Service (*Servicio de Rentas Internas*) of Ecuador can authorise higher rates of depreciation in cases such as obsolescence, excessive use, and faster than expected wear-out of assets.

Annual depreciation rates are as follows:

Asset	Depreciation rate (%)
Real estate (except land), aircraft, naval crafts, and similar property	5

Asset	Depreciation rate (%)
Facilities, machinery, equipment, and furniture	10
Vehicles, trucks, and tractors used for construction	20
Computer equipment and software	33.33

Depreciation rates apply to the cost of assets.

In the case of vehicles, if, at the time of purchase of the vehicle, its appraisal exceeds USD 35,000, the deductibility on the excess will not apply, unless it is an armoured car or a vehicle exempt from the tax on vehicles. The limitation on the deductibility will also not apply in the cases of taxpayers that have car rental business as their only activity.

Intangible assets are amortised either within the terms specified in the contract or over a 20-year period.

Goodwill

Goodwill cannot be amortised in Ecuador, but there are limited exceptions.

Organisational and start-up expenses

Organisation, experimentation, and preoperational expenses can be amortised over five years at the rate of 20% per year.

Interest expenses

Interest on debts incurred for business purposes are deductible.

In general, foreign loan interests are deductible for CIT purposes to the extent that the credits are registered before the CBE and the interest rates do not exceed the referential rates established by the CBE.

If the above-mentioned criteria are not met at the moment of the registration of the loan before the CBE, the excess will not be deductible for CIT purposes.

Interest paid on loans obtained from non-resident financial institutions and other approved entities is deductible and not subject to withholding tax (WHT) unless the interest rate is higher than the referential interest rate established by the CBE. In such cases, the excess is subject to 25% WHT (*in all cases where a 25% WHT is applicable, please refer to the Withholding taxes section for more information*).

Interest paid for loans granted by a related party are subject to WHT at 25% over the gross amount.

Bad debt

If the bad debt provision is less than 1% of the portfolio granted in the year, it will be deductible. Any excess will be non-deductible.

Charitable contributions

Payments for charitable contributions are non-deductible for CIT purposes.

Fines and penalties

Interest and fines paid as penalties imposed on late payments of tax obligations and on CIT payments are not deductible for CIT calculation purposes.

Taxes

Taxes, rates, and levies related to the generation of taxable income, as well as contributions to the Social Security system, are deductible.

Other significant items

Advertising, pension plans, travel, and foreign related-party expenses are subject to deductibility limits.

Net operating losses

The carryforward of losses is allowed to a maximum of five years, with an amortisation limit of 25% per year over the taxable base. There is no loss carryback.

Payments to foreign affiliates

In most cases, payments made abroad are deductible, as long as income taxes have been withheld (at the rate of 25% or 35% over the taxable base) and do not exceed some maximum limits. Professional fees, royalties, commissions, or any payment made abroad is subject to WHT at a rate of 25% or 35% over the taxable base. Payments on imports are deductible and not subject to WHT.

Group taxation

Group taxation is not permitted in Ecuador.

Transfer pricing

The transfer pricing regime in Ecuador is based on the Organisation for Economic Co-operation and Development (OECD) guidelines. Related-party transactions must be carried out at arm's length. Formal documentation requirements exist.

A regulation has established the procedures to follow in order to apply for an advance pricing agreement (APA) from the tax authorities in regards to transfer pricing methods for related-party transactions. Accordingly, the taxpayer may submit a formal application for a binding rule.

Thin capitalisation

A thin capitalisation rule on foreign loans granted by related parties at a 3:1 ratio over equity must be considered. For branches of a foreign corporation, only capital must be taken into account.

Controlled foreign companies (CFCs)

There are no CFC provisions in Ecuador.

Tax credits and incentives

Foreign tax credit

There are no provisions in Ecuador for a foreign tax credit. In general terms, income taxed abroad is considered as exempt income, with some special exceptions.

Handicapped employee and new employee hiring incentives

An amount equivalent to 150% and 100% of remunerations of handicapped and new employees, respectively, can be considered as an additional deduction for income tax calculation purposes. In the case of handicapped employees, the deduction will apply over the excess of the minimum handicapped employees that the employer is obligated to hire. New employees must work with the company for at least six months.

Environmental-friendly investments

Additional deductions can be applicable to investments in environmental-friendly assets.

CIT exemptions

Investments made by new companies located outside the cities of Quito and Guayaquil, in specific sectors determined by law, will have a five-year CIT exemption.

Tax credit on remittance tax paid

5% remittance tax paid on imports of raw material and goods included in a list issued by the authorities and used for the production of other goods and services can be considered as a tax credit for CIT computation purposes.

Other exemptions to payments of capital and interests derived from foreign loans are applicable under certain conditions.

Withholding taxes

Dividends paid to non-resident entities generally are not subject to WHT. However, dividends paid to non-resident entities in tax haven countries are subject to WHT.

Revenues from occasional services provided by non-resident individuals are levied at 25% WHT. Payments made abroad to non-resident individuals and companies are subject to a 25% WHT. Other payments made abroad, other than dividends or profits to neutral jurisdictions, are subject to a 25% WHT.

The Internal Revenue Service of Ecuador establishes WHT percentages on local payments, which are not greater than 10%. Current rates are 1%, 2%, 8%, and 10% withholding. Specifically:

- Dividend payments to resident companies are subject to a 0% WHT.
- Dividend payments to resident individuals are subject to a 0% to 35% WHT.
- Interest payments to resident companies are subject to a 0% to 2% WHT.
- Interest payments to resident individuals are subject to a 2% WHT.
- Royalty payments to resident companies are subject to an 8% WHT.
- Royalty payments to resident individuals are subject to an 8% WHT.

Tax treaties

There are limitations to the application of tax treaties up to USD 225,400. The excess will be subjected to tax withholding, with further refund by the tax authorities. As a member of the Andean Community, Ecuador has adopted Decision 578, which provides relief from double taxation for individual or company members. Furthermore, Ecuador has similar tax treaties with the countries provided in the table below.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations	0	0 to 2	8
Resident individuals	marginal rate	2	8
Non-resident corporations and individuals:			
Non-treaty	0/10	0/25	0/25/35 (1)
Treaty:			
Andean Community	0	25	25
Belarus	0	10	10
Belgium	0	10	10
Brazil	0	15	15/25 (2)
Canada	0	15	10/15 (3)
Chile	0	15	10/15 (3)
China	0	10	10
France	0	10/15 (5)	15
Germany	0	10/15 (5)	15
Italy	0	10	5
Korea, Republic of	0	12	5/12 (3)
Mexico	0	10/15 (6)	10
Romania	0	10	10
Singapore	0	10	10
Spain	0	5/10 (5)	5/10 (4)
Switzerland	0	10	10
Uruguay	0	15	10/15 (3)

Notes

1. 35% WHT may be applied where the payment's beneficiary is domiciled in a tax haven jurisdiction.
2. The higher rate is applicable to payments for the use of or right to use trademarks.
3. The lower rate is applicable to payments for the use of or right to use industrial, commercial, or scientific equipment.
4. The lower rate is applicable to payments made for copyrights.
5. The lower rate is applicable to interests derived from loans granted for the sale of industrial, commercial, or scientific equipment.
6. The lower rate is applicable to interest payments made to banks.

Tax administration

Taxable period

The fiscal year is the calendar year.

Tax returns

The tax system operates on the basis of self-assessment, with subsequent inspection by the tax authorities.

Tax filing deadlines begin on 10 April and continue up to 28 April. The tax return due dates are determined by the ninth digit of the company's Tax Identification Number (TIN).

Payment of tax

Local tax authorities have established that for CIT purposes, and its corresponding pre-payments, companies are obligated to follow IFRS accounting principles.

In general terms, most companies are required to keep accounting records and must make CIT prepayments in two equal instalments in July and September, based on the following calculation:

The sum of 0.4% of the taxable income, 0.4% of total assets, 0.2% of total equity, and 0.2% of deductible expenses from the last fiscal year. Some special considerations might apply depending on the economic activity of the company.

The final CIT obligation cannot be lower than the total amount of the tax prepayment calculated; there are minimum exceptions to this rule. The final CIT payment is due between 10 April and 28 April.

Tax audit process

In general terms, tax authorities look at the consistency of the information delivered by the taxpayers and information reported by third parties. Tax authorities can issue communications in order to require explanations on any detected inconsistency. Additionally, accounting inspections can be performed.

Statute of limitations

Fiscal authorities have three years from the date of filing to start proceedings for tax audits or assessment and collection of taxes.

The statute of limitations is extended from three to six years if the corresponding tax returns have not been filed or are incompletely filed. A tax audit can be reopened, verified, or amended within one year from the date of completion.

Topics of focus for tax authorities

Tax authorities usually focus on substance, formal compliance requirements, and consistency of information filed.

Egypt

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Significant developments

There have been no significant corporate tax developments in Egypt during the past year.

Taxes on corporate income

Resident companies are taxed on worldwide income. Non-resident corporations and partnerships pay tax on income derived from their permanent establishments (PEs) in Egypt.

The corporate income tax (CIT) rate in Egypt is 22.5% on the net taxable profits of a company.

The above rate applies to all types of business activities except for oil exploration companies, whose profits are taxed at 40.55%. In addition, the profits of the Suez Canal Authority, the Egyptian Petroleum Authority, and the Central Bank of Egypt are taxable at a rate of 40%.

Local income taxes

There are no governorate or local taxes on corporate income in Egypt.

Corporate residence

Foreign corporations and partnerships are classified as residents of Egypt if they meet one of the following conditions:

- The entity is established according to the Egyptian law.
- The government or a public authority owns more than 50% of the capital of the entity.
- The effective place of management is in Egypt.

The executive regulations of the law indicate that Egypt is considered as the effective place of management if the entity meets any two of the following conditions:

- Daily managerial decisions take place in Egypt.
- Members of the board of directors hold their meetings in Egypt.
- At least 50% of the board members or managers reside in Egypt.

- The major shareholders (owners of more than 50% of the shares or voting rights) reside in Egypt.

Permanent establishment (PE)

The PE concept is defined in the Income Tax Law as follows:

- Headquarters.
- Branch.
- Building used as sale outlet.
- Office.
- Factory.
- Workshop.
- Places of extraction of natural resources.
- Farms.
- Building site, construction or assembly point, installations, supervisory activities of the same.
- An agent who has the power to ratify contracts on behalf of a foreign company.
- An independent broker or agent who is proved to have dedicated most of one's time during the year in the interest of a foreign company.

A foreign company that is deemed to have a PE risk, according to the Egyptian Companies Law, should incorporate a legal entity in Egypt.

There are several legal forms existing under the Egyptian Companies Law from which a foreign company can choose to incorporate, and these are: joint-stock company, limited liability company, branch, or a representative office.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 14% as of financial year 2017/18 (i.e. as of 1 July 2017; previously 13%). The standard rate is applicable on all goods and services, except for machinery and equipment used for the purpose of producing a commodity or rendering a service, which are subject to a 5% VAT (although buses and passenger cars are subject to different tax rates).

The VAT law exempts a number of basic goods and services that affect low-income earners (in addition to other exemptions listed within the law). It also includes a reverse-charge mechanism, whereby transactions involving non-residents providing services/royalties to Egyptian resident entities are subject to VAT in Egypt.

Customs duties

The liability for customs duty rests with the person who is importing the goods from abroad.

Customs duty rates on imported goods range from 5% to 40%, with the exception of vehicles for which different rates apply.

Where entities import machines and equipment as capital assets, and to establish a company's project, the machines and equipment will be charged customs duty at 5%.

Component parts, which are imported to be assembled in Egypt, are assessed customs duty based on the complete product. Then, it is reduced by a percentage ranging from 10% (if the local content of the final product is less than 30%) to a maximum of 90% (if the local content exceeds 60%).

Machines, equipment, and similar capital assets (with the exception of private motor cars) imported on a temporary basis are subject to fees at 20% of the original customs duty for each year or fraction of a year during which they remain in Egypt until they are exported.

Excise taxes

There are no excise taxes in Egypt.

Real estate taxes

The Real Estate Tax Law takes into consideration the different variables that can affect the value of a property, such as location, value of similar buildings, and the economic situation of the district in which the property is located. This is to be updated every five years (most recently in August 2014).

Real estate tax is levied annually on all constructed real estate units, with the exemption of schools, orphanages, charitable organisations, and private residences with a market value of less than 2 million Egyptian pounds (EGP). This tax covers land and buildings, excluding plant and machinery.

Such tax is assessed based on the rental value of the land and building, and these value assessments are set by the committees, after approval of the Minister or whomever the Minister delegates, and published in the Official Journal. Based on the announcement, any taxpayer can appeal the rental value assessment.

The real estate tax rate is 10% of the rental value, and the calculation of the rental value differs for residential units and non-residential units. Specific percentages of deductions are provided by the law to account for all the expenses incurred by the taxpayer, including maintenance costs.

Stamp tax

There are two distinct types of stamp tax, which are imposed on legal documents, deeds, banking transactions, company formation, insurance premiums, and other transactions, as follows:

- The nominal stamp tax is imposed on documents, regardless of their value. The tax rate for items such as contracts is EGP 0.9 for each paper.
- Percentage or proportionate stamp tax is levied based on the value of transactions.

An annual proportional stamp tax at the rate of 0.4%, shared by the bank and the client, is imposed on a bank's loans. This stamp tax is due on a quarterly basis on the beginning balance of each quarter of credit facilities and loans and advances provided by Egyptian banks or branches of foreign banks during the financial year in addition to the amounts utilised within the quarter.

Loans from other establishments are not subject to this tax.

Stamp tax is imposed on advertisements at the rate of 20%.

Stamp tax on the disposal of shares

Stamp duty is now enacted on the disposal of shares as per the publication number 24 in the official gazette published on 19 June 2017. As per the publication, such stamp duty is imposed on the proceeds (i.e. value of the transaction) from buying or selling any kind of stocks regardless of whether they are Egyptian or foreign, listed or non-listed, without deducting any costs, where buyer and seller should apply the stamp duty on the total proceeds based on the following rates:

- 0.125% shall be paid by both seller and buyer till 31 May 2018.
- 0.150% shall be paid by both seller and buyer from 1 June 2018 till 31 May 2019.
- 0.175% shall be paid by both seller and buyer from 1 June 2019.

However, in case any of the below-mentioned conditions are met, then the rate of the stamp duty to be imposed in such case should be 0.3%:

- If the sale and purchase transaction involves 33% or more of the value or the number of shares or voting rights in a resident company, or
- If the sale and purchase transaction involves 33% or more of the assets or the liabilities of a resident company by another resident company in return of shares in the acquiring company.

In both cases above, the buyer and seller should each pay the 0.3% stamp duty on the gross transaction value without deducting any costs.

In case the total of sale and purchase transactions performed by one person in one entity has reached the limit mentioned above (i.e. 33% or more) in two years from the first transaction undertaken by such person and from the date of issuing and enacting this law, the whole transaction should be considered as one transaction and consequently be subject to the 0.3% stamp duty. The seller shall pay 0.3% once one reaches the exit limit, and the buyer shall also pay 0.3% when one reaches the acquisition limit and after deducting any stamp duty paid before.

The 0.3% stamp duty imposed on the transactions equalling 33% or more should not be considered as deductible expense for CIT purposes.

Payroll taxes

There is no payroll tax other than the employer's social insurance contribution (*see below*).

Social insurance (employer's contribution)

The social insurance contribution of the employer is 26% of the basic salary (up to EGP 1,370) and 24% of the variable salary (up to EGP 2,800).

Branch income

Branches of foreign corporations operating in Egypt receive tax treatment identical to that of corporate entities for the results of their activities in Egypt.

A branch, but not a subsidiary, may deduct a 'head office charge' of an amount of up to 10% of its taxable income.

According to law no. 53 of 2014, which imposed withholding tax (WHT) on dividend payments, a PE's profits will be deemed dividend payments (and thus subject to 5% WHT) if not repatriated within 60 days of the following financial year-end.

Income determination

Inventory valuation

Egyptian generally accepted accounting principles (GAAP) should be applied to inventory valuation, and all methods that are acceptable by Egyptian GAAP can be used. The methods acceptable are almost the same as those acceptable under International Financial Reporting Standards (IFRS).

Capital gains

The law defines capital gains as the difference between the acquisition cost and the fair market value/selling price of the share. However, for listed shares acquired before 1 July 2014 and sold after that date, the capital gain will be calculated as the difference between either the acquisition price or the closing price on 30 June 2014 (whichever is higher) and the selling price.

Capital gains tax treatment applicable to resident companies

- Shares/securities listed on the Egyptian stock exchange: Capital gains realised by a resident/non-resident company due to the disposal of shares listed on the Egyptian stock exchange should be subject to a capital gains tax at the rate of 10%. However, such tax imposed on the gains realised from the sale of listed shares was put on hold for two years starting 17 May 2015, and that ended on 17 May 2017. On 19 June 2017, the Egyptian government has announced the extension of such exemption of listed shares from capital gains tax for another three years, ending on 17 May 2020.
- Unlisted shares/securities: Capital gains realised from the sale of unlisted shares will be subject to a capital gains tax at the rate of 22.5%.
- Foreign shares/securities (invested abroad): Capital gains realised from shares invested abroad will be subject to a capital gains tax at the rate of 22.5%, with a credit to be given for the foreign tax paid.

Capital gains tax treatment applicable to non-resident companies

- Shares/securities listed on the Egyptian stock exchange: Capital gains realised from the sale of listed shares will be subject to 10% WHT. However, law no. 96 of 2015 has put the tax on capital gains on listed shares on hold for two years as of 17 May 2015 (i.e. until 17 May 2017). The Egyptian government has announced the extension of such exemption of listed shares from capital gains tax for another three years, ending on 17 May 2020.
- Unlisted shares/securities: Capital gains realised from the sale of unlisted shares will be subject to a capital gains tax at the rate of 22.5%.
- Foreign shares/securities (invested abroad): Capital gains realised from shares invested abroad will not be taxable in Egypt.

Capital losses

A capital loss can be offset against a capital gain arising during the same tax year, provided that they both arise from the sale of shares (i.e. gain and loss of listed shares are in a separate pool from the gain and loss of unlisted shares, so the loss from the sale of listed shares can only be offset against the gain from the listed shares and cannot be offset from the gain of unlisted ones). Excess capital losses that are not utilised during a tax year can be carried forward for a period of three years and should be offset against capital gains from the sale of shares.

Dividend income

Dividend income treatment applicable to resident companies

A 10% WHT will be imposed on dividends paid by Egyptian companies to resident corporate shareholders. The 10% WHT can be reduced to 5% if both of the following conditions are met:

- The shareholder holds more than 25% of the share capital or the voting rights of the subsidiary company.
- The shares are held for at least two years.

Dividends received by resident companies from other resident companies should not be added to taxable income, provided that the related/associated costs are not deductible from the recipient companies' taxable profit.

Dividend income treatment applicable to non-resident companies

A 10% WHT will be imposed on dividends paid by Egyptian companies to non-resident corporate shareholders. The 10% WHT can be reduced to 5% if both of the following conditions are met:

- The shareholder holds more than 25% of the share capital or the voting rights of the subsidiary company.
- The shares are held for at least two years.

Participation exemption

90% of the dividends distributed by a non-resident corporate shareholder to a resident one will be exempt from tax (i.e. only 10% of the amount of the dividends will be subject to tax). Such exemption can be benefited from if both of the following conditions are met:

- The shareholder holds at least 25% of the share capital or the voting rights of the subsidiary company.
- The company holds or commits to hold the shares of the subsidiary for at least two years.

Permanent establishments (PEs)

A PE's profits can be deemed dividend payments, and thus subject to the above treatment, if they were not repatriated to the parent company within 60 days of the PE's financial year-end.

Stock dividends

Stock dividends are not subject to tax in Egypt.

Interest income

Interest expenses are deducted from interest income when calculating the interest income to be included in taxable income, provided certain conditions are met.

Generally, interest income is not taxed separately; it is considered as part of the company's income and taxed accordingly (i.e. at the 22.5% CIT rate).

Rent/royalty income

Rent/royalty income are not taxed separately; they are considered as part of the company's income and taxed accordingly (i.e. at the 22.5% CIT rate).

Foreign income

Income from any source, domestic or foreign, received by a corporation within Egypt is subject to CIT. The scope of tax covers the activities carried out inside and outside Egypt, which are administered or managed within Egypt.

There is no provision for deferring income earned abroad.

Deductions

In order for expenses to be acceptable for tax deduction, such expenses must be:

- actual and supported by documents
- business related, and
- necessary for performing the company's activity.

Depreciation and amortisation

The tax law set the depreciation and amortisation rates for tax purposes to the following:

- 5% of the cost of purchasing, establishing, developing, and renovating buildings and establishments is deductible based on the straight-line method.
- 10% of the cost of purchasing, developing, and improving intangible assets is deductible based on the straight-line method.
- Computers, information systems, software, and data storage sets are depreciated at a 50% rate on a declining-balance method.
- All others assets are depreciated at a rate of 25% of the depreciation basis for each fiscal year, on a declining-balance method.

Accelerated depreciation

A company may have the option to deduct 30% accelerated depreciation from the value of the machines and equipment used in industries during the first fiscal year of their employment. This should be done by submitting a request to the tax authority prior to deducting the 30% accelerated depreciation.

Goodwill

According to Article 25 of the Egyptian Income Tax Law, goodwill is amortised at the rate of 10% using the straight-line method.

Start-up expenses

Start-up expenses are tax deductible, and the whole amount can be amortised for the first year.

Interest expenses

Interest expenses are deductible for tax purposes after offsetting any tax-exempt interest income.

Interest expense deductions are only allowed if the following conditions are fully met:

- The interest rate does not exceed twice the discount rate as determined by the Central Bank of Egypt at the beginning of the calendar year in which the tax year ends.
- The interest expense is in return for loans complying with the local thin capitalisation rule: 4:1 debt-to-equity ratio.
- The Egyptian transfer pricing rules (i.e. arm's-length principle) are being followed (*see Transfer pricing in the Group taxation section for more information*). In case of a tax audit, if the interest rate isn't proven to be at arm's length, the tax authority has the right to adjust this price to arrive at the 'arm's-length price' and re-calculate the taxes due accordingly.
- The loan is business related.

Bad debt

According to Article 28 of the Egyptian Income Tax Law, deduction of bad debts shall be allowed, subject to submitting a report from the external auditor indicating the fulfilment of the following conditions:

- The company is maintaining regular books and records.
- The debt is related to the company activities.
- That debt value was previously included within the company accounts and records.
- The company has taken serious procedures for settlement of such debt and has been unable to collect it after 18 months from its due date.

Charitable contributions

Donations to the government are tax deductible. Donations to Egyptian charities are also deductible, but only up to 10% of taxable income.

Fines and penalties

Financial fines and penalties paid by the taxpayer because they or one of their subordinates has committed a deliberate felony or misdemeanour are not deductible.

Taxes

Income tax payable according to the Income Tax Law is not deductible.

Other significant items

The following other items are not deductible:

- Reserves and appropriations of all different types.
- Profit shares, distributed dividends, and the attendance fees paid to shareholders for attending the general assembly's meetings.
- Compensation and allowances obtained by the chairmen and board members.
- Workers profit share to be distributed according to the law.

Net operating losses

A company may carry losses forward for a period not to exceed five years. Nevertheless, if a change occurs in the ownership of its capital exceeding 50% of the shares, stocks, or the voting rights, if the company is either a joint-stock company or a company limited by shares whose shares are not listed on the Egyptian Stock of Exchange, and if the company changes its activity, the company cannot carry the losses forward.

In general, companies cannot carry losses back, except for contracting companies (i.e. in case of long-term projects), which are allowed a loss carryback for an unlimited period of time (to the extent of the duration of the contract).

Payments to head office

A branch may deduct head-office charges of up to 10% of its taxable income. Moreover, the branch or subsidiary should withhold taxes before the payment of interest, royalties, and service fees to non-resident foreign corporations or affiliates.

Group taxation

The Egyptian tax law treats every company in a group of companies as a separate legal entity. Thus, affiliated companies or subsidiaries cannot shift the profits/losses within the group.

Transfer pricing

Transfer pricing rules follow the arm's-length principle, specifying that any transaction between related parties should be at arm's length (i.e. market value).

The law does not specify penalties with regard to transfer pricing. However, the law states that the Egyptian Tax Authority (ETA) may adjust the pricing of transactions between related parties if the transaction involves elements that would not be included in transactions between non-related parties, and whose purpose is to shift the tax burden to tax exempt or non-taxable entities. Where this is the case, the tax authorities may determine the taxable profit on the basis of the neutral price. The acceptable methods for determining such neutral price, according to the rule of the law, are as follows:

- Comparative free price (same as Comparable Uncontrolled Price method [CUP]).
- Total cost with an added margin of profit (same as Cost Plus method).
- Resale price.

On 29 November 2010, the ETA launched the Transfer Pricing Guidelines ('TP Guidelines'). The TP Guidelines are being issued as a series of parts, the first part of which was issued in final version to the public and provides guidance on the arm's-length principle, how to establish comparability, choosing the most appropriate transfer pricing method(s), and documentation requirements. The coming parts should cover more complex transfer pricing topics, specifically transactions involving intellectual property (IP), intra-group services, cost contribution arrangements, and advanced pricing agreements (APAs).

Taxpayers are required to prepare contemporaneous documentation studies to support the arm's-length nature of their controlled transactions. The ETA does not require the submission of transfer pricing documentation studies with the tax return; rather, they are required to be available upon request in a tax audit. Studies are acceptable in English, but a translation may be requested from the taxpayer.

The ETA explained that the TP Guidelines will be utilised as a practical guide to assist taxpayers and tax inspectors in understanding how to implement and examine transfer pricing transactions. The Egyptian TP Guidelines were compared to the Organisation for Economic Co-operation and Development (OECD) by an OECD representative and were found to be similar.

Thin capitalisation

The Egyptian thin capitalisation rule provided by the Egyptian Income Tax Law dictates that the debt-to-equity ratio is 4:1. Accordingly, the Law disallows the deductibility of debit interests of Egyptian companies on loans and advances if such loans and advances are in excess of fourfold the equity average (which is calculated according to the financial statements prepared pursuant to the Egyptian accounting standards).

Debt includes loans and advances, including bonds and any form of financing by debts, even if through securities with fixed/variable interest.

With respect to the debit interest, it includes all amounts paid by a taxpayer in return for the loans, advances of any kind obtained, bonds, and bills.

For determining the equity, the following items represent the basis for the calculation: the paid-up capital in addition to all reserves and retained earnings reduced by retained losses. In addition, revaluation gains should be excluded from the equation, in case they were not subject to tax. In case of retained or carryforward losses, they must be used to reduce retained earnings and reserves solely; the percentage is calculated on the basis of total loans and advances in proportion to the remaining equity amount, after deducting the retained losses with a minimum of the paid-up capital (in other words, they should be deducted from the retained earnings and reserves, where in case of a net loss balance, debt should be compared to the paid-up capital).

For the purpose of calculating the debt-to-equity ratio, average debt and equity balances are used.

It's worth noting that the following types of loans should be excluded from the above calculation:

- Interest-free loans.
- Loans with non-taxable interests.
- Loans with a grace period for settling the interest payment solely until the end of the loan period.

Controlled foreign companies (CFCs)

Egypt currently does not define specific rules for CFCs; however, in an effort to exert similar CFC provisions, investments are evaluated according to the Egyptian Accounting Standards and the equity rights method, where the profits generating from the disposal of such investments are determined on the basis of the difference between the cost of investment acquisition and its sale value.

Tax credits and incentives

Egypt offers no specific tax incentives unless a company is a free zone entity, which is considered tax exempt.

Foreign tax credit

The foreign tax paid by a resident company on its profits earned abroad is deductible from the tax payable in Egypt; however, losses incurred abroad are not deductible.

Withholding taxes

An Egyptian tax resident corporation paying invoices must withhold 0.5% to 5% of payments, depending on the services and commodities, to local taxpayers and remit them quarterly to the tax department.

A 10% WHT is imposed on dividends paid by Egyptian companies to resident corporate shareholders. *See Dividend income in the Income determination section for further information*.

Payments of dividends, interest, royalties, and services by a domestic corporation to foreign or non-resident bodies are subject to WHT as follows.

Dividends to non-residents

A 10% WHT is imposed on dividends paid by Egyptian companies to non-resident corporate shareholders (*see Dividend income in the Income determination section for further information*). However, an applicable double tax treaty (DTT) between Egypt and the foreign country may result in the reduction/elimination of such tax rate.

Interest to non-residents

Interest on loans with more than a three-year term entered into by private sector companies is exempt from WHT, while loans of less than three years are subject to 20% WHT on interest. However, an applicable DTT between Egypt and the foreign country may result in the reduction of such tax rate. *Please see below for the ministerial decree affecting the treatment of interest and royalty payments*.

Royalties to non-residents

Royalty payments are subject to 20% WHT. However, an applicable DTT signed between Egypt and the foreign country may result in a reduction in this rate. *Please see below for the ministerial decree affecting the treatment of interest and royalty payments*.

Service payments to non-residents

Service payments are subject to the 20% WHT. However, an applicable DTT signed between Egypt and the foreign country may result in the exemption of these payments if the services are performed abroad and not through PE in Egypt.

For payments withheld on behalf of non-resident entities, tax shall be remitted to the tax authority the day following the withholding of the amount.

Egypt

Tax treaties

Egypt has concluded DTTs with over 50 countries, which could change the tax treatment of transactions carried out between Egyptian entities and residents of a treaty country.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	5/10 (9)	20	20
Treaty:			
Albania	10	10	10
Algeria	10	5	10
Austria	15	15	-
Bahrain	0	-	-
Belarus	15	10	15
Belgium	15/20 (1)	15	15
Bulgaria	10	15	15
Canada	15/20 (1)	15	15
China	8	10	8
Cyprus	15	15	10
Czech Republic	5/15 (2)	15	15
Denmark	15/20 (2)	15	20
Finland	20	15	20
France	0	15	15% franchise 15% for other royalties
Georgia	10	10	10
Germany	15/20 (1)	15	15
Greece	10	10	10
Hungary	15/20 (1)	15	15
India	(3)	20	20
Indonesia	15	15	15
Iraq	(3)	20	16
Ireland	5/10 (2)	10	10
Italy	20	20	15
Japan	20	20	15
Jordan	15	15	20
Korea	10/15 (2)	15	15
Kuwait	10	10	10
Lebanon	10	10	5
Libya	(3)	-	-
Macedonia	10	10	10
Malaysia	0	15	15
Malta	10 (1)	10	12
Mauritius	5/10 (2)	10	12
Morocco	10/12.5 (2)	20	10
Netherlands	0/15 (4)	12	12
Norway	15	20	15
Oman	12.5	12.5	15
Pakistan	15/30 (5)	15	15
Palestinian Territories	15	15	15
Poland	12	12	12
Romania	10	15	15

Recipient	WHT (%) Dividends	Interest	Royalties
Russia	10	10	15
Saudi Arabia	5/10 (8)	10	10
Serbia & Montenegro	5/15 (5)	15	15
Singapore	15	15	15
South Africa	15	12	15
Spain	9/12 (2)	10	12
Sudan	0/15	20	10
Sweden	5/20 (2)	15	14
Switzerland	5/15 (2)	15	12.5
Syria	15	15	20
Tunisia	10	10	15
Turkey	5/15 (2)	10	10
Ukraine	12	12	12
United Arab Emirates	0 (6)	10	10
United Kingdom	20	15	15
United States	5/15 (4, 7)	15	15
Yemen	N/A (6)	10	10

Notes

1. Dividends paid out by a company resident of Egypt to an individual of the other contracting state shall not be taxed more than the maximum amount mentioned. 15% in all other cases.
2. Reduced rate of the gross amount of dividends is applied if the beneficial owner is a company that holds at least 25% of the company's capital. Higher rate applies in all other cases.
3. In the absence of specific provisions, dividends may be taxed under the local law at 10%, which may be reduced to 5% under certain conditions.
4. Lower rate applies if the foreign company holds more than 25% of the capital in the company.
5. Lower rate applies if the beneficial owner is a company.
6. Taxed in both the resident and source state.
7. The reduction in the rate does not apply if the recipient is engaged in a trade or business in the United States through a PE that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a PE in the United States to apply the reduced treaty rate to that item of income.
8. Reduced rate of the gross amount of dividends is applied if the beneficial owner is a company that holds at least 20% of the company's capital. Higher rate applies in all other cases.
9. *See Dividend income in the Income determination section for descriptions of instances when the 5% rate applies.*

Procedures for applying the WHT on payments to non-residents

Ministerial decree no. 771 for 2009 dictates that the reduced rate of WHT on interest or royalties provided by an applicable DTT should not be automatically applied. The rate of 20% (Egyptian tax rate) should be imposed upon deduction. However, under certain conditions, the foreign recipient of payments will be able to get a refund for the amount resulting from the variance between the normal rate of 20% and the reduced treaty rate.

Certain documents should be submitted to the tax authority along with the refund claim.

A special unit responsible for interest and royalty WHT refunds is tasked with reviewing each refund case and with issuing refund letters (subject to compliance with the requirements of the 2009 ministerial decree). A refund letter is required to be able to get a refund of excess WHT from the tax office to which the taxes were actually paid.

Please note that free zone entities are obligated to withhold tax when dealing with non-resident entities and shall remit the tax to the tax authority.

In 2015, amendments were made to certain articles of the executive regulations of the Egyptian Income Tax Law no. 91 of 2005, among which was amending the article that forms the basis of the ministerial decree no. 771, whereby some provisions of this article were abolished.

However, practically, it is still a controversial issue whether (i) the decree is abolished and so the reduced rate of the DTT should apply automatically or (ii) the decree stands and the refund mechanism should apply. Consequently, we are of the opinion that taxpayers must have the necessary documents available at all times, as the ETA, upon tax audit, may seek to ensure that the recipient of the income is the beneficial owner of it and is a tax resident of the relevant state, to approve benefitting from a relevant DTT's privileges.

Tax administration

Taxable period

The tax year is the financial year of the taxpayer.

Tax returns

The taxpayer is required to assess taxes due for every financial year and settle them with the tax return.

The CIT return is due within four months from the end of the financial year; consequently, if a company's financial year ends 31 December, then the tax return has to be filed before the end of April of the following year.

For the filing requirements of the WHT on dividends, the entity executing the transaction should withhold 1% of the dividends distributed by an Egyptian entity (in case the dividends are distributed to an Egyptian tax resident individual), and remit it to the tax authority at a maximum date of the fifth day of the month following the month at which the distribution took place. This amount is considered part of the dividends tax. Later, the shareholder should remit the remaining amount of the tax to the tax authority.

Payment of tax

Advance payments are deducted from taxes assessed per the tax return, and the balance is payable in a lump sum at the date of submitting the tax return.

Note that tax on capital gains realised on shares listed on the Egyptian stock exchange should be remitted to the tax authority by the legal entity undertaking the sale transaction. However, in case the shares are unlisted in the Egyptian stock exchange, the tax on capital gains should be withheld by any party executing the transaction.

The advance payment (i.e. WHT) is submitted on a quarterly basis.

Penalties

If the taxpayer included a tax amount in the tax return that is less than the finally assessed tax, the taxpayer is liable to a fine based on the non-included percentage, as follows:

- 5% of the tax payable on the non-included amount if such amount is equivalent to 10%, up to 20% of the final tax due.
- 15% of the tax payable on the non-included amount if such amount is more than 20%, up to 50% of the final tax due.
- 40% of the tax payable on the non-included amount if such amount is more than 50% of the final tax due.

Tax audit process

The audit cycle proceeds as follows:

Inspection

The tax authority inspects the company based on its documents and records in order to assess the total tax due on the company and determines the difference in tax due as per the company declaration and the tax authority assessment. The authority issues an assessment including the total tax due on the company. If the company objects to the inspection result, the dispute is transferred to the Internal Committee.

Internal Committee

The dispute is transferred to the Internal Committee to discuss the dispute points that arose from the inspection further to issue a modified assessment based on its opinion. If the company objects to the Internal Committee result, the dispute is transferred to the Appeal Committee to review the dispute points arising from the Internal Committee.

Appeal Committee

The Appeal Committee's decision is final and binding on the company and the tax department unless a case is appealed by either of them at the court within 30 days of receiving the decision. Based on the fact that the total taxes due on the assessment as per the Appeal Committee are considered final if they are not paid within the appropriate period, there will be penalties for the late payment.

Court

If the decision of the Appeal Committee is not satisfactory for either party, the case will be transferred to the court system, which is considered the final stage of the disputes. Normally, the court will appoint an expert witness to investigate the case and prepare a report. The court process usually takes a long period of time.

Statute of limitations

The statute of limitations is five years according to the Egyptian Income Tax Law and is extended to be six years in case of tax evasion.

Topics of focus for tax authorities

The most important topic for tax authorities is transfer pricing.

General anti-avoidance rule (GAAR)

A GAAR is applicable to arrangements entered into on or after 1 July 2014. The primary objective of the GAAR is to deter taxpayers from entering into abusive arrangements for the purpose of obtaining an abusive tax advantage. The law stipulates that the tax effect of any transaction whose main purpose, or one of the main purposes thereof, is tax avoidance shall not be reckoned with. In this case, the crucial factor when making tax assessments is the real economic substance of the transaction in question. The burden of proving that the main purpose, or one of the main purposes, of conducting a transaction has been to avoid taxation lies with the tax authority.

El Salvador

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Significant developments

Criteria regarding the consideration of a jurisdiction as a preferential tax regime

In September 2017, the tax administration issued guideline DG-001/2017 by which it is updating previous criteria regarding the consideration of a jurisdiction as a preferential tax regime or a low or no-tax jurisdiction by indicating that any jurisdiction not specifically named in the guide that grants an exemption on income tax (or other taxes with a similar or identical nature) or has such a tax that is inferior by more than 80% of the income tax that would be due in El Salvador will be considered a preferential tax regime or a low or no-tax jurisdiction, as well as holding companies, principal companies, auxiliary or mixed companies, service companies, finance branches, family wealth management companies, headquarters of multinational companies (SEM for its acronym in Spanish), international trusts, companies with which international financial lease contracts are celebrated, and international business corporations, among others.

Taxes on corporate income

The corporate income tax (CIT) rate is 30%, and this rate is applicable on the total amount of the company's revenues.

CIT is based on the principle of territoriality, and, by general rule, taxes are paid on goods located, activities realised, and capital invested in El Salvador as well as on services rendered or utilised in the country. Nevertheless, there is a special rule regarding securities and financial instruments, since such income is considered to be obtained in El Salvador if the issuing entity is domiciled in El Salvador.

Taxable income is equal to gross income net of costs and expenses considered necessary for generating and maintaining the related source of income and other deductions allowed by law. Gross income is comprised of income or profits collected or accrued, either in cash or in kind, from any sources in El Salvador.

Corporations are required to follow the accrual method of accounting.

Minimum payment of income tax

Minimum payment of income tax was declared unconstitutional in April 2015.

Income tax advance payment

A 1.75% tax is applied to gross revenues accrued. This tax is paid monthly as an advance payment that is applied against the CIT at the end of the year.

Special Contribution of Large Taxpayers for the Public Safety Plan

The Special Contribution of Large Taxpayers for the Public Safety Plan taxes domestic and foreign legal entities with net earnings greater than 500,000 United States dollars (USD) within a fiscal year through a special contribution of 5% of the total amount thereof, which must be filed by a return within the first four months of the following year.

Entities that benefit from tax incentives under special regimes, such as the free zone program and the international services program, are also subject to the contribution tax.

The 5% contribution tax is in addition to the 30% CIT and the 5% withholding tax (WHT) applicable to dividend distributions (25% if the parent company resides in a tax haven). The special contribution tax is not deductible for CIT purposes.

The taxable base consists of 'net gains' obtained during the tax year (1 January to 31 December). Income partially or totally exempt from CIT is still subject to the special contribution. 'Net gains' means net income subject to CIT plus excluded or exempt income reduced by expenses related to that excluded or exempt income.

Taxpayers must inform the Salvadoran tax administration of the total amount of gains subject to this tax and the corresponding tax liability by means of a specific tax return that must be filed within the first four months of the following year (i.e. 1 January to 30 April of the following year).

Local income taxes

There is a municipal tax related to taxpayers' income. This tax depends on the location of the operations where the taxpayer performs its activity.

Corporate residence

A company incorporated in El Salvador is a resident entity in the country for tax purposes and subject to CIT on Salvadorian-source income. Also, branches from foreign companies authorised in El Salvador and entities operating as a permanent establishment (PE) are considered resident entities for tax purposes and subject to CIT on Salvadorian-source income.

The general rule for the determination of the corporate domicile is that it will be the one established on the incorporation document.

Permanent establishment (PE)

A foreign resident creates a PE in El Salvador when corporate activities are performed through one of the following:

- A fixed place of business where partially or totally developed business activities or personal independent services are carried out (e.g. branches, offices, factories, workshops, locations of natural resource exploitation).

- A different person, who is not an independent agent, who has the following qualities: (i) acts on behalf of the subject, (ii) has authority to conclude or carry out contracts in the subject's name, and (iii) habitually exercises this authority to conclude or carry out contracts in the subject's name.
- A construction/installation project or a supervision activity that exceeds six months.

Other taxes

Value-added tax (VAT)

VAT (i.e. *Impuesto al Valor Agregado* or IVA) is levied at a rate of 13% over the taxable amount. As a general rule, the taxable amount is the price or remuneration agreed upon by the parties. For imports, the taxable amount is the customs value.

The following transactions are subject to VAT when performed within the Salvadoran territory:

- Transfer/sale of tangible movable goods.
- Withdrawal of tangible movable goods from the inventory made by the company for self-consumption by its partners, directors, or personnel.
- Import of goods and services.
- The supply of services of any type, whether permanent, regular, continuous, or periodic, including technical advice and project designs; lease and sublease agreements over tangible goods; lease and sublease agreements over real estate for commercial purposes; lease of services in general; construction of real estate properties or building contracts; auctions; freight, whether inland, air, or maritime; and lease, sublease, and any form of use regarding trademarks.

The following imports are exempt from VAT:

- Imports made by diplomats and consulate representatives of foreign nations with presence in the country according to international agreements adopted by El Salvador.
- Imports made by international organisations to which El Salvador is a party.
- Traveller's luggage according to customs regulations.
- Donations to non-profit organisations.
- Imports made by municipalities if the goods imported are for the public benefit of the community.
- Imports of machinery by taxpayers duly registered for this purpose, which will be part of the taxpayer's fixed assets.
- Vehicles for public transportation, which can only be transferred after five years.

The following services are exempt from VAT:

- Health services rendered by public institutions.
- Lease and sublease of real estate properties for housing.
- Services rendered under a labour relationship, as well as those rendered by public and municipal employees.
- Cultural public performances authorised by competent authorities.
- Educational services rendered by authorised entities, i.e. *Ministerio de Educación* (the Ministry of Education).
- Interest on deposits and loans provided by local financial institutions or entities registered at the Salvadoran Central Bank (BCR).

- Interest on securities issued by the government and/or private entities traded through a stock exchange.
- Water supply by public institutions.
- Public transportation.
- Insurance premiums covering individuals, and reinsurance in general.

VAT is levied on exports at a rate of 0%. Foreign-source income is not subject to VAT.

VAT paid by a registered taxpayer company on its purchases (tax credits) is credited against VAT charged to its customers (tax debits) on a monthly basis.

VAT returns are filed on a monthly basis within the first ten working days of each month following the period under taxation.

Customs duties

In El Salvador, the *Arancel Centroamericano de Importación* (Central America Import Duty) is applied, which is constituted in the *Sistema Arancelario Centroamericano* (SAC) (Duty Central American System) and its correspondent duties for import.

All duties for import are *ad valorem* and are applied at the cost, insurance, and freight (CIF) value of the merchandise. The duty is common for all the countries in Central America.

Excise taxes

Tax on simple or sweetened soft drinks

An *ad valorem* tax on simple or sweetened soft drinks is levied at the rate of 10% over the selling price to the public as suggested by the manufacturer, importer, or distributor, excluding VAT and returnable bottle taxes.

Tax on the production and importation of alcohol and spirits

A tax is levied on domestically produced or imported alcohol and spirits at rates ranging from USD 0.09 to USD 0.16 for each 1% of alcohol volume per litre or in proportion thereof. Spirits and alcohol also have an *ad valorem* tax levied at the rate of 8% over the suggested selling price to the public, excluding VAT.

Tax on tobacco products

A tax is levied at USD 0.005 per cigarette, cigar, little cigarette, or other tobacco product. Also, an *ad valorem* tax is levied at the rate of 39% over the suggested consumer selling price to the public, excluding VAT.

Special Contribution for Security and Coexistence

Effective from November 2015, a special tax is directed to providers of telecommunications services in all its forms; providers of subscription television services, by wire, wireless, or any other physical medium; service providers to transfer data between two or more points related to information provided by the user, by any means or technological means; and taxpayers that transfer technological devices, terminals, or equipment and accessories to enable the use of the services listed in Article 3 of the Law of Special Contribution for Citizen Security and Coexistence. The rate of the special tax is 5% and must apply to the taxable amount determined according to the law. This law will be applicable for the next five years.

Tax on transfer of real estate property

A 3% tax is applied to transfers of real estate property. This tax is applied to the amount by which the value of the real estate exceeds USD 28,571.43.

Stamp taxes

No stamp taxes are assessed as the pertinent law was abrogated in 1992.

Capital gains tax

Capital gains are taxed at a flat rate of 10% of net profits, except when gains are realised within 12 months following the purchase date, in which case they are taxed as ordinary income. Capital gains for securities are also subject to capitals gains tax; however, the 12-months rule described above does not apply for securities.

Capital losses can only be offset against capital gains. Whenever capital losses exceed capital gains, the remaining balance may be carried forward to future capital gains within a five-year period.

Annual business tax

Companies are required to register themselves with the Registry of Commerce and pay an annual business licence fee assessed on the company's assets, as follows:

Assets (USD)	Fee (USD)
2,000 to 57,150	91.43
57,151 to 114,286	137.14
114,287 to 228,572	228.57
An additional charge for each office, branch, or agency property of a company	34.29

If the assets exceed the amount of USD 228,572, there is an additional duty of USD 11.43 for each additional USD 100,000 in assets or fraction thereof. In any case, the relevant duties are limited to USD 11,428.57.

Payroll taxes

Entities with more than ten employees must pay a payroll tax that is destined to the National Institute of Professional Development (INSAFORP), which promotes professional development through courses and complementary studies. The percentages are summarised below:

Monthly employee's salary (USD)	Employer's rate (%)
0 to 1,000	1
Over 1,000	0

Social security contributions

Social security contributions (ISSS) are mandatory for both employee and employer and are destined to public health services. The employee's contributions are withheld from the employee's monthly salary and are transferred by the employer to the Salvadorian Institute of Social Security through monthly payrolls. The contribution amounts are summarised in the table below:

Monthly employee's salary (USD)	Employee's rate (%)	Employer's rate (%)
0 to 1,000	3	7.50

Note: For individuals who have salaries above USD 1,000, the social security contribution applicable is USD 30.00 for the employee and USD 51.49 for the employer.

Contributions to the pension fund (AFP) are mandatory for both employee and employer. The employee's contributions are withheld from the employee's monthly salary and are transferred by the employer. The employer's contributions are paid to the AFP. Both contributions are reported to the Pension Fund Administrator through a monthly payroll. The percentages are summarised below:

Monthly employee's salary (USD)	Employee's rate (%)	Employer's rate (%)
0 to 6,500.00	7.25	7.75

Tax on Financial Operations

A tax on the amount paid for any type of check and electronic transfer in the country has been established. The taxable events are debits on deposit accounts and money orders or wire transfers corresponding to:

- Payments by electronic transfer when the transaction value exceeds USD 1,000.
- Transfers to third parties, in any form or by any technological means, when the value of the transaction exceeds USD 1,000.
- Disbursements of loans or financing of any kind.
- Transactions between the entities of the financial system, based on any instruction of their clients or for their own interest.

These transactions are taxable at a rate of 0.25% on the amount of the transactions.

Additionally, the Law of Tax on Financial Operations introduced a WHT to control liquidity, which consists of a deduction of 0.25% on the excess of USD 5,000, originated from operations deposits, payments, and cash withdrawals, individually or cumulatively, in each month.

Municipal taxes

Municipal taxes are assessed according to a progressive tariff list issued by each municipality. The taxes are applicable to the company's assets located in each municipality and are paid on a monthly basis. The tariff lists are applied separately to commercial, industrial, and financial sectors.

Branch income

In El Salvador, tax rates on branch profits are the same as for domestic corporations. Dividends and profits paid or credited by headquarter (HQ) representatives, affiliates, branches, subsidiaries, agencies, and others not domiciled in El Salvador are subject to 5% WHT (25% if paid to a tax haven as considered by the Salvadoran tax administration).

The law does not provide separate treatment for administrative offices located in El Salvador.

The general regulations indicate that branches, agencies, and/or establishments permanently operating in the country, with owned or leased installed infrastructure, employing domestic staff, and performing their economic activities in a material and perceptible manner in the country are subject to the same taxes as companies duly incorporated.

Income determination

In El Salvador, income is considered taxable if it is obtained from goods located in the country, activities undertaken within the national territory, or services rendered or utilised in the country.

Inventory valuation

For tax purposes, taxpayers are authorised to use any one of the following inventory methods, provided they are technically appropriate for the particular business, consistently applied, and easily audited:

- Purchase or manufacturing costs.
- Last purchase costs.
- Direct average allocation costs.
- Average costs.
- Last in first out (LIFO).
- First in first out (FIFO).
- Specific methods for fruits and farm products.
- Specific method for cattle.

Other than the methods enumerated above, taxpayers are not permitted to use other methods for valuing their inventories except with prior authorisation of the tax office, provided that in the latter's judgement the method in question contains clear determination and *bona fide* elements available to the office. Once an inventory valuation method is adopted, the taxpayer may not change it without the tax office's prior authorisation.

Capital gains

Capital gains are subject to capital gains tax, except when gains are realised within 12 months following the purchase date, in which case they are taxed as ordinary income. Capital gains for securities are also subject to capitals gains tax; however, the 12-months rule described above does not apply for securities. *See Capital gains tax in the Other taxes section for more information*.

Dividend income

Cash profits or dividends remitted or credited to shareholders are subject to a 5% WHT (25% if paid to a tax haven as considered by the Salvadoran tax administration).

Interest income

Interest income is taxable in El Salvador when the entity paying the interest is resident in El Salvador, when the capital is invested in the country, and when the risk is assumed in El Salvador.

Partnership income

Partnership income is taxable if it is Salvadorian-source income; nevertheless, no specific provisions exist in El Salvador regarding partnership income.

Rent/royalties income

Rent and royalties income is taxable if it is Salvadorian-source income; nevertheless, no specific provisions exist in El Salvador regarding rent and royalties income.

Condoned debts

Condoned debts are considered taxable income and must be included as part of the income generated in that fiscal period.

Foreign income

Under the territoriality source of income principle, extraterritorial income is not taxable in El Salvador, with the exception of income and other benefits from securities and other financing operations. In this case, interest arising from loans granted to a resident of El Salvador is considered as taxable income, and the person or entity making the payment should withhold 10% of the interest. If financial services are rendered between related parties, the withholding must be at 20%.

Deductions

All business expenses considered necessary to produce taxable income and/or maintain income sources (e.g. freight, marketing, power, telecommunications, water, salaries, lease contracts, merchandise and transport insurance, fuel, and interest paid on loans used by income generating sources) are deductible for income tax purposes.

Depreciation and amortisation

Depreciation is calculated using the straight-line method, which results in the following maximum annual rates for determining depreciation deductions.

Assets	Rate (%)
Buildings	5
Machinery	20
Vehicles	25
Other movable assets	50

Depreciation of new software is permitted at a rate of 25% of purchase or production costs.

Amortisation of goodwill, trademarks, and other similar intangible assets are not deductible for income tax purposes.

Start-up expenses

In El Salvador, there is not a special regulation for expenses related to the starting up of a company.

Interest expenses

Interest expenses are deductible if the amount of the loan is invested in a source that generates taxable income.

Bad debt

In El Salvador, bad debt is deductible if the following requirements are presented:

- The debt is generated from the business activity.
- The debt had been registered as taxable income.
- The debt is registered in the accounting system.
- The debt has been expired for 12 months.

Charitable contributions

The deductibility of charitable donations is limited to 20% of the donor's net income after deducting the donation amount.

Fines and penalties

In general, penalties, late payment charges, and fines of that type are not deductible.

Taxes

Taxes paid are not deductible.

Net operating losses

Operating losses cannot be carried forward to future years or carried back. Capital losses, however, may be carried forward to offset capital gains for five years.

Payments to foreign affiliates

Remittance of royalties, interest income, and service fees to foreign affiliates are deductible, provided proper contracts are in place, the corresponding withholdings are applied (i.e. 20% WHT for non-domiciled entities, 25% for entities domiciled in tax havens), and there is sufficient evidence that these services have actually been received.

Group taxation

There are no grouping rules in El Salvador between independent entities. Each entity, even if related, is treated separately and must report and pay their taxes independently.

Transfer pricing

In El Salvador, it is mandatory for entities that have operations with related parties or with entities resident in tax havens to undertake these operations in compliance with the arm's-length principle.

Local tax authorities can establish the value of the operations according to market prices rules if, according to their point of view, these operations have not been undertaken according to the arm's-length principle.

Thin capitalisation

Interest, commissions, and any other payments from financial, insurance, or reinsurance transactions entered into by the taxpayer (borrower) shall not be deductible when, among others, the lender or provider of insurance or reinsurance services is a related subject or is domiciled, incorporated, or located in a country, state, or territory with a preferential tax regime of low or zero tax or considered a tax haven and the debt for credit operations, insurance, or reinsurance exceeds the result of multiplying three times the value of assets or average taxpayer (borrower) equity.

Controlled foreign companies (CFCs)

There are no CFC rules in El Salvador.

Tax credits and incentives

El Salvador offers a wide range of incentives to attract foreign investment and drive new commercial and industrial developments. There are also no restrictions on foreign ownership or on mergers, acquisitions, or joint ventures.

There are four specific laws in El Salvador that seek to encourage foreign investment by improving the country's competitiveness in all areas involving the granting of tax incentives. These laws are the Industrial and Commercial Free Zone Law, the Law of International Services, the Renewable Energy Incentives Law, and the Tourism Law.

The Industrial and Commercial Free Zone Law No. 405, dated 3 September 1998, grants companies the following incentives:

- CIT exemption.
- VAT exemption.
- Municipal tax exemption.
- Exemption from real estate transfer taxes when land is intended to be used for productive activities.
- Exemption from duties for imports on machinery, raw materials, equipment, and intermediate goods used for production.
- An option to sell merchandise or services linked to international trade produced in the free zone in the Salvadoran market as long as the corresponding import taxes, CIT, VAT, and municipal taxes are paid on the final goods or services.

Any foreign company may establish and function in a free zone or bonded warehouse and benefit from these incentives if they are engaged in production, assembly, manufacturing, processing, transformation, or commercialisation of goods and services and/or rendering of services linked to international or regional trade, such as gathering, packaging and repackaging, cargo consolidation, distribution of merchandise, and other activities connected or complementary to them.

The Law of International Services No. 431, dated 11 October 2007, grants the same benefits as the Free Zone Law, but the beneficiaries are companies operating in Service Centres specially created according to this law and dedicated to international services as defined therein.

The Renewable Energy Incentives Law provides customs duties exemption on imports of machinery, equipment, and materials for up to ten years, income tax exemption for a period of five to ten years, and total tax exemption on revenues from the sale of Certified Emission Reductions, when certain requirements are met.

The Tourism Law indicates that, with a minimum investment of USD 25,000, a company can qualify as a tourist project of national interest and obtain benefits such as total exemption from real estate transfer tax for the acquisition of property destined for the development of the project, exemption from customs duties on the importation of assets, total exemption from income tax for up to ten years, and partial exemption of municipal taxes for a period of five years.

Foreign tax credit

There is no foreign tax credit available in El Salvador.

Withholding taxes

Payments or amounts credited to non-residents arising from income obtained in El Salvador are subject to a 20% WHT. Income earned in El Salvador covers income from assets located in the country, from any activities performed or capital invested in the land, and from services rendered or used in the national territory, regardless of whether they are provided or paid outside the country. Income from services used in the country is income earned in El Salvador by the service provider, irrespective of whether the relevant income generating activities are performed abroad. Note that payments to foreign entities located in tax haven regimes are subject to a 25% WHT. Guidelines issued by the Salvadoran tax administration list the territories and countries considered as tax havens for El Salvador tax purposes.

In September 2017, the tax administration issued guideline DG-001/2017 by which it is updating previous criteria regarding the consideration of a jurisdiction as a preferential tax regime or a low or no-tax jurisdiction by indicating that any jurisdiction not specifically named in the guide that grants an exemption on income tax (or other taxes with a similar or identical nature) or has such a tax that is inferior by more than 80% of the income tax that would be due in El Salvador will be considered a preferential tax regime or a low or no-tax jurisdiction, as well as holding companies, principal companies, auxiliary or mixed companies, service companies, finance branches, family wealth management companies, headquarters of multinational companies (SEM for its acronym in Spanish), international trust, companies with which international financial lease contracts are celebrated, and international business corporations, among others.

Payments to resident individuals with respect to services rendered, other than under a labour relationship, are subject to a 10% WHT.

Income received from securities listed on the Salvadoran stock exchange by entities not resident in El Salvador is subject to a reduced WHT rate of 3%.

The acquisition of intangible goods among resident entities in the country is subject to a 10% WHT.

Certain transactions are subject to a reduced WHT rate of 5%, such as the following:

- Dividends (*see Dividend income in the Income determination section for a description of the WHT on dividends*).
- International transport services paid to non-residents.
- Insurance services, re-insurances, and bondings paid to non-residents.
- Payments for transfer of intangible assets or use of the rights to intangibles and tangible assets related to films, movies, music records, cable TV, satellite, etc.

See Foreign income in the Income determination section for a description of the WHT on interest.

Moreover, a treaty to avoid double taxation exists between El Salvador and Spain, this treaty established reduced WHT, such as the following:

- 12% WHT (or 5% since the local rate is more favourable to the taxpayer) made to dividend payments. Note that the payment is exempt from WHT if the dividend is paid by a local entity to a Spanish company that owns 50% or more of the capital of the local entity.
- 10% WHT made to interest payments.
- 10% WHT made to rent and royalties payments.
- 10% WHT made to payments for services.

Tax administration

National taxes, fees, and other contributions on all types of goods, services, and income in El Salvador are levied by the National Congress. Local governments (municipalities) may suggest contribution rates and propose their approval to the National Congress by way of a specific law.

The Ministry of Finance (*Ministerio de Hacienda*) controls the state's finances and defines and guides the government's financial policy. It also harmonises, directs, and implements its policies on taxation through its agencies.

Taxable period

In El Salvador, the fiscal year is from 1 January to 31 December.

Tax returns

CIT annual returns must be filed each year no later than 30 April, following the end of the year under taxation.

Payment of tax

Taxes are due on the date established for filing the tax returns. In El Salvador, tax payments are made together with the filing of tax returns, and payments must be made at the banks of the local financial system.

In addition, public and private legal entities resident in the country for tax purposes, other than farm and cattle concerns, are required to make advance income tax payments at 1.75% of gross revenues. These advance payments are due, together with the corresponding return, within ten working days following the corresponding calendar month and are ultimately applied against the CIT at the end of the year.

Tax audit process

In El Salvador, the audit cycle is constituted by the following steps:

- The tax administration issues a resolution of an auditor designation.
- The requirement of financial information of the company.
- The requirement of complimentary documentation to verify possible issues.
- The tax administration issues an audit report where the issues are expressed.
- A resolution hearing is issued by the tax administration, which gives the taxpayer the right to provide evidence to refute the issues made by the mentioned authority.
- Final resolution is determined regarding the complimentary tax or the penalties to be paid.

Statute of limitations

In El Salvador, the statute of limitations for the compliance of the payment of tax debts is ten years.

The tax administration's power to perform a tax audit is for three years in the case of tax returns presented on time by the taxpayer; five years in the case of tax returns presented in a delayed way, but this time is going to start from the day after the extemporary presentation; and five years in cases where the taxpayer has not presented the tax return.

Topics of focus for tax authorities

In El Salvador, when the tax administration performs a tax audit, it focuses on the following topics:

- Compliance of the transfer pricing rules, this can be considered as the main element for the tax authorities.
- Compliance of the obligations held with non-domiciled subjects, especially those domiciled in tax havens.
- Deductions.
- VAT issues.

Equatorial Guinea

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Significant developments

There have been no significant corporate tax developments in Equatorial Guinea (EG) during the past year.

Taxes on corporate income

The corporate income tax (CIT) must be paid by any resident entity.

Taxable profit is determined by deducting from gross income all expenses tied to the performance of taxable activities in Equatorial Guinea. In principle, all expenses are deductible, but the Tax Code provides deductibility rules for some of them.

Resident companies are subject to CIT on their worldwide income (even if, in practice, it is tolerated for CIT only to be applied to income related to activities carried out in Equatorial Guinea). Non-resident entities are subject to a 10% withholding tax (WHT) on gross income derived from sources in Equatorial Guinea.

The CIT rate is 35% on taxable profits.

Minimum income tax (MIT)

The MIT rate is 3% of the turnover of the company for the previous year. This amount cannot be lower than 800,000 Central African CFA francs (XAF) (even if the company does not generate any revenue).

MIT can be totally or partially deducted from the CIT liability to be paid.

Local income taxes

There are no provincial or local income taxes in Equatorial Guinea.

Corporate residence

A legal entity present in Equatorial Guinea more than three months within a calendar year, or more than six months within two consecutive calendar years, and performing an economic activity or providing paid services in the country is considered as a resident for taxation purposes.

The notion of residence applies equally to any kind of activity (even if there is some specificity in the oil and gas sector).

Permanent establishment (PE)

The notion of 'permanent establishment' is not defined in Equatorial Guinea's Tax Code. Authorities mainly refer to the notion of residence as defined above.

Other taxes

Value-added tax (VAT)

VAT is an indirect tax on consumption based on turnover.

All operations performed in Equatorial Guinea are subject to VAT unless they are included in the list of exemptions provided by the EG Tax Code or a specific tax regime.

VAT is generally chargeable on the following:

- Goods sold or assigned for valuable consideration.
- Services provided.
- Self-consumed goods and services.
- Imports.
- Other operations carried on by individuals or legal entities in their sphere of business, professional, and individual activities, including extraction activities.

The standard VAT rate is 15%.

A rate of 0% is applicable to a specific list of products and equipment provided in the Tax Code (e.g. certain medical products, some equipment for construction).

A reduced rate of 6% is applicable to a limited list of basic consumables and books.

Customs duties

The customs duties are based on the categories of goods as follows:

- Category I: Primary necessity goods: 5%.
- Category II: Raw material and materials: 10%.
- Category III: Intermediary goods and miscellaneous: 20%.
- Category IV: Current consumption goods: 30%.

Excise taxes

Excise taxes are applicable on specific goods, such as alcoholic drinks and tobacco. The EG Tax Code (article 296) provides a single rate of 30% applicable to products subject to excise taxes.

Real property tax

A 1% urban property tax applies annually to 40% of the value of the land and the buildings on such land. Urban property is defined by the Tax Code as "any land with or without buildings and the buildings built thereon, whenever located in urban areas".

Transfer tax

For the transfer of goods between residents and non-residents, and between non-residents, there is a 3% tax on the value of the goods.

Real estate transfers between residents are taxed at the rate of 5% on the value of the real estate. The rate increases to 25% on real estate transfers between residents and non-residents, and between non-residents.

Stamp duties

Stamp duties are payable on a variety of instruments and transactions and vary depending on the concerned legal act.

Payroll taxes

The personal income tax (PIT) liability is withheld from the employee's salary and declared and paid by the employer.

The tax tables applicable to individuals are provided in the Taxes on personal income section of Equatorial Guinea's Individual tax summary at www.pwc.com/taxsummaries.

Social security contributions

Employers contribute 1% of gross salary to the Work Protection Fund (*Fondo de Protección al Trabajo* in Spanish) and 21.5% to the National Institute of Social Security (INSESO for its Spanish acronym) on a monthly basis.

Employees contribute 0.5% of net salary to the Work Protection Fund and 4.5% to the INSESO on a monthly basis.

Both of these contributions are declared and paid by the company.

Branch income

Branch income is subject to CIT. We understand there is no branch remittance tax, even if tax authorities have tried to challenge this position in the past.

Income determination

Inventory valuation

Inventory is evaluated at cost price for tax purposes. The tax method generally matches the book method.

Capital gains

Capital gains are, in principle, subject to CIT.

Some exemptions and specific tax regimes can apply, as follows:

- Capital gains that come from the assignment, in the ongoing operation, of the components of the fixed assets will not be included in the taxable profit of the fiscal year in the course of which they have been obtained if the taxpayer puts them in a special account named 'capital gains to be reused' and is committed to reinvesting in new fixed assets in the company before the expiration of a period of time of three years, starting from the close of this fiscal year, an amount equal to the amount of these capital gains plus the cost of the assigned components.
- Capital gains different from those obtained on goods, resulting from free assignment of stock, corporate portions, or liabilities, as a consequence of the merger of

corporations, limited partnerships by shares, or limited companies, will be exempt from the tax regarding the profits made by those corporations, on condition that the take-over company or the new company has its corporate headquarters in Equatorial Guinea.

Dividend income

All dividends received by a resident company are subject to CIT.

A personal income WHT of 25% is applicable on dividends paid to individuals or companies not having their usual domicile or headquarters in Equatorial Guinea. This tax is a final tax for those taxpayers.

The net products of the shares owned and earned by the parent company from its subsidiary can be deducted from the total net profits of the parent company after offsetting from this amount 25% (expenses and charges lump sum amount) if the:

- shareholder holds at least 25% of shares of the subsidiary and
- shareholder guarantees the shares have always been registered in the name of the participating company and commits it will hold these shares for at least two consecutive years.

This proportional part is established at 10% of the amount of these products and represents the management expenses already deducted from overhead costs.

Interest income

Interest earned by companies established in Equatorial Guinea is subject to CIT (35% rate).

Interest earned by companies not having their usual domicile or headquarters in Equatorial Guinea is considered as dividend income and subject to WHT at a 25% rate.

Royalty income

Royalties over gross production for the oil and gas industry are paid based on the respective Production Sharing Contracts.

Foreign income

Resident companies are subject to CIT on their worldwide income.

There is no tax deferral in Equatorial Guinea.

Deductions

Depreciation

A straight-line method of computation of depreciation should be applied to fixed assets according to the normal useful lives of the assets involved, as provided by the Tax Code.

Goodwill

Goodwill is, in principle, not deductible.

Start-up expenses

Start-up expenses can be amortised (regarding tangible assets) or fully deductible (regarding registration costs and fees).

Interest expenses

Interest expenses are deductible if they do not exceed the limit for loans set up by the Central Bank.

Bad debt

Bad debts are deductible, given they are supported.

Charitable contributions

Charitable contributions are deductible, given they are for philanthropic, sport, educative, scientific, social, or family purposes and do not exceed 0.5% of the turnover for the fiscal year of the company.

Fines and penalties

Fines and penalties are not deductible.

Taxes

Only professional taxes are deductible.

Net operating losses

Net operating losses can be carried forward for three years (five years for companies belonging to the oil and gas sector). Losses cannot be carried back. Losses of one entity cannot be transferred to another entity in a reorganisation.

In theory, when the results of a company, no matter the kind of company, are negative during a maximum period of three consecutive years, this company will immediately be removed from the register by the Tax Administration for the practice of the activity for which it was registered, except when the company is newly created.

Payments to foreign affiliates

The deductibility of the technical assistance made by the parent company to its subsidiary is limited to 50% of the intermediary tax result (accounting result plus potential fiscal reintegration).

In case of a deficit, the relevant basis for the evaluation of the foreign technical assistance amount to be reintegrated will be the intermediary result of the last beneficiary fiscal year.

Group taxation

Equatorial Guinea law does not provide specific provisions for taxation of groups.

Transfer pricing

There are no specific rules regarding transfer pricing, even if there are indirect references in the Tax Code.

Indeed, according to the Tax Code, in order to determine the CIT liability of entities under dependence and control of companies located outside of Equatorial Guinea, any transfer of profits shall be recorded in the accounting's profits and losses.

Furthermore, the Economic and Monetary Community of Central Africa (CEMAC) Directive related to CIT states that head office costs are fully deductible if they correspond to real operations, and they are neither unusual nor exaggerated.

However, there is no regulation in force providing a definition of 'transfer of profits' and neither any criterion that would allow the determination of the 'exaggerated' nature of costs.

Thin capitalisation

According to the Tax Code:

"Interest paid to the partners for amounts made available to the company, in addition to their capital contributions, no matter the form of the company, will be admitted (for deduction) within the limits established for the advances of the Central Bank.

In incorporated or limited companies, the deduction of interest will not be allowed for partners or shareholders that have the right to hold, or actually hold, the company management except to the extent that the amounts deposited do not exceed the combination of the contributions of these partners or shareholders."

Controlled foreign companies (CFCs)

According to the Tax Code:

"Regarding legal entities located outside of Equatorial Guinea and which have subsidiary or interdependence ties with other legal entities or companies located in Equatorial Guinea, the place of their taxation will be the same as that of the legal entities or companies with which it maintains those ties (i.e. Equatorial Guinea). These latter are jointly and severally liable for the payment of the tax owed by the legal entities located outside of Equatorial Guinea."

Tax credits and incentives

Some tax and customs exemptions can be granted by the government for some specific economic sectors (e.g. oil and gas sector, public work sector). These exemptions shall be negotiated in the contract signed between the company and the administration (e.g. Production Sharing Contract, Public Work Contract).

Foreign tax credit

There is no foreign tax credit in Equatorial Guinea.

Withholding taxes

WHT in the general regime (i.e. any sector other than the oil and gas sector)

There is a 10% tax withheld on the gross incomes obtained in Equatorial Guinea by non-residents.

There is a 10% WHT on royalties for non-CEMAC residents.

Dividends and interests paid to non-residents are subject to 25% WHT.

WHT on the oil and gas sector

In Equatorial Guinea:

- a 6.25% WHT must be applied to payments made to a resident entity within the oil and gas sector and
- a 10% WHT must be applied to payments made to a non-resident entity within the oil and gas sector.

In practice, the tax authorities consider this tax only applies to sales of services.

The tax basis is composed of the gross amount paid to the provider.

Tax administration

Taxable period

The taxable period is from 1 January to 31 December for CIT purposes.

Tax returns

CIT returns must be filed within the first four months of the year following the taxable fiscal year.

Payment of tax

Payment of CIT must be made within 15 days from the day following the date of receipt of the tax liquidation issued by the Ministry of Finance and Budget.

The MIT of 3% of the previous year's turnover is payable before 31 March.

Penalties

Penalties of XAF 200,000 per month late, up to 75% of the tax owed, apply for late filing of CIT returns.

A penalty of 50% to 100% of the undeclared amount applies in case of shortfall in the return and in case of arbitrary settlement, 50% of the total amount if the good faith of the taxpayer is established or assumed and 100% wherever the taxpayer does not prove good faith.

Tax audit process

There is no specific provision related to the tax audit cycle in Equatorial Guinea.

Statute of limitations

The statute of limitations is five years from the date the tax is due.

Topics of focus for tax authorities

Topics systematically assessed by tax authorities in the framework of audits are:

- WHT of the oil and gas sector.
- PIT and social contributions.

In the framework of recent audits, the tax authorities are more and more interested in assessing transfer pricing operations.

Estonia

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Significant developments

Estonia is regarded as offering a relatively favourable income tax regime, as all undistributed corporate profits are tax exempt. Estonia levies a corporate income tax (CIT) only on profits that are distributed as dividends, share buy-backs, capital reductions, liquidation proceeds, or deemed profit distributions. Distributed profits are generally subject to 20% corporate tax (20/80 on the net amount of the profit distribution).

Two significant amendments to the Income Tax Act entered into force on 1 January 2018.

Firstly, a new anti-tax avoidance clause is introduced, which obligates a resident company to pay income tax on a loan issued to a shareholder or a partner if the 'circumstances of the transaction indicate that it might be a hidden profit distribution'. If the due date of an outbound loan exceeds 48 months, then the Ministry of Finance assumes that certain loans issued to related parties may constitute hidden profit distributions, and, once the deadline is met, the burden to prove the opposite lies with the taxpayer. This amendment is applicable on qualifying loans granted onwards from 1 July 2017.

As a second amendment, from 2018 onwards, a lower CIT at the rate of 14% for those companies making regular profit distributions is available. The payment of dividends in the amount that is below or equal to the extent of taxed dividends paid during the three preceding years (20%) will be taxed with a rate of 14% (the tax rate on the net amount being 14/86 instead of the regular 20/80). In cases where the recipient of the 14% dividend is either a resident or non-resident individual, a 7% withholding tax (WHT) rate will apply unless a tax treaty provides for a lower WHT rate (5% or 0%).

Taxes on corporate income

All undistributed corporate profits are tax exempt. This exemption covers both active (e.g. trading) and passive (e.g. dividends, interest, royalties) types of income. It also covers capital gains from the sale of all types of assets, including shares, securities, and immovable property. This tax regime is available to Estonian resident companies and permanent establishments (PEs) of non-resident companies that are registered in Estonia.

The taxation of corporate profits is postponed until the profits are distributed as dividends or deemed to be distributed, such as in the case of transfer pricing adjustments, expenses and payments that do not have a business purpose, fringe benefits, gifts, donations, and representation expenses.

Distributed profits are generally subject to the 20% CIT at 20/80 of the net amount of profit distribution. For example, a company that has profits of 100 euros (EUR) available for distribution can distribute dividends of EUR 80, on which it must pay CIT of EUR 20.

From 2018 onwards, a lower CIT at the rate of 14% for those companies making regular profit distributions is available. The payment of dividends in the amount that is below or equal to the extent of taxed dividends paid during the three preceding years (20%) will be taxed with a rate of 14% (the tax rate on the net amount being 14/86 instead of the regular 20/80). In cases where the recipient of the 14% dividend is either a resident or non-resident individual, a 7% WHT rate will apply unless a tax treaty provides for a lower WHT rate (5% or 0%). 2018 is the first year to be taken into consideration for the purposes of determining the average dividend.

From the Estonian perspective, this tax is considered a CIT and not a WHT, so the tax rate is not affected by an applicable tax treaty. Certain distributions are exempt from such tax (*see the Income determination section*).

In Estonia, resident companies are taxed on profits distributed from their worldwide income, while PEs of non-residents are taxed only on profits distributed from income derived from Estonian sources. Other Estonian-source income derived by non-residents may be subject to final WHT or CIT by way of assessment.

Local income taxes

There are no municipal or local income taxes in Estonia.

Corporate residence

A legal entity is considered resident in Estonia for tax purposes if it is established under Estonian law. There is no management and control test for the purpose of determining corporate residency. Most tax treaty tie-breakers for legal entities are based on competent authority procedures.

Permanent establishment (PE)

A PE (including a branch registered in the Commercial Register) of a foreign entity is deemed to be a non-resident taxpayer. Under the domestic law, which deviates from the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, a PE is defined as an enterprise through which the permanent business activities of the non-resident are conducted in Estonia. A PE is deemed to be created as a result of the business activities conducted in Estonia that are geographically linked or have movable character or as a result of the business activities of an agent that is authorised to conclude contracts in the name of the non-resident.

Other taxes

Value-added tax (VAT)

The following transactions are subject to Estonian VAT:

- Taxable supplies of goods and services (the place of supply of which is Estonia).
- Taxable imports of goods.
- Taxable intra-Community acquisitions of goods.

The standard VAT rate is 20%. A reduced rate of 9% is applied to books, periodicals (with few exceptions), hotel accommodation services, and listed pharmaceuticals.

It was planned to raise the VAT rate for hotel accommodation services from 9% to 14%, but the amendment is to be cancelled by the new government coalition, so these services will continue to enjoy the reduced rate.

The VAT rate on the export of goods and certain services is 0% (i.e. exempt with credit). Some services, such as health care, insurance, certain financial, and transactions with securities, are exempt (i.e. exempt without credit).

Transactions in real estate are generally exempt from VAT, but there are certain significant exceptions (e.g. transactions in new and significantly renovated buildings). Taxpayers can elect to add VAT to real estate transactions if certain conditions are met.

The reverse-charge mechanism applies to the supply of gold, waste metal, and real estate, under which VAT is accounted for by the VAT liable purchaser and not by the supplier. For real estate and investment gold, the reverse charge applies only when the seller has opted for taxation.

If the taxable supplies of Estonian resident businesses or a PE of a non-resident business in Estonia exceed EUR 40,000 in a calendar year, VAT registration is required. Voluntary registration is also possible. Certain transactions of non-resident businesses require Estonian VAT registration without any threshold.

The VAT accounting period is generally a calendar month, and VAT should be declared and paid on or before the 20th day of the following month.

Under certain conditions, a European Union (EU) taxable person that is not registered for VAT in Estonia will be entitled to a refund of input VAT paid in Estonia. Non-EU taxable persons are entitled to claim VAT refunds based on reciprocity.

Estonia has implemented a system that allows, under certain conditions, a company to account for VAT on imports on the VAT return without paying VAT to the customs authority.

Customs duties

After becoming a member of the European Union, Estonia also became a member of the Customs Union. The Community Customs Code and related implementation regulations apply, meaning that:

- trade between Estonia and other EU countries is customs-free
- imports from non-EU countries are subject to EU customs tariffs, and
- numerous free trade agreements concluded between EU and non-EU countries apply to Estonia.

Excise duties

Excise taxes are levied on tobacco, alcohol, electricity, some packaging materials, and motor fuel.

Land and property taxes

Land is subject to an annual land tax, which is calculated on the assessed value of land at rates between 0.1% and 2.5%, depending on the municipality. The tax is paid by the owners of land, or sometimes by the users of land, in two instalments, by 31 March and 1 October (amounts not exceeding EUR 64 are paid in one instalment by 31 March). The land under a home is generally exempted from land tax.

There is no property tax (i.e. tax on the value of buildings).

Property transfers are generally subject to state and notary fees.

Transfer taxes

There are no transfer taxes in Estonia.

Stamp taxes

Certain transactions may be subject to insignificant stamp taxes (i.e. state fees).

Payroll taxes

In addition to payment of the social tax, unemployment insurance contributions, and compulsory accumulative pension scheme contributions (*see below*), employers should withhold personal income tax (PIT) at the flat rate of 20% after deduction of the employee's contribution to unemployment insurance scheme, compulsory accumulative pension scheme, and, if relevant, personal deduction, which may be up to EUR 500 per month.

Social tax and unemployment insurance

Employers operating in Estonia (including non-residents with a PE or employees in Estonia) must pay social tax on certain payments to individuals at the rate of 33% (where 20% is used for financing public pension insurance and 13% is used for financing public health insurance). Social tax paid by employers is not capped and mainly applies to salaries, directors' fees, and service fees paid and fringe benefits granted to individuals.

In addition to social tax, employers are also required to pay and withhold unemployment insurance contributions. Employers must pay 1% and employees must pay 2% (collected by employers through payroll withholding). The contributions mainly apply to salaries and service fees paid to individuals.

Compulsory accumulative pension scheme

Employers' payroll withholding includes 2% contributions to the compulsory accumulative pension scheme if the employee has joined that pension scheme. Under the compulsory accumulative pension scheme, resident employees born after 31 December 1982 are obligated to join the compulsory accumulative pension scheme and make contributions at 2% from gross salary. For resident employees born before 1983, joining the compulsory accumulative pension scheme is voluntary, but, after joining, it becomes compulsory and employees may not subsequently leave the scheme.

Heavy goods vehicle tax

The heavy goods vehicle tax is paid for the following classes of vehicles that are registered with the Estonian National Motor Vehicle Register and are intended for the carriage of goods:

- Lorries with a maximum authorised weight or gross laden weight of not less than 12 tons.
- Road trains composed of trucks and trailers with a maximum authorised weight or gross laden weight of not less than 12 tons.

The tax is paid by the owners or users of the vehicles. The quarterly tax rates range from EUR 0 to EUR 232.60 per heavy goods vehicle.

Gambling tax

Gambling tax is imposed on amounts received from operating games of skill, totalisator, betting, lotteries, and promotional lotteries. Tax is also charged on gambling tables and machines used for games of chance located in licensed premises. The tax is paid monthly by authorised operators.

Local taxes

Local taxes can be imposed by rural municipalities or city councils; however, the fiscal significance of local taxes is almost non-existent. Local taxes include advertisement tax, road and street closure tax, motor vehicle tax, tax on keeping animals, entertainment tax, and parking charges.

Branch income

Registered PEs of non-residents, much as with resident companies, are subject to CIT only in respect of profit distributions, both actual and deemed, as defined in domestic law.

Transactions and dealings between a head office and its PE(s) should be conducted on arm's-length terms. Thus, such profits should be attributed to a PE of a non-resident taxpayer that the PE would be expected to make if it were a distinct and separate taxpayer engaged in the same or similar activities, and under the same or similar conditions, and dealing in a wholly independent manner with its head office.

Income determination

Distributable profits are determined based on financial statements drawn up in accordance with Estonian Generally Accepted Accounting Principles (GAAP) or International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS), and there are no adjustments to accounting profits for tax purposes (e.g. tax depreciation, tax loss carryforward or carryback).

The CIT liability associated with the distribution of dividends is accounted for as an expense at the time the dividends are declared, regardless of when the profits were generated or distributed.

Dividends paid by Estonian companies are generally subject to 20/80 CIT at the level of the distributing company. However, dividends distributed by Estonian companies are exempt from CIT if the distributions are paid out of:

- dividends received from Estonian, EU, European Economic Area (EEA), and Swiss tax resident companies (except tax haven companies) in which the Estonian company has at least a 10% shareholding

- profits attributable to a PE in the European Union, European Economic Area, or Switzerland
- dividends received from all other foreign companies in which the Estonian company (except tax haven companies) has at least a 10% shareholding, provided that either the underlying profits have been subject to foreign tax or if foreign income tax was withheld from dividends received, or
- profits attributable to a foreign PE in all other countries, provided that such profits have been subject to tax in the country of the PE.

In addition, stock dividends (bonus shares) distributed to stockholders are exempt from 20/80 CIT charge.

Certain domestic and foreign taxes can also be credited against the 20/80 CIT charge under domestic law or tax treaties.

From 2018 onwards, a lower CIT at the rate of 14% for those companies making regular profit distributions is available. The payment of dividends in the amount that is below or equal to the extent of taxed dividends paid during the three preceding years (20%) will be taxed with a rate of 14% (the tax rate on the net amount being 14/86 instead of the regular 20/80). 2018 is the first year that is taken into account for determining the average dividend payment. In cases where the recipient of the 14% dividend is either a resident or non-resident individual, a 7% WHT rate will apply unless a tax treaty provides for a lower WHT rate (5% or 0%).

Deductions

Distributable profits are determined based on financial statements drawn up in accordance with Estonian GAAP or IAS/IFRS, and there are no adjustments to accounting profits for tax purposes (e.g. tax depreciation, tax loss carryforward or carryback).

Fringe benefits

Employers operating in Estonia (including non-resident companies that have a PE or employees in Estonia) are liable to Estonian taxation on any fringe benefits granted to their employees (including directors).

Fringe benefits are subject to an exceptional tax treatment in Estonia, as only the employer is obligated to pay taxes on the fringe benefits furnished to the employee. Taxable fringe benefits received by a resident employee are generally not included in the taxable income of the employee for Estonian tax purposes. Fringe benefits are subject to 20/80 CIT and 33% social tax. For example, where the amount of the benefit is EUR 100, the CIT due by the employer would be EUR 25 (20/80 x 100) and the social tax due EUR 41.25 (0.33 x 125), for a total fringe benefit tax charge of EUR 66.25.

As of 1 January 2018, sports and health costs of an employee are to be exempted from income and social tax in the sum of up to EUR 100 per employee in one quarter. Previously, if the employer bore such costs without a respective obligation deriving from law, the costs were deemed fringe benefits.

Gifts, donations, and representation expenses

The 20/80 CIT is generally due on gifts and donations. Gifts and donations made to certain qualifying recipients are only subject to 20/80 CIT if such expenses exceed one of two limitations:

- 3% of the calculated social tax base for the existing calendar year or
- 10% of the profit of the last financial year according to statutory financial statements.

Representation expenses, those expenditures whose character and primary purpose is for representational or entertainment related activities, are generally subject to 20/80 CIT only if they exceed the threshold of EUR 32 per month plus 2% of the calculated social tax base of the calendar month in which the expenses are paid.

Taxes

All taxes paid are deductible for CIT purposes. In certain circumstances, domestic or foreign taxes may be creditable against the 20/80 CIT charge under domestic law or an applicable tax treaty.

Other significant items

The 20/80 CIT is generally due on expenses and payments that do not have a business purpose and that are regarded as deemed profit distributions. These may include, for example, late payment interest on tax arrears, penalties imposed by law, bribes, purchase of services or settlement of obligations not related to the taxpayer's business, and acquisition of assets not related to the taxpayer's business.

Furthermore, there are specific anti-tax haven rules treating certain transactions and dealings with tax haven companies as deemed profit distributions, which are therefore subject to 20/80 CIT. These include the following:

- Acquisition of securities issued by a tax haven entity (exception for certain listed securities).
- Acquisition of an ownership interest in a tax haven entity.
- Payment of fines or penalties to a tax haven entity, unless settled by court or arbitrage.
- Granting loans or making prepayments to a tax haven entity or otherwise acquiring a claim against a tax haven entity.

From 2018, a new anti-tax avoidance clause entered into force, which obligates a resident company to pay income tax on a loan issued to a shareholder or a partner if the 'circumstances of the transaction indicate that it might be a hidden profit distribution'. If the due date of an outbound loan exceeds 48 months, then the Ministry of Finance assumes that certain loans issued to related parties may constitute hidden profit distributions, and, once the deadline is met, the burden to prove the opposite lies with the taxpayer. This amendment is applicable on qualifying loans granted onwards from 1 July 2017.

Payments to foreign affiliates

Payments to foreign affiliates are deductible for tax purposes (i.e. not subject to 20/80 CIT as deemed profit distributions) if the payment serves a business purpose, provides a benefit to the payer, is at arm's length, and is substantiated by sufficient documentation.

Payments to foreign affiliates may also be subject to various WHTs. Certain payments to affiliates located in tax haven countries are always subject to 20/80 CIT or a 20% WHT rate.

Group taxation

There is no form of consolidation or group taxation for CIT purposes in Estonia.

Transfer pricing

Transfer pricing rules are applicable to all types of transactions between related parties. Both domestic and cross-border transactions with related parties must be conducted at arm's length. Estonian tax legislation includes a relatively broad definition of related parties. Under the present corporate tax system, if the transactions between related parties do not follow the arm's-length principle, then the subsequent transfer pricing adjustments are treated as hidden profit distributions subject to 20/80 monthly CIT.

As a general rule, Estonian group companies and PEs of foreign companies are obligated to prepare transfer pricing documentation to prove the arm's-length nature of the inter-company transactions with all related parties.

However, this documentation requirement does not apply to small and medium-size enterprises (SMEs) unless they have conducted transactions with entities located in low-tax territories. A company or PE is deemed to be an SME if the consolidated results of the previous financial year of an Estonian company or a PE, together with its associated enterprises or head office (i.e. at the group level), are below all of the following criteria:

- EUR 50 million annual sales.
- EUR 43 million balance sheet.
- 250 employees.

Apart from the formal transfer pricing documentation and general requirement to disclose the transactions with the related parties in the annual reports, there are no additional reporting requirements related to transfer pricing in relation to inter-company transactions.

Country-by-country (CbC) reporting

In 2017, the Estonian Parliament approved a law that introduced a CbC reporting obligation for multinational enterprises with consolidated revenue of over EUR 750 million. The first reporting period was set for 2016 with the exception that subsidiaries operating in Estonia are obligated to submit the report for 2017 for the first time in case the parent company does not comply with the reporting obligation for 2016.

Estonian tax residents who are members of large multinational groups and are not the reporting entity of the CbC report need to notify the Estonian tax authorities about the group's reporting entity. Once the notification has been submitted, there is no need to provide the information on annual basis, unless the reporting entity changes.

The deadline for the CbC report is on the 31st of December following the reporting period at the latest.

Thin capitalisation

There are no thin capitalisation rules in the Estonian tax legislation.

Controlled foreign companies (CFCs)

Estonia has no CFC rules for corporate taxpayers.

Tax credits and incentives

There are no special tax incentives in Estonia. However, the entire Estonian corporate tax system, which provides for an indefinite deferral for taxing corporate profits, may be viewed as a tax incentive that promotes reinvestment of profits and thus stimulates economic growth.

Foreign tax credit

In certain circumstances, domestic or foreign taxes may be creditable against the 20/80 CIT charge under domestic law or an applicable tax treaty. *See the Income determination section for more information*.

Withholding taxes

Withholding agents must withhold CIT from certain payments. Withholding agents include resident legal entities, resident individuals registered as sole proprietorships or acting as employers, and non-residents having a PE or acting as employers in Estonia. The tax must be reported and paid by the tenth day of the month following the payment. CIT is not withheld from payments to resident companies, registered sole proprietorships, and registered PEs of non-resident companies. The following rules are in place with respect to payments that are subject to WHT:

- There is no WHT on dividends.
- There is no WHT on interest payments to non-residents. Interest payments to resident individuals are subject to a 20% WHT rate.
- Royalties (including payments for the use of industrial, commercial, or scientific equipment) paid to non-residents are generally subject to a 10% WHT rate under domestic law, but reduced rates may be available under double tax treaties (DTTs). Certain royalty payments to associated EU and Swiss companies that meet certain conditions are exempt from WHT.
- Rental payments to non-residents for the use of immovable property located in Estonia and movable property subject to registration in Estonia (excluding payments for the use of industrial, commercial, or scientific equipment) are subject to a 20% WHT rate under domestic law, but DTTs may exempt payments for the use of movable property from WHT.
- Royalties and rental payments to resident individuals are subject to a 20% WHT rate.
- Payments to non-resident companies for services provided in Estonia, including management and consultancy fees, are subject to a 10% WHT rate under domestic law, but may be exempt under DTTs. Service fee payments to tax haven entities are always subject to a 20% WHT rate.
- Salaries, directors' fees, and service fees paid to individuals are subject to a 20% WHT rate under domestic law, but DTTs may exempt service fee payments to non-resident individuals from WHT.

- Payments for the activities of non-resident artistes or sportsmen carried out in Estonia are subject to a 10% WHT rate.
- Certain pensions, insurance benefits, scholarships, prizes, lottery winnings, etc. paid to non-residents and resident individuals are subject to a 20% WHT rate under domestic law.

For non-residents without a PE in Estonia, the tax withheld from these payments at domestic or treaty rates constitutes final tax in terms of their Estonian-source income, and they do not have any tax reporting requirements in Estonia.

For certain types of Estonian-source income, non-residents are liable under Estonian domestic law to self-assess their Estonian tax and submit a tax return to the Estonian tax authorities. These types of income include:

- Taxable capital gains.
- Profits derived from business conducted in Estonia without a registered PE.
- Other items of income from which tax was not withheld but should have been withheld.

From 2018, Estonia has effective tax treaties with the territories listed in the table below. A treaty has been signed with Morocco and Japan, but these are not yet effective.

The following WHT rates apply to dividends, interest, and royalties paid to a recipient or beneficial owner resident in a tax treaty country. The lower of the domestic or the treaty rate is given.

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (3)**
Non-treaty	0	0	0/10
Treaty:			
Albania	0	0	5
Armenia	0	0	10
Austria	0	0	0/5/10 (4)
Azerbaijan	0	0	10
Bahrain	0	0	0
Belarus	0	0	10
Belgium	0	0	0 (7)
Bulgaria	0	0	0/5
Canada	0	0	0 (7)
China, People's Republic of	0	0	10
Croatia	0	0	10
Cyprus	0	0	0
Czech Republic	0	0	0/10
Denmark	0	0	0 (7)
Finland	0	0	0 (7)
France	0	0	0 (7)
Georgia	0	0	10
Germany	0	0	0/5/10 (4)
Greece	0	0	0/5/10 (4)
Hungary	0	0	0 (7)
Iceland	0	0	0 (7)

	WHT (%)		
Recipient	Dividends (1)	Interest (2)	Royalties (3)
India	0	0	10
Ireland, Republic of	0	0	0 (7)
Isle of Man	0	0	0
Israel	0	0	0
Italy	0	0	0 (7)
Jersey	0	0	0
Kazakhstan	0	0	15
Korea, Republic of	0	0	5/10 (4)
Latvia	0	0	0/5/10 (4)
Lithuania	0	0	0/10
Luxembourg	0	0	0 (7)
Macedonia	0	0	5
Malta	0	0	0/10
Mexico	0	0	10
Moldova	0	0	10
Netherlands	0	0	0 (7)
Norway	0	0	0 (7)
Poland	0	0	0/10
Portugal	0	0	0/10
Romania	0	0	0/10
Serbia	0	0	5/10 (5)
Singapore	0	0	7.5
Slovakia	0	0	0/10
Slovenia	0	0	0/10
Spain	0	0	0 (7)
Sweden	0	0	0 (7)
Switzerland	0	0	0 (7)
Thailand	0	0	8/10 (6)
Turkey	0	0	5/10 (4)
Turkmenistan	0	0	10
Ukraine	0	0	10
United Arab Emirates	0	0	0
United Kingdom	0	0	0 (7)
United States	0	0	5/10 (4)
Uzbekistan	0	0	10
Vietnam	0	0	0/10

Notes

1. Under the domestic law, the rate is nil for all non-resident individual and corporate shareholders.
2. Under the domestic law, the rate is nil for all non-resident individual and corporate creditors.
3. The rate is nil for arm's-length royalties paid to an associated EU or Swiss company if certain conditions are met.
4. The lower 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment.
5. The lower 5% rate applies to royalties paid for the use of copyright royalties, excluding software royalties.
6. The lower 8% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment.
7. The definition of royalties precludes fees paid for the use of equipment, and royalties are exempt from WHT in Estonia.

Tax administration

Taxable period

The tax period is a calendar month.

Tax returns

The combined CIT and payroll tax return (form TSD with appendices) must be submitted to the local tax authorities by the tenth day of the month following a taxable distribution or payment. Tax returns may be filed electronically via the Internet.

Payment of tax

CIT and payroll taxes must be remitted to the local tax authorities by the tenth day of the month following a taxable distribution or payment. No advance CIT payments are required.

Advance rulings

The aim of the advance ruling system is to provide certainty on the tax consequences of specific transactions or combination of transactions taking place in the future. The ruling is binding on the authorities (and not on the taxpayer) if the transaction was made within the deadline and the description provided in the ruling and the underlying legislation has not been substantially changed in the meantime. Estonian legislation specifically excludes obtaining rulings when the interpretation of the legislation is objectively clear, the situation is hypothetical, or the main purpose of the planned transaction is tax avoidance. In addition, transfer pricing valuation issues are excluded from the scope of the binding ruling system.

Tax audit process

There is no statutory tax audit cycle in Estonia.

Statute of limitations

As a general rule, the statute of limitations is three years. In case of intentional tax evasion, it is five years.

Topics of focus for tax authorities

The main topics of focus for tax authorities are ‘envelope wages’, personal services companies, VAT fraud, and transfer pricing.

Other issues

Exchange of information

Estonia has transposed the OECD Common Reporting Standard (CRS) as well as Council directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation into domestic law. Estonian financial institutions covered by the CRS must annually report certain income and asset information on certain non-resident account holders to the Estonian tax authorities.

The first exchange of information took place in 2017.

Company restructurings

In accordance with the EC Directive 2009/133/EC on mergers, divisions, partial divisions, transfers of assets, and exchanges of shares concerning companies of different member states, the mergers, divisions, and re-organisations of companies are generally tax-neutral in Estonia. The principle of going concern is applied in taxation of referred restructuring transactions.

Fiji

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Significant developments

Corporate income tax (CIT)

The following amendments to the Fiji Income Tax Act (FITA) 2015 are effective from 1 August 2017:

- The tax on dividends has been repealed (i.e. dividends shall no longer be subject to any tax in the hands of the shareholder).
- The export income deduction of 50% has been extended until 2017.
- Pre-2014 profits not distributed as dividends by 30 June 2017 shall be subject to 1% transitional tax.
- Health insurance benefits provided to employees who are Fiji citizens shall be exempt from fringe benefits tax (FBT).
- All Tax Free Region (TFR), commercial agriculture, and agro-processing incentives have been extended from 2018 to 2028.
- The bio-fuel incentive has been restructured and extended from 2018 to 2028.
- The minimum capital to qualify for the electric vehicle charging station incentive has been reduced from 3 million Fijian dollars (FJD) to FJD 500,000.

Tax Administration Act

Effective 1 August 2017, the tax authority may issue amended notices of assessment at any time. Previously, there was a six-year limitation except in certain cases (e.g. fraud).

Value-added tax (VAT)

Effective 1 August 2017, fish supplied to the Pacific Fishing Company Limited (PAFCO) shall be a zero-rated supply.

Service turnover tax (STT) and environment and climate adaptation levy (ECAL)

The following amendments to the STT Act and Environmental Levy (EL) Act are effective from 1 August 2017:

- The EL has been renamed the ECAL.
- The ECAL rate on prescribed services increases from 6% to 10%, and the STT rate decreases from 10% to 6%.
- ECAL shall be applicable on the following:
  - Prescribed plastic bags at 10 cents per bag.
  - 10% on the import of new or re-conditioned luxury vehicles with engine capacity exceeding 3000cc, subject to certain exemptions.

- The 12.5% superyacht charter fee shall be replaced with the ECAL at the rate of 10%.
- The STT and ECAL shall only be charged once for the same service.

Water Resource Tax (WRT) Promulgation

Effective 1 August 2017, the WRT has been amended as follows:

Current threshold (litres per month)	Previous threshold (litres per month)	WRT (cents per litre)
0 to 9,999,999	0 to 3,499,999	1.00
10,000,000 and above	3,500,000 and above	18.00

Pending legislation

Please note that this summary is current as of 1 June 2018. Typically, pending legislation is announced and/or enacted in June or July. Please visit the Worldwide Tax Summaries website at *www.pwc.com/taxsummaries* to see any significant corporate tax developments that occurred after 1 June 2018.

Taxes on corporate income

Resident corporations are taxed on their worldwide income. Non-resident corporations may only be taxed on their Fiji-sourced income.

CIT is payable and assessed on the chargeable income of the business calculated by subtracting deductible expenses from all assessable income specified under the FITA.

CIT is payable on taxable income at the following rates:

Type of company	CIT rate (%)
Non-resident shipping companies in respect of outgoing business from carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Fiji	2
Non-resident company that establishes its regional or global headquarters in Fiji (subject to certain conditions)	17
Company listed on the South Pacific Stock Exchange (SPSE)	10
All other companies, including non-resident companies carrying on business in Fiji (e.g. branch profits)	20

Corporate residence

A company incorporated, formed, or settled in Fiji is considered a ‘resident’ in Fiji. A company not incorporated in Fiji is resident in Fiji if it has any part of its central management and control located in Fiji.

Permanent establishment (PE)

PE is determined based on the applicable tax treaty. The FITA also defines ‘permanent establishment’ as a fixed place of business through which the business of a person is wholly or partly carried on and includes the following:

- A place of management, branch, office, factory, warehouse, or workshop, but not a liaison office.

- A mine site, oil or gas well, quarry, or other place of exploration for, or extraction of, natural resources.
- A building site, or a construction, assembly, or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than six months.
- The furnishing of services by the person, including consultancy services, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project by the person or an associate for a period or periods aggregating more than six months in any 12-month period.
- A person, referred to as an 'agent', acting on behalf of another person, referred to as the 'principal', if the agent:
  - regularly negotiates contracts on behalf of the principal, or
  - habitually maintains a stock of trading stock from which the agent regularly delivers trading stock on behalf of the principal but does not include an agent of independent status.
- Substantial equipment used for more than six months within a 12-month period or installed by, for, or under contract with the person.
- The carrying on of activities, including the operation of substantial equipment in the exploration for, or exploitation of, natural resources or standing timber for the period or periods exceeding in aggregate of 90 days in any 12-month period, for or under contract with a person.

However, PE excludes the business of a person that enters into a contractual arrangement solely with the government or persons in which the government has an interest, subject to certain conditions.

Other taxes

Value-added tax (VAT)

VAT of 9% generally applies on the supply of goods and services in Fiji by a registered person in the course or furtherance of a taxable activity carried on by that person. The threshold amount for VAT registration is FJD 100,000 for the supply of goods and/or services.

The supply of financial services (except for certain insurance services), residential accommodation (subject to certain conditions), and education by an approved institution is exempt.

Exports of goods and services and international transportation are zero-rated under certain conditions.

The due date for lodgement of VAT returns and payment of any VAT payable is the end of the month following the taxable period, which is normally a month. However, where an entity's supplies do not exceed FJD 300,000, it may opt to lodge VAT returns and pay any VAT payable on an annual basis.

Under certain conditions, directors of companies with insufficient funds may be held liable for any outstanding VAT or CIT liability of the company and may be sued in their personal capacity.

Customs duties/import excise taxes

Import excise tax (from 5% to 15%) applies to selected goods (in addition to the fiscal duties imposed on importation), including:

- Alcohol and tobacco.
- Used or second-hand liquefied petroleum gas (LPG) powered motor vehicles.
- New or used licensed mini buses.
- Some goods that are also locally manufactured.
- Certain white goods and luxury items.

Excise taxes

Excise tax is payable on tobacco, alcohol products, and carbonated soft drinks manufactured in Fiji, based on quantities produced.

Property taxes

There are no property taxes at the national level. However, the municipalities may charge property rates in their respective areas.

Stamp duties

Under the Fiji Stamp Duties Act, stamp duty is payable in respect of instruments, including, but not limited to, declaration of trusts, leases, loans, mortgages, transfer of property (or interest therein), and shares.

Capital gains tax (CGT)

Capital gains made from the following assets (excluding trading stock, depreciable assets, or business intangibles) may be subject to CGT of 10%:

- Land or an interest therein.
- Ships or boats.
- Yachts.
- Shares, securities, equities, or other financial assets (except shares listed on the SPSE).
- Intangible assets.
- Interest in a partnership or trust.
- Aircraft.
- Option, right, or other interest in an asset referred to above.

A capital gain made on disposal of an asset that is used solely to derive income that is exempt from tax under the FITA shall be exempt from CGT.

Foreign tax paid in respect of the disposal of a capital asset may be allowed as a tax credit against the CGT payable.

There is no carryforward of capital losses in calculating CGT.

Any gain on the disposal of shares listed on the SPSE shall be exempt from CGT.

Any gain on the disposal of shares in any Unit Trust in Fiji shall be exempt from CGT, subject to certain conditions.

Any gain on the disposal of shares by a Fiji resident shall be exempt from CGT where a private company goes through reorganisation, restructure, or amalgamation for the purpose of listing on the SPSE, subject to certain conditions.

Transfer of shares due to corporate reorganisation shall not be subject to CGT, subject to certain conditions.

Service turnover tax (STT) and environment and climate adaptation levy (ECAL)

STT at the rate of 6% (effective 1 August 2017; previously 10%) is imposed on the turnover of a person conducting a business involving the provision of a prescribed service, which includes the following:

- Provision of accommodation, refreshments, and any other services by a hotel.
- Any services provided in a vessel that is principally or wholly engaged in the carriage of tourists in Fiji.
- Provision of meals, beverages, and any other services in a bar.
- Provision of services in a nightclub.
- Provision of in-bound tour services.
- Live entertainment provided by artists for a fee.
- Provision of services for recreational activity for gain.
- Provision of services relating to exhibition of films to the public or section thereof by an exhibitor where a charge is made for admission, including services provided by cinema operators.
- Provision of services by hired or rental car operators and chartered transport services to tourists by omnibus or mini-bus operators.
- Provision of meals, beverages, and any other services by bistros or coffee shops with an annual gross turnover over FJD 1.5 million.
- Provision of meals, beverages, and any other services on sale by restaurants with annual gross turnover over FJD 1.25 million.
- Provision of charter flight services by an aircraft or helicopter, excluding such services for medical or natural disaster relief evacuation.
- Provision of all water sports, including underwater activities and river safaris.
- Provision of accommodation in a private residence or property that accommodates tourists, international students, or overseas visitors who are paying guests.

The above-prescribed services are also subject to ECAL at the rate of 10% (effective 1 August 2017; previously 6%). However, non-consumption services by hotel properties are no longer subject to STT (or ECAL). STT and ECAL shall only be imposed once for the same service. The following shall also be subject to ECAL:

- Prescribed plastic bags at 10 cents per bag.
- Import of new or re-conditioned luxury vehicles with engine capacity exceeding 3000cc, subject to certain exemptions.
- Charter of superyachts.

The due date for payment of STT and ECAL is aligned with the VAT Act requirements (i.e. end of the month following the taxable period).

Water Resource Tax (WRT)

The WRT, at the following rates, shall be levied upon the extraction of water in its natural state for sale:

Litres extracted monthly	Cents per litre
0 to 9,999,999	1.00
10,000,000 and above	18.00

Fringe benefits tax (FBT)

FBT of 20% is payable by the employer on the grossed-up value of certain fringe benefits provided to employees (the effective tax rate is 25%).

Payroll taxes

Employers are required to deduct and remit monthly to the tax authority appropriate Pay-As-You-Earn (PAYE) tax, social responsibility tax (SRT), and ECAL from employee gross cash emoluments.

If appropriate PAYE taxes, SRT, and ECAL are not deducted and remitted, the tax authority may recover the taxes from the employer or the employee and/or disallow a tax deduction for the expenditure.

Contributions to the Fiji National Provident Fund (FNPF)

The FNPF is a compulsory superannuation scheme for local employees. Under the FNPF Act, employers and employees are required to contribute 10% and 8%, respectively, of cash emoluments of employees to the Fund.

Employers are not required to contribute to the FNPF for expatriate employees.

Telecommunication levy

Telecommunication levy of 1% is imposed on all voice call charges.

Third party insurance levy

Third party insurance levy of 20% is imposed on the total third party insurance premium collected in a month.

Gambling turnover tax (GTT)

GTT is imposed on the value of consideration paid or payable in respect of the provision of prescribed gambling services (i.e. acceptance of bets and provision of tickets for any lottery) at the rate of 15%.

Branch income

The profits of a foreign company's branch operating in Fiji are subject to the same tax rate as the tax rate levied on profits of a resident corporation (i.e. 20%).

Income determination

CIT is payable and assessed on taxable income of the business. Taxable income is calculated by subtracting allowable deductions from all assessable income (i.e. all sources of income).

Inventory valuation

Inventories are normally valued at the lower of cost and net realisable value. While the first in first out (FIFO) method is acceptable, the last in first out (LIFO) method is not, for either book or tax purposes. Conformity between book and tax reporting is not required, and there are no special provisions for valuing inventories or determining inventory flows.

Capital gains

Any profit or gain accrued or derived from the sale or disposal of real or personal property, or any interest therein, shall be subject to income tax when:

- the business of the company comprises dealing in such property
- the property is acquired for the purpose of selling or otherwise disposing thereof, or
- any profit or gain is derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit.

Otherwise, the capital gain may be subject to CGT of 10% (*see Capital gains tax [CGT] in the Other taxes section for more information*).

Dividend income

Transfers of property by private companies to shareholders and associates may be deemed to be a dividend paid by that company.

Effective 1 August 2017, dividends are no longer subject to tax in the hands of the shareholders.

Interest income

Interest income over FJD 200 derived by a resident from a company shall be appropriately subject to resident interest withholding tax (WHT) of 10%, which may be claimed as a tax credit against income tax payable on income. Exempt income shall not be subject to WHT.

Royalty income

Royalty income derived by a resident company or PE may be appropriately subject to contractors' WHT of 5%, which may be claimed as a tax credit against income tax payable on income.

Royalty income derived by a non-resident company without a PE in Fiji should be appropriately subject to WHT at the rate of 15%.

Partnership income

The income of the partners from a partnership for any income year is equal to each partners' respective share of income from that partnership. Each partner declares income separately and is individually liable for filing a tax return for each applicable year.

Liability of directors/shareholders

Directors/shareholders of companies in liquidation or with insufficient assets to satisfy tax liabilities may be held liable for any outstanding tax liability of the company, under certain conditions.

Other significant items

Where a foreign-controlled business in Fiji produces less income than might be expected, the revenue authorities may determine the income for tax purposes.

Foreign income

Resident corporations are taxed on their worldwide income. Foreign income derived from a treaty country is taxed according to the treaty. Foreign income sourced from a non-treaty country by a Fiji tax resident is subject to income tax in Fiji. A credit is allowed in Fiji for foreign tax paid on foreign income. The tax credit is limited to the lesser of the Fiji tax payable or the foreign tax paid on such income. There are no special provisions for taxing undistributed income of foreign subsidiaries.

Deductions

Generally, expenses wholly and exclusively incurred in deriving assessable income are allowable deductions. Expenditures that are capital or domestic in nature are generally not deductible.

Depreciation and depletion

Depreciation may be calculated on the cost of a business asset on a straight-line or diminishing-value basis. The prescribed rates of depreciation are based on the estimated life of the asset. Upon disposal of a business asset, either recoupment of depreciation claimed is taxable or the excess of tax written-down value over sale proceeds is deductible. The taxpayer has an option to set-off recoupment of depreciation against the cost of replacement assets. Conformity between book and tax depreciation is not required.

There are three broad bands of depreciation rates for assets (other than buildings). The three broad bands and the depreciation rates are as follows:

Band	Kind of asset	Diminishing value (%)	Straight line (%)
1	Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than seven tonnes; computers and data handling equipment; and construction equipment and earthmoving equipment	40	25
2	Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of more than seven or more tonnes; specialised trucks; tractors; trailers and trailer-mounted containers; and plant and machinery used in manufacturing, mining, or farming operations	30	20
3	Vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; and any depreciable asset not included in another category	20	12.5

Certain renewable energy plant and water storage facilities also qualify for a 100% write-off.

Capital expenditure aimed at economising on the consumption of fuel, electricity, or its derivatives, or on an asset using energy sources indigenous to Fiji, may be eligible for accelerated depreciation at varying rates.

The cost of the acquisition of a mining lease or tenement and the cost of development of mines may be written off in equal instalments in any five of the first eight years, commencing with the year in which the expenditure was incurred.

A deduction for depletion of other natural resources is not available.

Goodwill

Goodwill, and the amortisation thereof, may be deductible for income tax purposes.

Start-up expenses

Start-up expenses are deductible for income tax purposes.

Interest expenses

Interest expenses that are revenue expenditure wholly and exclusively incurred in deriving taxable income are generally deductible in calculating taxable income, subject to the thin capitalisation rules (*see Thin capitalisation in the Group taxation section for more information*).

Provisions

Provisions for expenses not yet incurred (e.g. bad debts) are not tax-deductible. Deductions are generally permitted in respect to amounts that are actually paid or incurred.

Charitable and other contributions

Contributions to approved academic and charitable organisations of up to FJD 100,000 are deductible.

There are certain other specific donations that qualify for varying levels of deductions, including:

- Donations to the Fiji Heritage Foundation, which qualify for a deduction of 150%.
- Donations to Tourism Fiji, which qualify for a deduction of 150%.
- Cash donations exceeding FJD 50,000 to the Poverty Relief Fund for Education, which qualify for a deduction of 200%.
- Cash donations exceeding FJD 50,000 to a Sports Fund (as approved by the CEO of the Fiji Revenue and Customs Service [FRCS]) for purposes of sports development in Fiji, which qualify for a deduction of 150%.
- Total cost of new computers, laptops, and tablets of not less than FJD 10,000 but not exceeding FJD 100,000 that are donated to urban and rural schools registered with the Ministry of Education, which qualify for a deduction of 150% and 200%, respectively.
- The following payments qualify for a deduction of 150%:
    - Cash donations of not less than FJD 10,000 but not exceeding FJD 100,000 to the Disaster Rehabilitation Fund.
    - Cash sponsorships of more than FJD 100,000 but not exceeding FJD 200,000 towards the hiring of international sporting coaches.
    - Cash donations not exceeding FJD 50,000 towards any approved housing project for squatters by the Fiji government.

- Cash donations of not less than FJD 10,000 to the Farmers Disaster Relief Emergency Fund Account, which qualify for a 200% deduction.

Fines and penalties

Generally, fines and penalties are not deductible for income tax purposes.

Taxes

Taxes levied on income are not deductible. Only 50% of the employer's statutory FNPF contribution paid by the employer is allowed as a deduction for tax purposes in the year the contribution was paid (*see Contributions to the FNPF in the Other taxes section for more information*).

Employee cost not appropriately subject to Pay-As-You-Earn (PAYE) final WHT is not allowed as a deduction for tax purposes.

FBT is not allowed as a deduction for tax purposes.

Net operating losses

Tax losses may be carried forward for four consecutive years, provided the company can demonstrate a minimum 51% continuity of shareholding between the year of loss and the year of claim. Notwithstanding the change in ownership, losses may also be carried forward where a company carries on the same business in the carried forward year as it did in the loss year (subject to certain conditions).

In relation to certain private hospitals and medical services businesses, tax losses may be carried forward for eight years. *Please refer to the Medical industry incentives in the Tax credits and incentives section*.

Loss carrybacks are permitted, but only in very limited circumstances.

Payments to foreign affiliates

Subject to the normal rules of deductibility, a deduction may be claimed for royalties, management service fees, and interest charges paid to foreign affiliates.

Group taxation

Group taxation is not available in Fiji.

Transfer pricing

Transfer pricing provisions state that the tax authority may allocate income and expenses between associates (related entities) to reflect income and expenses on an arm's-length basis.

The Income Tax (Transfer Pricing) Regulations provide that the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing guidelines may be used in interpreting the provisions of the Regulations in determining income or expenses on an arm's-length basis.

Thin capitalisation

If a foreign controlled resident company, other than a financial institution, has a debt to equity ratio in excess of 2:1 at any time during a tax year, interest expense in relation to that part of the debt that exceeds the ratio is not allowed as a tax deduction unless the company can properly substantiate the arm's-length nature of the debt.

Controlled foreign companies (CFCs)

Fiji does not have specific rules in relation to CFCs.

Tax credits and incentives

The tax incentives in Fiji are designed primarily to promote export sales and to encourage the development of industries that are considered of benefit to the economic development of Fiji.

Export income deduction

A deduction for export income is allowed in accordance with the following:

Year of assessment	Percentage of export income to be deducted (%)
2017	50

'Export income' means net profit derived by a taxpayer from the business of exporting goods and services; and the CEO of the FRCS may, where separate records for export income are not maintained, determine what this income should be.

Information and communication technology (ICT) tax incentives

The income of an ICT operator may be exempt from CIT for a period of 13 years from the date of issue of the licence, provided that the business employs 50 employees or more for six months within the income year and 60% or more of the total value of its services in that income year is exported.

The income of the following may be exempt from CIT for a period of 13 years from the date of approval:

- ICT start-ups involved in application design or software development.
- Accredited ICT training institutions.

The expenses incurred by the following entities shall qualify for a 150% deduction:

- ICT start-ups involved in application design or software development.
- Accredited ICT training institutions.

Employment incentives

Salary and wages paid to first-time employees (including apprentices and trainees) for the first 12 months of employment qualify for a 200% deduction, subject to certain conditions. This deduction is available until 31 December 2020.

Salary and wages paid to students qualify for a 200% deduction, subject to certain conditions. This deduction is available until 31 December 2020.

Salary and wages paid to disabled persons qualify for a 300% deduction, subject to certain conditions. This deduction is available until 31 December 2022.

Employees' education fees qualify for a 150% deduction, subject to certain conditions.

Hotel industry incentives

The following incentives are currently available only to new hotels.

Approved capital expenditure incurred in building, renovating, or expanding a hotel is subject to an investment allowance of 25% of the approved expenditure, in addition to normal depreciation.

Under the Short Life Investment Package (SLIP), the following concessions are available to a company:

- Exemption from CIT for a period of four years (previously ten years), provided that the capital investment in the hotel is more than FJD 7 million.
- Duty-free entry of certain capital equipment, plant, and machinery, upon receiving provisional approval from the Minister.
- Permission to generate one's own electricity, the excess to be sold to the Fiji Electricity Authority.

Any tax losses incurred by an entity granted approval for the investment allowance or SLIP may be carried forward for four years, but may only be set off against income of the hotel business or from the hotel premises.

The recipients of provisional approval for hotel investment tax incentives are required to complete the hotel projects within two years from the date provisional approval is granted.

The incentives are also available for new apartments, subject to certain conditions.

Medical industry incentives

Approved capital expenditure incurred in building, renovating, or expanding a private hospital (minimum capital investment of FJD 1 million) or ancillary medical centre (minimum capital investment of FJD 500,000) is allowed an investment allowance of 60% of the approved expenditure, in addition to normal depreciation.

Under the Medical Investment Package (MIP), the following concessions are available to a company:

- Exemption from CIT for a period of ten years, provided that the capital investment in the private hospital or ancillary medical centre is more than FJD 7 million or FJD 2 million, respectively.
- Duty-free entry of certain capital equipment, plant, and machinery, upon receiving provisional approval from the Minister.

Any tax losses incurred by an entity granted approval for the investment allowance or MIP may be carried forward for eight years, but may only be set off against income of the medical business or from the hospital premises.

The recipients of provisional approval are required to complete the projects within two years from the date provisional approval is granted.

Residential housing incentives

The following concessions are available to a company developing buildings for residential purposes with a capital investment of more than FJD 2 million and at least 20 residential housing units:

- Subsidy of 5% or 7% (depending on capital investment) of the total approved capital expenditure incurred, in addition to normal depreciation.
- Duty-free and VAT-free entry of certain capital equipment, plant, and machinery, upon receiving provisional approval from the Minister.

The recipients of provisional approval are required to complete the projects within two years from the date provisional approval is granted.

Electric vehicle charging station incentives

The following concessions are available to a company developing electric vehicle charging stations with a capital investment of more than FJD 500,000:

- Subsidy of 5% of the total approved capital expenditure incurred, in addition to normal depreciation.
- Exemption from CIT for a period of seven years.
- Duty-free entry of certain capital equipment, plant, and machinery, upon receiving provisional approval from the Minister.

The recipients of provisional approval are required to complete the projects within two years from the date provisional approval is granted.

Filmmaking and audio-visual incentives

A tax exemption or reduced tax rate is available on the income of non-resident employees of an approved non-resident company engaged or intending to be engaged in making a film in Fiji.

A resident entity (excluding an entity holding a broadcast licence in television or radio in Fiji or with substantial shareholdings in the same) may deduct up to 150% of expenditure on audio-visual production in respect of income in the year of the expenditure. 'Audio-visual productions' include production for exhibition or sale of theatrical films, broadcast television, direct-to-video and video disk programme, audio recording, computer software, and interactive websites.

A tax exemption is available on the income derived by a taxpayer from the commercial exploitation of a copyright until the taxpayer has received from the commercial exploitation a return of up to 60% of the expenditure. The expenditure must be of capital nature and in relation to the audio-visual production costs in respect of a qualifying audio-visual production.

Tax concessions are also available for residents of areas declared as studio city zones by the appropriate government minister.

Tax Free Regions (TFRs)

The following concessions may be available to a newly incorporated entity engaged in trade, business, or manufacture in the TFRs:

- Exemption from CIT for a period of 5 to 20 consecutive fiscal years for a new activity established between 1 January 2009 to 31 December 2028, depending on the level of investment and the equity held by an iTaukei landowner.
- Duty-free entry of raw materials, machinery, and equipment (including parts and materials) required for the establishment of the business.

The areas declared TFRs are Vanua Levu, Rotuma, Kadavu, Lomaiviti, Lau, and the airport side of the Rewa Bridge, excluding the town of Nausori up to the Ba side of the Matawalu River (previously Korovou to Tavua).

CIT exemption of 5, 7, or 13 years (depending on the amount of capital investment) is available to a taxpayer engaged in any new activity established in the TFR from the airport side of the Rewa Bridge, excluding the town of Nausori up to the Ba side of the Matawalu River, subject to certain conditions.

Other tax incentives

An investment allowance of 55% is available for the construction or refurbishment and renovation of a vessel, in addition to normal depreciation, subject to certain conditions.

An approved mining company may, for a specified period, be exempt from CIT or taxed at a lower rate. The holder of a valid prospecting licence may write off approved expenditure on prospecting for minerals against income from all sources.

A 150% deduction is available for direct capital expenditure incurred by commercial banks in rural banking programmes.

Investors engaged in value adding processes in the food processing, agricultural processing, fisheries, or forestry business may be able to claim a 100% deduction with respect to amounts invested or re-invested (for expansion), provided that the businesses meet the 50% local content rule.

A CIT exemption may be available to a taxpayer engaged in the following commercial agricultural farming and agro-processing activities, subject to certain conditions:

- Any new activity approved between 1 January 2009 and 31 December 2028, for a period of 5 to 13 consecutive fiscal years, depending on the level of capital investment.

Income derived by a taxpayer from a new activity in processing agricultural commodities into bio-fuels established between 1 January 2009 and 31 December 2028 may be exempt from CIT for a period of 5 to 13 consecutive tax years (depending on the level of capital investment), under certain conditions.

An exemption from CIT for a period of five years may be available to a taxpayer engaging in renewable energy projects and power cogeneration.

Entities in the agriculture, fisheries, and tourism industries, with a maximum turnover threshold of FJD 500,000, may also be exempt from CIT.

A 150% deduction is available on expenses incurred in reorganising a company for the purpose of listing on the SPSE.

Any gain derived from the following sale of shares shall be exempt from CIT:

- For the purpose of listing on the SPSE, subject to certain conditions.
- By a resident of shares in an SPSE-listed company.

40% of capital expenditure of not less than FJD 50,000 incurred by any existing business located in Vanua Levu is allowed as a deduction for tax purposes, subject to certain conditions.

A 150% deduction is available on expenditure not exceeding FJD 250,000 incurred in marketing goods and services for export to any of the South Pacific countries, excluding Australia and New Zealand.

The income of a shipping company derived from servicing Rotuma and the Lau Group shall be exempt from CIT for a period of seven years, subject to certain conditions.

A 50% deduction is available on expenditure incurred for uniforms made in Fiji and supplied to an employee, provided that the cost is not recovered from the employees.

A 150% deduction is available for foreign companies for capital expenditure incurred for the relocation to Fiji of its regional or global headquarters, which provides management, technical, or other supporting services to its offices or associated companies, subject to certain conditions.

Foreign tax credit

A credit is allowed in Fiji for foreign tax paid on foreign income, limited to the lesser of the Fiji tax payable or the foreign tax paid on such income.

Withholding taxes

WHTs are levied as follows:

	WHT (%)				
Recipient	**Dividends**	**Interest**	**Royalties**	**Know-how, management fees**	**Professional fees**
Resident corporations	0	10 (1)	5 (2)	5 (2)	5 (2)
Resident individuals	0	10 (1)	5 (2)	5 (2)	5 (2)
Non-resident corporations:					
Non-treaty	0	10	15	15	15
Treaty:					
Australia	0	10	15	15	0/15 (3)
India	0	10	10	10	0/10 (3)
Japan	0	10	10	10	0/10 (3)
Korea, Republic of	0	10	10	10	0/10 (3)
Malaysia	0	10	15	15	0/15 (3)
New Zealand	0	10	15	15	0/15 (3)
Papua New Guinea	0	10	15	15	0/15 (3)
Qatar	0	0	5	5	0/5 (3)
Singapore	0	10	10	10	0/10 (3)
United Arab Emirates	0	0	10	10	0/10 (3)
United Kingdom	0	10	15	15	0/15 (3)

Notes

1. Applies to interest (over FJD 200) but is not applicable if income is exempt.
2. This WHT only applies where there is a formal written contract.
3. Depending on the provisions of the applicable double taxation agreement.

Tax administration

The Tax Administration Act (TAA) was promulgated with the stated intention of harmonising the administration of the various tax laws, including CIT and VAT. CGT, FBT, STT, and ECAL are also covered by the provisions of the TAA.

If a due date falls on a Saturday, Sunday, or holiday, the due date is the last working day before the due date.

Taxable period

Tax is assessed on income derived during the calendar year preceding the year of assessment. Returns are therefore generally accepted on a calendar-year basis, although approval is also given to use an alternative fiscal-year basis. For purposes of assessment of returns completed on a fiscal-year basis, the calendar year in which more than one-half of the fiscal year falls is deemed to be the calendar year in which the income is derived.

Tax returns

The Fiji tax system is not based on self-assessment. Returns of income contain information on the basis of which assessments are raised by the tax authorities.

The due date for lodgement of CIT returns is three months after the end of the income year. However, under the Tax Agent Lodgement Programme, an extension of time may be granted to lodge the CIT returns.

Payment of tax

Final payment of CIT (i.e. the balance of actual tax payable) is generally due by the tax return lodgement due date.

Advance tax payments are required to be made in three instalments, as follows:

- First advance: Due on the last day of the sixth month of the current fiscal year (33⅓% of the preceding income year's tax payable or estimated tax liability).
- Second advance: Due on the last day of the ninth month of the current fiscal year (33⅓% of the preceding income year's tax payable or estimated tax liability).
- Third advance: Due on the last day of the fiscal year (33⅓% of the preceding income year's tax payable or estimated tax liability).

The TAA provides for various ways to ensure the collection of taxes, including, but not limited to, the following:

- Departure prohibition order: A departure prohibition order may be used by the tax office to prevent taxpayers from leaving the country without settling outstanding taxes.
- Garnishee orders: The tax office may garnish bank accounts for outstanding taxes.
- Registration of charges on personal and real properties of the taxpayer.
- Distress and sale of personal property.

- Temporary closure of business.

Penalties

Administrative penalty provisions have been amended and increased under the TAA. Some of the penalties are as follows:

- Failure to register: Every person who fails to apply for registration as required pursuant to the Act commits an offence against the Act and will, on conviction, be liable to a fine not exceeding 50% of the tax payable where the delay does not exceed six months, or a fine not exceeding the tax payable where the delay exceeds six months.
- Late filing of a return: A registered person who fails to lodge a tax return is liable for a penalty of 20% of the tax payable in the case where tax is payable and a penalty of 5% of the tax payable for every month of default.
- Late payment of tax payable: Where any tax remains unpaid on the expiry of the due date, a penalty of 25% of the tax payable in respect of that taxable period will apply.
- Failure to comply with the late payment penalty: Every person who fails to comply with the late payment penalty is liable for penalty of 5% of the unpaid tax for each month of default.
- Failure to maintain proper records: A registered person who fails to keep, retain, or maintain account, documents, or records is liable for a penalty of 75% (knowingly or recklessly made) or 20% (in other cases).
- Insufficient payment of advance taxes: A taxpayer who makes advance payment of taxes less than the required amount per instalment is liable for a penalty of 40%.

Tax audit process

The FRCS undertakes ongoing compliance activities to ensure corporations are meeting their tax obligations. Compliance activities take various forms, including questionnaires, reviews of specific issues, and audits.

Statute of limitations

Generally, the tax authority may issue amended notices of assessment at any time. Previously, there was a six-year limitation except in certain cases (e.g. fraud).

Topics of focus for tax authorities

The FRCS has recently been focusing on transfer pricing issues, the implementation of PAYE tax as a final tax, FBT, WHT, and excise and fiscal duties.

Finland

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Significant developments

There have been no significant corporate tax developments in Finland during the past year.

Taxes on corporate income

Finnish resident companies are subject to Finnish corporate income tax (CIT) on their worldwide income (i.e. unlimited tax liability). Also, Finnish permanent establishments (PEs) of non-resident companies are subject to Finnish CIT on their worldwide income attributable to the PE.

The CIT rate is 20%.

Public service broadcasting tax

Public service broadcasting tax (*Yleisradio* or YLE tax) for companies and organisations is based on the taxable income for a fiscal year. The tax amounts to 140 euros (EUR) per year if the taxable income of the organisation is at least EUR 50,000. For organisations with taxable income exceeding EUR 50,000, the tax is levied at EUR 140 plus 0.35% of the taxable income exceeding EUR 50,000. The maximum of the annual tax is EUR 3,000, which will be payable by organisations with taxable income of EUR 868,000 or more.

YLE tax is deductible in the taxation of income of a company.

Local income taxes

No municipal or local income taxes are levied in Finland on the income of a company.

Corporate residence

A company is deemed to be resident on the basis of incorporation. Consequently, a company is deemed to be resident in Finland if it is incorporated (registered) in Finland.

Permanent establishment (PE)

A PE is, in general, formed in line with the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Other taxes

Value-added tax (VAT)

The general VAT rate is 24%. A reduced rate of 14% is applied to food and animal feed. The reduced VAT rate of 14% also applies to restaurant and catering services. A reduced VAT rate of 10% is applied to certain goods and services (e.g. books, subscriptions of newspapers and magazines lasting one month or longer, accommodation, passenger transport).

A zero rate applies in certain instances (e.g. intra-Community supplies of goods and exports of goods). Additionally, certain services (e.g. financial services, insurance services, and certain educational services) are exempted from VAT.

Customs duties

Many goods imported into Finland from outside the European Union (EU) are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff and vary widely.

Excise duties

Product specific, EU harmonised excise duties are levied on tobacco products, liquid fuels, and alcohol, as well as electricity and certain other fuels. In addition to the harmonised excise duties, Finland levies national excise duties on soft drinks, beverage containers, oil waste on lubrication oils and other oil based lubrication preparations, oil transported through or imported into Finland, waste to landfill deposits, and tall oil, as well as electricity, coal, natural gas, and liquid fuels.

Real estate tax

Municipalities impose an annual real estate tax. The tax is levied on the taxable value of buildings and land. The municipal council determines the applicable tax rates, although the minimum and maximum tax rates are set by tax legislation (e.g. 0.93% to 2.00% for general real estate tax, 0.41% to 1.00% for permanent dwellings). The tax is deductible from taxable business income if the real estate is used for business purposes. The tax is deductible from taxable income of the so-called 'other-source income' if the real estate is used to acquire other taxable income than business income.

Transfer tax

A transfer tax of 4% of the sales price is payable on the transfer of real estate situated in Finland. The transfer of shares in Finnish companies (other than housing companies and real estate companies) and other domestic securities is subject to a transfer tax of 1.6%. The transfer of shares in Finnish housing companies and real estate companies is subject to a transfer tax of 2%.

A transfer tax of 2% of the sales price is payable on the transfer of shares in a foreign company whose activities consist mainly of owning or holding (directly or indirectly) real estates in Finland, provided that either the transferor or the transferee is a resident of Finland or, alternatively, a Finnish branch of a foreign credit institution, a Finnish branch of a foreign investment firm, or a Finnish branch of a foreign fund management company.

Generally, the transfer tax is payable by the transferee.

No transfer tax is payable on the transfer of securities that are subject to trading on a regulated market or multilateral trading facility in the European Economic Area (EEA). Similarly, no transfer tax is payable if both the seller and the transferee are non-residents. Transfer tax is, however, always payable on transfers between non-residents if the transferred shares are shares in a Finnish housing or real estate company.

Stamp tax

No stamp taxes are levied in Finland.

Payroll taxes

The employer has a liability to withhold income taxes on remuneration subject to tax in Finland, including cash remuneration and non-cash benefits based on their taxable value. The taxes can, however, be withheld only on cash compensation, and the maximum income tax withholding liability equals the amount of cash remuneration.

Social security contributions

According to the Finnish social security legislation, both Finnish and foreign employers have a liability to pay several social security payments in Finland in cases where an employee performs one's tasks partly or wholly in Finland. The liability concerns all employers, regardless of the form of the company and whether the foreign company has a PE in Finland. The percentage rates for the employer's (and employee's) social security contributions are revised on an annual basis.

Compulsory social security contributions payable by the employer in 2018, according to the paid salaries, are as follows:

- Employer's health insurance contribution: 0.86% (no cap).
- Employer's pension insurance contribution: 17.75% (on average, no cap).
- Employer's unemployment insurance contribution: 0.65% for the first EUR 2,083,500 of gross salaries and 2.6% for the portion of the gross salaries exceeding EUR 2,083,500 (no cap). Employer's unemployment insurance contribution applies to employees of age 17 to 64.
- Group life insurance premium: 0.07% (on average, no cap).
- Accident insurance premium: 0.8% (on average, no cap).

The rates for employer's health insurance contribution are applicable to salaries paid as of 1 January 2018. The employer's health insurance contribution is paid to the Finnish Tax Administration, and the other contributions are paid to the insurance providers. All of these contributions are tax deductible as salary cost.

Compulsory social security contributions payable by the employee in 2018 are as follows:

- Employee's pension insurance contribution: 6.35% for employees of age 17 to 52 or 63 and over, and 7.85% for employees of age 53 to 62 (no cap).
- Employee's unemployment insurance contribution: 1.90% (no cap).

The above-mentioned contributions are tax deductible for the employee. These contributions are withheld from the gross salary at the time of salary payment and remitted by the employer to the appropriate insurance provider together with the employer's pension and unemployment contributions.

- Employee's sickness insurance contribution: 1.53%, provided that the annual taxable income exceeds EUR 14,020 (otherwise 0.00%; no cap).

In 2018, the sickness insurance consists of two payments, a daily allowance contribution of 1.53% and a medicare contribution of 0.00%. From these two contributions, only the daily allowance contribution is tax deductible for the employee. Unlike other employee's social security contributions, the sickness insurance contribution is included in the withholding tax (WHT) rate of the employee's personal WHT card and, thus, withheld and remitted to the tax authorities together with the withheld income taxes and is finally settled in the final assessment.

If an employee is regarded as a foreign-posted employee and has an A1 certificate or a certificate of coverage from one's home country, neither the aforementioned employer's social security contributions nor the employee's social security charges are payable in Finland, with the possible exception of employee's sickness insurance premium in some cases.

Branch income

As a general rule, a branch is taxed like a corporation (tax rate 20%) on the profits attributable to it, provided the branch constitutes a PE in Finland. No tax is withheld on transfers of (taxed) profits to the head office.

Income determination

Companies and other legal entities may have income from three different sources: income from business activities, agricultural income, and personal-source income. The net taxable income is calculated separately for each source. The expenses of one source of income cannot be deducted from the taxable income of another source, and a loss from one source of income cannot offset taxable income from another source. All taxable income received by a company is taxed at the CIT rate of 20%, irrespective of the source to which it is attributable.

Income from business and professional activities falls into 'business source' income (taxed in accordance with the Business Income Tax Act or BITA), while income from non-business activity is 'personal income'. Typically, personal income is passive income derived, for example, from investments. As an example, rental income from real estate let to non-related companies is usually regarded as 'personal source' income. The same can apply to a dividend received from stock exchange quoted companies, where the recipient of the dividend is a passive holding company. Farming and forestry income are, as a main rule, treated as agricultural-source income.

In general, Finland has a very broad income concept, and taxable income includes all income derived from a company's activities, though there are some significant exceptions, including (among others):

- Capital contributions by shareholders.
- In most cases, dividends from unlisted companies (*see Dividend income below*).
- Liquidation gains and capital gains qualifying for the participation exemption (*see Capital gains below*).
- Proceeds from disposal of company's own shares.

- Merger gain.

There is no general distinction between capital gains and other income; capital gains of a company are taxed as part of its general income either in the 'business income' basket or the 'other income' basket. No rates other than the general CIT rate of 20% are applied to any part of taxable income of a company.

Taxable income of a company generally is computed on an accrual basis (i.e. income is taxable in the year it is earned). However, exemptions to this main rule do exist, including unrealised exchange gains and losses, which are taxable/deductible in the year of the rate change.

Inventory valuation

Inventories may be written down to the lower of direct first in first out (FIFO) cost, replacement cost, or net realisable value. Conformity between book and tax reporting is required.

Capital gains

Capital gains and losses are generally included in the taxable business income (i.e. sales proceeds are included in the taxable income, and the undepreciated balance of the asset sold is deducted in the sales year) and treated as ordinary income. However, the entire stock of machinery and equipment is treated as a single item, and the capital gain on machinery and equipment is entered as income indirectly by deducting the selling price from the remaining value of the stock of machinery and equipment.

Capital gains arising from the sale of shares are tax exempt via a participation exemption, under certain circumstances. Specifically, capital gains arising from the sale of shares are tax exempt if:

- the seller is not a company carrying out private equity activities (as defined by the BITA)
- the seller has owned continuously, for a period of at least one year, at least 10% of the share capital of the target company, and
- the shares are part of the seller's fixed assets and the shareholding is included in the seller's business income source for tax purposes.

For the participation exemption to apply, the target company cannot be a real estate company, a housing company, or a company the activities of which mainly include owning of real estates. The target company must also be a Finnish company, a company referred to in the European Commission (EC) Parent-Subsidiary Directive, or a company resident in a country with which Finland has concluded a tax treaty that applies to the target company's dividend distribution.

Note that a capital gain is taxable to the extent that the gain corresponds with a previous tax-deductible write-down or provision made in connection with the acquisition cost of shares, subsidies received for acquiring shares, or previous capital losses deducted for Finnish tax purposes from intra-group transfer of the shares.

Capital losses are non-deductible in situations where capital gains are exempt from tax.

Dividend income

Dividends received by a Finnish company are tax exempt in most cases.

However, dividends received by a Finnish company are fully taxable (100%) if:

- the dividend is received from a publicly quoted company, the receiving company is not a publicly quoted company, and the shareholding is less than 10% of the equity of the distributing company
- the dividend is distributed by a non-resident company that is not such as mentioned in the EC Parent-Subsidiary Directive or other company resident in an EU or EEA country that is not liable to pay at least 10% tax for its income, or
- the dividend is distributed by a company resident outside the European Union or European Economic Area.

Note that most of the Finnish tax treaties include provisions enabling tax-exempt dividends from the tax treaty country in case of at least a 10% shareholding.

Furthermore, dividends received are partly (75%) taxable if the dividend is received on shares belonging to 'investment assets' and the receiving company does not own at least 10% of the equity of the distributing company that is resident in another EU member state and covered by the EC Parent-Subsidiary Directive or the dividend is received on shares belonging to 'investment assets' and the distributing company is resident in Finland or an EEA country but not a company covered by the EC Parent-Subsidiary Directive (note that only financial, pension, and insurance institutions may have assets that are considered as 'investment assets').

Finland has implemented into domestic tax legislation the changes in the Parent-Subsidiary Directive (concerning mismatches in tax treatment of profit distribution to avoid situations of double non-taxation and general anti-abuse rules, directives 2014/86/EU and 2015/121/EU) by limiting Finnish companies' right to receive tax-exempt dividends. Due to these changes, dividends received by a Finnish company are always considered fully taxable in case:

- the dividend is tax deductible for the distributing company, or
- the dividend distribution relates to an arrangement or series of arrangements mainly aimed at achieving a tax benefit that is not meant to be the purpose of the dividend article and is not genuine, taking into account all the facts and circumstances related to the case (i.e. the arrangement or series of arrangements is not based on solid business reasons).

Stock dividends

Stock dividends (bonus shares) may be distributed to stockholders, which are corporations and other legal entities with some exceptions, free of tax on the shareholder (*see Dividend income above*).

Distributions from reserves for invested unrestricted equity

Distributions from reserves for invested unrestricted equity are, in general, deemed as dividends. However, distributions from non-listed companies can be deemed as capital gain if they are:

- a return of capital investment made by the same taxpayer
- distributed within ten years of the investment, and
- clarified by the taxpayer that the above-mentioned conditions are met.

Distributions cannot be deemed as a capital gain if the reserves for invested unrestricted equity have been formed in conjunction with company restructurings (merger and acquisition [M&A] processes).

Interest income

Interest income of a company is taxed as part of its general income, thus the regular CIT rate of 20% is applied.

Royalty income

Royalty income of a company is taxed as part of its general income, thus the regular CIT rate of 20% is applied.

Foreign income

A Finnish corporation is taxed on foreign dividends when the decision to distribute dividends is made and on foreign branch income and other foreign income (e.g. interest and royalties) as earned. The principal method of avoiding double taxation is the credit method, although the exemption method is still applied in a few older treaties (*see the Tax credits and incentives section for more information*).

Deductions

As with taxable income, the concept of deductible costs is wide and covers, in general, all costs incurred in the pursuance of taxable income. Significant exceptions to this rule include (among others):

- Income taxes (*see below*), tax late payment interests, and punitive tax increases.
- Fines and other punitive payments.
- 50% of entertainment costs.
- Capital losses and liquidation losses if capital gains from the sale of shares of a target company would qualify for the participation exemption (*see Capital gains in the Income determination section*).
- Losses from the disposal of a company's own shares.
- Merger losses.
- Net interest expenses exceeding 25% of taxable profit as increased with interest expenses, depreciation, and received group contribution, and as decreased with given group contribution (EBITDA) (*see Thin capitalisation in the Group taxation section*).

As the accrual method is applied to the calculation of taxable income, expenses are usually deductible in the year they are realised (i.e. the year the obligation to pay has arisen).

Depreciation, amortisation, and depletion

The maximum annual rates of depreciation calculated on the remaining acquisition cost for tax purposes (declining-balance method) are 25% for machinery and equipment and from 4% to 20% for buildings and other constructions, depending on the type and estimated life of the asset. The remaining acquisition cost for tax purposes is defined as cost less accumulated tax depreciation and, in the case of machinery and equipment, proceeds on disposal of the assets. The straight-line method is applied to certain intangible assets and capitalised expenditures and to assets with long economic use, such as dams. Tax depreciation is limited to the cumulative charges made in the books.

Costs related to qualifying intangible property are usually amortisable over a period of ten years or a shorter period if the economic life is proven to be less than ten years.

The capital cost of mines, sandpits, quarries, and peat bogs is written off in proportion to the quantities extracted. Short-lived items (the economic life of which is three years or less) may be written off immediately.

Land is not a depreciable asset.

Goodwill

Acquired goodwill is amortisable for tax purposes over its economic life, up to a maximum of ten years.

Start-up expenses

Start-up expenses are generally deductible expenses when determining taxable income.

Interest expenses

As a general rule, interest expenses are fully deductible. However, deductibility of interest expenses for intra-group loans is restricted to 25% of fiscal EBITDA (*see Thin capitalisation in the Group taxation section*).

Bad debt

In general, bad debts incurred from sales receivables, etc. are tax deductible. The bad debts must also be deducted for accounting purposes.

Charitable contributions

Donations are deductible for CIT purposes in certain cases.

In order for a donation to be tax deductible, the amount of the donation should be at least:

- EUR 850, but not more than EUR 250,000, if made to an EEA member state or to a publicly financed university or other higher educational institution in the EEA to benefit the sciences, the arts, or the Finnish cultural heritage, or
- EUR 850, but not more than EUR 50,000, if made to an association, foundation, or other institution in the EEA nominated by the Tax Administration and to benefit the sciences, the arts, or the Finnish cultural heritage.

Donations of not more than EUR 850 (e.g. to charitable purposes) are, in general, tax deductible.

Taxes

No income taxes are deductible when determining taxable income. However, the real estate tax and YLE tax are deductible.

Education costs of employees

Employers are allowed to make an additional tax deduction for certain education costs of their employees. It is required that the employer has made a qualifying education plan and the education relates to the current or future tasks of the employee. The deduction entails both internal and external courses. The amount of the deduction is the average daily salary of all employees working for the employer multiplied by the amount of all qualifying educational days of all employees. This amount is subsequently divided by two. The maximum amount of qualifying education days is three days per employee within the fiscal year in question. The deduction has no tax consequences for the employees.

Net operating losses

Losses may be carried forward for ten subsequent years. However, the right to carry forward losses may be forfeited in certain instances, such as in cases where there is a direct or indirect change in the ownership of the company operating at a loss. However, a special permit can be applied in certain situations from the Finnish tax authorities to retain the tax losses despite the change in ownership. Loss carrybacks are not allowed.

Payments to foreign affiliates

A Finnish corporation may claim a deduction for royalties, service fees, and interest charges paid to foreign affiliates, provided the underlying transaction is beneficial to it and the amounts paid are at arm’s length.

Group taxation

Companies within a group are not consolidated for CIT purposes. However, via group contributions (i.e. lump sum payments of cash based on annual taxable profits), group companies may even out their taxable profits and losses, which leads effectively to the same result as consolidation would. A group contribution is a deductible cost for the granting company and taxable income for the receiving company, provided that all of the following are true:

- Both companies belong to a group where there is a direct or indirect common ownership of at least 90%, and the group structure has existed for the entire fiscal year.
- Both companies are Finnish resident for tax purposes.
- Both companies are limited liability companies or co-operatives with business activities (i.e. have a source of income from business activities, *see the Income determination section*) and are not financial, insurance, or pension institutions.
- The contribution is recorded in the annual statutory accounts of both companies involved and must affect their annual net income.
- The accounting period for both companies ends at the same date.
- The amount of contribution does not exceed the taxable business income of the granting company.
- The contribution is not considered a capital investment.

Based on case law, the ownership chain may also be traced via foreign entities, provided there is a tax treaty between Finland and the country wherein the ultimate parent for the group is resident.

Transfer pricing

All transactions between related parties must take place at arm's length. The requirement is imperative even in relation to purely domestic transactions. If the arm's-length requirement is not followed, income or deductions of a company may be adjusted for tax purposes, in addition to which a risk for substantial penalties exists.

The guidance provided by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations is adopted as a significant source of interpretation in the application of the arm's-length principle. According to the Finnish Tax Administration's statement, the OECD's Base Erosion and Profit Shifting (BEPS) Reports are applied retrospectively.

A Finnish company is obligated to prepare transfer pricing documentation to support transactions between its non-Finnish related parties. Documentation is subject to statutory requirements regarding content, which vary depending on the volume of related-party transactions. As of 1 January 2017, the content requirement is in line with the three-tiered documentation model introduced in the updated OECD Transfer Pricing Guidelines. The documentation requirement concerns Finnish companies and Finnish PEs of foreign companies that are a part of a group that has more than 250 employees or a group that has a turnover of more than EUR 50 million and a balance sheet exceeding EUR 43 million.

These thresholds are calculated at the group level. Failure to present appropriate documentation within 60 days from the tax authorities' request may lead to a punitive tax increase. The documentation may be requested six months after financial year end at the earliest.

Country-by-country (CbC) reporting

The CbC reporting obligation applies to multinational groups with a consolidated turnover of at least EUR 750 million in the preceding fiscal year. The main rule is that an obligation to submit a CbC report to the Finnish tax authorities lays with the ultimate parent company if resident in Finland. However, if the ultimate parent company is not resident in Finland, the obligation lays with any other group company resident in Finland in case the foreign ultimate group company (i) is not obligated by CbC reporting requirements; (ii) is resident in a jurisdiction outside the European Union with which Finland has not concluded an agreement on exchange of information regarding CbC reports within due time; or (iii) is resident in a jurisdiction that has systematically neglected exchange of information and the Finnish tax authorities have reported this neglect.

This does not, however, apply to situations where the ultimate group company has appointed a group company resident within the European Union to submit the CbC report. Nor does it apply, under certain conditions, if the ultimate group company has appointed a group company resident outside the European Union. A notification of the company obligated to submit the CbC report shall be given to the Finnish tax authorities.

The CbC report shall contain the following country-specific data of the group companies and PEs:

- Revenues.
- Profit or loss before taxes.

- Income tax paid and accrued, as well as WHT.
- Bookkeeping value of equity.
- Accumulated earnings
- Number of employees.
- Tangible assets, other than cash or cash equivalents.

In addition, the CbC report should include information on the business of each group company (and PE), as well as information on data sources and currency used. The government's proposal text also suggests that other information that is considered relevant to facilitate an understanding of transfer pricing risks could be included in the CbC report.

Also, the CbC report can be provided in Finnish, Swedish, or English.

The CbC report shall be prepared for financial years starting on or after 1 January 2016, and it is due within 12 months after the end of the financial year concerned. A separate notification of the company obligated to submit the CbC report shall be made by the end of the fiscal year for which the report is provided.

Thin capitalisation

There are no thin capitalisation rules as such; interest limitation rules have been implemented instead. Deductibility of interest expenses for intra-group loans is restricted to 25% of fiscal EBITDA. Excess interest can be carried forward to future years. The limitation rules do not apply if (i) net annual interest expense (including both intra-group and third party interest) does not exceed EUR 500,000 or (ii) if the Finnish company's equity-to-gross-assets ratio is greater than or equal to the group-consolidated ratio. In addition, the amount of debt and rate of interest should be at arm's length. If not, a possibility for application of the general anti-avoidance provision may exist.

Controlled foreign companies (CFCs)

The CFC rules are applicable with respect to foreign entities in low tax jurisdictions controlled by Finnish residents. The undistributed profits of such foreign entities may be taxed as profit of the Finnish resident direct or indirect shareholders. The entity is deemed to be controlled by Finnish residents if at least 50% of the capital or total voting rights are directly or indirectly held by Finnish residents or if Finnish residents have the right to at least 50% of the profits of the entity. The taxable person in such a case is the Finnish resident shareholder who directly or indirectly owns at least 25% of the capital of the corporate body or has the right to at least 25% of the profits of the entity. A foreign entity is considered to be low taxed if the actual income tax burden of the foreign corporation in its country of residence is lower than three-fifths of the tax burden of a comparable Finnish corporation.

Foreign PEs of non-resident companies can be regarded as equal to foreign companies, provided that the PE's profits are not taxed in the head office state. Due to the transitional period, the PE provision is applicable to PEs of foreign entities only as of 1 January 2015.

Certain types of businesses are excluded from the scope of the CFC rules (e.g. income principally from industrial, manufacturing, or shipping activities, as well as sales or marketing activities related to such activities, if they are directed principally to the country of residence of the sales or marketing company). Also, companies resident in a country with which Finland has a double tax treaty (DTT) generally are outside the scope of the CFC rules if the company does not benefit from any special tax incentives in that treaty country. Tax treaty countries that are not covered by this rule are exhaustively mentioned in a specific 'black list' provided by the Ministry of Finance. These countries are Barbados, Bosnia-Herzegovina, Georgia, Kazakhstan, Macedonia, Malaysia, Moldova, Montenegro, Serbia, Singapore, Switzerland, Tajikistan, United Arab Emirates, Uruguay, and Uzbekistan.

In addition to these two mentioned exclusions, the Finnish CFC rules are not applicable in cases of genuine economical establishment in a foreign country, which is either an EU/EEA member state or a tax treaty state not on the 'black list'. The genuine economical establishment is evaluated in light of the requirements of the business in question and paying special attention to capable personnel and office space located in the low tax jurisdiction.

Tax credits and incentives

Foreign tax credit

The principal method of avoiding double taxation is the credit method, although the exemption method is still applied in a few older treaties. Foreign tax can be credited against taxes payable in Finland on the same income over the same period on a *pro-rata* basis. The credit is given for taxes paid to a foreign state and covered by the relevant DTT. The maximum credit is the lesser of either the amount of the foreign tax or an amount equal to the Finnish tax payable on the income from a foreign state. This maximum is calculated on a source-by-source basis. Unused credit of foreign tax paid may be carried forward for five years on an income basket basis.

Research and development (R&D) activities

R&D related costs may be deducted annually, or they can be capitalised.

Withholding taxes

Finnish corporations paying certain types of income are required to apply a 20% or 15% WHT on payments to foreign corporations and a 30% WHT on payments to non-resident individuals or other than corporate entities.

According to domestic legislation, interest paid to a non-resident is usually tax exempt in Finland.

No WHT is levied on dividend payments received by companies resident in the EU/EEA area, which would have been tax-free if paid to a Finnish corporate body, if the WHT cannot be fully credited in the company's country of residence.

Dividends paid to a company referred to in the EC Parent-Subsidiary Directive, owning at least 10% of the capital of the dividend distributing company, are also tax exempt.

The domestic WHT rate may be 15% (or lower under a relevant tax treaty) in cases where the shares of the distributing company belong to the investment assets of the non-resident beneficiary of dividends and if certain prerequisites are met.

See the table below for WHT rates on dividends and other payments from Finland to non-residents.

For countries not included in the table, the WHT rate is 20% (corporate entity) and 30% (individual or other than corporate entity).

Note that each tax treaty should be studied carefully because there are often exceptions to general rules.

	WHT (%)			
Recipient	**Dividend (portfolio)/ interest on cooperative capital**	**Dividend (direct investment)***	**Investment fund profit share**	**Royalties**
Argentina	15	10 [25%]	20/30	15 (18)
Armenia	15	5 [25%]	0	10 (6)
Australia	15	5 [10%] (6, 14)	20/30	5 (8)
Austria	10 (2)	0 [10%] (2, 14)	0	5 (15)
Azerbaijan	10	5 [25%] (8)	20/30	5 (4)
Barbados	15 (5)	5 [10%] (14)	20/30	5 (1, 5)
Belarus	15	5 [25%]	0	5
Belgium	15 (2)	5 [25%] (2)	0	5 (1, 15)
Bosnia-Herzegovina	15	5 [25%]	0	10
Brazil (*see protocol*)	20/30	20/30	20/30	20/30
Bulgaria	10 (2)	10 (2)	0	5 (1, 15)
Canada	15	5 [10%] (14)	20/30	10 (1)
China, People's Republic of	10	5 [25%]	20/30	10 (9)
Croatia	15	5 [25%]	0	10
Cyprus	15 (2)	5 [10%] (2)	0	0 (15)
Czech Republic	15 (2)	5 [25%] (2)	0	10 (1, 15, 16)
Denmark (including the Faroe Islands)	15 (2)	0 [10%]	0	0
Egypt	10	10	20/30	25
Estonia	15 (2)	5 [25%] (2)	20/30	0
France	0	0	0	0
Georgia	10	0 [50%] (8)/5 [10%] (8)	0	0
Germany	15 (2, 8)	5 [10%] (2, 8)	See dividend	0
Great Britain	0 (5)	0	0 (5)	0 (5)
Greece	13 (2)	13 (2)	0	10 (1, 15)
Hungary	15 (2)	5 [25%] (2)	0	5 (1, 15)
Iceland	15 (2)	0 [10%]	0	0
India	10	10	20/30	10
Indonesia	15	10 [25%]	20/30	15 (4)
Ireland, Republic of	0 (5)	0 [10%] (2, 14)	0 (5)	0 (5)
Israel	15	5 [10%]	0	10
Italy	15 (2)	10 [50%] (2)	0	5 (1, 15)
Japan	15	10 [25%] (8)	0	10
Kazakhstan	15	5 [10%]	0	10
Korea, Republic of	15	10 [25%]	0	10

Finland

Recipient	WHT (%) Dividend (portfolio)/ interest on cooperative capital	Dividend (direct investment)*	Investment fund profit share	Royalties
Kyrgyzstan	15	5 [25%]	0	5
Latvia	15 (2)	5 [25%] (2)	20/30	10 (12, 15)
Liechtenstein	20/30 (2, 24)	20/30 (2, 24)	20/30	20/30
Lithuania	15 (2)	5 [25%] (2)	20/30	10 (12, 15)
Luxembourg (10)	15 (2)	5 [25%] (2)	0	5 (1, 15)
Macedonia	15	0 [10%] (14)	0	0
Malaysia	15	5 [10%]	20/30	5
Malta	15 (2)	5 [10%] (2, 14)	0	0
Mexico	0	0	20/30	10
Moldova	15	5 [25%]	0	7 (6)
Morocco	10	7 [25%]	20/30	10
Netherlands	15 (2)	0 [5%]	0	0
New Zealand	15	15	20/30	10
Norway	15 (2)	0 [10%]	0	0
Pakistan	20 (21)	12 [25%]	20/30	10
Philippines	20/30	15 [10%] (14)	20/30	25 (3)
Poland	15 (2)	5 [25%]	0	5 (15)
Portugal	15 (2)	10 [25%] (2)	0	10 (15)
Romania	5 (2)	5 (2)	0	5 (15, 19)
Russia	12	5 [30%] (7)	0	0
Serbia and Montenegro	15	5 [25%]	0	10
Singapore	10	5 [10%] (14)	20/30	5
Slovak Republic	15 (2)	5 [25%] (2)	0	10 (1, 15, 16)
Slovenia	15 (2)	5 [25%] (2)	0	5 (15)
South Africa	15	5 [10%]	0	0
Spain	15 (2)	10 [25%] (2)	0	5 (15)
Sri Lanka	15	15	0	10
Sweden	15 (2)	0 [10%]	0	0
Switzerland	10	0 [10%]	0	0
Tajikistan	15	5 [25%]	0	5
Tanzania	20	20	0	20
Thailand	20/30	20 [25%] (13)	20/30	15
Turkey	15	5 [25%]	20/30	10
Turkmenistan	15	5 [25%] (8)	0	10
Ukraine	15	5 [20%]	0	10 (17)
United Arab Emirates	20/30 (23)	20/30 (23)	20/30 (23)	20/30 (23)
United States	15 (22)	5 [10%] (14, 22)	0	0
Uruguay	15	5 [25%]	0	10 (20)
Uzbekistan	15	5 [10%] (14)	0	10 (6)
Vietnam	15	5 [70%]/10 [25%]	20/30	10
Zambia	15	5 [25%]	20/30	15 (1, 11)

Notes

* The recipient is a company whose share in the company making the payment is at least the percentage indicated in brackets.

1. Tax is not levied on literary, scientific, or artistic royalties (*for film royalties see text of treaty*).
2. If corporate entity, then:
   - no tax if these dividends were tax free under Business Tax Act and if the recipient does not receive a full credit for the Finnish tax in the country of residence, and
   - no tax on dividend paid to a company meant in the EU Parent-Subsidiary Directive owning at least 10% of the capital of the paying company.
3. The tax rate is 15% on films, tapes used in television or radio broadcasts, use of copyright of literary, artistic, or scientific works, or royalty paid for usufruct.
4. The tax rate is 10% on literary, scientific, artistic, and film royalties.
5. The tax rate for an individual is 30% if income is tax-exempt in the country of residence.
6. A lower tax in certain cases.
7. Foreign capital greater than 100,000 United States dollars (USD) when dividend becomes due and payable.
8. *See the treaty for additional requirements.*
9. The tax rate is 7% on industrial, scientific, and commercial royalties.
10. The tax agreement does not apply if the recipient is a special holding company.
11. The tax rate is 5% on royalties from films and tapes.
12. The tax rate is 5% on royalties paid for the use of industrial, commercial, or scientific equipment.
13. The tax rate is 15% if the payer is also an industrial enterprise.
14. The 10% is calculated on the total voting stock.
15. There is no tax on royalties between associated companies meant in EU Directive 2003/49/EC, 2013/13/EU.
16. The tax rate is 1% for finance lease of equipment and 5% for operating lease of equipment and computer software.
17. The tax rate is 5% for the use of secret process or for know-how; there is no tax for computer software or patent.
18. The tax rate is 10% on industrial royalty, 3% on royalties to news agency, and 5% on artistic royalty to the author or the author's *mortis causa* successor.
19. The tax rate is 2.5% on royalties paid for the use of industrial, commercial, or scientific equipment or computer software.
20. The tax rate is 5% on royalties paid for the use or the right to use of industrial, commercial, or scientific equipment or software.
21. The tax rate is 15% if the recipient is a company.
22. There is no tax on dividends to qualified parents-subsidiaries and pension funds.
23. There is no tax if the recipient proves that one has domicile (individual) or is incorporated in the United Arab Emirates.
24. If corporate entity tax is 15% or 20%.

Non-treaty areas include Andorra, Antigua and Barbuda, Bahama Islands, Bahrain, Belize, Cayman Islands, Channel Islands, Gibraltar, Grenada, Greenland, Hong Kong, the Spitsbergen, Jan Mayen, Liberia, Macao, Mauritius, Monaco, Panama, Samoa, San Marino, Vanuatu, and Virgin Islands.

Tax administration

Taxable period

The fiscal year is generally the calendar year. A company having an accounting period other than the calendar year is taxed for the accounting period or the accounting periods ending during the calendar year.

Tax returns

A company must file a CIT return within four months from the end of the month during which the accounting period ends. As a general rule, companies must file a CIT return electronically after 1 November 2017.

For potential tax refunds, taxpayers should submit their account number to the tax authorities electronically.

Payment of tax

Income taxes are levied as prepayments during the fiscal year. Advance tax payments for companies are collected in two or 12 instalments during the fiscal year. If the total amount to be paid is not more than EUR 2,000, the instalments are due in the third and the ninth month of the accounting period. If the total amount to be paid exceeds EUR 2,000, the instalments are due monthly (due date is the 23rd day of each month).

The process for advance tax amendments changed as of 1 November 2017. New rules apply to fiscal year 2017 in most cases. As of 1 November 2017, taxpayers may apply for amendments to advance taxes levied (increase, decrease, or abolishment) until tax assessment has been completed (within ten months from the end of the fiscal year). Application for amendments to advance taxes should be filed electronically.

Tax authorities may, without application, levy or increase advance taxes within two months from the end of the fiscal year. Decrease or abolishment of advance tax payments may be levied by the tax authorities (by or without taxpayer's application) until tax assessment has been completed.

Interest on late payment will be calculated starting from the first day of the second month after the fiscal year has ended until the due date of each for the following payments that are due on that day or after:

- advance tax payable
- outstanding tax (i.e. if the final tax exceeds advance taxes paid and thus additional payment will be levied by the tax authorities), and
- tax payable due to tax amendments.

The YLE tax is included in the advance tax payments.

Tax audit process

Tax audits are performed at irregular intervals by tax auditors, who are entitled to examine the accounts of a company and to request additional information necessary to the examination. Generally, the taxpayer receives an advance notice of an audit from the tax authorities.

Statute of limitations

The time to claim for reassessment of CIT has changed from fiscal year 2017.

From 2017 and onwards, the general time to claim for reassessment of CIT is three years starting from the subsequent year after the fiscal year (i.e. calendar year 2017 will be open for reassessment until 2020).

Prior to fiscal year 2017, the general time limit for statute of limitations was five years starting from the year after the tax assessment year (i.e. calendar year 2016 would have been open for reassessment until 2022).

In addition to the general three-year rule, the Finnish tax authorities may also rectify taxation after the three-year time limit in case certain criteria are met (in such cases, time limit would be extended to four or six years). In case of the taxpayer being accused for a crime, the appeal time is linked to the criminal justice process.

Appeal process

The appeal process has also changed from 1 January 2017 onwards. The primary appeal authority will always be the Tax Adjustment Board, regardless of the type of tax.

The taxpayer may appeal to the Tax Adjustment Board within the general three-year time limit.

After receiving a decision from the Tax Adjustment Board, it can be appealed within 60 days to the Administrative Court.

The possibility to appeal the Tax Adjustment Board's decision directly to the Supreme Administrative Court on prejudice grounds remains unchanged and it will cover all tax types.

Topics of focus for tax authorities

Current issues of special focus for tax audits are transfer pricing and PEs.

MyTax

MyTax is a system where taxpayers can, for example, request a prepayment or additional prepayment and file self-assessed tax returns (e.g. VAT or employer's contributions). In MyTax, taxpayers can also file CIT returns and make claims for adjustment.

Other issues

Company restructurings

In accordance with the EC Directive 2009/133/EC on mergers, divisions, partial divisions, transfers of assets, and exchanges of shares concerning companies of different EU member states, it is possible to carry out the said restructurings tax neutral if statutory conditions are met. In cross-border situations, both parties should be resident in the European Union. The principle of going concern is applied in taxation (i.e. the receiving company receives the assets with the values the transferring company had for those assets in its taxation).

EU state aid investigations

There are no current state aid investigations going on in Finland.

Notification duty for construction businesses

A monthly notification duty of the employee and contract information to the Tax Administration applies to construction work subscribers and the main contractor of a joint construction site.

Foreign Account Tax Compliance Act (FATCA)

On 5 March 2014, Finland signed an intergovernmental agreement (IGA) concerning FATCA with the United States. On the basis of the agreement, Finland agreed to bring into force legislation according to which Finnish financial institutions are required to carry out specific due diligence procedures in order to identify their customers subject to tax in the United States and to report information relating to these customers' income and wealth to the Finnish Tax Administration. The information to be reported includes, for example, interest income, income from dividends and derivatives, life insurance payments, and gross sales prices of shares and bonds. The Finnish Tax Administration shall forward the information to the US Internal Revenue Service (IRS).

The domestic law regarding the FATCA agreement was approved by the Finnish President on 20 February 2015. The financial sector began recognising their customers in accordance with FATCA as of 1 July 2014. The first FATCA reports (for year 2014) were required to be submitted to the Finnish Tax Administration by 30 April 2015.

The Finnish Tax Administration published tax technical guidance on the interpretation of the Finland-US FATCA IGA on 15 April 2015. The guidance in the circular can be used to interpret the FATCA-related customer due diligence and reporting obligations faced by Reporting Finnish Financial Institutions.

Common Reporting Standard (CRS)

On 29 October 2014, Finland signed an international agreement on automatic exchange of information, which requires Finland to apply the CRS for Automatic Information Exchange published by the OECD.

Finland has implemented the CRS into domestic law as of 15 April 2016. The amendment requires Finnish financial institutions (as defined in the CRS) to identify their financial account holders and to annually report to the Finnish Tax Administration certain income and asset information with respect to account holders that have been identified to be tax resident in the countries outside of Finland.

Finland has agreed to exchange information automatically in accordance with CRS for the first time in 2017 regarding certain financial information collected from the beginning of 2016.

Information exchange within the European Union

Starting from 2016, the amended EU Directive of Administrative Co-operation in Tax Matters (Council Directive 2014/107/EU, the so called 'DAC 2' or 'EU FATCA') was implemented into domestic legislation. Under DAC 2, EU member states have to require their financial institutions to implement reporting and due diligence rules that are fully consistent with those set out in the CRS.

France

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Significant developments

New Double Tax Treaty (DTT) between Luxembourg and France

On 20 March 2018, the Luxembourg and French governments signed a new DTT, together with an accompanying Protocol.

The new DTT seeks to modernise the treaty as a whole; the current treaty between Luxembourg and France was signed as long ago as 1 April 1958. The new DTT is fully 'post-BEPS'. It implements the new approaches developed at the international level during the Organisation for Economic Co-operation and Development (OECD)/G20 base erosion and profit shifting (BEPS) project, and now reflected in the 2017 version of the OECD Model Tax Convention and in the Multilateral Convention to Implement Tax Treaty Related Measures, signed by both Luxembourg and France in June 2017.

More specifically, the DTT redefines what constitutes a permanent establishment (PE) for the purpose of the DTT, and introduces new rules for the taxation of cross-border payments such as dividends, interest, and royalties. The Protocol clarifies the situation of cross-border workers and grants limited access to the DTT to Undertakings for Collective Investments (UCIs).

Assuming that both the Luxembourg and French governments complete without any major delay the necessary processes for ratification of the new DTT, the provisions of the new DTT could be applicable in many situations from as soon as 1 January 2019.

Progressive reduction of the corporate income tax (CIT) rate (article 84 of the 2018 Act)

Pursuant to the action plan released by the French Prime Minister in September 2017, the French CIT rate cuts will apply over a five-year period as follows (for all companies with revenues exceeding 7.3 million euros [EUR]):

- For tax years beginning on or after 1 January 2018, the standard CIT rate for all companies is 28% on taxable income up to EUR 500,000, and 33.33% on taxable income exceeding that amount.
- For tax years beginning on or after 1 January 2019, the standard CIT rate for all companies will be 28% on taxable income up to EUR 500,000, and 31% on taxable income exceeding that amount.
- For tax years beginning on or after 1 January 2020, the standard CIT rate for all companies will be 28%.
- For tax years beginning on or after 1 January 2021, the standard CIT rate for all companies will be 26.5%.

- For tax years beginning on or after 1 January 2022, the standard CIT rate for all companies will be 25%.

Elimination of the 3% tax on dividend distributions (article 37 of the 2018 Act)

Pursuant to the French government commitment made in September 2017 and several recent court decisions, the 3% tax on distributions is repealed entirely for payments made on or after 1 January 2018.

Modification of the interest deductibility limitation ('Carrez') rule (article 38 of the 2018 Act)

The '*Carrez*' rule is anti-abuse legislation preventing interest deductions in France relating to French or foreign participations acquired by a French entity but effectively managed outside France. In other words, decision-making, control, and influence are not effectively exercised by the acquiring French entity itself or by a company established in France that, directly or indirectly, controls the acquiring company under the meaning of the French Commercial Code, or by a company established in France that is directly controlled by the same company as the acquiring company under the same meaning.

The 2018 Act relaxes this restriction so that it complies with European Union (EU) legislation with regard to a company established in France, but with its seat of management in another EU member state or in a European Economic Area (EEA) member state that has concluded a convention on administrative assistance on tax matters covering tax evasion and avoidance with France.

The new regime applies to tax years closed on or after 31 December 2017.

Transformation of the CICE tax credit into a decrease in employer's charges (article 86 of the 2018 Act)

The CICE ('*Crédit d'Impôt Compétitivité-Emploi*') tax credit is calculated as a percentage of wages paid during a calendar year to employees earning less than 2.5 times the French regulated minimum wage (SMIC).

For wages paid on or after 1 January 2018, the 2018 Act reduces the CICE tax credit rate from 7% to 6%.

For wages paid on or after 1 January 2019, the CICE tax credit is repealed and replaced by a permanent decrease in payroll charges paid by employers to finance the French social security system.

Calculation of the revenue generated by tax group members for CVAE tax rate purposes (article 15 of the 2018 Act)

The CVAE ('*Cotisation sur la Valeur Ajoutée des Entreprises*') is a tax based on the added value that a taxpayer produces, and it depends on its gross revenue.

The French Constitutional Court, on 19 May 2017, ruled that the method used to determine the CVAE tax rate applicable to a French tax consolidated group of companies was unconstitutional because it created an unjustified difference in treatment between entities that were part of a French tax consolidation and those that were not.

Pursuant to the 2018 Act, the CVAE tax rate applicable to a French group of companies complying with the conditions to set up a French tax group (i.e. 95% ownership) is now based on the consolidated gross revenue recognised by the group of companies for a given year, whether or not they are effectively part of a French tax group.

The new regime applies to the CVAE due in 2018.

Elimination of the 20% increased payroll tax rate (article 90 of the 2018 Act)

The payroll tax is due from French employers whose activity is not subject to value-added tax (VAT). It is assessed annually on gross wages and benefits in kind paid by the employer.

The standard rate of the payroll tax is 4.25%, but increased rates apply to gross individual wages that exceed certain thresholds. Those increased rates are:

- 8.5% for wages ranging from EUR 7,799 to EUR 15,572.
- 13.6% for wages ranging from EUR 15,572 to EUR 152,279.

As a result of Brexit and to increase hiring of foreign executives by cutting the related tax costs, the 2018 Act eliminates the 20% increased rate for wages exceeding EUR 152,279 paid on or after 1 January 2018.

Financial transaction tax (FTT) (article 39 of the 2018 Act)

The 2018 Act repeals the FTT provision that otherwise would have applied to intra-day trading for acquisitions made on or after 1 January 2018.

Therefore, the scope of the FTT remains the same and excludes intra-day trading transactions.

Modifications of the tax deferral regime applicable to French reorganisations (articles 23 and 15 of the 2017 Act)

The 2017 Act brings several amendments to the favourable tax regime set forth in Article 210 A *et seq.* of the French Tax Code (FTC):

- The European Union Court of Justice (ECJ), on 8 March 2017, held that the requirement to obtain a prior ruling to qualify for the French tax deferral regime applicable to mergers when a French entity is absorbed by a non-French entity did not comply with EU law.

  As a consequence, the 2017 Act repeals this requirement and introduces a new requirement to benefit from the tax deferral regime: The assets of the merged entity will have to be attached to a PE of the foreign receiving entity to be located in France.

- A specific filing is required now for absorptions benefiting non-French entities.
- Under a new anti-avoidance provision, mergers, spin-offs, and partial contributions of assets whose main purpose is tax fraud or tax evasion are excluded now from the tax deferral regime.
- Under the previous rule, partial contributions of assets forming an autonomous line of business benefited from the tax deferral merger regime only if the contributing

entity undertook to keep the shares received for a minimum period of three years. The 2017 Act eliminates this commitment.
- For a partial contribution of assets, attribution of shares to the shareholders of the contributing entity is now possible without any prior ruling as long as the following cumulative conditions are met:
  - The shares in the beneficiary company are attributed to the shareholders of the contributing company on a pro rata basis with respect to their shareholding in the latter, within one year of the contribution.
  - The initial contribution benefited from the favourable merger tax regime.
  - At least one complete line of business remains within the contributing company once the contribution is completed.
  - The shares that are attributed have been received in exchange for a contribution of assets constituting a 'complete line of business'.
- Some interim operations made by companies (e.g. a division or regrouping of shares) normally generate a taxable capital gain or loss unless the tax authorities have granted deferral of taxation on these transactions, subject to conditions. This deferral regime is now codified as part of the French tax law so that a tax deferral applies.

The above measures will apply to mergers, de-mergers, contribution of assets, and spin-off operations completed on or after 1 January 2018.

Restricted deduction of foreign withholding tax (WHT) (article 14 of the 2017 Act)

French companies receiving a foreign tax credit for a WHT that were in a loss position were not able to offset this credit against a profit. Consequently, the expense corresponding to the tax paid abroad was deducted for French tax purposes.

While the French tax authorities challenged this position, the French Administrative Supreme Court ('*Conseil d'Etat*') ruled that companies could take a deduction if such deduction was not expressly forbidden by a tax treaty.

According to the new rule, regardless of the tax treaty, foreign WHTs are no longer deductible.

However, absent a tax treaty entered into with the country applying a WHT, or if the tax was withheld in breach of the relevant treaty provisions, it remains deductible for French tax purposes.

Reduction of the late payment interest rate (article 55 of the 2017 Act)

The interest rate applicable to late tax payments previously was 0.40% per month late (4.80% per year).

The 2017 Act reduces this rate to 0.20% per month late (2.40% per year) for interest due from 1 January 2018 through 31 December 2020.

France aligned transfer pricing documentation requirements with OECD Action 13

Large corporations located in France (i.e. with annual turnover or amount of gross assets in excess of EUR 400 million) are required to provide documentation containing general information regarding the relevant group of companies.

For financial years beginning on or after 1 January 2018, these French entities would have to present to the French tax authorities transfer pricing documentation that is largely inspired by the OECD's recommendations, now published as the new Chapter V of the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

The new legislation aligns with the list of information recommended by the OECD for the master file and the local file, and the following informational elements will now be required by law to be included in French transfer pricing documentation reports (non-exhaustive list):

- The group's organisational chart.
- A description of the supply chain of the five main goods and services offered by the group as well as any other goods and services amounting to more than 5% of the group's turnover.
- The intangible assets.
- The inter-company financial activities of the group and its main sources of external financing.
- The group's financial and tax positions.
- A description of the significant intra-group transactions and the conditions under which they were entered into.
- A reconciliation of the financial data used for transfer pricing purposes and the French entity's statutory accounts.

The penalty regime has not been modified, and companies that do not meet their transfer pricing documentation obligations expose themselves to a penalty that is the greater of:

- A minimum of EUR 10,000 for each fiscal year concerned.
- 5% of the taxable profits deemed to have been transferred for each fiscal year.
- 0.5% of the amount that represents non-documented transactions.

Taxes on corporate income

France levies CIT at a standard rate of 33.33%.

Pursuant to the action plan released by the French Prime Minister in September 2017, the French CIT rate cuts will apply over a five-year period as follows (for all companies with revenues exceeding EUR 7.3 million):

- For tax years beginning on or after 1 January 2018, the standard CIT rate for all companies is 28% on taxable income up to EUR 500,000, and 33.33% on taxable income exceeding that amount.
- For tax years beginning on or after 1 January 2019, the standard CIT rate for all companies will be 28% on taxable income up to EUR 500,000, and 31% on taxable income exceeding that amount.
- For tax years beginning on or after 1 January 2020, the standard CIT rate for all companies will be 28%.
- For tax years beginning on or after 1 January 2021, the standard CIT rate for all companies will be 26.5%.
- For tax years beginning on or after 1 January 2022, the standard CIT rate for all companies will be 25%.

A resident company is subject to CIT in France on its French-source income. In that respect, income attributable to foreign business activity (if there is no treaty in force between France and the relevant foreign country) or to a foreign PE (if a tax treaty applies) is excluded from the French tax basis.

A non-resident company is subject to CIT in France on income attributable to French business activity or to a French PE, as well as on income from real estate located in France.

Social contribution tax

Concerning large-size companies, a social contribution tax amounting to 3.3% is assessed on the CIT amount from which a EUR 763,000 allowance is withdrawn.

In addition, the Finance Bill for 2016 implemented an additional contribution due by the companies that are liable to the social contribution tax and whose turnover of the preceding year is equal to or exceeds EUR 1 billion.

This additional contribution is levied at a rate of 0.04% and is assessed on the estimated turnover of the year.

An instalment that amounts to 90% of the additional contribution must be paid and declared, at the latest, by 15 December of each year.

The additional contribution balance is paid each year at the same time as the social contribution tax, meaning 15 May of the year following the one during which the tax is due. The additional contribution paid during a year is deducted from the amount of the social contribution tax for the following year.

3% additional contribution on dividend distributions

Pursuant to the French government commitment made in September 2017 and several recent court decisions, the 3% tax on distributions is repealed entirely for payments made on or after 1 January 2018.

Patent box regime

Under certain conditions, income derived from the sale or license of patents or patentable inventions is taxed at a reduced CIT levied at the rate of 15%.

Capital gains

A reduced tax rate of 15% applies to certain capital gains. *See Capital gains in the Income determination section for more information*.

Local income taxes

No income tax is levied on income at the regional or local level.

Corporate residence

France is defined as metropolitan France (excluding the overseas territories [TOM], but including the continental shelf), Corsica, and the overseas departments (DOM, i.e. French Guyana, Guadeloupe, Martinique, Reunion).

As a general rule, a resident company is a company that is incorporated under French commercial laws.

Permanent establishment (PE)

The notion of PE is not defined by the FTC and has been specified by a case law of the French Administrative Supreme Court. The notion of PE refers to an enterprise exploited in France that can be materialised in one of the three following situations:

- Business activity conducted through an establishment (i.e. a fixed business installation operating with some degree of autonomy [e.g. a branch, sales office]).
- Business conducted in France by a dependent agent.
- Existence of a complete commercial cycle in France.

A ruling application can be submitted to the French tax authorities to get confirmation as to whether the presence in France of a foreign corporation is a PE.

Other taxes

Turnover taxes

Turnover taxes are assessed on goods sold and services rendered in France, and operate as a VAT. The normal rate is 20%. Sales of certain kinds of medicines and transports of persons are taxable at a 10% reduced rate. Food products, subscription to gas and electricity (under certain circumstances), sales of books, and products and services provided to disabled persons are taxable at a 5% reduced rate. Other specific sales and services are taxable at a 2.1% reduced rate. Exports and certain specific services invoiced to non-French residents are zero-rated.

Business-to-business (B2B) suppliers of services are generally taxable at the location of the customer and not at the location of the supplier. For business-to-consumer (B2C) suppliers of services, the place of taxation is generally where the supplier is established.

Turnover taxation applies only to taxable persons, partly taxable persons, and non-taxable legal persons that are registered for turnover taxes.

Specific turnover taxation rules apply to leases of transportation equipment; cultural, arts, and sports services; electronic and telecommunication services; and transportations of goods.

Customs duties

Depending on their country of origin, goods may be subject to customs duties. The rules are aligned with the EU customs regulations.

Under certain circumstances, the payment of the duties can be deferred depending on the terms and conditions of the warehousing arrangements.

Excise taxes

Some specific goods are subject to excise duties, notably:

- Alcohol and alcoholic drinks (e.g. wine, beer, ethylic alcohol).
- Processed tobaccos (e.g. cigars, cigarettes, tobacco).
- Oil and gas products.

Real estate tax

All properties located in France are subject to a 3% real estate tax. The tax is assessed annually on the fair market value of the real estate, in proportion to the direct or indirect interest held. All entities in the chain of ownership are jointly liable for the payment of the tax.

Automatic exemptions apply in three situations. First, to entities whose French real estate assets represent less than 50% of their total French assets. Second, to entities listed on a regulated market whose shares, units, or rights are significantly traded on a regular basis. Third, to entities having their registered office in France, in an EU member state, or in a country that has concluded a DTT with France providing for an administrative assistance or a non-discrimination clause, where:

- their direct or indirect interest in the French real estate is less than either EUR 100,000 or 5% of the fair market value of the French real estate
- they are pension funds or public charities recognised as fulfilling a national interest whose activities justify the need to own French real estate, or
- they are non-listed French real estate funds (*société de placement à prépondérance immobilière à capital variable* [SPPICAV] or *fonds de placement immobilier* [FPI]) or foreign funds subject to equivalent regulations.

Where an automatic exemption does not apply, a claim may be submitted for conditional exemption.

Territorial economic contribution

The territorial economic contribution (*Contribution Economique Territoriale* or CET) is comprised of two different taxes: the companies' land contribution (*Cotisation Foncière des Entreprises* or CFE) and the companies' added value contribution (*Cotisation sur la valeur ajoutée des entreprises* or CVAE). Although they have a similar scope, the taxes are subject to very different rules.

The CFE tax is based on the rental value of assets that are subject to the real estate tax, excluding movable goods and equipment. For industrial plants, the taxable base is reduced by 30%. There is a specific rental value for each town and an upgrading ratio is set forth at the national level each year.

The CVAE is based on a company's added value. Only taxpayers that are not exempt from the CFE and whose turnover is greater than EUR 152,500 are subject to CVAE. However, tax relief equal to the amount of the tax is provided for companies whose turnover is below EUR 500,000. The tax rate for companies whose turnover ranges from EUR 500,000 to EUR 50 million is assessed according to a progressive scale, which ranges from 0% to 1.5%.

There is an upper ceiling on the added value that applies to the CET. As a consequence, tax relief applies and is equal to the excess of the sum of CFE and CVAE over 3% of the added value of the company.

Registration duties

Registrations duties mentioned hereafter are imposed on the purchaser. However, the seller may be liable for these duties in case of non-settlement by the purchaser.

Transfer of goodwill

The transfer of goodwill is subject to a registration duty at a rate of 3% on the part of the transfer price amounting from EUR 23,000 to EUR 200,000 and at a rate of 5% on the part exceeding EUR 200,000.

Transfers of shares

The transfer of shares is subject to registration duty at a rate of 0.1% with no cap. The transfer of listed shares recorded by a deed is subject to registration duty at a rate of 0.1%.

Several exemptions are added to the list of the transactions that are not subject to transfer duties:

- Transactions subject to the FTT.
- Repurchase by companies of their own shares intended to be sold to the subscribers of a company employee saving plan, with some exceptions.
- Transactions between companies in the same group within the meaning of Article L233-3 of the French Commercial Code.
- Transfer of ownership resulting from a merger, a contribution, or a spin-off made under the provisions of Article 210 A and 210 B of the FTC and acquisition shares of a company by its employees.

Transfer of interest or quotas in legal entities whose capital is not divided into shares

The transfer of interests or quotas in legal entities whose capital is not divided into shares (e.g. *Société à responsabilité limitée* [SARLs] or *Société en nom collectif* [SNCs], which are a form of private limited liability corporate entity) is subject to a registration duty of 3%.

Transfer of shares in non-quoted real estate companies

The transfer of shares in non-quoted companies whose assets consist principally of immovable property is subject to a registration duty of 5%. In case of disposal of shares held in real estate companies, the taxable basis for transfer tax purposes is equal to the fair market value of the real estate assets or rights reduced by the debt contracted for the acquisition of such assets or rights. Other kinds of debts are not taken into account to compute the taxable basis of the transfer tax.

Transfer of real estate

The sale of land and buildings is subject to registration duty at a rate of 5.09% on the transfer price, including expenses.

Exit tax rules in case of transfer of French head office or establishment

In the case of a transfer of assets outside France as part of a transfer of a head office or an establishment, unrealised gains are immediately taxable. However, in the case of a transfer to an EU member state or, under certain conditions, to an EEA member state, taxpayers are able to either pay the full amount of tax immediately or pay it over five years in five equal instalments.

Payroll tax

Companies that are not liable for VAT on at least 90% of their annual turnover are subject to payroll tax (*taxe sur les salaries*) regarding salaries paid during the following calendar year. Companies below the 90% trigger are liable for the payroll tax on the complement of their VAT recovery ratio, called the counter VAT recovery ratio.

The standard rate of the payroll tax is 4.25%, but increased rates apply to gross individual wages that exceed certain thresholds. Those increased rates are:

- 8.5% for wages ranging from EUR 7,799 to EUR 15,572.
- 13.6% for wages ranging from EUR 15,572 to EUR 152,279.

As a result of Brexit and to increase hiring of foreign executives by cutting the related tax costs, the 2018 Act eliminates the 20% increased rate for wages exceeding EUR 152,279 paid on or after 1 January 2018.

French social security contributions

The French social security system is composed of various schemes providing a wide range of benefits. This system includes social security basic coverage, unemployment benefits, compulsory complementary retirement plans, complementary death/disability coverage, and complementary health coverage.

The contributions are shared between employer and employee; on average the employer's share of contributions represents 45% of the gross salary. For 2018, the employee's share of French social contributions represents approximately 20% to 23% of the remuneration. However, since the contributions are assessed using various ceilings, the average rate will decrease as the gross salary increases.

Employers' contributions made to additional medical coverage schemes (which are mandatory and collective) are taxable.

Generally, for any employee who carries out a salaried activity in France, the employer withholds the employer's and employee's share of French social security charges.

Systemic risk tax

A bank tax known as a systemic risk tax has been implemented to prevent excessive risk behaviour by banks. This tax is payable by certain financial institutions (including credit institutions).

It should be noted that 'fund' entities (e.g. hedge funds or securitisation vehicles) are outside the scope of the tax.

French banks are subject to the bank tax on their worldwide business activities. The equity requirements that are used as the taxable basis for the calculation of the bank tax are calculated on a consolidated basis. Therefore, institutions that fall within the scope of the tax and that belong to a consolidated group are not subject to the tax on an individual basis. Where they are not part of such a group, institutions pay a contribution calculated on their individual position. The taxable basis is made up of the minimum equity required of the institution, as set out by the Prudential Control Authority to meet reserve ratio requirements in accordance with Basel II standards and specified during the previous calendar year.

The rate of the bank tax amounts to 0.25% of the taxable basis, and any amounts paid in that respect will be deductible for CIT purposes.

A tax return must be filed by 30 June every year, and the tax due must be settled at the same time.

Subject to the principle of reciprocity, it should be noted that taxpayers for which the registered office or the group parent company is located in a country that has enforced a similar tax on systemic risk can benefit from a tax credit. This tax credit can be used to settle the tax due or can be reimbursed.

Amending Finance Bill for 2014 gradually reduces the tax rate before its complete abolition in 2019. In addition, a new tax (in order to finance the support fund for local authorities who contract 'toxic loans'), whose characteristics are similar to systemic risk tax, entered into effect as of 1 January 2015.

This tax is not deductible from CIT.

Financial transaction tax (FTT)

FTT applies to acquisitions for consideration of equity securities or similar securities in the meaning of the French Monetary and Financial Code issued by certain French-listed companies (i.e. financial instruments giving access to capital or to voting rights in the company and securities issued under foreign law representing French-eligible securities). FTT applies regardless of whether the transaction is executed inside or outside of France.

The tax is due by the investment service provider (ISP) that has executed the purchase order or, when there is no ISP, by the custodian, irrespective of its place of establishment.

In most cases, the central securities depositary will be in charge of centralising the collection of the tax, the reporting to the French tax authorities, and the payment of the tax to the French Treasury.

The tax is computed based on the acquisition price of the shares.

The 2017 Act increased the FTT rate from 0.2% to 0.3% for acquisitions made on or after 1 January 2017.

Branch income

Tax rates on branch profits are the same as on corporate profits. As a principle, branch profits are deemed to be distributed to the head office. WHT is levied on French branches of non-resident, non-EU corporations at the rate of 30%, or a reduced tax treaty rate (e.g. for the United States [US], 5%), on net profits. Refund (limited or full) of tax may be claimed to the extent that the taxable amount exceeds the dividend(s) actually distributed by the foreign corporation during the 12 months following the close of the fiscal year concerned, or to the extent the dividends are distributed to residents of France.

Profits realised in France by non-resident corporations whose head offices are located in an EU country are not subject to branch WHT, provided that certain conditions are met (e.g. effective head office in an EU country or non-resident corporation subject to corporate taxation).

Income determination

Inventory valuation

Inventories must be valued at the lower of cost or market. Cost must be determined in accordance with the first in first out (FIFO) or the average-cost method. The last in first out (LIFO) method is prohibited.

Capital gains

Capital gains generally are taxable as ordinary income and subject to CIT at the standard rate of 33.33%, regardless of the duration of ownership of the assets sold.

However, a reduced rate of 15% is applied to capital gains on the disposal of patents or patentable inventions, as well as on income from the licensing of patents or patentable inventions. Capital losses on the disposal of patents or patentable inventions (either short-term losses or long-terms losses) are tax deductible at the standard rate of 33.33%.

Gains on the sale of shares in subsidiaries held for at least two years benefit from significant relief (88% of such capital gains are excluded from CIT, with the remaining 12% portion being taxed at the standard 33.33% rate). Long-term capital losses cannot be offset against future long-term capital gains.

The long-term capital gain regime applies notably to capital gains from the disposition of shares benefiting from the parent-subsidiary regime only if the seller holds at least 5% of the voting rights in the entity whose shares are being disposed. This provision applies to tax years beginning on or after 1 January 2017.

The long-term capital gain regime also applies to capital gains from the disposition of shares in an entity located in a 'non-cooperative state or territory' (NCST), as long as the entity can demonstrate that its activities are real and it does not seek to locate profits in the NCST.

Capital gains and losses on shares sold to a related company

Capital gains derived from the disposal of shares held in subsidiaries for less than two years are immediately taxable at the common rate of CIT.

Capital losses derived from such disposal are not immediately deductible. In such a case, the loss will be deducted if, before a period of two years (as from the date of acquisition by the purchaser):

- the vendor stops being subject to CIT
- the shares are, after a restructuring of the transferee company, held by a company that is not related to the vendor, or
- the shares stop being held by the related company (notably further to a new sale).

If no event mentioned above arises within a period of two years starting from the acquisition by the vendor, the capital loss that has not been immediately deducted is treated in accordance with the long-term regime (i.e. the capital loss is therefore not deductible).

Otherwise, the vendor has to join to its corporate tax return a specific form mentioning capital losses that are not immediately deducted.

Capital gains of non-residents

As a general rule, non-resident companies are not taxable in France regarding capital gains derived from the disposal of French assets unless these are part of a PE.

There are two main exceptions to this principle:

- Capital gains derived from the disposal of real estate assets located in France or derived from the disposal of French real estate, non-listed companies are subject in France to WHT at a 33.33% rate.
- Capital gains derived from the disposal of shares held in a French company subject to CIT are subject in France to WHT at a 45% rate in the specific case where the seller has owned, at any point in time during the five years preceding the sale, at least 25% of the rights in the profits of the French company, unless provided otherwise by the DTT applicable, if any.

Note that in the specific case where the non-resident company is located in an NCST, all capital gains derived from the disposal of French assets are subject to WHT in France at a specific rate of 75%.

Dividend income

Dividends generally are taxable as ordinary income and subject to CIT at the standard rate of 33.33%.

For information on the taxation of inter-company dividends, see Participation-exemption regime in the Group taxation section.

Interest income

Interest income generally is taxable as ordinary income and subject to CIT at the standard rate of 33.33%.

Royalty income

A reduced tax rate of 15% applies to capital gains on proceeds from the:

- licensing (or sublicensing) of patents or patentable inventions, and manufacturing processes associated with such patents or patentable inventions (including improvements made to such patents), held for at least two years, subject to certain conditions, and
- sale of patents or patentable inventions, and manufacturing processes associated with such patents or patentable inventions, held for at least two years, subject to certain conditions.

In other cases, royalties are subject to CIT at standard rate of 33.33% (plus additional social contribution).

Foreign income

Resident corporations are not taxed on foreign-source income derived from activities carried out abroad through foreign branches and foreign PEs. Other foreign income is not taxable until actually repatriated to French-resident corporations. As a result, undistributed income of foreign subsidiaries is not taxable. The only exception to the territoriality principle is provided by Article 209 B of the FTC, known as the Controlled Foreign Company (CFC) rules (*see the Group taxation section for more information*).

Deductions

Depreciation

The depreciation of fixed assets has to be carried out component by component. The components of a fixed asset have to be depreciated separately according to their own lifetime.

Declining-balance depreciation is allowed for certain new and renovated assets whose useful life is in excess of three years.

For assets bought or manufactured between 4 December 2008 and 31 December 2009, the rate is computed by multiplying the rate of straight-line depreciation by:

- 1.75, if the useful life of the asset is three or four years
- 2.25, if the useful life of the asset is five or six years, or
- 2.75, if the useful life of the asset is more than six years.

For assets bought or manufactured after 31 December 2009, the rate is computed by multiplying the rate of straight-line depreciation by:

- 1.25, if the useful life of the asset is three or four years
- 1.75, if the useful life of the asset is five or six years, or
- 2.25, if the useful life of the asset is more than six years.

A temporary investment incentive measure was introduced by the Finance Bill for 2016, enabling companies to claim an additional deduction equal to 40% of the asset investment, provided the investment meets the following three conditions:

- Conditions of the fiscal special depreciation regime (i.e. a new asset having a minimum useful life of three years).
- Belonging to some limited categories defined by the government (industrial assets, such as plant machinery and equipment, manufacturing equipment, and research operations fittings).
- Investments made between 15 April 2015 and 14 April 2016.

The Finance Bill for 2017 extended this incentive measure to companies that invest under the following three conditions:

- The investment has been firmly decided before 15 April 2017.
- The investing company has paid, before 15 April 2017, an instalment that amounts to at least 10% of the total investment cost.
- The final acquisition of the investment occurs within a two-year period following the date of beginning of the purchase order.

Goodwill

Under current French tax rules, goodwill (e.g. *clientele*, trademarks) cannot be amortised.

Start-up expenses

No specific rules apply regarding deduction of start-up expenses, except the qualified expenses incurred in establishing the company (so called '*frais d'établissement*'), which can be either deducted or depreciated over five years.

Research and development (R&D) and software expenses

Concerning R&D and software expenses, a business may elect to immediately deduct costs incurred in R&D of software or to amortise their cost on a straight-line basis over a maximum period of five years.

The cost of acquiring software may be written off on a straight-line basis over 12 months.

The cost of patents acquired can be amortised over a five-year period.

Interest expenses

In principle, interest expenses are tax deductible.

Restriction of interest deduction

A test is applicable to the existing rules governing interest deductions for financing by a party that is directly or indirectly related to a French borrower.

Interest deductions are allowed only if the French borrower demonstrates that the lender is, for the current financial year, subject to a CIT on the interest that equals 25% or more of the CIT that would be due under French tax rules. When the lender is domiciled or established outside of France, the CIT determined under French law equals the tax liability that the lender would have owed on the interest had it been resident or domiciled in France.

Taxpayers must provide documentation to support the CIT calculation if requested by the French tax authorities.

'Carrez' rule

The '*Carrez*' rule is anti-abuse legislation preventing interest deductions in France relating to French or foreign participations acquired by a French entity but effectively managed outside France. In other words, decision-making, control, and influence are not effectively exercised by the acquiring French entity itself or by a company established in France that, directly or indirectly, controls the acquiring company under the meaning of the French Commercial Code, or by a company established in France that is directly controlled by the same company as the acquiring company under the same meaning.

The 2018 Act relaxes this restriction so that it complies with EU legislation with regard to a company established in France, but with its seat of management in another EU member state or in an EEA member state that has concluded a convention on administrative assistance on tax matters covering tax evasion and avoidance with France.

The new regime applies to tax years closed on or after 31 December 2017.

Additional limit on interest deductions

25% of the net finance expenses of a company subject to French CIT is not deductible. This limit applies in addition to existing limits. In a tax group, this limit applies to the consolidated tax result of the group. This is a permanent disallowance, as there is no mechanism to carry the disallowed interest forward to subsequent fiscal years. 'Net finance expense' is defined as the total amount of finance expense incurred as consideration for financing granted to the company, reduced by the finance income received by the company in consideration for financing granted.

Rents incurred as part of a rental agreement between related parties or a financial lease agreement also are included in finance expenses after the deduction for depreciation of the lessor. However, rents paid in relation to real estate rental agreements between related parties should be excluded. This limit applies to both related and third party financing, regardless of the purpose of the financing.

This limit does not apply if a company's annual net finance expense is lower than EUR 3 million. In a tax group, this applies if the net finance expense of the group is lower than EUR 3 million. Groups need to consider the impact of this provision on how tax is shared among the members of the tax group in the tax sharing agreement.

In addition, in a tax consolidated group, this limit does not apply to the portion of net finance expense resulting from financing transactions between members of a French tax unity.

Thin capitalisation

Please see comments regarding thin capitalisation in the Group taxation section.

Bad debt

Bad debts that are definitively non-recoverable are treated, from a tax point of view, as losses.

Under certain conditions, a tax-deductible reserve can be established for debts whose collection is uncertain.

Charitable donations

Charitable donations made by companies to certain foundations or societies are deductible at up to 60% of their amount (limited to EUR 5,000 of the turnover before taxes).

Fines and penalties

As a general principle, fines and penalties are not tax deductible for CIT purposes.

Taxes

Most taxes, including unrecoverable turnover taxes, registration duties, and CET, are deductible. The major exceptions are CIT and tax penalties.

CIT losses

Carryforward of tax losses

Tax losses carried forward are available to offset the first EUR 1 million of taxable profits and 50% of taxable profits in excess of this.

The carryforward is conditional to certain limitations, namely that the entity continues the same business activities. The FTC provides criteria for measuring such a change of activity that jeopardises the right to carry forward net operating losses. Under certain circumstances, a ruling can be obtained from the French tax authorities to keep all or part of the net operating losses despite a business reorganisation.

Carryback of tax losses

Tax losses are available for carryback to the fiscal year immediately preceding that in which the losses arise and up to a maximum of EUR 1 million. Any unused surplus will be carried forward and used as set out above. In addition, the election to carry back tax losses must be filed prior to the deadline for submission of the tax return for the loss-making period.

Tax groups

The overall tax losses of a French tax group, as well as pre-election tax losses of the individual members of the group, will be attributed, whether carried forward or carried back, in the same manner and within the same limits as those set out above.

Payments to foreign-related parties

Payments to foreign affiliates are allowed, as long as they meet the arm's-length test. If they do not, Article 57 of the FTC provides that income directly or indirectly transferred to the foreign-related parties, through either the increase or the reduction of the purchase or sales price of goods and services, or through any other means, must be added back to taxable income. For the purpose of this provision, foreign-related parties are defined as a parent, subsidiaries, or sister companies.

Where the payments are made to companies located in a country with a privileged tax regime, the French taxpayer must prove, in addition, that the transaction is *bona fide* and that the amount due is not exaggerated (*see the Group taxation section for more information on countries with a privileged tax regime*).

Royalties

Article 11 of the Finance Act for 2012 restricts the conditions for deducting licensing royalties where the licensor and the licensee are related parties. A full deduction for the royalty expense may only be allowed if the licensee can demonstrate, and properly document, that:

- the use of the licence results in added value for the licensee over the entire licensing period, and
- such use is real (i.e. does not consist of an artificial scheme).

Group taxation

Tax consolidation regime

French corporations and their 95% owned domestic subsidiaries may elect to file one single tax return, thus allowing the offset of losses of one group corporation against the profits of a related corporation. CIT is then levied on the aggregate income after certain adjustments for intra-group provisions (e.g. debt waivers, dividend distributions) have been made.

When shares in a company that will be integrated into the group are acquired by a group company from individuals or legal entities that control this group, either directly or indirectly, a portion of the group's overall financial expense incurred by the members of the group is progressively added back to the group's taxable income on a straight-line basis over a nine-year period.

A French subsidiary can be included in a tax consolidated group even if its parent company is not located in France. However, at least 95% of the share capital of the foreign company must be held, directly or indirectly, by the French company that is head of the tax consolidated group. In addition, the foreign company must be subject to CIT, be located in the European Union or in a member state of the European Economic Area whose tax treaty with France includes a mutual administrative assistance clause to fight tax fraud and tax evasion, and hold 95% of the lower-tier subsidiary's shares.

Amending Finance Bill for 2014 adds the opportunity for the companies subject to CIT to adopt horizontal tax consolidation. The creation of a horizontal tax consolidation between French companies' subsidiaries of the same parent located in an EU member state, or Iceland, Norway, and Liechtenstein, and subject to a tax equivalent to CIT ('non-resident parent entity') is now permitted, allowing one of its subsidiaries (called 'parent company') to be solely liable for CIT. This regime applies, optionally, for fiscal years beginning on or after 1 January 2015.

A PE of a foreign company subject to French CIT can be a member of a French tax consolidated group if the shares of the foreign company are held by other French companies, which are members of the consolidated group.

Provisions on the tax neutrality of intra-group transaction flows (e.g. dividends, amortisation, waivers of debts, interest, and capital gains/losses on the sales of shares) have been modified to treat tax consolidated groups with an intermediate foreign company the same as other tax consolidated groups. Dividends distributed within a tax consolidated group under the parent-subsidiary regime are exempt up to 99%, and the remaining 1% may not be neutralised.

Allocation of the tax charge within a tax consolidated group

In an important decision dated 12 March 2010 ('Wolseley Centers France'), the French Supreme Court disagreed with the French tax authorities by ruling that the tax charge of the group can be freely allocated between members of the consolidated tax group.

Following this decision, group companies are free to enter into a tax consolidation agreement stating the conditions for the allocation of the group tax charge or, where applicable, the tax savings arising from the group arrangement.

The Supreme Court concludes that since the terms of an agreement to allow a re-allocation take into account the specific results of each of the group companies, the terms of this re-allocation cannot be regarded as an indirect subsidy. However, this allocation should neither undermine the corporate benefit of each group member nor the minority shareholders rights; otherwise, this will result in an abnormal act of management.

Underpriced sale of asset between two entities of a same tax consolidated group

In a decision dated 10 November 2010 ('Société Corbfi'), the French Supreme Court specified that an underpriced sale of an asset between two members of the same tax group must be neutralised at the group level only after the computation of the entities results on a standalone basis.

First, on a standalone basis, the seller has to add back the advantage given to the buyer (i.e. the difference between the fair market value and the amount paid) and the buyer adds back this advantage as if it was a dividend. Second, when reprocessing the different entities results, the advantage added back by the buyer has to be neutralised at the group level.

Participation-exemption regime

French parent companies (i.e. companies incorporated in France and holding qualifying shares that represent at least 5% of the issued capital of subsidiaries, French or foreign) have the option of excluding 95% of the subsidiaries' net dividends from CIT (5% of charges and expenses must be added back to the parent company's taxable results). The French parent-subsidiary regime extends to certain shares without voting rights. There is no formal commitment to have held the shares for at least two years, and companies can benefit from this regime from the acquisition date of the shares. However, the obligation remains to hold the shares over this two-year period. Certain shares of listed real estate companies are not eligible to the French parent-subsidiary regime.

The taxation of dividends received by a parent company from its subsidiary cannot be capped at the amount of the expenses actually incurred by the parent company. Thus, the tax liability will be equal to 5% of the dividends received, tax credits included.

The French parent-subsidiary regime is not applicable to dividends paid from entities located in an NCST.

In principle, the subsidiary's shares must be kept by the parent company for at least two years in order to benefit from the participation-exemption regime. However, some operations lead to a break of the two-year holding period. In that case, the exchanged shares are deemed withheld until the sale of the securities received in exchange.

The exchanged shares will be deemed kept for the application of the participation-exemption regime only if the gain or loss is not taken into account in the result of that exchange. If the gain or loss is included in the result, the dividends received may not benefit from the participation-exemption regime and will be taxed.

In addition to the above, the 2016 Act repealed the exclusion from the benefit of the parent-subsidiary regime for the dividends received on shares with no voting rights.

Accordingly, the parent-subsidiary regime applies to dividends received on shares with no voting rights, retroactive to 3 February 2016.

In case of tax consolidated group

There is a 99% exemption on dividends received by a member of a tax group from:

- another member of the same group or
- a company:
  - subject to a tax equivalent to French CIT in another member state, or in an EEA member state that has concluded an administrative assistance agreement with France to fight against tax fraud and tax evasion, and
  - that fulfils the conditions to participate in a French tax consolidated group if it is established in France (other than being subject to CIT in France).

All other qualifying dividends remain 95% exempt (e.g. dividends from French subsidiaries that are not part of a consolidated group, dividends received from a foreign subsidiary if the French parent is not a member of the French consolidated group).

Distribution followed by absorption or sale of subsidiary

The FTC prevents the possibility for a company to accumulate the exemption of dividends received from its subsidiaries (under the participation-exemption regime or the tax consolidation regime) and the deduction of a loss in value resulting from the dividends' distribution due to previous distributions at the time of the securities exchange or sale of shares.

Transfer pricing

Light but annual transfer pricing documentation is to be provided within six months from CIT filing, reporting all intra-group flows in excess of EUR 100,000 and any change in the transfer pricing policy compared to the previous period.

Upon tax audit, companies whose gross assets exceed EUR 400 million, have a turnover that exceeds a specific threshold (EUR 152.4 million or EUR 76.2 million, depending on the activity of the company), or that are part of a group that meet those criteria, and assuming they have management accounts or consolidated accounts, have to provide the French tax administration with analytical and consolidated accounts.

Identically, rulings granted by foreign tax authorities have to be part of the transfer pricing documentation.

It is not possible to defer the collection of CIT reassessed when a mutual agreement procedure is launched.

Transfer pricing documentation

Large corporations located in France (i.e. with annual turnover or amount of gross assets in excess of EUR 400 million) are required to provide documentation containing general information regarding the relevant group of companies, including main activities, operational and legal structures of the related companies, functions performed and risks borne, main intangible assets, and group transfer pricing policy, amongst others.

Advanced pricing agreements (APAs)

APAs are available for taxpayers only on the basis of international agreements entered into in accordance with Article 25 of the OECD Model Tax Convention. Currently, taxpayers are also allowed to enter into APAs with the French tax authorities on a unilateral basis. In practice, taxpayers are entitled to submit their transfer pricing policy to the French tax authorities. Agreement of the tax authorities to the APA precludes a later challenge as long as facts and circumstances described in the APA and actual ones are identical.

Light French transfer pricing annual reporting obligation

All French entities with turnover or gross assets on the balance sheet exceeding EUR 50 million, or with more than 50% direct or indirect shareholder or subsidiary interest meeting this threshold, are also subject to the light but annual French transfer pricing documentation requirements.

French companies subject to these transfer pricing obligations must file Form 2257 no later than six months after the deadline to file the annual CIT return with the tax authorities.

Form 2257 discloses general information related to the consolidated group (i.e. activities performed, group transfer pricing policy, country of location of intangibles, etc.). The form also includes specific information on the French entity (i.e. aggregated amounts of inter-company transactions exceeding EUR 100,000, main transfer pricing method used for each kind of transaction, etc.).

The 2016 Finance Act introduced two main changes:

- Electronic filing of Form 2257.
- If the relevant French entities are members of a French fiscal unity (consolidated group), Form 2257 must be filed by the head company of the French fiscal unity on behalf of the entire consolidated tax group.

Country-by-country (CbC) reporting

To align with recommendations of the OECD and the G20 BEPS Initiative (Action 13), France has introduced CbC reporting for multinational corporations, applicable to tax years beginning on or after 1 January 2016. The annual obligation requires multinational corporations to file with the French tax authorities anytime within the 12 months following their fiscal year-end a CbC report disclosing information regarding the name, activities, and profits of foreign entities in the same group.

Multinational corporations filed their first CbC report sometime in 2017. As an example, for fiscal years opened on 1 January 2017, the filing must be made no later than 31 December 2018.

French entities are subject to the CbC reporting requirement if they:

- establish consolidated accounts
- directly or indirectly hold or control one or several legal entities established abroad, or have foreign branches
- generate annual consolidated group revenue of at least EUR 750 million, and
- are not held by one or several legal entities established in France already subject to the French CbC reporting requirement, or by legal entities established abroad that are subject to similar CbC reporting requirements pursuant to foreign legislation.

The French government will publish a list of states or territories that have implemented a similar CbC reporting requirement, have concluded an automatic exchange of information agreement with France, and comply with this agreement.

An entity established in France is also subject to the French CbC reporting requirement when that French entity is held, directly or indirectly, by a legal entity established in a foreign state or territory that would have been subject to the CbC reporting requirement if established in France when:

- the French entity is designated by the consolidated group to perform the CbC reporting obligation for that group, and the French tax authorities have been informed of that designation, or
- the French entity is not able to demonstrate that any other entity of the group, either established in France or in a listed state or territory, has been designated to perform the CbC reporting for the group.

Failure to provide the French tax authorities with complete CbC reporting will result in a penalty of up to EUR 100,000.

Thin capitalisation

Under current rules, the tax deduction of interest paid by a French company to its foreign controlling shareholders is subject to the following three restrictions:

Interest rate limitation

Under the amended Article 212 of the FTC, tax deduction of interest paid to related parties is limited to the higher of (i) the average annual interest rate applied by credit institutions to companies for medium-term variable rate loans or (ii) the interest that the borrowing company could have obtained from independent banks under similar circumstances. This rate is 1.67% for financial years ending on 31 December 2017. Having passed this interest rate test, French-indebted companies have to pass a second test, the debt ratio.

Debt ratio

That part of interest paid to related parties that is deductible under the rate limitation test is disqualified if it exceeds all of the three following limitations during the same financial year:

- Interest relating to financing of any kind granted by related parties, within the limit of 1.5 times the net equity of the borrower.
- 25% of adjusted net income before tax (‘*résultat courant avant impôt*’, defined as the operating income, increased by certain items).
- Interest income received from related parties (i.e. there is no limitation on thin capitalisation grounds when the borrowing company is in a net lending position vis-a-vis related entities).

The portion of the interest that exceeds the three above limits is not deductible, except if it is lower than EUR 150,000.

Carryforward of excess interest

That part of the interest that is not deductible immediately by the borrowing company can be carried forward, without time limit, for relief in subsequent years, provided there is an excess capacity during such years. The amount in excess is, however, reduced by 5% each year, from the second financial year following the financial year in which the interest expense has been incurred.

Exceptions

The thin capitalisation rules do not apply to interest payable by banks and credit institutions, and also to certain specific situations, such as interest in connection with intra-group cash pools or with certain financial lease operations.

The thin capitalisation rules do not apply if the French-indebted company can demonstrate that the debt-to-equity ratio of the worldwide group to which it belongs exceeds its own debt-to-equity ratio.

Deductibility is also facilitated within a French tax consolidated group. The thin capitalisation rules apply to each company member of the group taken on a stand-alone basis. Any excess interest incurred by such company is, however, not carried forward by it. Instead, it is appropriated at the group level.

Extension of the thin capitalisation mechanism to loans granted by related parties

In the specific case where the repayment of a loan granted by a third party (including banks) is guaranteed by a related party or by a third party whose commitment is itself secured by a related one, then the proportion of interest that is payable on that part of the loan that is secured in this way is potentially subject to thin capitalisation rules.

The provisions will not apply where the loan:

- takes the form of a bond issued by way of a public offering or under equivalent foreign regulations, although this excludes private placements
- is guaranteed by a related party solely by way of a pledge of shares in the debtor, security over the debtor's receivables, or shares in a company directly or indirectly owning the debtor so long as the holder of such shares and the debtor are members of the same tax group; as a result, this exception will not apply where a foreign company grants a pledge of shares in its French subsidiary to guarantee the bank loan granted to it
- is obtained in the context of a refinancing to allow the debtor to complete the mandatory repayment of a pre-existing debt, which is required as a result of a direct or indirect takeover of the debtor (allowed up to the amount of the loan principal repaid and accrued interest to that date), or
- has been obtained prior to 1 January 2011 in connection with an acquisition of securities or the refinancing of such acquisition debt.

Controlled foreign companies (CFCs)

The CFC rules provide that:

- French corporations are required to include in their taxable income profits made by their more than 50% owned foreign subsidiaries and branches. The 50% holding is determined by direct and indirect control of shares and voting rights.
- The minimum holding threshold has to be reduced to 5% if over 50% of the share capital of the foreign entity is indirectly held through French or foreign companies controlled by the French parent company. However, if the shares in the foreign entity are listed on a regulated market, the French tax authorities will have to demonstrate that the French parent company, together with other entities holding shares in such foreign entity, is acting in concert.
- The CFC rules are only applicable if the foreign legal entity or PE in which the French company owns the requisite percentage of shares is in a country with a privileged tax regime. A privileged tax regime is defined by the FTC as a tax regime in which a foreign jurisdiction subjects taxable income of a foreign entity to at least 50% or lower of the income tax liability that would have been incurred in France, had the activity of the foreign entity been performed in France.
- Profits of the foreign entity that fall under the CFC rules are no longer taxed separately. They are now aggregated with the other taxable profits of the French parent company. Consequently, any tax losses incurred by the French parent company may be offset against the foreign entity's profits.
- The French parent company can avoid the application of the CFC rules if it demonstrates that the foreign entity carries an effective trading or manufacturing activity, conducted from its country of establishment or registered office. Furthermore, the CFC rules, in principle, are not applicable with respect of foreign branches or subsidiaries located in another EU country. However, this exception is not applicable if the French tax authorities can demonstrate that the foreign

entity located in another EU country constitutes an artificial arrangement, set up to circumvent French tax legislation. This concept is similar to the 'abuse of law' concept, although it does not have all the same characteristics.

Tax credits and incentives

Foreign tax credit

Under DTTs signed by France, several methods have been established to avoid double taxation. The main one is the traditional deduction of a tax credit from tax effectively paid. However, some treaties establish a tax exemption or the exclusive right to tax. Also, a tax-sparing clause is included in some treaties, which allows for the deduction of not only the tax actually paid but a higher amount of tax.

Tax credit to boost competitiveness and employment

To improve the competitiveness of the French economy and reduce employment costs, France has a tax credit that is available to French and foreign enterprises subject to CIT in France.

Partnerships will pass their tax credit through to their partners, provided the partners are subject to French tax.

There are no requirements regarding the nature of the activity carried out in France.

The tax credit is calculated as a percentage of the wages paid during the calendar year to employees receiving less than 2.5 times the French regulated minimum wage (SMIC).

The current gross monthly SMIC is EUR 1,498.47. For wages paid on or after 1 January 2018, the 2018 Act reduces the CICE tax credit rate from 7% to 6%.

For wages paid on or after 1 January 2019, the CICE tax credit is repealed and replaced by a permanent decrease in payroll charges paid by employers to finance the French social security system.

The tax credit can be offset against the CIT liability payable by the taxpayer with respect to the calendar year during which the wages are paid. Any excess credit can be carried forward and offset against the tax liability of the taxpayer during the next three years.

Credits unused after three years will be refunded to the taxpayer. The 'receivable' (unused credits) can be transferred or sold only to credit institutions. Finally, special provisions apply in the case of mergers and assimilated restructuring operations.

R&D tax credit

The R&D tax credit is determined on the basis of the eligible R&D expenses incurred during the calendar year.

Currently, the R&D credit equals 30% of the R&D eligible expenses incurred during the year, up to EUR 100 million in eligible R&D expenses, and 5% beyond this amount.

The FTC classifies eligible technical and scientific research operations in three areas: fundamental research, applied research, and experimental development.

The eligible expenditures include the following:

- Tax deductible depreciation expenses relating to fixed assets, created or acquired newly, assigned to eligible R&D works/projects, including patents acquired.
- Costs relating to staff qualifying as scientists and/or engineers (staff costs relating to 'young graduate doctors' are retained at up to 200% during the 24 months following their hiring by the company).
- Expenses resulting from outsourced R&D works/projects.
- Expenses incurred for patent registration and/or in connection with the defence of patents.
- Expenses relating to the monitoring of technical developments.
- Premiums paid in connection with insurance contracts relating to the legal defence of patents.

Salaries for research staff are fully taken into account. Operating costs are taken into account by retaining 50% of the R&D staff costs plus 75% of the depreciation on the assets allocated to the research.

Research expenditure sub-contracted to public research bodies, private research organisations approved by the minister with responsibility for research, or scientific/technical experts who have been approved under the same conditions are fully taken into account. The expenditure incurred must be for the purpose of carrying out genuine, clearly-specified R&D projects. If the company and the research body are unrelated, expenditure sub-contracted to public research bodies shall count for double of their amount.

Also, spending on outsourcing to private research organisations is included in the limit of three times the total amount of other research expenses qualifying for the tax credit.

The total amount of expenditure sub-contracted is capped at EUR 10 million (or EUR 12 million depending on the status of sub-contractors) in cases where sub-contractors are unrelated and to EUR 2 million in the contrary case.

The use of patented or patentable technologies in manufacturing

Companies that are involved in the manufacturing of products in France containing patented or patentable technologies, or companies that incorporate such technologies into goods that are manufactured in France, benefit from a reduced effective rate of tax.

In the case of a licensing arrangement between connected French companies, the licensor will benefit from a reduced 15% tax rate on royalty income, whereas the licensee company will benefit from a tax deduction at 33.33%.

In order for a licensee company to benefit from full deductibility for royalties paid, the rules require that the licensee company 'effectively exploits' the rights available to it.

Inbound investment incentives

No particular incentives are available to foreign investors in France. However, the government offers a comprehensive programme of tax incentives and development subsidies to encourage investment in underdeveloped areas.

Capital investment is encouraged through the declining-balance method of depreciation as well as through exceptional depreciation for certain capital expenditures.

Withholding taxes

Payments to resident corporations and individuals are not subject to WHT.

Payments to non-resident corporations and individuals are subject to WHT, as shown below.

In a decision given on 9 November 2015, the French Administrative Supreme Court ruled that a person who is exempt from tax in a contracting state by reason of one's status or activity cannot be considered liable to taxation and, consequently, is not a resident of the contracting state under the DTT if the treaty defines a 'resident' as a person who is liable to tax in a contracting state.

	Dividend WHT (%)		
Column 1	**Column 2**	**Column 3**	**Column 4**
Country of residence	**Individuals and non-parent companies**	**Parent companies**	**Shareholding required to be a parent**
Non-treaty	21/30 (37)	30	-
Treaty:			
Algeria	15	5	10
Argentina	15	15	-
Armenia	15	5	10
Australia	15	0	10
Austria	15	0	10
Bahrain	0	0	-
Bangladesh	15	10	10
Belgium	15	0 (1)	10
Benin	30	30	-
Bolivia	15	15	-
Botswana	12	5	25
Brazil	15	15 (2)	-
Bulgaria	15	0/5 (1)	10/15
Burkina Faso	15 (19)	30 (2)	-
Cameroon	15	15	-
Canada	15	5	10
Central African Republic	15	5	10
China	10	10	-
Comoro Islands (Mayotte)	15/25	15/25	-
Congo, Republic of	20	15	10
Croatia	15	0	10
Cyprus	15	0/10 (1)	10
Czech Republic	10	0 (1)	10
Ecuador	15	15	-
Egypt	0	0	-
Estonia	15	0/5 (1)	10
Finland	0/15	0/5 (1)	10
Gabon	15	15	-

	Dividend WHT (%)		
Column 1	Column 2	Column 3	Column 4
Country of residence	Individuals and non-parent companies	Parent companies	Shareholding required to be a parent
Georgia	10	0/5/10	10/50
Germany	15	0 (3)	10
Ghana	15	5	10
Greece	21/30 (37)	0/30 (1)	10
Hong Kong	10	10	-
Hungary	15	0/5 (1)	10
Iceland	15	0/5 (1)	10
India	10	10	-
Indonesia	15	10	25
Iran	20	15	25
Ireland, Republic of	15	0/10 (1)	10/50
Israel	15	5	10
Italy	15	0/5/15 (1)	10
Ivory Coast	15	15	-
Jamaica	15	15	10
Japan	10	5	10
Jordan	15	5	10
Kazakhstan	15	5	10
Kenya	10	10	-
Korea, Republic of	15	10	10
Kuwait	0	0	-
Latvia	15	0/5 (1)	10
Lebanon	0	0	-
Lithuania	15	0/5 (1)	10
Luxembourg	15	0/5 (1)	10/25
Holding company (4)	30	30	-
Macedonia	15	0	10
Madagascar	25	15	25
Malawi	30	30	-
Malaysia	15	5	10
Mali	15/30	30 (2)	-
Malta	15	0 (1)	10
Mauritania	30	30	-
Mauritius	15	5	10
Mayotte	30	25 (2, 5)	-
Mexico	15	0/5	5/10
Monaco	25	25	10
Mongolia	15	5	10
Morocco	0/15	0/15 (6)	-
Namibia	15	5	10
Netherlands	15	0/5 (1)	10/25
New Caledonia	15	5 (35)	-
New Zealand	15	15	-
Niger	25	-	-
Nigeria	15	12.5 (35)	10
Norway	15	0 (1)	10
Oman	0	0	-

	Dividend WHT (%)		
Column 1	**Column 2**	**Column 3**	**Column 4**
Country of residence	**Individuals and non-parent companies**	**Parent companies**	**Shareholding required to be a parent**
Pakistan	15	10	10
Philippines	15	10 (35)	10 (36)
Poland	15	5	10
Polynesia, French	30	30	25
Portugal	15	0/5 (1)	10
Qatar	0	0	-
Romania	10	0 (1)	10
Russia	15	5/10/15 (7)	-
Russian Federation	15	5	10
St. Pierre & Miquelon	15	5	-
Saudi Arabia	0	0	-
Senegal	15	15	-
Singapore	15	10	10
Slovakia	10	0/10 (1)	20
South Africa	15	5	10
Spain	15	0	10
Sri Lanka	30	30	-
Sweden	15	0/15 (1)	10
Switzerland (8)			
A (9)	15	0 (8)	10 (8)
B (10)	15 (8)	0/15 (8)	10 (8)
C (11)	30	30	-
Thailand	20	15	25
Togo	15/30	25 (2)	-
Trinidad and Tobago	15	10	10
Tunisia	30	30	-
Turkey	20	15	-
Ukraine (12)	15	0/5	10/50
United Arab Emirates	0	0	-
United Kingdom	15	0/5 (1)	10
United States	15	0/5	10/80
Uzbekistan	10	5	10
Venezuela	15	0/5	10
Vietnam	15	5	10
Zambia	30	30	50
Zimbabwe	15	10	25

	WHT (%)		
	Interest	**Royalties**	**Distributions**
Column 1	**Column 5**	**Column 6**	**Column 7**
Country of residence	**For instruments other than borrowings**		**Automatically levied on after-tax profits of PEs**
Non-treaty (13, 14, 15)	0 (16)	33.33	25
Treaty:			
Algeria	0	5/10 (33)	0
Argentina	0	18	5

	WHT (%)		
	Interest	Royalties	Distributions
Column 1	Column 5	Column 6	Column 7
Country of residence	For instruments other than borrowings		Automatically levied on after-tax profits of PEs
Armenia	0	5/10 (33)	5
Australia	0	5	15
Austria	0	0	0
Bahrain	0	0	25
Bangladesh	0	10	15
Belgium	0	0	0/10 (22)
Benin	0	0	25 (17)
Bolivia	0	15	0
Botswana	0	10	5
Brazil	0	10/15/25 (18)	15
Bulgaria	0	0/5 (38)	0/5 (22)
Burkina Faso	0	0	25 (17)
Cameroon	0	15 (19)	15
Canada	0	10 (19)	5
Quebec	0	10	5
Central African Republic	0	0	25 (17)
China	0	6/10 (20)	0
Comoro Islands (Mayotte)	0	33.33	25 (17)
Congo, Republic of	0	15	15
Croatia	0	0	0
Cyprus	0	0 (21, 38)	0/10 (22)
Czech Republic	0	0/5/10 (23, 34, 38)	0 (22)
Ecuador	0	15	15
Egypt	0	15	0
Estonia	0	0/5/10 (34, 38)	0
Finland	0	0	0/15 (22)
Gabon	0	10	0
Georgia	0	0	0
Germany	0	0	0
Ghana	0	10	0
Greece	0	0/5 (38)	0/25 (22)
Hong Kong	0	10	10
Hungary	0	0	0/5 (22)
Iceland	0	0	5
India	0	0	0
Indonesia	0	10	10
Iran	0	10	15
Ireland, Republic of	0	0	0/25 (22)
Israel	0	0/10 (19, 21)	5/10
Italy	0	0/5 (23, 38)	0
Ivory Coast	0	0/10 (24)	0
Jamaica	0	10	10
Japan	0	0	0
Jordan	0	5/15/25 (18)	5
Kazakhstan	0	10	5

	WHT (%)		
	Interest	Royalties	Distributions
Column 1	Column 5	Column 6	Column 7
Country of residence	For instruments other than borrowings		Automatically levied on after-tax profits of PEs
Kenya	12	10	25
Korea, Republic of	0	10	5
Kuwait	0	0	25
Latvia	0	0/5/10 (34, 38)	0
Lebanon	0	33.33	25
Lithuania	0	0/5/10 (34, 38)	0
Luxembourg	0	0	0/5 (22)
Holding company (4)	10 to 15	33.33	25
Macedonia	0	0	0
Madagascar	0	10/15 (25, 26)	25
Malawi	0	0/33.33 (19)	10
Malaysia	0	10 (26)	15
Mali	0	0	25 (17)
Malta	0	0/10 (23, 38)	0/10 (22)
Mauritania	0	0	25 (17)
Mauritius	0	0/15 (23)	15
Mayotte	0	0	25 (17)
Mexico	0	10 (20, 23)	0
Monaco	0	33.33	25
Mongolia	0	5 (23)	0
Morocco	0	5/10 (27)	0
Namibia	0	10 (23)	0
Netherlands	0	0	0
New Caledonia	0	10 (23)	10
New Zealand	0	10	15
Niger	0	0	25 (17)
Nigeria	0	12.5	25
Norway	0	0	0
Oman	0	7	25
Pakistan	0	10	0
Philippines	0/15/50	15	10
Poland	0	0/10 (23)	25
Polynesia, French	0	33.33	25 (17)
Portugal	0	0/5 (38)	0/15 (22)
Qatar	0	0	25
Romania	0	0/10 (38)	0/10 (22)
Russia	0	0	0
Russian Federation	0	0	25
St. Pierre & Miquelon	0	10 (23)	10
Saudi Arabia	0	0	25
Senegal	0	0	0
Singapore	0	0	5
Slovakia	0	0/5 (23)	10
South Africa	0	0	0
Spain	0	0/5 (29, 38)	0

	WHT (%)		
	Interest	Royalties	Distributions
Column 1	Column 5	Column 6	Column 7
Country of residence	For instruments other than borrowings		Automatically levied on after-tax profits of PEs
Sri Lanka	0	0/10 (30)	25
Sweden	0	0	0 (22, 23)
Switzerland (8)			
A (9)	0	0/5 (8, 31)	0 (8)
B (10)	0	0/5 (8, 31)	0 (8)
C (11)	0	33.33	0 (8)
Thailand	0	5/15 (28)	25
Togo	0	0	25 (17)
Trinidad and Tobago	0	0/10 (20)	10
Tunisia	0	5/15/20 (32)	25 (17)
Turkey	0	10	7.5
Ukraine	0	0/10	25
United Arab Emirates	0	0	0
United Kingdom	0	0	0 (22)
United States	0	0	5
Uzbekistan	0	0	0
Venezuela	0	5	0
Vietnam	0	10	0
Zambia	0	0/33.33 (19)	10
Zimbabwe	0	10	0

Explanation of columns

Column 2: Individuals and companies not qualifying as parents are subject to the WHT rates for dividends as indicated in this column.

Columns 3 and 4: Column 3 indicates the WHT rate for dividends paid to a foreign 'parent' company. To be considered as a parent company, the foreign company must hold a specified percentage of the French company's share capital or voting rights. These minimum percentages range from 0% to 50%, as indicated in Column 4, and certain other conditions must be met (*see each treaty*). If no percentage is indicated, either no minimum shareholding is required or the tax treaty does not reduce the WHT rate of 30%.

No WHT is levied on dividends paid by a French company to an EU parent or to a parent company of Iceland, Liechtenstein, or Norway that is subject to CIT, provided all the following conditions are met:

- The parent company has held a minimum percentage of the share capital of the distributing company, directly and continuously, for at least two years. As of 1 January 2009, the participation required is 10%.
- The parent company is the effective beneficiary of the dividends.
- The parent company has its effective seat of management in an EU state and is not deemed to be domiciled outside the European Union under an applicable tax treaty.
- The parent company is one of the legal forms enumerated by the relevant Directive.
- The parent company is subject to CIT in the member state where it has its effective seat of management.
- There is an anti-avoidance rule.

Column 5: The tax mechanism has been changed so as to exempt the interest from WHT in France except where the interest is paid to an entity established in a non-cooperative state or territory (WHT at a rate of 75% applicable). The payer can, however, be exempt if one proves that the main purpose and effect of such a payment is not to take advantage of locating the income in such a jurisdiction.

These provisions apply to income paid as of 1 March 2010. A special provision applies to loans entered into outside of France by French companies and some investments funds prior to this date. Interest paid on these loans and on related loans after 1 March 2010 will continue to be exempt.

Column 6: There is no requirement to withhold income tax on royalties paid to EU companies if all the following conditions are met:

- The taxpayer is a French-resident company or a French PE of a company resident in another EU member state.
- The recipient of the income is an EU-resident company.
- The taxpayer and the recipient are at least 25% associates, which means that either one directly holds 25% or more of the share capital or voting rights in the other, or a third party directly holds 25% or more of the capital or voting rights in them both.

Column 7: WHT is automatically imposed on after-tax profits of a PE unless certain conditions are met. The rate is 25% or the reduced tax treaty rate.

Notes

1. *See explanation of Columns 3 and 4.*
2. Exceptions where the dividends are excluded from the taxable income of the company that has received the dividends.
3. A rate of 15% is applicable for dividends distributed by certain companies.
4. The 1929-type Luxembourg holding companies are not entitled to any of the benefits of the France-Luxembourg tax treaty.
5. A 25% rate applies if dividends are not included in the income taxed to either corporate or income tax.
6. No WHT applies if dividends are taxable in Morocco.
7. The 5% rate applies to dividends when three conditions are fulfilled, as follows: (1) the effective recipient of the dividends must have invested at least EUR 76,224.51 in the company that pays these dividends; (2) the recipient must be a company liable for CIT; and (3) the latter company must be exempt from CIT. The rate is 10% when only condition (1) or conditions (2 and 3) are fulfilled. In all other cases, the rate is 15%.
8. An addendum signed on 22 July 1997 modifies the provisions of the French-Swiss tax treaty relating to dividends, interest, and royalties, and provides for the removal of the 5% WHT on profits realised by French PE of Swiss resident companies.
9. The rate indicated applies to Swiss resident companies controlled by Swiss residents.
10. The rate indicated applies to Swiss resident companies that are controlled by non-Swiss residents (non-UE) (Article 11.2.b ii) and meet the conditions of Article 14 of the tax treaty. In the case of column 3, the 15% rate applies to these companies, provided both the recipient and the distributing company are not quoted on a stock exchange. If these conditions are not met, the tax exemption applies.
11. The rate indicated applies to Swiss resident companies controlled by non-Swiss residents but not complying with Article 14 of the tax treaty.
12. The 5% rate applies to gross dividends if the effective recipient is a Ukrainian company that holds, directly or indirectly, at least 10% of the French company's capital. The rate is 0% if the participation exceeds 50% and EUR 762,245. It is 15% in all other cases.
13. Non-treaty recipients of royalties and management fees are subject to a 33.33% withholding rate. Where a treaty exists, management fees are exempt from WHT unless they are included in the definition of royalties subject to WHT.
14. In France, the WHT is levied on a provisional basis at 25% of the net profit. This amount is reduced to the extent it exceeds the dividends actually paid by the company during the previous 12 months, and the amount of dividends paid to residents of France. Consequently, if the foreign head office undertakes not to distribute dividends in a given year, the after-tax profits of its French branch are not subject to WHT, even when they are transferred abroad.
15. WHT on interest on loans with a contract is 0%, while withholding on other interest is in a range from 15% to 50%. For treaty rates, consult the individual entry in the table.
16. The WHT rate can be 60% for certain securities if the investor's identity is not disclosed.
17. The WHT is levied on the following amount: French net profit divided by the total foreign company net profit, multiplied by the amount of the distribution.
18. The rate of 10% is applicable on royalties for the use of literary, artistic, or scientific works, including films; 25% on royalties for the use of trademarks; and 15% otherwise.
19. No WHT is applicable on a royalty arising from the use of or the right to use literary, artistic, or scientific works (excluding film).
20. WHT is reduced to 6% for royalties paid for the lease of industrial, commercial, or scientific equipment.
21. A rate of 5% (Cyprus) and 10% (Israel) is applicable on royalties paid for the use or the right of the use of films.
22. Profits realised in France by foreign corporations whose head offices are located in a European country are not subject to WHT if certain conditions concerning the foreign corporation are met (effective head office in a European country; foreign corporation subject to corporate taxation).
23. No WHT is applicable on a royalty arising from the use or the right to use literary, artistic, or scientific works.

24. No WHT is levied on certain royalties paid in the field of audio visual techniques.
25. The rate of 15% is applicable on royalties paid for the use of industrial property and trademarks.
26. A rate of 33.33% is applicable on royalties paid for the use of or the right to use films.
27. The rate of 5% is applicable on royalties paid for the use of literary, artistic, or scientific works, excluding films.
28. The rate of 33.33% is applicable on royalties paid for the use of literary and artistic works, including films, and for information concerning commercial experience.
29. No WHT is levied on royalties paid for the use of or the right to use literary or artistic works, excluding films and recordings.
30. No WHT is levied on royalties paid for the use of or the right to use copyrights or films.
31. No WHT is levied on royalties paid for the use of or the right to use industrial, commercial, or scientific equipment.
32. The rate of 20% is applicable on royalties paid for the use of trademarks, 15% for the use of industrial property, and 5% for the use of literary, artistic, or scientific works.
33. The rate of 5% is applicable on royalties for the use of literary, artistic, or scientific works, not including films.
34. The rate of 5% is applicable on royalties for the use or the right to use industrial, commercial, or scientific equipment.
35. The reduced rate is applicable if the beneficial owner is a company (other than a partnership).
36. Voting shares solely.
37. French domestic law decreases the WHT rate from 30% to 21% concerning individuals who are resident in another EU member state, in Iceland, and in Norway.
38. *See explanation of Column 6.*

WHT on French-source dividends

The EU WHT exemption extends to dividends paid by foreign companies whose effective place of management is in an EEA member state that has concluded an administrative assistance agreement with France (including Iceland, Liechtenstein, and Norway).

Shares held in bare ownership are taken into account for the computation of the 10% percentage in the distributing entity's capital in order to benefit from the WHT exemption. The ownership percentage required to benefit from the WHT exemption may be reduced from 10% to 5% if the beneficial owner of the dividends (EU or EEA) cannot offset the French domestic WHT in its home country.

The WHT exemption also applies if dividends are paid to a parent company based in the European Union or in a third country that has concluded an administrative assistance agreement with France that is in a tax loss position and is declared bankrupt or is in a similar situation.

Dividends received by a French parent from qualifying holdings

Shares held in bare ownership are taken into account for the computation of the 5% percentage in the subsidiary's capital in order to benefit from the participation-exemption regime.

Participation exemption is available for distributions received from entities established in NCSTs, provided the parent company demonstrates that these operations are not designed for, or do not result in, locating profits in such NCST for tax fraud purposes.

There is an exclusion of certain dividend distributions (e.g. distributions made by *société d'investissement immobilière* côtée [SIIC], *société immobilières pour le commerce et l'industrie* [SICOMI], *société de placement à prépondérance immobilière à capital variable* [SPPICAV], etc.) from the participation-exemption regime.

Anti-avoidance rules applicable to Non-Cooperative States or Territories (NCSTs)

The French parent-subsidiary regime is not applicable to dividends paid from entities located in an NCST.

WHT on passive income is 75% for transactions with an NCST person or entity.

For French tax purposes, a state or territory is considered non-cooperative if it meets all of the following criteria:

- It is not a member of the European Community.
- It has been reviewed and monitored by the OECD Global Forum on Transparency and Exchange of Information.
- It has not concluded at least 12 administrative assistance agreements/treaties that allow a complete exchange of information for tax purposes.
- It has not concluded an administrative assistance agreement/treaty with France.

Payments (e.g. interests, royalties, payments for services) made to an NCST person or entity are, as a general rule, not tax deductible. In addition, it is not possible to offset WHT in France with any foreign WHT borne by the entity located in an NCST.

Moreover, concerning shareholders (individuals and companies) located in an NCST, a tax amounting to 75% is levied on capital gains derived from the disposal of shares in French companies, whatever the level of shareholding.

In 2018, the list of NCSTs includes Botswana, Nauru, Brunei, Niue, Guatemala, Panama, and Marshall Islands.

General Anti-Abuse Rule (GAAR)

A GAAR provided by the EU Directive is implemented in French law and applies to the:

- Parent-subsidiary regime.
- French WHT exemption.

The French GAAR provides that the benefit of these regimes cannot be claimed:

- if the distributions result from a scheme or series of schemes put in place to obtain, as a main objective or as one of the main objectives, a tax benefit that is contrary to the purpose of the parent-subsidiary regime, and
- that is not genuine based on the applicable facts and circumstances.

According to parliamentary works, this GAAR aims to exclude from the exemption holding companies with a sole purpose of holding shares.

Tax administration

Taxable period

The ordinary taxable period is equal to 12 months. Conformity with the calendar year is not requested. In particular cases, the duration of the taxable period can be different from 12 months (e.g. newly established companies are allowed to have taxable periods longer than 12 months; companies that are involved in extraordinary transactions [merger, de-mergers, etc.], as well as companies that are liquidated, may have taxable periods shorter than 12 months).

Tax returns

Regarding fiscal years that end on 31 December, CIT returns are due by the end of April of the following year.

Accounting records to be provided in 'computerised format' in case of tax audit

Companies are required to keep their accounting records in computerised form and to provide them to the tax authorities in the same format. Such electronic files must be provided for fiscal year 2015 and following years when audited in fiscal year 2018.

Payment of tax

Payment of tax is made during the fiscal year by way of four instalments totalling 33.33% of the taxable income of the preceding year (i.e. by 15 March, 15 June, 15 September, and 15 December for fiscal years that end on 31 December). Regarding fiscal years that end on 31 December, final CIT payment is due on 15 April of the following year.

Currently, for companies that have gross income in excess of EUR 500 million, the last down-payment is assessed on the basis of the estimated taxable income of the present year (in case of significant increase of the taxable profits in comparison with the previous fiscal year). This leads to an anticipated payment of CIT.

For tax years beginning on or after 1 January 2017, companies with revenues exceeding EUR 250 million in the previous tax year must compute their fourth CIT instalment payment as follows:

Total of the four instalment payments	Conditions
80% of the CIT due on the projected profits	EUR 250 million ≤ Revenues ≤ EUR 1 billion
90% of the CIT due on projected profits	EUR 1 billion < Revenues ≤ EUR 5 billion
98% of the CIT due on projected profits	Revenues > EUR 5 billion

For example, the last instalment payment will be due on 15 December 2018 for tax years ending on 31 December 2018.

Interest and penalties

Regarding CIT, VAT, registration duties, and business tax:

- late payment is subject to late interest computed at a rate of 0.4% per month late (4.80% per year) (the 2017 Act reduces this rate to 0.20% per month late [2.40% per year] for interest due from 1 January 2018 through 31 December 2020) and to a 5% penalty, and
- late filing is subject to late interest computed at a rate of 0.4% per month late (4.80% per year) (the 2017 Act reduces this rate to 0.20% per month late [2.40% per year] for interest due from 1 January 2018 through 31 December 2020) and to a 10% penalty.

Moreover, a penalty of 40% applies in case of bad faith and is increased to 80% in case of fraud.

Tax audit process

The French tax authorities are responsible for verifying that taxpayers' obligations are correctly complied with and, if necessary, for making adjustments by issuing tax assessments.

Once an assessment is notified by the tax inspector and if the taxpayer disagrees with such an assessment, the taxpayer has 30 days to answer (with a possible 30 days extension upon request) and to provide comments to the French tax authorities.

Following an exchange of written correspondences between the tax inspector and the taxpayer (including hierarchical recourse), either party may submit any disagreement on a factual issue to the departmental or national tax commission. The decision of this commission is neither binding on the taxpayer nor on the French tax authorities.

In cases where the disagreement between the French tax authorities and the taxpayer still remains, the taxpayer can file a claim with the French civil courts or with the French administrative courts, depending on the type of tax that has been subject to assessment by the tax inspector.

Statute of limitation

Regarding CIT, the general statute of limitation expires at the end of the third year following the one that has triggered the tax liability.

Under certain circumstances, the statute of limitation can be extended (e.g. fraud, undisclosed/hidden activity); the statute of limitation can also be interrupted (e.g. notification of a notice of reassessment).

Topics of focus for tax authorities

Transfer pricing, business reorganisation, financing arrangements, and VAT are standard elements reviewed during tax audit.

The ruling system

To secure the tax status of a situation, foreign companies and individuals can request a private ruling from the French tax authorities as to whether their activities constitute a PE or fixed base.

The French tax authorities have to provide an answer within three months after the receipt of the request. In the absence of response from the French tax authorities within this period of time, the foreign company or individual will be deemed not to have a PE in France.

APAs are also provided by the French tax authorities for transfer pricing purposes (*see the Group taxation section for more information*) as well as for eligibility of R&D expenses to the R&D tax credit.

Other issues

France and the United States sign bilateral agreement on the implementation of the Foreign Account Tax Compliance Act (FATCA)

On 14 November 2013, France and the United States signed a bilateral intergovernmental agreement (IGA) intended to implement FATCA. FATCA was enacted by the United States in 2010 to combat offshore tax evasion by US persons. France, with the United Kingdom, Germany, Spain, and Italy, was an original member of the 'G5' countries that agreed with the United States to advance the principles of FATCA under the concept of bilateral IGAs in order to address many of the legal barriers faced by financial institutions in complying with FATCA.

The French government has committed to drafting local laws and regulations to implement FATCA among all financial institutions resident in France (including French branches of foreign companies). Broadly speaking, the banking, life insurance, and asset management industries will be most affected, but certain estate (patrimonial) vehicles, holding companies, as well as hedging, finance, and treasury centres of non-financial groups could also be impacted, depending on the nature of their activities.

As expected, the US-France IGA is based on the Model 1A version with an Annex II negotiated to include provisions specific to the local French market and that contains categories of French financial institutions qualifying for exempt beneficial owner or deemed-complaint status.

Compliance with FATCA's due diligence, reporting, and, in some cases, withholding requirements is necessary for foreign financial institutions (FFIs) to avoid suffering 30% withholding on certain US-source income and payments. The French IGA is intended to simplify the FATCA requirements for French financial institutions, but, in most cases, still requires significant efforts to maintain compliance.

The following are key points specific to the US-France IGA to consider:

- Inclusion of the 'most favoured nation' clause allowing adoption of certain provisions from other IGAs that may be more favourable to French financial institutions.
- Consistent with Notice 2013-43, the timetable for implementation of FATCA has been synchronised with the intended amendments to the US Treasury Regulations, starting with the entry into force of key provisions effective 1 July 2014.
- Annex II of the French IGA describes various classes of exempt beneficial owners and deemed-compliant financial institutions.
    - The deemed-compliant financial institutions described in Annex II are treated as Non-Reporting French Financial Institutions under the French IGA. In turn, these Non-Reporting French Financial Institutions are considered certified deemed-compliant FFIs under the US regulations and do not have to register to obtain a global intermediary identification number (GIIN).
    - Collective investment vehicles, including investment entities established in France that are regulated as collective investment vehicles, *sociétés de crédit foncier* and *sociétés de financement de l'habitat*, are Non-Reporting French Financial Institutions treated as deemed-compliant FFIs.
- The asset management industry should benefit from an exemption related to employee savings plans and a special status that is intended to reduce the FATCA

obligations of investment vehicles and management companies that can ensure the absence of US investors and non-participating financial institution customers.
- The agreement also provides specific provisions for certain French institutions and financial products, including:
  - Exemption for certain local banks with an almost exclusively local client base. This could be beneficial to French institutions following the mutual banking model.
  - Most regulated savings products (savings books and savings plans), which are excluded from the definition of a financial account and will not be treated as US Reportable Accounts, whereas the share savings plan (PEA) remains within the scope of FATCA.
  - Products dedicated to retirement planning (Article 39, Article 82 , Article 83, Madelin, Madelin agricole, Perp, Pere, and Prefon), which are excluded from the definition of financial accounts and will not be treated as US Reportable Accounts.
  - Pension funds will also benefit from a specific exemption.

French financial institutions, as well as non-financial organisations with financial institutions within their groups, should be taking steps based on the IGA (and in some cases US Treasury Regulations) to ensure they are prepared to comply. Unofficial draft guidelines have been prepared regarding the US-France IGA. This draft is not binding on French tax authorities. Official guidelines were published on 5 August 2015.

Gabon

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Significant developments

Further to the promulgation of the Financial Act for 2018, the following new tax measures have been introduced:

- Possibility to obtain tax benefits with regard to corporate income tax (CIT), value-added tax (VAT), and related withholding tax (WHT) during the stage of investment or construction, subject to the fulfilment of conditions, and for a period that does not exceed five years.
- The institution of thin capitalisation rules.
- The extension of the list of goods subject to excise duty, the reduction of the former excise duty's rates, and the institution of a specific tax based on quantities in addition to the 'ad valorem' rate.
- The institution of a monitoring fee for companies holding forestry, mining agricultural, or hydrocarbons' exploitation rights in the Gabonese Republic.
- The institution of a contribution to the African Union due on the products originating from states that are not members of the African Union that are imported in the customs territory for consumption.

Taxes on corporate income

Subject to the provisions of double tax treaties (DTTs), profits subject to CIT in Gabon are those obtained by companies exploited in Gabon or those relating to operations carried out in this country.

As the Uniform Act of the Organisation for the Harmonisation of Business Law in Africa (OHADA) relating to the law of companies and economic interest groups has introduced the simplified stock company (SAS) in the OHADA area, the General Tax Code has enlarged the application of the CIT to include the SAS. The Finance Act for 2018 has also enlarged the application of the CIT, on an optional manner, to companies of owners of ships or built and unbuilt properties, for the part of the shareholders indefinitely liable and whose identity is known by the Administration.

The CIT rate is fixed at 30%.

The CIT rate is 35% for companies operating in the oil and mining sectors and 25% for the following entities:

- Companies owning intellectual property (IP) shares.
- The Gabonese Development Bank.
- Authorised companies of property promotions.

- Public companies.
- Non-profit partnerships and collectives.
- Authorised companies of the tourism sector.

CIT is assessed on profits minus deductible expenses and charges. Profits are composed of all operations carried out in Gabon by companies during the period of taxation, including, notably, capital gains on fixed assets.

Non-resident companies shall be taxed via WHT at the rate of 20% for income raised in Gabon if they have no permanent establishment (PE) in Gabon.

In cases where non-resident companies have PE in Gabon, they shall be subject to CIT on the income raised in Gabon via the Gabonese PE.

Impôt Minimum Forfaitaire (IMF)

The IMF is a lower limit to the CIT and is calculated as 1% of the global turnover carried out during the fiscal year of taxation.

The turnover on which the IMF is calculated corresponds to all the revenues resulting from the operations carried out during the fiscal year, including the financial and exceptional profits.

Minimum de Perception (Minimum of Perception)

The Minimum of Perception is the ultimate lower limit to the CIT, as the amount of CIT paid by a taxpayer cannot be less than 1 million Central African CFA francs (XAF), even in the absence of profit.

New companies (as defined in Articles 194, and following, of the Gabonese Tax Code), without consideration of the sector of activity, are exempt from this minimum tax during the first two fiscal years of their existence.

Local income taxes

There are no local government taxes on income in Gabon.

Corporate residence

As a general rule, a resident company is a company that is incorporated under commercial laws in force in Gabon.

Permanent establishment (PE)

From a general treaty perspective, a PE designates a permanent business installation through which a company carries out the whole or part of its activity.

The expression ‘permanent establishment’ notably includes the following:

- Head office.
- Branch.
- Office.
- Plant.
- Workshop.
- Mine, oil or gas shaft, quarry, or other place of natural resources extraction.

- Building site or assembly line.

Other taxes

Value-added tax (VAT)

VAT is a cumulative tax levied on the sale of goods and the provision of services rendered or used in Gabon.

There are four rates of VAT:

- Standard rate: 18%, which applies to all transactions unless otherwise provided for by the law.
- Reduced rates:
  - 10%, which applies to manufacturing operations and sales of products mentioned in a limitative list provided by Article 221 of the Gabonese Tax Code, including mineral water, chicken, and sugar.
  - 5%, which applies to sales and services relating to cement.

- Zero-rate: 0%, which applies to exports and international transports.

Taxable persons are individuals or legal entities carrying out, usually or occasionally, in an independent manner, taxable operations in the scope of an economic activity and for an onerous consideration.

The aforesaid persons, subject to CIT or personal income tax (PIT), being registered or not, are liable to VAT should their turnover out of taxes reach XAF 60 million.

VAT on real estate

According to article 248 ter of the Gabonese Tax Code, operations in relation to the construction or sale of real estate, such as sales of lands to build on, delivery of new buildings, or self-delivery of some buildings, carried out by persons subject to VAT in the scope of their economic activities are subject to VAT on real estate.

The taxpayer of the VAT on real estate is the builder of the building.

The VAT is payable on the delivery date.

The deeds relating to the transfer of buildings subject to VAT on real estate are subject to registration formalities.

The VAT on real estate is calculated based on the sale price as determined by the parties or on the real value of the real estate in case it is superior.

The applicable rate is 18%.

Special Solidarity Contribution (SSC)

SSC is a tax levied on the sale of goods and the provision of services rendered or used in Gabon based on similar principles as VAT.

The SSC must be invoiced by the taxpayers (natural and legal persons) carrying out, on as usual or occasional basis, taxable transactions whose annual turnover, excluding taxes, is at least XAF 30 million.

The arrangements for the taxation of the said contribution are similar to those applicable to VAT.

This contribution aims to replace the contribution to Health Insurance (ROAM) that was formerly due by operators of the mobile telecommunication sector.

The SSC is calculated based on the amount invoiced, out of taxes.

The applicable rate is 1%.

Customs duties

Gabon is member of the Central African Economic and Monetary Community (CEMAC), a customs union that comprises countries from Central Africa.

Merchandise entering into the CEMAC customs territory is subject to importation duties registered into the Customs Tariff.

Four customs regimes are available in Gabon, notably one standard regime and three specific regimes (an exemption regime, a temporary admission regime, and a reduced tax regime).

Apart from customs duties, the importation of merchandise in Gabon is subject to the community tax of integration (CCI) at a rate of 0.4% and to the OHADA withholding (duty) at a rate of 0.05% of the customs value of the imported merchandise.

The Finance Act for 2018 has introduced, as of 1 January 2018, a contribution to the African Union (CAF) that is due on the importation within the custom territory of products originating from states that are not members of the African Union.

The CAF is paid at a single rate of 0.2% of the customs value of the products originating from states that are not members of the African Union.

Excise duty

Excise duty principally applies to luxury goods, such as alcoholic drinks, perfume and cosmetic products, caviar, salmon, cigars, and cigarettes.

The rates of the excise duty are between 5% and 25%.

The Financial Act for 2018 has extended the list of products subject to excise duties and has provided a decrease of the former excise duty rates.

The Finance Act for 2018 has also introduced, in addition to the ad valorem rate, a specific tax based on the quantities.

The excise duties are currently the following:

- Local and imported beers: 22% + XAF 80 per litre.
- Local and imported wines: 25% + XAF 80 per litre.
- Champagnes: 22% + XAF 200 per litre.
- Other beverages with more than 12° of alcohol: 22% + XAF 200 per litre.
- Soft drinks and other beverages with less than 12° of alcohol: 5%.
- Cigarettes, cigars, cigarillos, tobacco: 25% + XAF 300 per package produced or imported.

- Perfume and cosmetic products: 25%.
- Games of chance: 5% + XAF 100,000 per operated machine.
- Used vehicles: 25% + XAF 50,000 per sold vehicle aged 3 years at most and XAF 100,000 per sold vehicle aged more than 3 years.
- Caviar, foie gras, salmon: 25%.
- Mobile telecommunication activities (calls): 5%.

Tax on property

Tax on buildings (*Contributions Foncières des Propriétés Bâties* or CFPB) is levied annually at the rate of 15% of the rental value of the building after deduction of 25% for deterioration and maintenance. For properties booked into the assets of a company's balance sheet, the rental value of the premises is equal to 10% of the gross balance sheet value without being inferior to a tenth of the market value of the premises. However, in the hypothesis where the market value is unknown, only the gross balance sheet value has to be considered.

Tax on non-built property is levied annually at the rate of 25% of the taxable revenue corresponding to 4% to 5% of the rental value or 10% of the purchase value.

Transfer tax

The tax on funds transfer is due on remote transfer operations carried out in Gabon at destination of countries outside the Central Africa Monetary Union (UMAC) countries.

The tax is calculated on the amount of the funds to be transferred, except for related fees and commissions paid by the giver.

The rate of the transfer tax is 1.5%.

Stamp duty

A stamp duty is levied on all paperwork relating to civil and judicial actions and to documents that could be produced in court as evidence.

All signatories for mutually binding contracts, lenders and borrowers for loans, and ministerial officials who receive or modify deeds announcing unstamped deeds or books are jointly responsible for the payment of stamp duties and fines.

Business license tax

The business license tax applies to both individuals and entities, Gabonese and foreign, engaged in a profession, business, or industry in Gabon.

Business license tax corresponds to a professional tax borne annually. It is deductible from the taxable income for CIT purposes.

The rates of this tax vary according to the profession, business, and location within Gabon territory (this tax may vary between XAF 15,000 and XAF 540,000).

The head of the group of companies is exempted from the payment of the business license tax.

Franchise tax

The franchise tax is a fixed annual duty varying from XAF 10,000 to XAF 500,000, according to the size, nature, and location of the company. Each company that carries on a trade, business, or activity that is not expressly exempted is liable for franchise tax.

Activities that are expressly exempted from franchise tax are those carried out by companies of provident, craftsmen, teachers and professors, lyrical and dramatic artists, farmers, cattle-breeders, fishers, etc.

Registration duties

Registration duties in Gabon are fixed, proportional, or progressive, depending on the nature of the acts and transfers in question.

Payroll taxes

PIT and complementary tax on salary (TCS) are withheld monthly by the employer and paid to the Treasury before the 15th day of the following month.

Social security contributions

Employers must contribute to the social security system, which consists of the National Social Security Fund (CNSS) and the National Disease Insurance and Social Guarantee Fund (CNAMGS).

The taxable basis for social security contributions to the benefit of the CNSS is made up of gross salaries, including indemnities having the function of a salary and any benefits in kind. However, there is an annual ceiling of XAF 18 million (or XAF 1.5 million per month).

The taxable basis for social security contributions to the benefit of the CNAMGS is made up of gross salaries, including taxable indemnities, up to the limit of a monthly ceiling of XAF 2.5 million.

The social security contributions due by the employer for both funds are determined according to the following rates:

Contribution to CNSS	Rate (%)
Family allowances	8
Industrial accidents (work injuries)	3
Retirement pensions	5
Contribution to CNAMGS	**Rate (%)**
Health evacuation funds	0.6
Medication distribution	2
Hospitalisations	1.5
Total	**20.1**

Tax on insurance premiums

Insurance or annuity agreements made with insurance companies or any other Gabonese or foreign insurer are subject to an annual obligatory tax.

The tax is levied on the sums charged by the insurer and on any accessory payments made to this party by the insured party according to the following rates:

Nature of the policies	Rate (%)
Marine policies	5
Life policies	Exempt
Fire policies	30
Other (e.g. personal liability, transportation)	8
Reinsurance	Exempt

Branch income

Taxation of branch income is the same as for corporate income. However, a 20% WHT on profit is due at the time the profit is taken by the head office (located abroad) of the branch. This rate is reduced to 10% in case of the existence of a tax treaty.

Simplified tax regime for oil subcontractors

There is a simplified tax regime specific to the oil sector, which is a lump-sum tax regime granted for a biennial period. The request to benefit from such a tax regime is renewable for an additional period of two years, at least. Should the biennial period end after the first quarter of a considered year, the benefit from the simplified tax regime will apply until the end of the said year.

Features of this specific regime are as follows:

- The option for this regime is irrevocable for a period of two years, renewable once.
- The total duration of the benefit of such a regime can't exceed four years.
- The companies must perform their activities exclusively in the scope of oil operations.
- The option is granted by the Director of the General Tax Office to foreign companies.
- The subcontractor must have signed, with an oil company, a temporary agreement for the provisions of services to this company.
- The option is no longer granted to companies that have been in Gabon for more than nine years. The duration of nine years is calculated from the year during which the company started its activities in Gabon.
- The subcontractor must constitute a Gabonese branch office.

The rates for the 2017 and 2018 fiscal years are 35% for CIT and 20% for PIT of expatriate employees.

Specific regime for regional offices (quartiers généraux)

A regional office is a company or a branch that renders various administrative services, such as management or accounting, exclusively to other companies of the same group based in a given geographical area (usually a group of countries).

Taxation is based on the expenses of the regional office. A rate, between 5% and 12%, is applied to operating expenditures to determine the tax basis. The CIT rate is then applied to that basis.

Income determination

Inventory valuation

Stocks are estimated at cost price. If the market price is lower than the cost price, the company has to make provisions for depreciation of inventory.

Capital gains

Capital gains arising from the transfer of assets must be used for the calculation of taxable profits. However, the tax on capital gains can be deferred if a company reinvests an amount equal to the capital gain and the sale price of the transferred asset back into its fixed assets within three years.

Capital gains realised on the transfer of legal rights of persons or entities, whose asset is, in its majority, constituted of such rights or rights directly or indirectly owned in a company located in Gabon, are subject to CIT in Gabon.

Dividend income

The rate of transferable securities income tax (*Impôt sur le Revenu des Capitaux Mobiliers* or IRCM) is 20% on distributed dividends.

IRCM charged on the beneficiaries of the earnings is withheld at source by the distributing company. It is paid over to the Registration Officer within 30 days from the payment of the dividends.

Inter-company dividends

Inter-company dividends are taxed at a reduced rate in full discharge of the 20% WHT if paid and received by or from companies with their registered office in a CEMAC country, shares were allotted at the time of issue or kept for two years, and the Gabonese company owns more than 25% of the share capital of the subsidiary.

Interest income

Interest income paid to companies is subject to a 20% WHT in Gabon. When paid in respect of bonds of five years or more, it is subject to a 10% WHT.

Royalty income

Royalty income is subject to CIT at a rate of 30% (35% for companies operating in the oil and mining sectors).

Foreign income

Foreign interest, royalties, and dividends are included in taxable income, subject to international tax treaties. Note that tax treaties provide that certain/all types of income are not includable in Gabon taxable income. Gabon has tax treaties with Belgium, France, the other countries of CEMAC, and some countries that continue to apply the provisions of the African and Malagasy Common Organisation (OCAM) tax treaty.

The concept of deferred tax is not applicable in Gabon.

Deductions

Depreciation

The straight-line method and an accelerated depreciation method are permitted in Gabon. Tax and book conformity is obligatory (i.e. annual depreciation must be booked to preserve tax deductibility).

The main depreciation rates provided by the Gabonese Tax Code are the following:

Asset	Rate (%)
Buildings	5
Machinery, equipment	5 to 33.33
Office furniture	15
Office equipment	10
Vehicles	20 to 33.3
Computing equipment	25 to 100

Goodwill

There is no provision in the Gabonese Tax Code concerning the tax treatment of goodwill.

Start-up expenses

During the first five years of activity, a start-up can use an accelerated depreciation method on the acquired equipment goods under certain conditions and subject to specific provisions of the Gabonese Tax Code applicable to start-ups. Applicability of these provisions must be requested from the General Tax Manager prior to the incorporation of the company.

Interest expenses

Interest paid to shareholders with respect to the sums made available by them to the company is only deductible within the limit of those calculated on the intervention rate on invitation to tender (TIAO) of the Bank of the Central African States (BEAC) raised by 2%, provided that the share capital is fully paid up in case of incorporation of the company as well as in case of increase of the said share capital.

Concerning corporations or limited liability companies, the deduction is only allowed with regard to the sums made available by partners or shareholders assuming in right or in fact the management of the company, only for the part of these sums that does not exceed, for the whole partners and shareholders, one and a half of the share capital fully paid up.

Bad debt

Bad debt can be deducted from the result of the fiscal year during which the debt became completely unrecoverable, subject to the irrecoverable character of the compromised debt being justified due to the situation of the debtor.

Provisions

To be tax deductible, provisions must relate to existing liability or loss. General provisions are not deductible.

Expenditures on rent

The amount of the rentals granted to a company is allowed as a deductible expense under the condition that it does not exceed the average rentals applied for similar buildings and amenities.

However, an exception is provided with regard to the renting of premises by a partner owning at least 10% of the shares of the company.

Charitable contributions

Charitable contributions do not, in principle, constitute expenses deductible from the taxable result. However, contributions for charity can be deducted, provided that the donation is made to the profit of organisms of public interest located in Gabon and that the donation is justified.

The deduction is limited to 1/1,000 of the company's turnover for the considered fiscal year.

Fines and penalties

Fines and third-party taxes borne by companies are not tax deductible.

Social security contributions paid to foreign retirement funds

The deductibility of social security contributions paid by the employer to foreign retirement funds are only allowed when paid to the benefit of employees in secondment and within a limit of 15% of the gross salary paid to these employees.

Taxes

Only professional taxes for which the recovery proceeding has started in the current fiscal year and for which the company is effectively liable due to operations carried out in Gabon can be deducted.

Net operating losses

The Gabonese Tax Code does not provide the possibility to carry back losses. It does, however, provide for a five-year carryforward for net operating losses.

Regarding depreciation deferred in the accounts, they can be carried forward indefinitely.

Payments to foreign affiliates

Management fees paid to a foreign parent company are deductible if they meet all of the following conditions:

- They reflect real transactions.
- They do not present an abnormal characteristic.
- They are not exaggerated.

Management fees determined on a lump sum basis are not deductible.

Management fees exceeding 10% of the taxable profit before deduction of the said fees are not deductible.

Interest paid to shareholders is deductible only within the limit of the BEAC's normal rate for advances plus 2%, on the condition that the registered capital is entirely paid. The portion exceeding the ceiling is not deductible and is thus subject to taxation.

Concerning corporations or limited liability companies, the deduction is only allowed with regard to the sums made available by partners or shareholders assuming in right or in fact the management of the company, only for the part of these sums that does not exceed, for the whole partners and shareholders, one and a half of the share capital fully paid up.

Group taxation

Specific group tax regime

There is a specific tax regime derogatory to the common law tax regime that is applicable, under conditions, to groups of companies.

According to the provisions of Article 11 b. of the tax measures applying to groups of companies, groups of companies are those constituted by companies subject to CIT, or a foreign equivalent tax, united between them through direct or indirect capital links of at least 50% and that allow one of them or several companies, jointly, to control the others.

The control is defined as:

- either the direct or indirect holding of the majority of the vote in another company or
- the nomination, during two consecutive years, of the majority of the members of the board of directors of another company.

To be eligible for this specific tax regime, and without any prejudice of other activities performed to the profit of third parties, the head of the group of companies must perform to the profit of other companies of the group an activity relating exclusively to the following fields:

- Provisions of services of any kind, notably technical, accounting, financial, administrative, data processing, legal, human resources, and commercial corresponding to functions of management, coordination, and control of the group's companies.
- Research and development (R&D) to the sole profit of the group.
- Management of the intra-group finance.

Each company subject to CIT that is a member of the group and fulfils the conditions provided by the law will be subject to a separate taxation of its results according to the rules of common law and subject to amendments expressly provided by the law for the determination of the taxable result.

The express amendments provided in the scope of the specific tax regime applicable to groups of companies are the following:

Capital gains

Net capital gains are taxed at a reduced rate of 20% when they are realised in the scope of intra-group operations.

Expenses deductible from the taxable result subject to CIT

The following expenses are deductible within the group:

- Head office fees and management fees determined on a lump sum basis, according to the conditions of allocation of the expense between the companies' members of the group defined in a previous ruling with the tax authorities.
- The whole of the interests on partners' current accounts (i.e. on the sums put, by the partners, at the disposal of a company of the group) within the sole limit of the intervention rate TIAO of the BEAC (equivalent to 2.85%) raised by 2%.
- Rents of movables carried out within the group by the mother company or between companies of the same group.

20% WHT

Sums subject to CIT according to the provisions of Article 206 of the Gabonese Tax Code paid by a Gabonese debtor member of a group of companies to a foreign company member of the same group are exempted from the 20% WHT even though no DTT aiming to avoid double taxation has been concluded between Gabon and the country of residence of the beneficiary of the remunerations.

Transferable securities income tax (IRCM)

Companies of the group that benefit from transferable securities income originating from Gabon are exempted from IRCM when the said revenues are paid by a company member of the group.

In return, payments carried out by the head of the group of companies to the profit of its partners (individuals or legal entities) are subject to IRCM at a unique and at source rate of 10% (instead of 20%).

It is to be noted that the transferable securities incomes having their source abroad and which gave rise to taxation in their country of origin give the right in Gabon to a tax credit of the amount of the taxation that is deductible from the CIT of the fiscal year of perception of the incomes. The aforesaid tax credit applies even though no DTT aiming to avoid double taxation has been concluded between Gabon and the country of origin of the incomes.

VAT

The head of the group of companies is liable for VAT.

Members of a group of companies could, however, on option, consider the following provisions of services performed within the group as being out of the scope of application of VAT:

- Provisions of services of any kind, notably technical, accounting, financial, administrative, data processing, legal, human resources, and commercial.
- Fees relating to studies.
- Putting at disposal of personal.
- Management of finance.

The option for the subjection of the above-mentioned operations must be formulated by the concerned taxpayers on express request addressed to the General Tax Manager.

Registration duties

Deeds relating to incorporation, increase or reduction of share capital, breaking up with or without clearance, merger, scission, partial contribution of assets, and transfer of shares of a company member of a tax group, are subject to a fixed duty of XAF 50,000.

In the absence of a more favourable duty provided by the common law of registration, the changes of ownership and use that are not provided at Article 6 of the Gabonese Tax Code are subject to a proportional rate of 1% when carried out by members of the same tax group.

Requirements relating to declaratory obligations

The adherence to the group tax regime must be notified in writing by the head of the group of companies to the General Tax Manager accompanied by the list of the companies included in the tax perimeter of the group.

Each company remains liable for the periodical returns applicable to its activity.

For the purpose of calculation and verification of the returns, each tax return relating to the CIT of each company of the group will be gathered and filed at the same time by the head of the group of companies before the Tax Office.

Transfer pricing

The Gabonese Tax Code provides rules regarding transfer pricing issues.

According to these rules, any payment considered to be a result of mismanagement will be subject to the CIT rate at 30% (35% for companies operating in the oil and mining sectors) plus penalties.

Indeed, Article 12 of the Code provides that "By virtue of law or in fact, for companies which are dependent of companies or groups of companies located outside the CEMAC area, or for those which possess the control of companies located outside the CEMAC area, payments or expenses realised by any mean whatsoever or any kind of advantages or help granted to third parties without equivalent counterpart for the company, comparable to abnormal act of management, constitute transfer of profits subject to corporate income tax".

It is applicable for the following:

- Payments constituting an increase or decrease of purchases or sales.
- Payments of excessive royalties or royalties without compensation.
- Relinquishment of revenues (underestimated sale price, free of charge service provision, granting of a free loan or a loan with low interests).

The abnormal act of management is not limited to expenses; it also includes any form of advantages or allowances granted to third parties without any equivalent compensation for the company.

Article 13 of the Gabonese Tax Code provides that "The advantages or assistance granted by companies belonging to the same group can only be considered as resulting from a normal management if the company which grants these advantages or assistance demonstrates the existence of its own interest in acting as such. The general interest of the group is not sufficient to justify such practices”.

Further to the Financial Act for 2017 implementing the Organisation for Economic Co-operation and Development (OECD) regulation, a Master file containing information about the group structure and a Local file in relation to the structure, transfer pricing policy, and group transactions of the local entity must be provided to the tax authorities on a yearly basis, at the same time as the Annual Tax Return (DSF).

The Financial Act for 2017 has also introduced penalties, in case of failure to provide the Master and Local files, corresponding to 5% of the transactions realised with companies of the group with a minimum of XAF 65 million per year.

In addition, a Country-by-Country (CbC) report must be filed by the ultimate parent company of the group before the tax administration of which it depends.

Thin capitalisation

Thin capitalisation rules have been introduced by the Finance Act 2018.

When the company paying the interest is deemed to be thinly capitalised, only a portion of that interest may be deductible from the taxable result.
A company is deemed thinly capitalised when the amount of interests paid on inter-company loans exceeds, simultaneously, the three following limits during the same fiscal year:

- The product of interest payments on inter-company loans x ((1.5 x equity)/loans granted to group affiliates).
- Interests received by the company by affiliates.
- 25% of the profits before tax + interests paid + depreciation taking in consideration to be deducted from the considered tax profit + share of the rents of leasing taken into account for determining the transfer price of the property at the end of the contract.

In a thinly capitalised company, the fraction of interests exceeding the highest of the above-mentioned ratios would not be tax deductible in the course of the considered fiscal year.

Controlled foreign companies (CFCs)

There is no specific tax rule under Gabon legislation related to CFCs.

Tax credits and incentives

Foreign tax credit

DTTs include provisions relating to the attribution of foreign tax credits. Such tax credits aim to limit the double taxation of profits that are subject to taxation in both member states of the treaty.

Tax credits for job creation

There is a mechanism in place for granting corporate tax credits for any salaried appointments of Gabonese personnel.

This tax credit is equal to 20% of the gross salary paid to new employees and is subject to the creation of a minimum number of jobs, according to the size of the company as follows:

- Two jobs, for companies with less than 20 employees.
- Three jobs, for companies with 20 to 50 employees.
- Five jobs, for companies with more than 50 employees.

Note that the tax credit is granted only on newly created jobs since the preceding fiscal year. Contracts concluded with the employees must also be for an undetermined duration, and the new jobs must not result from the diminution of existing jobs.

Inbound investment incentives

Due to the provisions of the Investments Law, any private investment in Gabon can benefit from:

- A common law framework.
- Privileged frameworks.
- Specifically agreed frameworks.

Depending on the frameworks it is eligible for, a company can benefit from customs privileges and tax breaks.

Industrial companies already set up in Gabon and wishing to increase their production capacity can be admitted to a preferential tariff framework. This entails the application of a global reduced rate of 5% for duties and taxes paid on imports of equipment (excluding materials, furniture, and spare parts), provided that these correspond to an investment schedule and their value is in excess of XAF 100 million.

New industrial companies can also benefit from this framework, provided they are not subject to any of the other privileged frameworks outlined by current legislation.

The granting of this privileged tariff framework occurs on the basis of a decision by the Minister of Finances, following a proposal from the Director of Customs and Indirect Taxes.

Capital investment incentive

New companies are exempt from the IMF, the minimum taxation of CIT, during the first two years of operations.

Social housing incentive

There are some tax exemptions applicable exclusively to authorised companies during the performance of a social housing investment project.

Favourable measures are applicable with regards to the importations of materials, engines, and equipment destined to authorised companies. Indeed, such importations are exempt from customs duties. They can also be imported under the normal temporary admission.

The concerned companies may apply before the customs authorities in order to benefit from the above-mentioned regime.

The concerned companies are those authorised for the planning of urban lands intended for social habitat and the building of housings of a socio-economic nature and industrial units of manufacturing of materials and other inputs used for the building of social housings. The above-mentioned tax exemptions relate to CIT, VAT, and business license tax.

Tourism incentive

Companies having hotel activity in the tourism sector are exempted from CIT during the first three years of existence, provided that the amount of the investment equals or exceeds XAF 300 million. If not (i.e. investment of less than XAF 300 million), aforesaid authorised companies investing in the tourism sector can benefit, during a five-year period, from a 5% tax credit.

Withholding taxes

20% WHT

When they are paid by a debtor established in Gabon to individuals or companies subject to CIT or PIT that do not have a permanent professional base in Gabon, the following amounts are subject to a 20% WHT:

- All amounts paid pursuant to the practice of an 'independent profession' in Gabon.
- Payments received by inventors, payments relating to copyrights, and all payments relating to intellectual and commercial property as well as assimilated rights.
- All amounts paid for services materially rendered or effectively used in Gabon.
- Interest, arrears, and all others fixed-income investment-products pertaining to income declared as professional revenue of the beneficiary.

Net profits carried out by branches of foreign companies having their head offices abroad are also subject to a 20% WHT in Gabon before they are taken into account by the foreign companies.

The WHT of 20% may not apply in the context of the application of a DTT, as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	20	20	20
Treaty:			
Belgium (1)	18	15	10
Canada (1)	15	10	10
France (2)	15	10	10
Morocco (2)	15	10	10

Notes

1. If the beneficial owner of the dividends, interest, or royalties is a resident of the other contracting state.
2. If the person receiving the dividends, interest, or royalties is the beneficial owner.

Transferable securities income tax (IRCM)

IRCM is due at a 20% rate on revenues from stocks and shares paid to legal entities. It is due by beneficiaries of these revenues and must be withheld by the distributing company.

Tax administration

Taxable period

Companies are required by law to have a 31 December closing of any fiscal year.

Tax returns

Returns for the previous calendar year are to be filed before 30 April of each year.

Payment of tax

Tax is payable to the General Tax Office in two instalments on 30 November and 30 January. The balance of the tax due must be paid by 30 April. The first instalment must equal one-quarter of the tax assessed in the previous year and the second instalment must equal one-third of this tax.

Tax audit process

The rules concerning the tax audit procedure are provided by the Gabonese Tax Code.

There is no specific rule on the selection of companies to be subject to a tax audit. However, it has to be noted that, generally, the tax administration proceeds by sectors of activities.

The Tax Inspectors proceed to audits at the head office or at the place of the taxpayer's main establishment.

The main steps of the tax audit are the following:

- Notification of a tax audit by which the taxpayer is informed on the date of performance of the tax audit.
- Performance of the audit.
- Provisions of a notification of reassessment.
- Provision, by the taxpayer, of its answers to the notification of reassessment (to be provided within a delay of 20 days from the receipt of the notification).
- Reply of the tax administration to the answers of the taxpayer (to be provided within a delay of 60 days from the receipt of the above-mentioned answer from the taxpayer).
- Closing of the tax audit.

Statute of limitations

The tax administration can proceed to tax audit until the fourth year following the year for which the tax is due.

Topics of focus for tax authorities

The tax administration shall particularly focus on the following aspects:

- Compliance of deductibility of management fees.
- Compliance of deductibility of corporate expenses.
- Compliance of WHT on payments made to foreign services providers.
- Payment of VAT on behalf of third parties.

Other issues

Legal reserve

According to the provisions of the OHADA Uniform Act relating to commercial companies and economic interest groups, one-tenth of the year's profits, reduced, if applicable, by any previous losses, must be put into a reserve account named 'Legal Reserve'.

The endowment of this reserve ceases to be obligatory when its value reaches one-fifth (20%) of the company share capital.

Tax regime of merger and similar operations

There is a specific tax regime derogatory from the common law applicable to the following operations:

- Mergers.
- Scissions.
- Partial transfers of assets.
- Subsidiarisation.

This regime only applies to operations performed by companies liable to CIT.

The benefit of this specific tax regime is also subject to the fulfilment of conditions listed in the Finance Act for 2015.

This Finance Act also provides the provisions applicable to the above-mentioned operations regarding the following taxes:

- CIT.
- VAT.
- Registration duties.

Georgia

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Significant developments

There have been no significant corporate tax developments in Georgia during the past year.

Taxes on corporate income

Resident enterprises are subject to corporate income tax (CIT) on worldwide income.

Non-resident enterprises carrying out economic activities in Georgia through a permanent establishment (PE) are subject to CIT with respect to its Georgian-source income.

The CIT rate is a flat 15%.

Non-resident enterprises earning income from Georgian sources, other than through a PE, are subject to withholding taxes (WHTs) (*see the Withholding taxes section for more information*).

New CIT system

From 1 January 2017, Georgia has switched to a new CIT system. The new system represents the adoption of the Estonian model of CIT to the Georgian tax system. As such, retained profits are no longer taxable until they are distributed. The new regime is not aimed to exempt the profits from taxation, but is designed to defer the taxation moment. Consequently, taxpayers no longer need to determine taxable gross income and allowable deductions in order to arrive at the taxable profits, but rather a standard CIT rate of 15% is applicable to the grossed-up value of the following transactions:

- Profit distribution.
- Costs incurred not related to economic activity.
- Free of charge distributions.
- Over limit representative expenses.

Note that commercial banks, credit unions, insurance companies, microfinance organisations, and pawn shops will be affected by the new CIT regime after 1 January 2019.

Distributed profit

Distributed profit encompasses distribution of profits by an enterprise to its partner as a dividend in a monetary or non-monetary form.

Distribution of dividends between Georgian legal entities and distribution of dividends received from a foreign enterprise (except for a person registered in a country with preferential tax treatment) are not subject to CIT.

Distributed profit of a PE of a non-resident enterprise shall be a deemed distribution of profits attributable to the PE for its activities. A PE shall be allotted a profit it might have gained as an independent enterprise conducting the same or similar activity and being in the same or similar conditions.

Costs incurred not related to economic activity

Costs not related to economic activity shall be:

- Non-documented expenses.
- Expenses, the purpose of which is not to gain profit, income, or compensation.
- The interest paid for a credit (loan) above the annual interest rate established by the Minister of Finance of Georgia (i.e. 24%).

Certain transaction are deemed as non-business expense, which, *inter alia*, include:

- Payments for acquisition of shares/interest of a non-resident enterprise or contributions made in the capital of a non-resident enterprise.
- Granting of a loan to a natural person or a non-resident.

Certain transaction with persons registered in the countries with preferential tax regimes are also subject to immediate taxation of CIT. Among them are:

- Provision of loans to such persons.
- Purchase of debt securities issued by such persons.
- Payment of contractual penalties and fines to such persons.
- Payment of advances to such persons.
- Acquisition of debt claim towards such persons.
- Loss derived as a result of transferring the right of claim to such entities.
- Loss incurred from waiving the claim receivable from such entities.

The main purpose of the listed taxable objects is to mitigate hidden distribution of profit without taxation. That said, the tax law requires taxation of such cash outflow, which may be embodied with profit distribution, though in turn it allows one to claim back the paid CIT when the cash is returned. Specifically, the Georgian tax code sets that companies have the right to credit the CIT paid previously in the following cases:

- When compensation is received as a result of supply of debt securities.
- When compensation is received from supply of shares or transfer of right of claim.
- When issued loan/paid advances is fully or partially returned (in proportion of returned amount).
- When goods/services are received in exchange for the paid advances.
- When security of issued loan from the third party is cancelled.

Free of charge delivery of goods/services and/or transfer of funds

Free of charge delivery of goods/services and transfer of funds will be subject to CIT. Additionally, shortage of inventory and/or fixed assets will be considered as free of charge supply at the moment of its revealing and will be taxed accordingly by CIT.

Representative expenses

Representative expenses exceeding the specific limit will be subject to CIT. The limit determined for these purposes is 1% of the company's total revenues derived or expenses incurred in the previous calendar year, whichever is greater.

Old CIT system

Commercial banks, credit unions, insurance companies, microfinance organisations, and pawn shops are continuing to operate under the old CIT system until 1 January 2019.

Under the old system, CIT in Georgia is applied to taxable profit at a rate of 15%. Taxable profit is defined as gross income minus deductible expenses.

Local income taxes

There are no regional or local income taxes imposed on the profit of legal entities.

Corporate residence

A resident enterprise is any legal entity that is established under the laws of Georgia or has its place of effective management in Georgia.

Permanent establishment (PE)

The domestic definition for a PE essentially adopts the definition for PE found in the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention.

Local legislation provides the definition for economic activity to be any activity undertaken with the intent to gain profit, income, or compensation, regardless of the results of such activity, unless otherwise provided by the tax code.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 18% and applies to the sale of all goods and services supplied in Georgia carried out as an economic activity. Goods are considered to be supplied in Georgia if they are transferred in or their shipment originates in Georgia. Services generally are considered to be supplied in Georgia if they are performed in Georgia. However, special rules apply for services relating to immovable property and certain services provided to non-residents.

The export and re-export of goods is exempt from VAT with the right to credit input tax (formerly referred to as zero-rated). VAT-exempt supplies include financial services, goods and services required for oil and gas operations, and medical services.

Reverse-charge VAT applies to services provided to Georgian taxpayers by a non-resident entity.

A VAT payer is a person who is registered or required to be registered as a VAT payer. Any person whose annual taxable turnover exceeds 100,000 Georgian lari (GEL) in any continuous period up to 12 months or who produces or imports excisable goods must register as a VAT payer. In addition, an enterprise that expects to perform one-off taxable transaction of more than GEL 100,000 must also register as a VAT payer no later than the second day after effecting the transaction.

Generally, VAT is chargeable on the supply of goods and services. VAT is also applied on the advances received on goods and services to be supplied. When goods and services are supplied, VAT is charged on the value of provided goods and services reduced by advance payment.

Customs duties

Import tax is levied on goods that cross the economical borders of Georgia (except export). Depending on the types of products, general rates on imported goods are: 0%, 5%, and 12%. Imported cars are taxed at GEL 0.05 multiplied by the volume of the engine, plus 5% of import tax on each additional year of ownership.

Excise tax

Excise tax is levied on specified goods that are produced in Georgia or imported into Georgia. Excise tax generally is calculated with reference to the quantity of goods (e.g. volume, weight) or, in the case of automobiles, on the basis of the engine capacity and vehicle age. Excise tax rate varies from GEL 0.15 to GEL 400 for one unit.

Excise tax applies to the following goods:

- Alcoholic drinks (i.e. GEL 5 per litre of whiskey).
- Condensed natural gas, except for pipeline.
- Oil distillates.
- Goods produced from crude oil.
- Tobacco products.
- Automobiles.

The export of excisable goods is exempt from excise tax with the right to credit.

Apart from goods, mobile telecommunication services and termination service of international calls in mobile and fixed networks are also subject to excise tax in Georgia.

The applicable excise rate for mobile telecommunication services is 3%.

International calls termination is taxable based on the call duration with the following rates:

- Call termination within mobile network: GEL 0.15 per minute.
- Call termination within fixed network: GEL 0.08 per minute.

Property tax

Property tax is payable at the rate of 1% on the annual average residual value of fixed assets (except for land) and investment property on the balance sheet as well as on leased out property of Georgian entities or foreign entities with taxable property in Georgia. For immovable property acquired before 2005, the average residual value must be multiplied by a coefficient of between 1.5 and 3, depending on the acquisition date.

Land tax

The annual land tax rate for agricultural land varies according to the administrative unit and the land quality.

The base tax rate per 1 hectare of agricultural land varies from GEL 5 to GEL 100. The tax is further adjusted by a territorial coefficient of up to 150%, depending on the location.

The base tax rate payable on non-agricultural land is GEL 0.24 per square metre, which is further adjusted by a territorial coefficient not exceeding 150%.

Transfer taxes

There are no transfer taxes in Georgia.

Stamp taxes

There are no stamp taxes in Georgia.

Payroll taxes

Payroll tax in Georgia represents a normal personal income tax (PIT), which is withheld by an employer at the source of payment of salary to an employee at a 20% rate of gross payment.

Social security contributions

There are no social security contributions in Georgia.

Branch income

Branch income is taxed at the general rate of 15% upon its distribution. Distributed profit of a PE of a non-resident enterprise shall be a deemed distribution of profits attributable to the PE for its activities. A PE shall be allotted a profit it might have gained as an independent enterprise conducting the same or similar activity and being in the same or similar conditions.

Income determination

Under the new CIT system, the income is recognised as per International Financial Reporting Standards (IFRS).

Under the old CIT system, taxable income is determined as the difference between the gross income of a taxpayer and the relevant deductions granted under the Georgian tax code.

Inventory valuation

A taxpayer is required to record the value of goods produced or acquired as the outlays (except for depreciation charges) or the purchase price in tax accounting. Furthermore, the taxpayer shall include the storage and transportation expenses in the value of such goods.

A taxpayer is entitled to record the cost of inventory using the individual accounting method, the average weighted cost method, or first in first out (FIFO).

Capital gains

The Georgian tax code does not define any separate tax for capital gains. Capital gains are taxable as normal business income at the general CIT rate.

Dividend income

Dividends received by local legal entities (except for sole enterprises and entrepreneur partnerships) are not subject to taxation at source and shall not be included in gross income.

Dividends received by non-resident enterprises from resident enterprises are subject to WHT at source (*see the Withholding taxes section for more information*).

Interest income

Resident legal entities and PEs of non-residents that received interest income that was taxed at source in Georgia are entitled to a credit on tax paid to the state budget.

Interest income received from a licensed financial institution is not subject to WHT at source, and it should not be included in the gross income of a recipient unless the recipient is another licensed financial institution.

Rent/royalty income

Rent and royalty income received by resident companies and/or PEs of non-resident enterprises should be subject to CIT upon its distribution in the form of dividends if the taxpayer is under the new CIT system. Under the old CIT system, such income should be included in the taxable gross income of the enterprises.

Foreign income

Resident legal entities are subject to CIT on their worldwide income. Under the new CIT system, foreign income is subject to CIT at 15% upon its distribution in the form of dividends. Taxes withheld abroad can be offset against CIT charged on distribution of foreign income.

Deductions

The concept of deduction is no longer applicable for the companies and PEs operating under the new CIT system, since they follow IFRS.

Under the old CIT system, expenses connected with the receipt of income generally are deductible from income, provided sufficient primary documentation is available.

Note that the deduction rules provided below are applicable for taxpayers who continue operating under the old CIT system.

Depreciation

The declining-balance method of depreciation applies to fixed assets for tax purposes. The maximum rate of depreciation is 20% for most fixed assets, though buildings and construction are subject to depreciation at the rate of 5% (please contact us for additional information regarding other groups and rates).

A taxpayer is entitled to fully deduct costs of fixed assets (excluding those contributed to capital) in the year when the fixed assets are put into operation (a form of capital allowance). In case the taxpayer employs the right of full deduction in this manner, this method may not be changed for five years.

Amortisation of intangible assets

Intangible assets (e.g. goodwill) are amortisable in proportion with the period of beneficial use. However, intangible assets of value less than GEL 1,000 are fully deductible from gross income.

If the period of beneficial use of an intangible asset cannot be defined, it is amortisable at the rate of 15%.

Start-up expenses

Expenses incurred before registration of an entity as a taxpayer (e.g. public registry fee) are not deductible under Georgian tax legislation.

Interest expenses

Interest paid on loans is deductible within the limits established by the Finance Minister, unless it is paid on loans received from domestic licensed banks and microfinance organisations. The annual deductible interest rate limitation established by the Minister of Finance of Georgia for the year 2018 is 24%. No limits are established on loans received from domestic licensed banks and microfinance organisations.

Bad debt

A taxpayer is entitled to deduct bad debt only if all of the following conditions are met:

- The bad debt is related to the taxpayer's goods or services sold.
- Income receivable from the sale of goods or services was previously included in taxable gross income.
- The bad debt has been written off and recorded as such in the taxpayer's accounting records.
- Certain documents prescribed under the Georgian tax code are available confirming that the debt is irrecoverable.

Charitable contributions

Charitable contributions are deductible, up to 10% of taxable profit.

Fines and penalties

Fines and penalties paid to the state budget are not deductible.

Taxes

CIT is disallowed for deduction.

Other significant items

The following other expenses are not deductible:

- Expenses not related to the generation of income.
- Expenses related to the receipt of income exempted from CIT.

The deduction of certain expenses is subject to limitations, including:

- Representation expenses, up to 1% of gross income.

- Repair expenses, up to 5% of the book value of the relevant asset at the end of the year. Any excess must be capitalised and deducted through depreciation.

Net operating losses

Losses may be carried forward for five years but may not be carried back.

A taxpayer may elect to extend the carryforward period to ten years. However, this also results in the statute of limitations period being extended from six to 11 years.

International financial companies, free industrial zone (FIZ) enterprises, and Special Trading Companies are not entitled to carry forward losses.

An international financial company is a financial institution that, on behalf of the application of plenipotentiary representative, gets state registered, is granted as an ‘international financial company’, and is given a status confirming certificate. These are resident companies that, after application, were granted the status of international financial company.

An FIZ enterprise is an enterprise operating in the FIZ, which, for the purposes of tax exemption, is granted the status of an FIZ enterprise.

Payments to foreign affiliates

There is no special tax regime in Georgia for payments made to foreign affiliates; as such, general rules will apply. Payments may be classified as equity, financing, or service fee. Any such transaction will need to be at arm’s length in accordance with the Georgian transfer pricing rules.

Group taxation

Georgian law does not provide for taxation of groups.

Transfer pricing

The transfer pricing rules introduced in the tax code are broadly based on the OECD arm’s-length principle adopted in tax treaties and by most countries when they implement domestic transfer pricing rules.

The law recognises the five OECD transfer pricing methods for evaluating whether prices are at arm’s length:

- Comparable uncontrolled price method.
- Resale price method.
- Cost plus method.
- Net profit margin method.
- Profit split method.

The tax code stipulates that in accordance with the Ministry of Finance (MoF) instructions, the tax authority may recalculate the taxes if they can prove that the prices applied by related parties to transactions differ from the market prices.

According to the instructions issued by the MoF, the methods for assessing the transfer pricing assessment rules have been explained, and the following procedures have been established:

- Determination of comparability of independent transactions.
- Transaction adjustment procedure.
- Information to be represented by the parties of the transaction to the tax authority.
- Documentation list.
- Sources of information on market prices.
- Price range application procedure.

The taxpayer becomes liable to present documentation to the tax authority in support of one's position in considering income received to be consistent with market principles within 30 days of the formal request of the Revenue Service. The report can be written in both Georgian and English but should be translated to Georgian in case it is requested by the Revenue Service. The companies also have an option to sign an Advance Pricing Agreement (APA) in which the transfer pricing methodology will be agreed for specific transactions with the tax authority, who will no longer have the right to charge fines/taxes on these transactions.

Under the new CIT system, transfer pricing adjustment is subject to immediate taxation.

The following general penalties, determined by tax legislation, apply for non-compliance with the arm's-length principle or failing to prepare or submit transfer pricing documentation:

- An understated tax liability (e.g. VAT, CIT) is subject to a penalty of 50% of the understated tax.
- Late payment of taxes is subject to interest at a rate of 0.05% per overdue day.
- Failing to submit a required document is generally subject to a penalty of GEL 400.

Thin capitalisation

No thin capitalisation rules are applicable in Georgia.

Controlled foreign companies (CFCs)

Georgia tax legislation does not provide CFC rules.

Tax credits and incentives

Foreign tax credit

Income tax or profit tax paid on income earned from outside Georgia may be credited against CIT payable in Georgia. The amount of credited taxes may not exceed the Georgian tax payable on the foreign income. The rule is also applicable under the new CIT system on CIT due from dividend distribution.

CIT exemptions

The following are exempt from CIT (the list is not exhaustive):

- Income of budgetary, international, and charitable organisations (including grants, membership fees, and donations), except for the profit from commercial activity.
- Profit received from financial services conducted by international financial companies.
- Gains on sales of securities issued by international financial companies.

Free industrial zone (FIZ)

The following rules apply for enterprises located in an FIZ:

- Income received by an FIZ enterprise from its permitted activities conducted in an FIZ is exempt from CIT.
- The importation of foreign goods into an FIZ is free of customs duties and VAT-exempt.
- Operations carried out in an FIZ are VAT-exempt without the right to credit.
- Property located in an FIZ is exempt from property tax.
- The PIT of employees is paid by those individuals through self-reporting.

An FIZ enterprise should pay tax at a rate of 4% on the market price of the goods supplied/received to/from a person registered under the Georgian law (excluding on the supplies to/from other FIZ enterprises).

Withholding taxes

Non-resident enterprises earning income from Georgian sources, other than through a PE, are subject to WHT at the following rates:

Income	WHT (%)
Dividends	5
Interest	5
Royalties	5
Oil and gas subcontractor income	4
International transportation/communication	10
Income from services rendered in Georgia	10
Other Georgian-source income	10
Insurance and re-insurance	0

Payments of interest, royalties, or other Georgian-source income to non-residents registered in so called 'black listed' countries are subject to WHT at a 15% rate.

The list of such countries is determined by the MoF of Georgia.

Double tax treaties (DTTs)

For those countries with which Georgia has entered into DTTs, the WHT rates are the following:

	WHT (%)		
Recipient	**Dividends**	**Interest (1)**	**Royalties**
Non-treaty (14)	5	5	5
Treaty:			
Armenia	5/10 (15)	10	5
Austria	0/5/10 (2)	0	0
Azerbaijan	10	10	10
Bahrain	0	0	0
Belarus	5/10 (15)	5	5
Belgium	5/15 (15)	10	5/10 (3)
Bulgaria	10	10	10

	WHT (%)		
Recipient	**Dividends**	**Interest (1)**	**Royalties**
China, People's Republic of	0/5/10 (2)	10	5
Croatia	5	5	5
Cyprus	0	0	0
Czech Republic	5/10 (15)	8	0/5/10 (4)
Denmark	0/5/10 (2)	0	0
Egypt	10	10	10
Estonia	0	0	0
Finland	0/5/10 (2)	0	0
France	0/5/10 (6)	0 (5)	0
Germany	0/5/10 (6)	0	0
Greece	8	8	5
Hungary	0/5 (8)	0	0
Iceland	5/10 (15)	5	5
India	10	10	10
Iran	5/10 (15)	10	5
Ireland	0/5/10 (9)	0	0
Israel	5	0/5 (10)	0
Italy	5/10 (15)	0	0
Kazakhstan	15	10	10
Korea	5/10 (15)	10	10
Kuwait	0/5 (11)	0	10
Latvia	5/10 (15)	5	5
Liechtenstein	0	0	0
Lithuania	5/15 (15)	10	10
Luxembourg	0/5/10 (2)	0	0
Malta	0	0	0
Netherlands	0/5/15 (2)	0	0
Norway	5/10 (15)	0	0
Poland	10	10	10
Portugal	5/10 (15)	10	5
Qatar	0	0	0
Romania	8	10	5
San Marino	0	0	0
Serbia	5/10 (15)	10	10
Singapore	0	0	0
Slovak Republic	0	5	5
Slovenia	5	5	5
Spain	0/10 (12)	0	0
Sweden	0/10 (13)	0	0
Switzerland	10	0	0
Turkey	10	10	10
Turkmenistan	10	10	10
Ukraine	5/10 (15)	10	10
United Arab Emirates	0	0	0
United Kingdom	0/15 (7)	0	0
Uzbekistan	5/15 (15)	10	10

Notes

1. Some agreements provide a 0% rate on the interest paid by the government or any of its units or on the interest guaranteed by them; this table doesn't consider such provisions.
2. The 0% rate applies if the foreign company owns at least 50% of the Georgian company and has invested more than 2 million euros (EUR).
3. Royalty rate paid for the enterprise is 5%.
4. The 0% rate refers to the copyright of any literature, art, or scientific works (except software), and films and records; the 5% rate refers to lease of techniques.
5. The 0% rate applies to interest on bank loans and commercial credits.
6. The 0% rate applies if the foreign company owns at least 50% of the Georgian company and has invested more than EUR 3 million.
7. The 0% rate applies if the foreign company owns at least 50% of the Georgian company and has invested more than 2 million pound sterling (GBP).
8. The 0% rate applies if the foreign company owns at least 25% of the Georgian company in any continuous 12-month period prior to distribution of dividends.
9. The 0% rate applies if the foreign company controls at least 50% of the voting power in the Georgian company and has invested more than EUR 2 million.
10. The 0% rate applies for certain types of interest.
11. The 0% rate applies if the foreign company has invested in the Georgian company more than 3 million United States dollars (USD).
12. The 0% rate applies if the foreign company owns at least 10% of the Georgian company.
13. The 0% rate applies if the foreign company owns at least 10% of the capital or the voting power of the Georgian company.
14. Domestic WHT rates are applicable when a treaty provides a relief with more unfavourable rates.
15. Domestic WHT rate on dividends is 5%. A treaty provides a relief with the same or more unfavourable rate, thus the domestic rate is applicable.

Tax administration

The tax departments under the MoF are responsible for tax administrative matters in Georgia.

Taxable period

The tax year is the calendar year in Georgia.

Tax returns

The new CIT regime shifts from annual reporting to a monthly reporting practice.

CIT returns should be submitted on monthly basis before the 15th day following the month when the taxable transaction took place. As a result, the quarterly advance payment rule is abolished for companies subject to the new CIT system.

A CIT return should be submitted before 1 April of the year following the reporting period for companies under the old CIT system.

Payment of tax

CIT is due on a monthly basis before the 15th day following the month when the taxable transaction took place for companies working under the new CIT regime.

In case a transaction was taxed with CIT and then the amount (part of the amount) remitted on this transaction was returned back to the taxpayer, the latter may set off and recover a sum of the previously paid CIT in proportion of the returned amount. This, *inter alia*, relates to:

- If the participation in a foreign entity was disposed of or contribution into the capital of foreign entity was returned.
- When a loan granted was repaid.

Under the old CIT system, CIT is paid in advance in four equal instalments, before 15 May, 15 July, 15 September, and 15 December. The advance instalments are estimated according to the previous year's annual tax. A taxpayer with no prior-year CIT obligation is not required to make advance payments.

Final payment is due by 1 April of the year following the reporting period. Excess CIT payments may be offset against other tax liabilities.

Tax audit process

There are two types of tax audits: desk tax audit and field audit. The tax audit may be conducted based on the order of the Revenue Service of Georgia. The Revenue Service sends a notice to the taxpayer no less than ten working days before the commencement of the audit. The audit should commence no later than 30 days after receiving such notice by the taxpayer. Normally, the tax audit may last for three months, and may be extended to another two months with the approval of the head of the Revenue Service. The findings should be presented to the taxpayer in the form of a tax act.

Statute of limitations

The statute of limitations is three years in Georgia from 2017. For those taxpayers who decide to increase the loss carryforward to ten years, the statute of limitations is 11 years. The statute of limitations period was six years prior to 2015, five years in 2015, and four years in 2016.

Topics of focus for tax authorities

In recent periods, the tax authorities have become largely focused on transfer pricing issues during tax audits.

Other issues

International agreements

Georgia is a member of the North Atlantic Treaty Organization's (NATO's) Partnership for Peace Program and is actively working to join NATO and the European Union (EU). Georgia is also a member of the World Trade Organization (WTO), the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), and the Union of Georgia, Ukraine, Uzbekistan, Azerbaijan, and Moldova (GUUAM), and an observer in the Council of Europe.

Georgia was formerly a member of the Commonwealth of Independent States (CIS). Because of the August 2008 conflict with Russia, Georgia formally notified the CIS on 18 August 2008 of its intention to withdraw from the organisation, and that withdrawal came into effect on 18 August 2009. However, Georgia's Ministry of Foreign Affairs has said it will uphold all trade and treaty agreements made between Georgia and fellow CIS countries.

Georgia has a free-trade regime with members of the CIS, including Armenia, Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan, Ukraine, and Turkey. This results in duty-free trade of goods and services.

On 18 December 2002, the GUUAM free-trade agreement was ratified by the Georgian Parliament, the goal of which is to create favourable trade conditions and to strengthen economic links among the member countries. The agreement to form a free-trade zone was reached at the GUUAM Presidents' Summit in July 2003 in Yalta. Uzbekistan has since left the free-trade zone.

In June 2014, the European Union and Georgia signed an unprecedented Association Agreement. This Agreement aims to deepen political and economic relations between Georgia and the European Union and to gradually integrate Georgia into the European Union.

In July 2015, an intergovernmental agreement (IGA) was signed by and between Georgia and the United States about tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA). As a result, Georgia joined a list of countries that provide financial information to its partner country, the United States, for the deterrence of facts of tax evasion by its citizens.

Germany

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Significant developments

As part of its implementation of the Organisation for Economic Co-operation and Development (OECD) recommendations developed in the Base Erosion and Profit Shifting (BEPS) Project in June 2017, Germany introduced a restriction on the deductibility of certain royalty payments to related parties to counter so-called harmful preferential tax regimes. The OECD allowed for a grandfathering of existing preferential tax regimes (e.g. certain patent boxes) (i.e. those not in line with the so-called Modified Nexus Approach defined as minimum standard in Action 5 of the BEPS Project) until June 2021. In Germany, however, the restriction on the deductibility of such payments to related parties shall apply from 1 January 2018 onwards.

In addition to the OECD proposals, Germany will also have to consider various standards set by the European Union (EU). The Anti-Tax Avoidance Directive (EU-ATAD) must be implemented into local law in the main by no later than 31 December 2018 and is to be generally applied from 1 January 2019 onwards. In May 2017, the Council of the European Union further adopted a directive amending the EU-ATAD (ATAD II). The member states must transpose ATAD II into local law by 31 December 2019 and apply it generally from 1 January 2020 onwards.

Furthermore, at the EU level, an extension of the EU Mutual Assistance Directive with reference to the exchange of information on cross-border tax planning schemes ('arrangements'), including the imposition of disclosure requirements on so-called intermediaries and taxpayers, was adopted in May 2018. The new rules must be implemented into domestic law by 31 December 2019 and will become applicable from 1 July 2020. It should be noted, however, that the disclosure rules also cover reportable cross-border arrangements, the first step of which is implemented between 25 June 2018 and 30 June 2020.

On 20 December 2017, the European Court of Justice (ECJ) decided that the German anti-treaty shopping rules, denying full or partial relief from withholding tax (WHT), as otherwise prescribed under a double tax treaty (DTT) or applicable EU directive, which were applicable until 2011, were neither compatible with the Parent-Subsidiary Directive nor with the freedom of establishment. Following the decision of the ECJ, an amendment of the anti-treaty shopping rules in their current form may be expected.

Taxes on corporate income

Germany taxes its corporate residents on their worldwide income. However, most DTTs exempt income attributable to a foreign permanent establishment (PE). Non-residents with PE or property income are taxed by assessment on German-source income; those earning royalties and dividends are taxed by withholding at source. Interest paid abroad is, in most cases, free of German tax altogether.

German business profits are subject to two taxes, corporation tax and trade tax.

Corporation tax (Körperschaftsteuer)

Corporation tax is levied at a uniform rate of 15% and is then subject to a surcharge of 5.5% (solidarity surcharge). This results in a total tax rate of 15.825%.

Trade tax (Gewerbesteuer)

The trade tax rate is a combination of a uniform tax rate of 3.5% (base rate) and a municipal tax rate (*Hebesatz*) depending on where the PEs of the business are located. Currently, municipalities with at least 80,000 inhabitants currently levy trade tax at a rate of between 12.6% (*Hebesatz* of 360%) and 20.3% (*Hebesatz* of 580%).

The basis for this tax is the adjusted profit for corporation tax purposes: in particular, 25% of all financing costs over 100,000 euros (EUR), including the implicit financing costs in leasing, rental, and royalty payments, are added back to taxable income.

If the basis for the two taxes is identical (unlikely in practice), the overall burden on corporate profits earned in Munich would be 33%. In Frankfurt, the burden would be 32%. In Berlin, it would be 30.2%.

Corporate residence

A corporation is resident in Germany for tax purposes if either its place of incorporation or its main place of management is in Germany. A corporation meeting neither of these criteria will be regarded as non-resident with tax obligations limited to its income from German sources. These include active business activities through a PE or the letting of property and equipment rental (leasing), as well as specific investment income and royalties. Income of the first three categories is generally taxed by assessment on the actual net earnings. That of the last two is usually taxed at source by withholding from the gross amount payable. Interest paid to a non-resident is generally tax-free (certain exceptions apply, e.g. in respect to interest on convertible or profit-sharing bonds).

Permanent establishment (PE)

Domestic law defines a PE as any fixed business facility serving the corporate purpose. A permanent representative is someone who 'habitually' deals on behalf of the principal acting on the principal's instructions. In its tax treaty PE definitions, Germany consistently follows the OECD model; consequently, purchasing activities, delivery stores, and independent agents acting in the ordinary course of their business are regularly excluded from the PE concept. Recent tax treaties generally reflect the Authorised OECD Approach to PE income, and Germany has also negotiated corresponding amendments to a number of older treaties. The Authorised OECD Approach has been adopted into domestic law and is generally followed in practice unless doing so would lead to double taxation from continued adherence to the old approach (of treating a PE as part of the same legal entity as its head office) in the other state.

Other taxes

Value-added tax (VAT)

Proceeds of sales and services effected in Germany are subject to VAT under the common system of the European Union at the standard rate of 19% (7% on certain items, such as food and books). The taxpayer generally is entitled to deduct the VAT charged on inputs from that payable on outputs.

VAT is administered by the tax office responsible for the corporation tax assessment of a company. It is based on preliminary VAT returns filed monthly or quarterly by the tenth day of the following month (monthly for new businesses or where the tax payable in the previous year was more than EUR 7,500) drawn up on the basis of the actual transactions during the filing period as shown in the books of account. A permanent filing extension of one month is available against an advance payment of one-eleventh of the total net tax due during the previous year. Otherwise, payment is due when the return is filed.

Legally, VAT is an annual tax. Each taxpayer must file an annual return for each calendar year, regardless of the actual accounting date for the business. If the annual return does not agree with the total of the monthly or quarterly returns, the tax office can be expected to ask for a detailed explanation.

Customs duties

Customs duties are levied under a common system on imports into the European Union. The rate is set at zero on most imports from EU candidate countries and on many imports from countries with which the European Union has an association agreement.

For manufactured products from other countries, the rates generally lie within the range of 0% to 14%. The basis is the import value of the goods and thus includes uplifts for royalty or other payments associated with their use but not apparent from the transit documents.

The European Commission (EC) also sets 'countervailing' duties from time to time on specific imports from specific countries in order to counter dumping attempts. The countervailing duty rate is set to fully absorb the dumping margin and is therefore usually much higher than 14%.

Excise taxes

Excise taxes on fuel, electric power, and some other products are not a compliance issue for businesses other than dealers in bonded goods, although they can be a significant additional cost factor for business users. These excise taxes also have an environmental element in as much as the rates are set to discourage excessive use of pollutants. However, an air passenger duty is the only tax on pollution as such. Energy producers (such as power stations) can claim a refund of the excise tax borne in the cost of the energy products used in the production process.

Property taxes

There are no taxes on wealth or capital employed. There is a minor local authority tax on property, but the effect of this is partly offset by an additional trade tax deduction.

Stamp taxes

The only significant German stamp tax is the real estate transfer tax (RETT) on the consideration on conveyances of German property. The rate varies by province; in 2018, the rate is 3.5% for property in Bavaria and Saxony; 4.5% in Hamburg; 5% in Baden-Württemberg, Bremen, Lower Saxony, Mecklenburg-Western Pomerania, Rhineland-Palatinate, and Saxony-Anhalt; 6% in Berlin and Hesse; and 6.5% in Brandenburg, North Rhine-Westphalia, Saarland, Schleswig-Holstein, and Thuringia.

This tax is also levied on indirect transfers from the acquisition of at least 95% of the shares in property-owning companies. This applies to shares of the shareholder throughout the corporate chain. A tightening of the rules for levying RETT in connection with a share transfer is currently being discussed (e.g. lowering the 95% threshold).

In general, RETT is calculated based on the value of the consideration. Where RETT is triggered due to a restructuring, unification of shares, change of partners in a partnership, or in cases where a consideration does not exist, the tax base is determined based on the valuation principles applied for inheritance tax purposes.

Under certain conditions, German RETT is not levied on direct or indirect transfers (without the payment of consideration) in the course of a corporate reorganisation under the laws of a member state of the European Economic Area (EEA), provided at least 95% of the ultimate interest in the property remains unchanged for five years before and after the transaction (group privilege).

In a decision of 30 May 2017, the Federal Fiscal Court referred a case to the ECJ and asked the ECJ for a preliminary ruling on the question as to whether the group privilege constitutes illegal state aid according to European State Aid Rules. Should the group privilege constitute illegal state aid according to Art. 107 para. 1 TFEU, the group privilege may no longer be applied until the European Commission decides upon its compatibility with the Internal Market.

Payroll taxes

Employers are required to pay employee remuneration under deduction of the income tax due. The amounts deducted are paid over to the tax office at regular, usually monthly, intervals. The actual deductions are calculated from the gross pay, taking the employee's marital, family, and other personal circumstances into account. The necessary personal details can be downloaded from a government database. For the employee, the payroll tax deduction is a prepayment on the income tax due after filing one's annual income tax return. As such, the payroll tax is a withholding tax and not a financial burden on the employer. However, employers are required to deduct the correct amounts and are thus exposed to the risk from a later tax audit assertion of under-deduction, especially as there are often legal or practical impediments to recovery from the employees after the event. The administrative effort involved is also far from insignificant.

Social security contributions

All employers are required to account for social security contributions on wages and salaries paid, up to set monthly limits. There are four separate types of insurance: for old-age pensions, unemployment benefits, health care, and invalidity care. Employees regularly earning more than EUR 59,400 in 2018 can opt out of the health and invalidity insurances if they take out appropriate coverage with a private insurance company. The pension and unemployment insurances are compulsory for all employees. The upper monthly salary limits are EUR 6,500 in 2018 (EUR 5,800 in the eastern part of Germany) for the pension and unemployment insurances and EUR 4,425 in 2018 for the health and invalidity insurances. Currently (2018), the rates are as follows:

- Pension insurance: 18.6%, of which the employee's share is one half.
- Unemployment insurance: 3.0%, of which the employee's share is one half.
- Health insurance: 14.6%, of which the employee's share is one half. The health funds have the power to levy a supplement.
- Invalidity insurance: 2.55%, (plus a surcharge of 0.25% in some cases) of which the employee's share is one half.

Branch income

Both corporation tax and trade tax are imposed on the taxable income of a foreign company's German branch. The rates are the same for branches as for resident German companies, although the WHT on dividend distributions by German companies is not deducted from profits transferred by a German branch to its foreign head office.

Income determination

The taxable income is generally determined on the basis of a tax balance sheet, which in turn is based on the statutory accounts according to German generally accepted accounting principles (GAAP). There are certain specific tax law and accounting adjustments to be made to the statutory accounts, and additional accounting options are available. If accounting options are exercised in the tax balance sheet that diverge from the financial statements according to German GAAP, a register must be kept of the resulting variances between the financial statements and the tax computation showing the basis on which each arose and its reversal. International Financial Reporting Standards (IFRS) financial statements are not accepted as a basis for computing taxable income.

Inventory valuation

Inventories normally are valued at the lower of actual cost, replacement cost, and net realisable value. However, any write-downs below actual cost must be made for specific reasons. If specific identification of the inventories is not possible, valuation at either standard or average cost is acceptable. The last in first out (LIFO) method is accepted as an option. First in first out (FIFO) is not accepted unless its assumption accords with the facts.

Long-term liabilities and accruals

Non-interest bearing liabilities with a remaining term of 12 months or more as at the balance sheet date, other than advance payments received, must be discounted at 5.5% per year. A similar provision applies to refurbishment (to restore an asset to its original condition) and other accruals that accumulate over time.

Capital gains

Generally, capital gains realised by a corporate entity from a disposal of business assets are treated as ordinary income. It is possible to postpone the taxation of part or all of the gain on real estate by offsetting the gain against the cost of a replacement property.

Capital gains from the sale of investments in other corporations are exempt from corporation and trade taxes. Corresponding losses are not deductible. However, 5% of the capital gains are added back to taxable income as non-deductible, directly-related expenses where the seller is resident or has a PE/representative in Germany.

Dividend income

Dividends received on significant holdings are exempt from corporation and trade taxes. Portfolio dividends are taxable. For corporation tax and trade tax purposes, different qualified portfolio holdings are applicable. With respect to corporation tax, a minimum shareholding of at least 10% is required and must be met at the beginning of the calendar year. For trade tax purposes, additional requirements need to be fulfilled (e.g. an active income criterion for certain foreign-source dividends) and different rules apply for German-source and foreign-source dividend income from shareholdings of at least 15% (or 10% insofar as the Parent/Subsidiary Directive is applicable).

For corporation tax purposes, 5% of the tax-free gross dividend is added back to taxable income as non-deductible business expenses. For dividends exempted for corporation as well as for trade tax purposes, the taxable amount of 5% of the dividends for corporation tax purposes is also taxable for trade tax purposes.

Note that, for example, banks do not enjoy this exemption on dividends from securities held for trading.

Stock dividends

In principle, a declaration of stock dividends (by converting reserves to capital stock) by a company will not lead to taxable income for the shareholder or to other tax effects. Subsequent capital reductions, however, will be treated as cash dividends in most circumstances. In general, there is no German tax reason for distributing a stock dividend as opposed to merely leaving accumulated profits on the books to be carried forward. The decision, therefore, depends upon the situation in the investor's home country.

Interest income

Interest received is taxed as part of a company's ordinary trading income. There is no exemption corresponding to the trade tax disallowance of 25% of the interest expense or to the general tax disallowance of net interest expense in excess of 30% of 'earnings before interest, tax, depreciation, and amortisation' (EBITDA) under the interest limitation rule (*see the Deductions section*). However, since the interest limitation is based on the net interest margin, a company can benefit from earning income as interest as opposed to an interest substitute.

Royalty income

Royalties received are taxed as part of a company's ordinary trading income. There is no special regime such as an IP Box or the like.

Foreign income

Foreign income, except dividends, received by a German corporation from foreign sources is included in taxable income for corporation tax unless a tax treaty provides for an exemption. Foreign PE income, in most cases, is exempt from corporation and trade taxes, while double taxation on most items of passive income (e.g. interest and royalties) is avoided by foreign tax credit or, at the taxpayer's option, by a deduction of the foreign taxes as an expense.

Irrespective of any tax treaty, income from a foreign branch or partnership is, in general, not charged to trade tax. However, with effect from the 2017 period of assessment, certain passive income arising to a foreign PE will be deemed to have been earned by a domestic PE for trade tax purposes.

The Foreign Tax Act provides for anti-avoidance (including controlled foreign company [CFC]) rules with respect to subsidiaries in certain lines of business subject to a low-tax regime. A low-tax regime is one in which the rate applicable to the income in question is less than 25%. Most forms of passive income fall under the CFC rules, which essentially attribute the income to the German shareholder as though it had been earned directly. Active business income is not generally caught where the business operates from properly established facilities.

Investment income held in an EU/EEA subsidiary is also exempt from attribution, provided the subsidiary is commercially active in its country of operation and maintains at least a minimum establishment.

Other provisions give the tax office the right to insist on full disclosure of all the facts and circumstances surrounding a transaction as a condition for the deduction of a business expense incurred within an essentially tax-free environment for the supplier. This rule operates independently of ownership or shareholding considerations.

Deductions

Depreciation and amortisation

Depreciation on movable fixed assets is calculated on the straight-line method over the asset's anticipated useful life. Depreciation takes the residual value of the asset into account only if it is material, with any gains on a sale being treated as normal business income.

Buildings are depreciated on a variety of straight-line or reducing-rate systems designed to reach a full write-down between 25 and 50 years, depending on the age of the building and on whether the taxpayer was its first owner.

In addition to normal depreciation, special depreciation is deductible for tax purposes in certain limited circumstances (e.g. small businesses, ancient monuments, buildings in designated renovated city zones).

Acquired intangibles are amortised straight-line over their estimated useful lives; goodwill is amortised over 15 years.

Start-up expenses

Start-up and formation expenses are deductible as incurred.

Interest limitation

Annual net interest expense (the excess of interest paid over that received) of group companies is only deductible at up to 30% of EBITDA for corporation and trade tax purposes. The 30% limitation applies to all interest, whether the debt is granted by a shareholder, related party, or a third party.

This limitation does not apply where the total net interest expense for the year is less than EUR 3 million or where the net amount paid to any one shareholder of more than 25% (or a related party) is no more than 10% of the total. However, this latter concession is dependent on the demonstration that the equity-to-gross assets ratio of the company is no more than two percentage points below that of the group as a whole. Unused EBITDA potential may be carried forward for up to five years to cover future excess interest cost. This carryforward is otherwise subject to the same principles as the loss carryforward, including curtailment on change of shareholder(s).

In a decision as of 14 October 2015, the Federal Fiscal Court held the interest limitation to be in breach of the constitution and has asked the Constitutional Court to give a definitive ruling. Since the Federal Fiscal Court is of the view that the provision is unconstitutional, it has suspended the proceedings in a pending case and submitted the question to the Constitutional Court. Only the Constitutional Court is authorised to decide if the regulation is unconstitutional and may thus no longer be applied.

It is emphasised that the interest limitation is additional to, and not a substitute for, the transfer pricing requirement that related-party finance be at arm's length.

Royalty limitation

Following (and beyond) the OECD recommendations on Action 5 of the BEPS Project, Germany has introduced a restriction on the deductibility of certain royalty payments to related parties applicable from 2018 onwards to counter so-called harmful preferential tax regimes. According to the royalty limitation rules, expenses arising after 31 December 2017 for the assignment of use or the right to use rights, in particular of copyrights and industrial property rights, in trade, technical, scientific and similar know-how, knowledge, and skills (e.g. plans, designs, processes), may not be a deductible business expense or may only be partially deductible.

The limitation will apply where:

- the recipient of the income from the assignment of rights is a related party, *vis-à-vis* the debtor
- the income in the hands of the (direct or indirect) recipient is subject to a special preferential regime, which does not correspond to the OECD Modified Nexus Approach, and
- the income received for the assignment of the rights is taxed at a rate less than 25% (low taxation) at the level of the (direct or indirect) recipient.

If the conditions of the provisions are met, the expenses in question will become proportionately non-deductible. The non-deductible portion of expenses is calculated as follows:

(25% - Income tax burden in %) / 25%

Bad debts

Bad debts incurred on trading with unrelated parties are deductible once it is apparent that they are irrecoverable and all attempts to pursue the debt have failed or been abandoned. Provision for future bad debts may be made; general provisions must reflect the past experience of the business; specific provisions require specific justification based on the actual circumstances. Expenses from the write-down of loans to shareholders of more than 25% or to their related parties may not be deducted from taxable income unless a third-party creditor would have granted the loan or allowed it to remain outstanding in otherwise similar circumstances.

Charitable contributions

Donations to recognised charities in cash or in kind are deductible up to the higher of 20% of otherwise net taxable income or 0.4% of the total of sales revenue and wages and salaries paid during the year. Donations to charities registered in other EU/EEA member states also qualify for deduction if the recipient charity meets the German requirements for recognition.

Fines and penalties

Fines and other penalty payments levied by a court, or other authority, with an intent to punish are not deductible. By contrast, those levied to confiscate ill-gotten gains, or to relieve damage to the victims or to the public good, are deductible. Penalty payments levied for attempted tax evasion are not deductible, but late payment surcharges are deductible if the tax itself is (e.g. VAT).

Taxes

All taxes borne are deductible except for corporation tax, trade tax, and the VAT on most non-deductible expenses.

Net operating losses

Net operating losses are carried forward without time limit. For corporation tax (but not trade tax), there is an optional carryback to the previous year of up to EUR 1 million.

The loss relief brought forward claimable in any one year is limited to EUR 1 million plus 60% of current income exceeding that amount. The remaining 40% of income over EUR 1 million is charged to trade and corporation taxes at current rates. This is referred to as ‘minimum taxation’.

The loss carryforward, as well as current losses of the ongoing fiscal year accrued up to the date of the harmful share transfer, is forfeited if a single (immediate or ultimate) shareholder acquires more than 50% of the issued capital (voting rights) within a five-year period. An acquisition of more than 25% and up to 50% leads to a corresponding reduction in the loss carryforward.

These forfeiture rules do not apply to share acquisitions as part of a group internal reorganisation without effect on the single ultimate shareholder, or inasmuch as the loss carryforward is covered by hidden reserves in the company’s assets that, on realisation, will lead to German taxation. This excludes the appreciation in value of shareholdings in other companies as well as business assets held in foreign PEs.

For harmful share transfers occurring after 31 December 2015, an application may be made under a new provision introduced in December 2016 to avoid a loss forfeiture. Relief may be available where the company has maintained exclusively the same business during a specified observation period and during this period no 'harmful event' has occurred. In this context, harmful events include, for example, the discontinuance of the business, the commencement of an additional business, and a change in activity/business sector. Where the conditions are fulfilled and the company has made the application, the total tax loss carryforward available at the end of the period of assessment, in which the harmful share transfer occurred, will be classified as so-called 'continuance-bound' loss carryforward (*Fortführungsgebundener Verlust*).

The occurrence of one of the harmful events as set out in the provision will result in the forfeiture of the continuance-bound loss carryforward last assessed as far as the continuance-bound tax loss carryforward is not matched by hidden reserves under the hidden reserve exception.

In a decision as of 29 March 2017, published on 12 May 2017, the German Federal Constitutional Court held that the German tax loss forfeiture rules violate the German Constitution to the extent they anticipate a partial forfeiture of a company's tax losses upon an acquisition of more than 25% but less than 50% of its shares. The decision directly affects only the period until the introduction of the application for a continuance-bound loss carryforward (i.e. share transfers up to 31 December 2015).

The German Federal Constitutional Court obligated the German legislature to amend the rules on a loss forfeiture in case of the acquisition of a qualified minority interest by 31 December 2018 at the latest with retroactive effect from 1 January 2008 to 31 December 2015, to ensure that they are consistent with the German Constitution.

There are further cases before the German Federal Constitutional Court on the question as to whether the full forfeiture of losses in the case of a harmful share transfer of more than 50% is unconstitutional and on other specific questions in connection with the minimum taxation rules.

Payments to foreign affiliates

A German corporation can claim a deduction for remuneration, such as interest charges (subject to the interest limitation), service fees, and royalties, paid to foreign affiliates, provided the amounts are at arm's length. Detailed provisions covering both form and substance define this. In particular, all services must be covered by prior written agreement, and it is also necessary to conclude agreements for the purchase and sale of goods in writing where this would be usual between third parties (e.g. for quantity rebates on sales). The substance tests must be satisfied, both as to value for money and as to business relevance. Thus, the manager of a German subsidiary must be able to show an adequate business benefit from a related-party transaction. These and all other aspects of inter-company (related-party) trading fall under strict and extensive documentation requirements, breach of which can lead to serious penalties.

Special features for trade tax

There are a number of differences between the income subject to trade tax and to corporation tax. The most significant is the trade tax disallowance of one-quarter of the interest costs, including interest implicit in leasing, rental, and royalty charges. Banks have an exemption from this interest disallowance.

Group taxation

If a parent holds more than 50% of the voting rights in a subsidiary having its place of management in Germany, the two may conclude a formal court-registered profit and loss pooling agreement, which must be concluded for a period of at least five years. If certain conditions are fulfilled, the ensuing relationship is referred to as an *Organschaft*. Effectively, the annual results of an *Organschaft* are pooled at the level of the parent. The tax group subsidiary itself is only subject to tax with respect to 20/17 of the compensation payments made to outside minority shareholders, if applicable. Profits and losses within a group can therefore be offset, but there is no provision for the elimination of intra-group profits from the total tax base. It should also be noted that negative income of the parent or of the subsidiary incurred within an *Organschaft* is excluded from offset in the same or another year if a foreign country takes it into account in the taxation of an *Organschaft* member, or of any other entity.

The main conditions for a tax group for corporate tax/trade tax purposes are:

- The subsidiary is financially integrated; in effect, the parent must have held the shares in the subsidiary without interruption from the beginning of its business year sufficient to give it a majority of the voting rights in the subsidiary.
- The parent of an *Organschaft* must be an individual, a trading partnership, or a non-tax exempt corporation, association, or estate.
- The investment in the subsidiary must, from a functional point of view, be attributable to a German branch of the parent, and the income of the branch must be subject to German tax and not be exempt under a DTT.
- The subsidiary must be a corporation having its place of management in Germany and its registered seat in an EU/EEA member state.
- The parent and the subsidiary must have concluded a qualifying profit and loss pooling agreement (PLPA) to run for at least five years and be consistently applied throughout the term of the agreement. Under the PLPA, the subsidiary surrenders its entire income to the parent. Conversely, the parent is obligated to compensate the losses incurred by the subsidiary throughout the term of the agreement.

Transfer pricing

Extensive rules on transfer pricing in respect of all transactions with foreign-related parties are in force. The basic principle is that all trading should be at arm's length, but the documentation requirements go far beyond the level of documentation normally found sufficient to demonstrate a conscientious approach to true third-party business. Failure to meet these rules exposes the company to serious risk of penalties as well as unfavourable estimates by the authorities, who have the right to exercise every possible leeway or margin to the taxpayer's disadvantage.

Germany has adjusted its transfer pricing documentation rules to meet the recommendations of the OECD BEPS Project. The taxpayer has to prepare documentation specific to the country and each business (local file) as well as a master file with information regarding the global business operations of the group. Furthermore, a so-called country-by-country reporting (CbCR) must be submitted.

Documentation (local file and master file) need not be set up already at the time of transaction or in the course of a tax return. However, in case of extraordinary business transactions (e.g. restructurings, cost sharing, other material long-term agreements), documentation needs to be prepared within six months after the end of the business year in which the business transaction occurred.

Usually, in preparation of a tax audit, the tax authorities request the relevant records/ documentation. Upon request of the tax auditor, the documents must be furnished within 60 days of the request or, in case of extraordinary business transactions, within 30 days.

The CbCR has to be submitted within one year after the end of the respective business year.

Thin capitalisation

There are no thin capitalisation rules as such; their substitute is the 'interest limitation' to, basically, 30% of EBITDA discussed in the *Deductions section*.

Controlled foreign companies (CFCs)

Pursuant to the German CFC taxation rules regulated in the Foreign Tax Act (FTA - *Außensteuergesetz*), certain low-taxed (less than 25%) income, referred to as passive income generated by a CFC, shall be subject to German tax at the level of the German shareholder, provided the CFC is deemed to be a so-called intermediate company (*Zwischengesellschaft*) and the German ownership criterion is fulfilled.

Passive income generated by a CFC that qualifies as an intermediate company will be attributed to the German shareholder regardless of whether it is actually distributed or not (CFC income). The CFC income is subject to German corporation tax and trade tax.

EU/EEA subsidiaries will not be qualified as an intermediate company if a so-called motive test is fulfilled (i.e. the German shareholders prove that the specific income is derived from a genuine economic activity of the non-resident company).

Tax credits and incentives

Germany does not offer tax incentives except in very limited circumstances, not usually of direct business relevance (e.g. special depreciation for buildings under a conservation order). Partly, this is a question of the state budget, and partly, it reflects the constitutional requirement for equal treatment of all taxpayers.

Other incentives

Local authorities may offer facilities on favourable terms, such as the provision of cheap land on industrial estates.

Foreign tax credit

If foreign-source income is not exempt from German taxation, a credit will be given for the foreign tax actually paid and not otherwise recoverable. However, the credit is limited to the corporation tax (including the solidarity surcharge) on the net income after deducting the related expense (a per-country limitation applies). Unused credit is lost, as there are no provisions for carryforward or for offset against other taxes, such as trade tax. There are still a few cases of fictitious foreign tax credits under tax treaties with developing countries (to protect the treaty partner's investment incentives), but German treaty policy is to abandon such provisions at the first opportunity.

Withholding taxes

Resident corporations paying certain types of income are required to withhold tax as shown in the following tables. There is also a solidarity surcharge of 5.5% on the tax due.

General

	WHT (%)		
Recipient of German-source income	**Dividends (1)**	**Interest (1)**	**Royalties**
Resident corporations and individuals	25	0/25 (2)	0
Non-resident corporations and individuals (1):			
EU corporations (4, 5)	0/25	0/25 (3)	0/15
Non-treaty corporations	25	0/25 (3)	15
Non-treaty individuals	25	0/25 (3)	15

Notes

1. Corporate recipients of dividend and interest income (interest on convertible and profit-sharing bonds) can apply for refund of the tax withheld over the corporation tax rate of 15% plus solidarity surcharge, regardless of any further relief available under a treaty.
2. Generally, only interest paid by banks to a resident is subject to a WHT. A 25% tax plus solidarity surcharge is also withheld from income on convertible or profit-sharing bonds.
3. Interest paid to non-residents other than on convertible or profit-sharing bonds and over-the-counter transactions is generally free of WHT. Tax on loans secured on German property is not imposed by withholding, but by assessment to corporation tax at 15% (plus solidarity surcharge) of the interest income net of attributable expenses. The tax authorities can order a WHT of 15.825% (including solidarity surcharge) if ultimate collection of the tax due is in doubt. Both forms of tax are reduced by treaty relief.
4. Where the EC Parent/Subsidiary Directive applies, dividends paid by a German company to a qualifying parent company resident in another EU member state are exempted from German WHT. The minimum shareholding is 10%, to be held continuously for at least one year.
5. The EC Interest and Royalties Directive exempts payments from WHT if made to an associated company in another EU member state. The association must be through a common shareholding of at least 25%.

Treaty rates

	WHT (%)		
Recipient of German-source income	**Dividends (1, 4)**	**Interest (1, 2, 3)**	**Royalties**
Albania (5)	5/15	5	5
Algeria (5)	5/15	10	10
Argentina (5, 8)	15	10/15	15
Armenia (5)	7/10/15	5	6
Australia (5, 8, 10)	0/5/15	0/10	5
Austria (5)	5/15	0	0
Azerbaijan (7, 8)	5/15	0/10	5/10
Bangladesh (5)	15	10	10
Belarus (7)	5/15	0/5	3/5
Belgium (5, 8)	15	0/15	0
Bolivia (5)	10	15	15
Bosnia-Herzegovina (5, 9)	15	0	10
Bulgaria (5)	5/15	5	5
Canada (7, 8)	5/15	0/10	0/10
China, People’s Republic of (5, 8)	5/10/15	0/10	10
Costa Rica (5, 8)	5/15	0/5	10
Croatia (5)	5/15	0	0

Recipient of German-source income	WHT (%)		
	Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Cyprus	5/15	0	0
Czech Republic (11)	5/15	0	5
Denmark (5)	5/15	0	0
Ecuador (8)	15	10/15	15
Egypt (5, 7)	15	15	15/25
Estonia (5, 8)	5/15	0/10	10
Finland (5)	5/15	0	0
France	5/15	0	0
Georgia (5)	0/5/10	0	0
Ghana (5, 8)	5/15	0/10	8
Greece	25	10	0
Hungary (5)	5/15	0	0
Iceland	5/15	0	0
India (5)	10	10	10
Indonesia (5, 7)	10/15	10	10/15
Iran	15/20	15	10
Ireland, Republic of (5)	5/15	0	0
Israel (5, 8)	5/10/15	0/5	0
Italy (5, 7, 8)	15	0/10	0/5
Ivory Coast (5)	15	15	10
Jamaica (8)	10/15	10/12.5	10
Japan (5)	0/5/15	0	0
Kazakhstan (5, 8)	5/15	0/10	10
Kenya	15	15	15
Korea, Republic of (5)	5/15	10	10
Kosovo (5, 9)	15	0	10
Kuwait (5)	5/15	0	10
Kyrgyzstan (5)	5/15	5	10
Latvia (5)	5/15	10	10
Liberia (7, 8)	10/15	10/20	10/20
Liechtenstein (5)	0/5/15	0	0
Lithuania (5)	5/15	10	10
Luxembourg (5)	5/15	0	5
Macedonia (5)	5/15	5	5
Malaysia (5)	5/15	10	7
Malta (5)	5/15	0	0
Mauritius (5)	5/15	0	10
Mexico (5, 8)	5/15	5/10	10
Moldova (5, 6)	15	5	0
Mongolia (5)	5/10	10	10
Montenegro (5, 9)	15	0	10
Morocco	5/15	10	10
Namibia (5)	10/15	0	10
Netherlands (5)	5/10/15	0	0
New Zealand (5)	15	10	10
Norway (5)	0/15	0	0
Pakistan (5, 8)	10/15	10/20	10
Philippines (5)	5/10/15	10	10
Poland (5, 8)	5/15	0/5	5

Recipient of German-source income	WHT (%)		
	Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Portugal (5, 8)	15	10/15	10
Romania (5)	5/15	0/3	3
Russia (5)	5/15	0	0
Serbia (5, 9)	15	0	10
Singapore (5)	5/15	8	8
Slovakia (11)	5/15	0	5
Slovenia (5)	5/15	5	5
South Africa	7.5/15	10	0
Spain	5/15	0/15	0
Sri Lanka (5, 8)	15	0/10	10
Sweden (5)	0/15	0	0
Switzerland (5)	0/15	0	0
Syria (5)	5/10	0/10	12
Taiwan (5)	10	10	10
Tajikistan (5)	5/15	0	5
Thailand (7, 8)	15/20	10/25	5/15
Trinidad and Tobago (7, 8)	10/20	10/15	0/10
Tunisia (7)	10/15	10	10/15
Turkey (5)	5/15	10	10
Turkmenistan (5)	5/15	10	10
Ukraine (5, 7, 8)	5/10	5	0
United Arab Emirates (5)	5/10/15	0	10
United Kingdom (5)	5/10/15	0	0
United States (5, 10)	0/5/15	0	0
Uruguay (5)	5/15	10	10
Uzbekistan (5, 7)	5/15	5	3/5
Venezuela (5)	5/15	5	5
Vietnam (5)	5/10/15	10	10
Zambia	5/15	10	10
Zimbabwe (5)	10/20	10	7.5

Notes

1. Corporate recipients of dividend and interest income (interest on convertible and profit-sharing bonds) can apply for refund of the tax withheld over the corporation tax rate of 15% plus solidarity surcharge, regardless of any further relief available under a treaty.
2. Generally, only interest paid by banks to a resident is subject to a WHT. A 25% tax plus solidarity surcharge is also withheld from income on convertible or profit-sharing bonds.
3. Interest paid to non-residents other than on convertible or profit-sharing bonds and over-the-counter transactions is generally free of WHT. Tax on loans secured on German property is not imposed by withholding, but by assessment to corporation tax at 15% (plus solidarity surcharge) of the interest income net of attributable expenses. The tax authorities can order a WHT of 15.825% (including solidarity surcharge) if ultimate collection of the tax due is in doubt. Both forms of tax are reduced by treaty relief.
4. The lower rates on dividends apply under certain conditions (minimum shareholding, specific shareholders, in some cases minimum holding period).
5. The treaty does not limit the taxation of certain profit-based interest income, which is deducted by the debtor from their tax base; consequently, the domestic rate (plus solidarity surcharge) applies.
6. The USSR treaty continues in force with Moldova.
7. The applicable maximum WHT rate on royalties depends on the type of royalty granted (film and television royalties, trademarks, patents, franchises, etc.).
8. The lower rate on interest income applies under certain circumstances (e.g. for certain recipients, such as banks or pension funds, or for interest paid in connection with certain purchases on credit).
9. The Yugoslav treaty continues in force with Bosnia-Herzegovina, Kosovo, Montenegro, and Serbia.
10. The dividend exemption applies under certain conditions to corporate shareholders with at least 80% throughout the previous 12 months.

11. The Czechoslovak treaty continues to apply to the Czech Republic and to Slovakia. Interest on profit-sharing bonds is taxed as a dividend.

Treaties or protocols amending existing treaties are signed but awaiting ratification with Macedonia, Oman, and South Africa.

Tax administration

Taxable period

The tax year in Germany is the calendar year.

Tax returns

Returns are filed for each calendar year and reflect the financial statements for the business year ending in that calendar year. Assessments are issued once the tax office has reviewed the return.

In principle, returns are due by 31 May of the following year. However, there is a virtually automatic extension to 31 December for those filing with professional assistance. A further extension to 28/29 February is possible if justified under the circumstances. Known late-filers and those with a record of other irregularities can be asked to submit their returns before these extension dates, though not before 31 May. For tax periods starting after 31 December 2017, the regular deadline will be 31 July following the tax year-end. For tax returns prepared by a professional tax adviser, the deadline will be extended to the last day of February of the subsequent year.

Electronic returns

Monthly or quarterly returns for WHT from employee salaries, dividends, interest, royalties, and other payments, and for VAT must be submitted electronically. The same applies to the annual returns for corporation tax, trade tax, and VAT. There is also an electronic filing requirement for the financial statements supporting the return.

Payment of tax

Taxes are payable in quarterly instalments during the year, with a final settlement when the assessment is issued. The quarterly instalments are based on the estimated ultimate liability. Usually, this is the total tax due shown by the last assessment issued, as adjusted by any rate changes. The corporation tax instalments are due on the tenth day of March, June, September, and December. For trade tax, the due dates are the 15th day of February, May, August, and November. Failure to pay by the due date followed by a three day grace period leads to a penalty of 1% per month.

Corporation and trade tax assessments bear interest on the net amount payable after deduction of all credits and previous payments. The rate is 0.5% per month simple interest, and the period runs from 1 April of the second year following the year of assessment until the date set for payment. The start of the interest period is independent of the actual date of assessment. It thus runs in retrospect on assessments issued later, for example following a tax audit.

Rulings

Tax offices are able to issue binding rulings in respect of planned transactions, provided the taxpayer can show a particular interest in the tax consequences of the intended action. The fee varies between EUR 241 and EUR 109,736, depending upon the amount of tax involved (no fee is charged if the tax amount is less than EUR 10,000).

Advance pricing agreements (APAs)

A taxpayer can request the Central Tax Office to negotiate an APA on related-party transactions with a foreign tax authority on one's behalf. The vehicle is the mutual agreement procedure under the treaty, and the fee is a lump sum EUR 20,000 for each new agreement.

Tax audit process

Germany relies heavily on tax audits as a means of ensuring taxpayer discipline. Audits of small businesses are carried out at random, although those for larger operations and for the local subsidiaries of foreign groups tend to be regular. With some district variations, audits are usually conducted at four to five yearly intervals, though not always with equal intensity for the entire period since the auditors' previous visit.

Statute of limitations

The statutory limitation period for the issue or correction of assessments is four years from the end of the year in which the return was filed. If no return was filed, the period runs from the end of the third year following the end of the year of assessment. The four-year period is extended to five in cases of taxpayer negligence and to ten in the event of evasion.

The statutory limitation period for the collection of tax debts is five years from the end of the year in which payment became due.

Topics of focus for the tax authorities

Tax office reviews of tax returns prior to issuing the assessment notice and payment demand are often rather superficial. Audits, though, are intense, being field reviews on site often lasting for several weeks or even months. Companies with an international focus can expect significant audit emphasis on all aspects of their dealings with their foreign business partners. If the company is a member of an international group, its most important audit component will usually be its transfer pricing on its dealings with foreign-related parties and the relevant documentation. It is emphasised that these two topics are separate fields, as documentation deficiencies can lead to unfavourable estimates on the taxpayer, even if the taxpayer is able to justify the taxpayer's group-company pricing in terms of overall result.

Other issues

International exchange of information

In recent years, Germany has been vigorous in promoting the international exchange of tax information and has either agreed to obligations regarding the exchange of information in DTTs or concluded Tax Information Exchange Agreements (TIEAs) with countries with which it has not concluded a general DTT.

The Foreign Account Tax Compliance Act (FATCA) agreement of 31 May 2013 with the United States (US) on the automatic exchange between national tax authorities of bank account information on each other's residents has been in force since December 2013.

Moreover, Germany has signed and implemented into domestic law the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information as of 29 October 2014, which is based on the Convention on Mutual Assistance in Tax Matters (1988/2010), which itself was also signed and implemented into domestic law by Germany. The first exchange of information on financial accounts in tax matters based on the so-called common reporting standard (CRS) from Germany took place in September 2017.

Automatic exchange of information has further been pushed as part of the BEPS Project of the OECD. The Multilateral Competent Authority Agreement on the Automatic Exchange of Country-by-Country Reports as of 27 January 2016 was signed by Germany and implemented into domestic law in 2016. At the level of the EU, the Mutual Assistance Directive was extended with respect to the exchange of information regarding CbCR as well as advance cross-border tax rulings and APAs. Both amendments were implemented by Germany into domestic law in December 2016. The implementation of a further extension of the Mutual Assistance Directive to anti-money-laundering information is pending.

Furthermore, at the EU level, an extension of the EU Mutual Assistance Directive with reference to the exchange of information on cross-border tax planning schemes ('arrangements'), including the imposition of disclosure requirements on so-called intermediaries and taxpayers, was adopted in May 2018. The new rules will have to be implemented into domestic law by 31 December 2019 and shall be applicable from 1 July 2020. It should be noted that the disclosure rules also cover reportable cross-border arrangements where the first step is implemented between 25 June 2018 and 30 June 2020.

BEPS Project of the OECD

On the initiative of the G20 group of countries, the OECD developed a 15-point Action Plan to address BEPS by multinational companies. It aims to adjust local tax regimes and DTTs to keep pace with globalisation and technical developments.

Some jurisdictions and the European Union already started implementing parts of the actions into their local law. Moreover, in August 2016, the EU Anti-Tax Avoidance Directive (EU-ATAD) entered into force, which includes certain minimum standards to combat tax avoidance schemes and which must be primarily implemented into national law by 31 December 2018.

Germany has already transposed some of the measures developed by the OECD or provided for by the European Union into domestic law, in particular concerning the international exchange of information in tax matters. Further, Germany introduced a restriction on the deductibility of royalty payments to related parties in certain cross-border situations where a preferential tax regime is considered harmful, applicable from 2018 onwards.

In addition to the OECD proposals, Germany will also have to consider various standards as set forth by the European Union. The EU-ATAD must be implemented into local law in the main no later than 31 December 2018 and will generally be applied from 1 January 2019 onwards. In May 2017, the Council of the European Union further adopted a directive amending the EU-ATAD (ATAD II). The member states must transpose the ATAD II into local law by 31 December 2019 and apply it generally from 1 January 2020 onwards.

Together with numerous other countries, Germany signed the so-called 'Multilateral Instrument' (MLI) at an official signing ceremony on 7 June 2017. It is to be expected that Germany will conclude additional bilateral agreements with respect to each DTT; these amendments should both identify the articles to be amended and set their terms in order to implement the provisions of the MLI into domestic law to the extent they have been accepted by Germany.

Ghana

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Significant developments

Temporary tax amnesty regime ending 30 September 2018

On 29 December 2017, the Tax Amnesty Act (Act 955) received assent to grant amnesty to persons who have not complied with the tax laws at all or are in partial compliance with the tax laws.

The tax amnesty provides for the waiver of taxes, interest, and penalties to persons who will come forward to register with the Ghana Revenue Authority (GRA). Similarly, non-compliant registered taxpayers are eligible for a waiver of penalties and interest.

A person who qualifies for benefits under this amnesty is required to submit a written application and the tax returns required to be filed with the Commissioner-General (C-G) by 31 August 2018.

Introduction of an Africa Union Import Levy

The African Union Import Levy Act, 2017 (Act 952) was passed to impose a levy of 0.2% on the cost, insurance, and freight (CIF) value of eligible imports from Non-African Union Countries.

The GRA officially commenced the collection of the levy from 12 January 2018.

Enforcing the affixing of the excise tax stamp

Effective 2018, qualifying excisable products that are imported or locally manufactured are required to be affixed with GRA's specific tax stamps before they are delivered ex-factory, cleared from any port of entry, or sold at any commercial level.

This is in accordance with the provisions of the Excise Tax Stamp Act, 2013 (Act 873), and all importers and manufacturers of the affected products are required to register with the GRA.

Introduction of automatic exchange of financial account information

The Standard for Automatic Exchange of Financial Account Information Act, 2018 (Act 967) was passed to impose on financial institutions an obligation to report to the GRA information regarding certain financial accounts of an individual or entity and conduct due diligence with respect to those financial accounts.

With the presidential assent of the Act on 4 May 2018, the financial institutions are required to comply with requirements in the Act to enable Ghana to fulfil its international obligations to exchange financial account information from the year 2018.

Use of fiscal electronic device by value-added tax (VAT) registered persons

VAT-registered persons are to use a GRA-approved fiscal electronic device to issue a fiscal receipt to each customer. The fiscal receipt is to contain the information as specified in the Taxation (Use of Fiscal Electronic Device) Act, 2018 (Act 966). The VAT-registered person is also required to keep another fiscal electronic device as a back-up at a location on the premises of the person as determined by the C-G.

Amendments

One of the key targets of the government of Ghana is to shift the focus of economic management from taxation to production. In lieu of this, Parliament has passed into law the following amendments to provide additional incentives and increase compliance:

Direct taxes

- Providing accelerated depreciation over a period of two years on machinery and equipment imported in order to affix the excise tax stamp on excisable goods by an importer or manufacturer of excisable goods.
- Exemption from tax on income of privately-owned universities so long as they plough back all their profit into the business.
- Exemption from tax the income of an approved unit trust scheme, mutual fund, or real estate investment trust (REIT).
- Removal of the 5% tax on lottery winnings.
- Extension of the 5% National Fiscal Stabilisation Levy (NFSL) to the 2019 year of assessment.

Indirect taxes

- Amendment to the VAT (Exemption of Active Ingredients, Selected Inputs, and Selected Drugs or Pharmaceuticals) Regulations.
- Provision of letters of credit, bank guarantees, or insurance covered by an importer who intends to keep imported goods in a bonded warehouse.
- Introduction of a 7% VAT withholding on the taxable value of VAT-standard-rated supplies (subject to VAT of 17.5%) by appointed VAT-registered withholding agents.
- Extension of the 2% Special Import Levy to December 2019.

Initiatives

The 2018 budget also seeks to focus on granting concessions, widening the tax net, and improving tax compliance. As such, the following tax policies or initiatives have been proposed by the government to be undertaken during 2018:

Direct taxes

- Granting additional tax incentives to support agro-processing businesses under the Akufo-Addo Program for Economic Transformation (AAPET).
- Abolishing income tax on commissions to lotto agents to discourage illegal lottery activities.

- Inculcating the culture of filing income tax returns by linking access to government services to proof of filing of returns.
- Unifying pension schemes in line with the National Pensions Act to create some fiscal space for the government and streamline the pensions payment process.

Indirect taxes

- Abolishing duties on some agricultural produce processing equipment and machinery.

Tax administration

- Making Tax Clearance Certificates a requirement for significant private contracts to expand the tax net.
- Introducing the Voluntary Disclosure Procedures (VDP) regime to encourage voluntary compliance.
- Introducing Alternative Dispute Resolution (ADR) for timely resolution of tax disputes.

Taxes on corporate income

A resident person's worldwide income is assessed for tax. Income from business and investment (from both Ghanaian and foreign sources) is included in determining the resident person's assessable income.

The business and investment income of a non-resident person is included in the assessable income for a year of assessment if that income has a source in Ghana. Where a non-resident person has a Ghanaian permanent establishment (PE), any income connected with the PE is assessed to tax.

The general corporate income tax (CIT) rate is 25%.

Mining and upstream petroleum companies pay CIT at a rate of 35%, while companies principally engaged in the hotel industry pay a reduced rate of 22%.

The CIT rate for companies engaged in non-traditional exports is 8%, while banks lending to the agricultural and leasing sectors pay a CIT rate of 20% on income from those businesses.

National Fiscal Stabilisation Levy (NFSL)

The NFSL applies to specified companies and institutions to raise revenue for fiscal stabilisation of the economy. The NFSL is 5% on the profit (accounting profit) before tax on specified companies. The specified companies and institutions include:

- Banks (excluding rural and community banks).
- Non-bank financial institutions.
- Insurance companies.
- Telecommunications companies liable to collect and pay the communications service tax (CST) under the CST Act, 2008 (Act 754).
- Breweries.
- Inspection and valuation companies.
- Companies providing mining support services.
- Shipping lines, maritime and airport terminals.

The levy shall apply to the aforementioned industries irrespective of any existing exemption granted to an entity under any other laws in Ghana. The tax payable shall not be a deductible expense in arriving at the CIT liability of an entity, and the C-G shall issue an assessment to an entity for the amount of tax payable for the period.

NFSL is payable in four equal instalments at the end of each quarter (i.e. March, June, September, and December).

The NFSL was initially scheduled to end in December 2017. However, an Act of Parliament has extended the levy to 2019.

Local income taxes

Ghana has no local, state, or provincial government taxes on income. However, other local authority bodies (i.e. District Assembly/Municipal Authority) may also apply levies based on location of business properties.

Corporate residence

A company is resident if it is incorporated under the laws of Ghana or has its management and control exercised in Ghana at any time during a year of assessment.

Permanent establishment (PE)

The Income Tax Act, 2015 (Act 896) (ITA) recognises both Ghanaian PE and foreign PE.

A Ghanaian PE includes:

- a place in the country where a non-resident person carries on business or that is at the disposal of the person for that purpose
- a place in the country where a person has, is using, or is installing substantial equipment or substantial machinery
- a place in the country where a person is engaged in a construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to that project, or
- the provision of services in the country.

A foreign PE means a fixed place of business situated in a foreign country where the business is conducted continuously for at least six months, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted.

Other taxes

Value-added tax (VAT)

Other than exempt goods and services, VAT and National Health Insurance Levy (NHIL) are charged on the following:

- Supply of goods and services made in Ghana.
- Importation of goods.

The standard VAT rate is 15% and the NHIL is 2.5%, except for supplies of a wholesaler or retailer of goods, which is a total flat rate of 3%.

VAT and NHIL are charged on the supply of goods and services where the supply is a taxable supply and made by a taxable person in the course of business.

Taxable persons or VAT-registered persons are to use a GRA-approved fiscal electronic device to issue a fiscal receipt to each customer. The fiscal receipt is to contain the information as specified in the Taxation (Use of Fiscal Electronic Device) Act, 2018 (Act 966).

VAT and NHIL are payable by the taxable person making the supply in the case of taxable supply and by the importer in the case of imported goods.

Most professional services are also subject to the same VAT and NHIL rates, including the following:

- Management services.
- Insurance brokerage and other services.
- Financial, tax, and economic consulting.
- Engineering and technical services.
- Accounting services.
- Courier services.
- Legal services.
- Provision of satellite television.
- Architectural services.
- Services rendered by surveyors.

Exports of goods and services are zero-rated. Unless specifically exempt, supplies of all goods and services are subject to VAT.

A person entitled to relief is required to pay the tax and apply for refund unless otherwise directed by the Minister responsible for finance.

The GRA's appointed VAT-registered withholding agents are expected to withhold 7% of the taxable value of goods and services when making payments for supplies subject to VAT at the standard rate of 17.5%.

Customs and excise duties

Customs and excise duties are imposed on the importation of goods at the port of entry and certain manufactured goods produced or imported into Ghana.

The following rates of excise duties apply on the ex-factory price:

Product	Rate (%)
Sachet water	0
Bottled water	17.5
Malt drink	2.5 to 17.5
Beer	10 to 47.5
Spirits	0 to 25
Cigars and cigarettes	175
Snuff and other tobacco products	175

The excise duty payable on malt drinks, beer, and stout, other than indigenous beer, is determined by the percentage of local raw materials used. Local raw materials do not include *water*.

In accordance with the Excise Tax Stamp Act, 2013 (Act 873), qualifying excisable products that are imported or locally manufactured are required to be affixed with tax stamps specified and supplied by the GRA before they are delivered ex-factory, cleared from any port of entry, or sold at any commercial level.

The affected products are:

- All cigarettes and other tobacco products.
- Alcoholic beverages whether bottled, canned, contained in kegs for sale, or packaged in any form.
- Non-alcoholic carbonated beverages whether bottled, canned, or packaged in any form.
- Bottled water.
- Any other excisable product prescribed by the Minister of Finance.

In addition, the Special Import Levy Act imposes a levy of 2% on the CIF value of certain imported goods.

The African Union Import Levy Act, 2017 (Act 952) also imposes a levy of 0.2% on the CIF value of eligible imports from Non-African Union Countries.

Property taxes

Property tax rates are payable by owners of immovable property to the local District Assembly/Municipal Authority. The rate of property tax differs depending on the location of the property.

Stamp taxes

Stamp duty is paid, at rates ranging between 0.25% to 1% and 0.05 Ghana cedi (GHS) to GHS 25, depending on the type of transaction and the instrument. A stamp duty of 0.5% applies on the initial stated capital and any subsequent increase in the stated capital.

The stamp duty is not a tax on transactions but on documents brought into being for the purposes of recording transactions. It is therefore a tax on documents or specific instruments that have legal effect, such as the following:

- Insurance policies.
- Awards of cost in matters of dispute.
- Conveyances or transfers on the sale of any property.
- Appointment letters of new trustees.
- Natural resource leases or licences (e.g. mining, timber).
- Agreements or memoranda of agreement.
- Bills of exchange (e.g. issue of cheques).
- Bills of lading.

Payroll taxes

Employers are required to withhold tax (pay-as-you-earn or PAYE) on employees' salaries and other emoluments, including benefits in kind, on a monthly basis at the graduated rates, with the highest rate at 25%. Employers are to remit the withheld taxes to the GRA by the 15th day of the subsequent month.

Failure to withhold the tax and remit to the GRA on the due date attracts an interest penalty of 125% of the statutory rate, compounded monthly and applied to the amount outstanding at the start of the period.

Employers are also required to file annual returns of employees by 31 March of the year following the year to which the returns relate.

Social security contributions

The social security contribution scheme is structured into three tiers, with the first two requiring mandatory contributions and the last one being voluntary. The employee is required to contribute 5.5% with the employer contributing 13%. Of the total contribution of 18.5%, 13.5% is contributed to the first tier and 5% to the second tier schemes.

Communications service tax (CST)

CST of 6% is levied on charges payable by both individual and corporate users of electronic communication services (ECS) provided by service providers other than private electronic communication services. The levy is also applicable to any form of recharge and is payable once a person makes a payment for ECS regardless of whether or not that person is authorised or permitted to provide ECS under the Electronic Communication Act (Act 755). Note that the definition of electronic communication includes interconnection.

Local business permits

Business ‘permits’ are payable annually to local District Assemblies or Municipal Authorities. The amount is dependent on the physical location where the business activity is conducted. It is therefore possible that if a taxpayer operates from two business locations in different regions, such permits would be paid to two different local authorities.

Branch income

The CIT rate on branch profits is the same as that on corporate profits.

However, a non-resident person that conducts activities in Ghana through a branch pays tax at 8% on earned repatriated profits, payable within 30 days. The portion of net profit of the resident person that corresponds to interest of the non-resident shareholders is treated as repatriated profits. The repatriated profit is also treated as a dividend distributed in accordance with the respective shares of the non-resident person.

Income determination

Inventory valuation

Section 11 of the ITA provides general guidance on the principles of stock (inventory) valuation for income tax purposes. A person making a determination of the cost of trading stock is required to use the absorption cost method. The owner of a trading stock or other fungible assets may determine the cost of that asset by using the first in first out (FIFO) method or the average cost method. The closing value of inventory is valued for tax purposes at the lower of cost or market value.

Capital gains

Capital gains are included as part of business income and taxed at the applicable CIT rate.

Dividend income

A dividend paid to a resident company by another resident company is exempt from tax where the company receiving the dividend controls, directly or indirectly, 25% or more of the voting power in the company paying the dividend.

Stock dividends

The issue of stock dividends is permitted under Section 74 (1) of the Ghana Companies Code 1963, Act 179. It is, however, subject to income tax at the dividend withholding tax (WHT) rate of 8%.

Interest income

Interest received by a resident company from another resident company is subject to WHT at a rate of 8%.

However, WHT does not apply to interest received by a resident financial institution.

Royalty income

Royalty income received by a company is included in the investment income and taxed at the applicable corporate tax rate with a general rate of 25%.

Mineral royalties

The mineral royalty rate is 5% of the total revenue earned from minerals (excluding petroleum and water) obtained from mining operations by a holder of a mining lease, restricted mining lease, or small-scale mining licence.

Exempt income

Specific exemptions from tax include the following:

- Income of a local authority.
- Income of a statutory or registered building society where only individuals are eligible to be members and the organisation does not engage in political party activities.
- Non-business income of a charitable organisation.
- Pensions.
- Income of organisations formed for the purpose of promoting social or sporting amenities.
- Income of a registered trade union.
- Gain or profit from the business of operating ships or aircraft by non-resident persons if an equivalent exemption is granted by the person's country of residence to persons resident in Ghana.
- Retirement contributions received by a retirement fund.
- Gains from the realisation of Ghana Stock Exchange (GSE) listed securities and Securities and Exchange Commission (SEC) approved securities.

- Income of an approved unit trust scheme, mutual fund, or REIT.
- Income of privately-owned universities when they plough back all their profit into the business.

Foreign income

Resident corporations are taxed on their worldwide income. Foreign income is taxed together with other income derived in Ghana, and double taxation is avoided through treaties or foreign tax credits. No special rules exist for taxing undistributed income of foreign subsidiaries.

Deductions

Depreciation and depletion

Depreciation of depreciable assets in the accounts of a business is not an allowable deduction in computing taxable profits. It is instead replaced by capital allowances at prescribed statutory rates, as follows:

Class	Assets	Rate
1	Assets pooled (allowance calculated on a reducing-balance basis). Mainly computers and data handling equipment together with peripheral devices.	40%
2	Assets pooled (allowance calculated on a reducing-balance basis). Mainly automobiles, buses, mini buses, construction and earth-moving equipment, trailers and trailer-mounted containers, plant and machinery used in manufacturing.	30%
3	Assets pooled (allowance calculated on a reducing-balance basis). Mainly railroad cars, locomotives and equipment, vessels and similar water transportation equipment, aircraft, public utility plant and equipment, office equipment and fixtures, and any other depreciable asset not elsewhere classified.	20%
4	Buildings, structures, and similar works of a permanent nature (allowance calculated using the straight-line method).	10%
5	Intangible assets.	Useful life
	Mining and petroleum expenditure (allowance calculated using the straight-line method).	20%
	Machinery and equipment imported in order to affix the excise tax stamp on excisable goods by an importer or manufacturer of excisable goods (allowance calculated using the straight-line method).	50%

Allowances are granted only on the following conditions:

- The taxpayer must own the asset.
- Capital expenditure must be incurred.
- The asset must be used in the trade.
- The asset must be in use up to the end of the basis period.
- Capital allowances are granted for every year in which the asset is in use. Balancing allowances and charges are made, as the case may be, on disposal of the asset.

For intangibles, such as goodwill, patents, trademarks, and copyrights, the law allows for capital allowance deduction over the useful life of the asset.

Start-up expenses and pre-operating costs

Although the tax law does not specifically mention start-up expenses or pre-operating costs, generally a deduction is allowed for start-up and pre-operating costs incurred by a business, provided such expenses are wholly, exclusively, and necessarily incurred in the production of income of the taxpayer.

Interest expenses

Interest incurred on loans used to generate the income of a business is ordinarily deductible. Restrictions apply on interest payments on related loans. *See Thin capitalisation in the Group taxation section*.

Financial costs

Deductions for financial costs other than interest are limited to the sum of:

- financial gains derived by the person that are to be included in calculating the income of the person from the investment or business for the year of assessment, and
- 50% of the chargeable income of the person for the year from the business or investment calculated without including financial gains derived by the person or financial costs incurred by the person.

Bad debts

A deduction is allowed for bad debts incurred in the normal course of business, other than advances made on capital accounts. A bad debt is allowed as a deduction if the C-G is satisfied that the taxpayer has taken all reasonable steps to pursue payment and the person reasonably believes payment will not be made.

Any amounts recovered in respect of a bad debt previously written off should be included in income and subject to tax accordingly.

An existing debt that becomes a bad debt after a 50% or more change in underlying ownership is not allowed as a bad debt deduction after the change in ownership has taken place.

Charitable contributions

The following contributions/donations are allowable as deductions in ascertaining the taxable income of a person:

- Contributions made to a charitable institution or fund approved by the government.
- Payments towards a scholarship scheme approved by the government for a technical, professional, or other course of study.
- Donations made for the purpose of any rural or urban area and approved by the government.
- Donations for the purpose of sports development approved by the government.
- Donations to the government for worthwhile government causes approved by the C-G.

Fines and penalties

Fines and penalties arising as a result of non-compliance with the provisions of the tax law are generally not allowable deductions.

Taxes

Any income taxes, profit taxes, or other similar taxes are not deductible in determining taxable income.

Other significant items

No other special deductions are allowed. Principal non-deductible expenses include the following:

- Domestic or private expenses, including cost of travel between residence and place of business or employment.
- Any disbursement or expense not being wholly and exclusively paid or expended for the purpose of acquiring income.
- Capital withdrawn or any sum employed or intended to be employed as capital.
- Capital employed in improvement.
- Any sum recoverable under an insurance contract of indemnity.
- Rent of or any expense in connection with premises or a part of premises not occupied or used for the purpose of producing business income.
- Any payment to a savings or other society or fund unless specifically allowed by the C-G.

Net operating losses

Tax losses can be carried forward for all sectors and deducted from assessable income for the three years immediately following the year in which the loss was incurred. Specified priority sectors can carry forward their tax losses for up to five years.

Carryback of losses is permitted for persons deriving income relating to a long-term contract (except where there is a more than 50% change in underlying ownership within a period of three years).

A long-term contract of a business includes a contract for manufacture, installation, or construction that is not completed within the company’s accounting year in which it is commenced.

Payments to foreign affiliates

The Transfer Pricing Regulations 2012, (LI 2188) require that payments or transactions between persons in a controlled relationship are conducted at arm’s length. A transaction is conducted at arm’s length between persons in a controlled relationship if the terms of the transaction do not differ from the terms of a comparable transaction between independent persons. The C-G may disregard or disallow transactions if they are deemed to be fictitious or do not have a substantial economic effect and the form does not reflect its substance.

Group taxation

No form of combined reporting of results of operations by a group or affiliates is permitted.

Transfer pricing

The Transfer Pricing Regulations follow the internationally accepted guidelines published by the Organisation for Economic Co-operation and Development (OECD), only with a much broader perspective on the nature of entities and transactions.

The Regulations cover transactions between related parties, including PEs and employees, and also prescribe the transfer pricing methods and documentation that entities are required to maintain and retain.

The Regulations also require entities with related-party transactions to file a return on an annual basis.

Thin capitalisation

Interest expenses and foreign exchange currency losses incurred on related-party debt by an entity (other than a financial institution) in which 50% or more of the underlying ownership or control is held by an exempt person, either alone or together with an associate, are not allowed as a deduction in arriving at the chargeable income of the entity if the entity is thinly capitalised. An entity controlled by an exempt person is deemed to be thinly capitalised if its debt-to-equity ratio exceeds the ratio 3:1.

Thin capitalisation provisions do not apply to resident financial institutions.

Controlled foreign companies (CFCs)

There are no provisions for CFCs in the tax laws of Ghana.

Tax credits and incentives

Foreign tax credit

A resident is entitled to a credit in respect to any foreign income tax paid, to the extent to which the tax paid is in respect of the resident's foreign taxable income. The foreign tax credit available on a specific income type should not exceed the average rate of Ghanaian income tax of the resident for a year.

Inward investment

Under the Ghana Investments Promotion Centre Act, 2013 (Act 865), various incentives are available to encourage strategic or major investments in the country, particularly in the areas of agriculture; manufacturing industries engaged in export trade or using predominantly local raw materials or producing agricultural equipment, etc.; construction and building industries; mining; and tourism.

Incentives generally include exemption from customs import duties on plant and machinery; reduced CIT rates; more favourable investment and capital allowances on plant and machinery; reduction in the actual CIT payable, where appropriate; retention of foreign exchange earnings, where necessary; guaranteed free transfer of dividends or net profits, foreign capital, loan servicing, and fees and charges in respect of technology transfer; and guarantees against expropriation by the government.

Capital investments

Venture capital tax incentives include the following:

- Relief from stamp duty in each year on subscriptions for new equity shares in venture capital funds.
- Interest and dividends from investment in a venture capital company are subject to tax at 1% for the first ten years of assessment.
- Chargeable income is subject to tax at 1% for the first ten years of assessment.
- Carryforward of losses for five years after the year of disposal.

- Carryforward of losses from disposal of investment in a venture capital subsidiary for five years after the ten years of assessment.

Free zone developers/enterprises

Companies registered to operate as free zone developers/enterprises do not pay CIT for the first ten years of operation. After the ten year corporate tax holiday has expired, the CIT rate on export outside the domestic market is 15% while income earned from sales in the domestic market is taxed at 25%.

Construction of residential premises

The income of a certified company from a low cost housing business is subject to tax at 1% for a period of five years of assessment.

Withholding taxes

Income	WHT rate (%)	Final tax
Resident persons:		
Interest (excluding individuals and resident financial institutions)	8	No
Dividend	8	Yes
Rent (on residential properties as investment income)	8	Yes
Rent (on commercial properties as investment income)	15	Yes
Royalties and natural resource payments	15	No
Fees to lecturers, invigilators, examiners, part-time teachers, and endorsement fees	10	Yes
Commissions to insurance agents and sales persons	10	No
Fees, emoluments, and other benefits to a resident director, manager, or board member of a body of persons	20	No
Commissions to lotto agents	10	No
Supply of goods exceeding GHS 2,000	3	No
Supply of works exceeding GHS 2,000	5	No
Supply of services exceeding GHS 2,000 (payments to persons other than individuals)	7.5	No
Payment to individuals for provision of services	7.5	No
Payment to petroleum subcontractors	7.5	No
Payment for unprocessed precious minerals	3	No
Non-resident persons:		
Dividend	8	Yes
Royalties, natural resources payments, and rents	15	Yes
Management, consulting, and technical service fees, and endorsement fees	20	Yes
Repatriated branch after tax profits	8	Yes
Interest income	8	Yes
Short-term insurance premium	5	Yes
Income from telecommunication, shipping, and air transport	15	Yes
Payment to petroleum subcontractors	15	Yes

Double tax treaties (DTTs)

Ghana has DTTs with the following countries for the relief from double taxation on income arising in Ghana:

Recipient	Dividends (%) (1)	Interest (%)	Royalties (%)	Technical or management service fees (%)
Belgium	5/15	10	10	10
Czech Republic (4)	6/6	10	8	8
Denmark	5/15	8	8	8
France	7.5/15	10	10	10
Germany	5/15	10	8	8
Ireland (4)	7	7	8	10
Italy	5/15	10	10	10
Mauritius (4)	7	7	8	10
Morocco (4)	5/10	10	10	10
Netherlands (3)	5/10	8	8	8
Singapore (4)	7/7	7	7	10
South Africa	5/15	5/10 (2)	10	10
Switzerland (3)	5/15	10	8	8
United Kingdom	7.5/15	12.5	12.5	10

Notes

1. The lower rate applies where the recipient holds at least 10% of the shares. The higher rate applies in any other case.
2. 5% for non-resident banks. 10% in any other case.
3. The DTT between Ghana and the Netherlands, which has been in force since 2009, has been amended. The agreement adds a new article on entitlement to benefits, replaces the article on assistance in tax collection, and amends the articles on exchange of information and territorial extension.

   The DTT between Ghana and Switzerland has been amended to include procedures for information requests.

4. The Parliament of Ghana is yet to ratify the DTTs with the Czech Republic, Ireland, Mauritius, Morocco, and Singapore.

The government of Ghana is pursuing DTTs with various countries, including Sweden, Syria, the United Arab Emirates, and the United States.

Tax administration

Taxable period

The tax year runs from 1 January to 31 December. Companies with financial periods other than the calendar year are taxed on their financial period ending during the calendar year.

Tax returns

Companies are expected to submit a tax return not later than four months after the end of the financial year. They may file an application for extension of filing time for not more than two months.

Payment of tax

CIT is due for payment at the same time as the due date for filing the return. The tax is payable in four equal instalments at the end of each quarter (i.e. March, June, September, and December) in each year of assessment, but such payments are not deemed to be the actual tax payable.

At the end of the year, all taxpayers are required to file final tax returns and pay any tax outstanding. The final return and tax are due within four months after the financial year-end.

There are also instances where the C-G may issue an additional assessment after conduct of an audit. Where such assessment is served, the tax is payable within 30 days after service of the notice. At the discretion of the C-G, the time for payment may be extended.

Penalties

Where tax is not paid by the due date, a penalty is calculated at 125% of the statutory rate, compounded monthly, and applied to the amount outstanding at the start of the period.

Tax audit process

The GRA assesses taxpayers on a regular basis. The ITA gives powers to persons authorised by the C-G to gain full and unlimited access to the taxpayers' premises, records, and electronic information. Industries such as mining, upstream oil and gas, and financial institutions are more likely to be selected for a tax audit. Also, request for a tax refund is also likely to lead to a tax audit. The GRA usually gives notice of its intention to perform a tax audit and, after performance, prepares a report on its findings, which is then shared with the taxpayer.

Statute of limitations

The Revenue Administration Act, 2016 (Act 915) (RAA) requires all taxable persons to maintain records of all receipts and payments, revenue and expenditure, and all assets and liabilities for a period of not less than six years. This is in conjunction with the fact that the Statute of Limitation bars actions to recover tax after 12 years.

Automatic exchange of financial account information

The Standard for Automatic Exchange of Financial Account Information Act, 2018 (Act 967) imposes on financial institutions an obligation to report to the GRA information regarding certain financial accounts of an individual or entity and conduct due diligence with respect those financial accounts.

The reporting financial institution is required to submit an annual report no later than six months following the end of the calendar year to which the report relates.

Topics of focus for tax authorities

Topics of focus for the tax authorities include:

- Tax refunds.
- CST.
- Transfer pricing sensitisation of taxpayers.
- NFSL.

Other issues

Local Content and Local Participation Regulations

The Minerals and Mining General Regulations 2012 (LI 2173) applicable to mining entities obligate mining contractors and subcontractors to conform to the requirements for recruitment of expatriates, train Ghanaians, and give preference to local products and services in their operations.

The Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204) aim at providing a transparent monitoring system to meet the objectives of the government's Local Content Policy. Further, the Regulations are expected to help facilitate job creation through the use of local expertise for goods and services, business, and financing in the petroleum industry value chain.

The Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (LI 2354) compels businesses operating in the electricity supply industry (including renewable energy) to comply with the defined percentages of Ghanaian equity ownership, utilisation of local human and material resources, and services in their businesses.

Ring fencing for mining and petroleum entities

In determining the chargeable income for a basis period, mining companies are not able to deduct expenses incurred in one mining area against revenue from another mining area.

Similarly, companies engaged in petroleum operations are required to treat the activities of a petroleum right as an independent activity separately from other rights.

Tax Amnesty

With the enactment of the Tax Amnesty Act (Act 955), the government promises to forgive persons who will come forward to register with the GRA their taxes, interest, and penalties for all years up to and including 2017 years of assessment. Such a person must register with the GRA on or before 30 September 2018.

Similarly, existing taxpayers who partially fulfilled their tax obligations once they pay all outstanding taxes will be eligible for a waiver of penalties and interest. The taxpayer must submit the tax returns on or before 30 September 2018 and pay all assessed and outstanding taxes.

A person who qualifies for benefits under this amnesty is required to apply and file the mandatory tax returns to the C-G by 31 August 2018. The amnesty does not cover taxes or sanctions the GRA is already considering.

Gibraltar

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Significant developments

The Gibraltar Budget

In his budget speech on 26 June 2017, the Chief Minister announced no changes relevant to corporate income tax (CIT).

Taxes on corporate income

Companies are subject to Gibraltar taxation on income accrued in and derived from Gibraltar.

The standard CIT rate is 10%, with utility and energy providers and companies that abuse a dominant position paying a higher rate of 20%. For telecommunications companies, the 10% rate will apply to the gains and profits arising from their non-telecommunications business and activities.

Corporate residence

A company will be considered resident in Gibraltar if the management and control of its business is exercised from Gibraltar or from outside Gibraltar by persons who are ordinarily tax resident in Gibraltar.

The location of central management and control will be established under legal principles laid down in the United Kingdom (UK) and is the place of the highest form of control and direction over a company's affairs, as opposed to decisions on the day-to-day running of the business.

Permanent establishment (PE)

Gibraltar has not entered into any double tax treaties (DTTs); consequently, there are no provisions on PE from a general treaty perspective. Nevertheless, the Gibraltar Tax Commissioner accepts the definition of PE set out in Article 5 of the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Under the Gibraltar Companies Act 2014 (CA 2014), foreign companies that establish a place of business in Gibraltar or have a branch in Gibraltar must register with the Registrar one month after commencing business in Gibraltar. Under the CA 2014, the definition of a company includes a foreign company registered in Gibraltar. The profits or gains of a foreign company registered in Gibraltar shall be assessable on the accounting period beginning whenever that company is first registered in Gibraltar.

Other taxes

Value-added tax (VAT)

There is no VAT in Gibraltar.

Import duties

Goods imported into Gibraltar are subject to import duty at varying rates. The most noticeable exceptions are fuel, tobacco, and alcohol, which are subject to a fixed amount of duty regardless of the value, and motor vehicles, which attract duty at various rates of between 2% and 35% of the value, depending on the type and size of engine and whether it is a private or dealer importation.

Excise taxes

There is no provision for excise taxes in Gibraltar.

Property tax

A general business property rate is levied annually on all businesses in Gibraltar. The amount varies depending on the property and is subject to an annual review.

Stamp duty

Stamp duty is payable on the transfer or sale of any Gibraltar real estate or shares in a company owning Gibraltar real estate (on an amount based on the market value of said real estate) at the following rates:

- 200,000 British pounds (GBP) or less: 0%.
- Between GBP 200,001 and GBP 350,000: 2% on the first GBP 250,000 and 5.5% on the balance.
- Over GBP 350,000: 3% on the first GBP 350,000 and 3.5% on the balance.

Stamp duty is also payable on mortgages secured on Gibraltar real estate at the rate of 0.13% for mortgages less than GBP 200,000 and 0.20% for mortgages over GBP 200,000.

Payroll taxes

Collection of employee taxes is initially effected under a pay-as-you-earn (PAYE) system. Employers are required to operate the system without exception, keep appropriate records, and complete the necessary filings.

The PAYE regulations require each employee to obtain from the Commissioner of Income Tax a PAYE allowances certificate, which allocates a code to the employee. The employer is required to use tax tables issued by the Income Tax Office to calculate and deduct tax from emoluments in accordance with the employee's applicable code. The employer is then obligated to pay over to the Commissioner any tax so deducted by the 15th day of the following month.

An employer must also account for social insurance payments in a similar manner, deducting and paying over the employee tax as well as accounting for employer's social insurance (*see below*).

Social insurance contributions

Social insurance contributions are payable by every employer in respect of every employee.

Employer contributions are 20% of gross earnings, subject to a minimum of GBP 16.50 per week (GBP 71.50 per month) and a maximum of GBP 36.50 per week (GBP 158.17 per month).

Gaming tax

Gaming tax is levied at 1% of the gaming income. The tax paid is subject to a minimum of GBP 85,000 and maximum of GBP 425,000.

Capital duty

Capital duty of GBP 10 is payable on the initial authorisation of share capital or any subsequent increase thereto.

Branch income

The basis for taxation of branches of foreign enterprises is the same as for corporations.

Allowable head office charges or expenses incurred by a Gibraltar branch for the common purpose of the company and its branches, or for the purpose of the head office or another branch exclusively, are limited to 5% of turnover of the Gibraltar branch (*see Payments to foreign affiliates in the Deductions section*).

Income determination

Generally, companies are subject to Gibraltar taxation on income accrued in and derived from Gibraltar.

The 'accrued in and derived from' principle is defined by reference to the location of the activities that give rise to the profits.

Should the activity of a business be a licensable activity under Gibraltar law, the profits from this activity will be deemed to arise in Gibraltar. Furthermore, the profits of a business that can lawfully be transacted in Gibraltar, through a branch or any form of PE, by virtue of the fact that it is licensed in another jurisdiction that enjoys passporting rights into Gibraltar and which would otherwise require such licence and regulation in Gibraltar shall be deemed to arise in Gibraltar.

In the case of royalty income and inter-company interest income, both revenue streams are deemed to accrue in and derive from Gibraltar where the entity in receipt of the income is a Gibraltar-registered company.

Inventory valuation

Inventory is valued at the lower of historical cost or net realisable value. A first in first out (FIFO) basis of determining cost where items cannot be identified is acceptable, but not the base-stock or the last in first out (LIFO) method.

Capital gains

Capital gains are not subject to tax in Gibraltar.

Dividend income

There is no charge to tax on the receipt by a Gibraltar company of dividends from any other company.

Interest income

Companies with a banking or money lending licence and earning interest as a trading receipt will have that interest treated as income chargeable to tax.

Interest received or receivable by a Gibraltar company arising from an inter-company loan will be chargeable to tax at the standard CIT rate. Where the interest received or receivable is less than GBP 100,000 *per annum*, the interest is exempt from any charge to taxation.

All other interest received or receivable is not taxable in Gibraltar.

Royalty income

Income from royalties received or receivable by a Gibraltar company is taxable at the standard CIT rate.

Foreign income

Foreign income is not normally taxed in Gibraltar. Exceptions to this rule are interest income and royalty income (*see above*).

Deductions

For the purpose of ascertaining assessable income, all expenses wholly and exclusively incurred in the production of income shall be deducted.

Capital allowances

The first GBP 30,000 of qualifying expenditure on plant and machinery (including fixtures and fittings) and the first GBP 50,000 of qualifying expenditure on computer equipment is fully deductible in the first year as a 'first year allowance'.

Thereafter, qualifying assets are pooled and are subject to an annual capital, or wear and tear, allowance. Allowances are available for plant and machinery (including fixtures and fittings), computer equipment, and motor vehicles at the rate of 15% (20% for companies that are obligated to pay the higher CIT rate, *see the Taxes on corporate income section*) and are calculated on a reducing-balance basis.

Capital allowances for industrial buildings are deductible at the rate of 4% *per annum* on a straight-line basis.

Goodwill

Amortisation of goodwill is not a deductible expense.

Start-up expenses

Expenditure incurred with a view to carrying on a trade is treated as incurred on the first day on which the trade is carried on for the purposes of computing the profits or gains of the trade.

Interest expenses

Full deduction is available in respect of interest expenses, subject to anti-avoidance rules (*see the Group taxation section for more information*).

Bad debt

Only specific bad debts or specific bad debt provisions are deductible to the extent that they are respectively estimated to be bad during the said period, notwithstanding that such bad debts were payable prior to the commencement of the period. General doubtful debt provisions are not an allowable expense.

Charitable contributions

A charitable donation is not considered as having been wholly and exclusively expended for the purposes of the production of the income of the trade and is therefore not allowable as a deduction for tax purposes.

Fines and penalties

Fines and penalties, including those resulting from late payment of taxation or from failure to make the necessary tax submissions, are deemed to be a tax and are therefore not a deductible expense.

Taxes

No deduction is allowed for any tax charges under the Income Tax Act.

Other significant items

Additionally, no deduction is allowed in respect of the following:

- Domestic or private expenses.
- Expenses not incurred wholly and exclusively in the generation of income.
- Any expenses of a capital nature.
- Any sum recoverable under an insurance contract or contract of indemnity.
- Property expenses not incurred for the purposes of producing income.
- Depreciation of assets (although capital allowances are available, *see above*).
- Employee remuneration not accompanied by a certified statement of name, address, and amount of remuneration (in respect of Gibraltar employment only).
- Certain business entertainment expenditure falling within guidelines published by the Commissioner.
- Interest paid to a non-Gibraltar resident that is more than a reasonable commercial rate.

In the case of a company that has income, some of which is chargeable to tax and some of which is not, the deductions allowed shall be apportioned on a pro-rata basis between the chargeable and non-chargeable income.

Net operating losses

A trading loss incurred in an accounting period may be offset against trading income arising in the same period or subsequent period, provided that within a period of three years there has not been both a change in the ownership of the company and a major change in the nature or conduct of the trade.

There is no provision for the carrying back of losses.

Payments to foreign affiliates

In the case of branches, the amount of general head office expenses incurred that is deductible is limited to 5% of its turnover.

The Income Tax Act includes anti-avoidance provisions. These provisions state that if the amount charged for goods or services by a connected person is not at arm's length, then the expenses that are allowed are subject to the lower of:

- the expense
- 5% of the gross turnover of the company, or
- 75% of the pre-expense net profit of the company.

Group taxation

Companies are assessed on an individual basis, and trading losses of group members may not be offset against profits of other members of the group.

The Income Tax Act contains a generic anti-avoidance clause that allows the Commissioner to disregard an arrangement that the Commissioner believes is fictitious or artificial. In addition, it includes the following specific anti-avoidance measures.

Where a taxpayer seeks to reduce their liability to tax by creating an artificial split between activities in Gibraltar and outside of Gibraltar, the Commissioner shall use anti-avoidance provisions to defeat such an attempt.

Transfer pricing

The amount of interest payments to connected persons that are in excess of that payable at arm's length will be deemed to be a dividend. Where the amount charged for goods and services by connected persons is not at arm's length, this will be disallowed as a taxable expense. Any expenses allowed will be subject to the lesser of (i) the expense, (ii) 5% of the gross turnover of the company, and (iii) 75% of the pre-expense profit of the company.

Country-by-country (CbC) reporting

Under the CbC reporting regime, a Gibraltar tax resident company that is the ultimate parent entity or surrogate parent of a multinational enterprise group with consolidated revenue of at least 750 million euros (EUR) is required, for fiscal years commencing on or after 1 January 2016, to file, within 12 months of the end of the fiscal year, a CbC report containing information on its group entities and jurisdictions in which the group operates.

A Gibraltar constituent entity of a multinational enterprise group with consolidated revenue of at least EUR 750 million is required in cases where it is not obligated to file a CbC report to notify the Gibraltar tax authorities of the identity and jurisdiction of tax residence of the entity in the group that is required to report.

Thin capitalisation

Interest paid on a loan to related parties that are not companies (or loans where security is provided by related parties) where the ratio of the value of the loan capital to the equity of the company exceeds 5:1 will be considered as dividend payments and thus not deductible for tax purposes. This provision is not applicable to Gibraltar banks or money lenders.

Back-to-back loans

Since interest income is not taxable on back-to-back loans, the interest expense is not deductible.

Dual employment

Income from dual employment contracts is taxed in Gibraltar if both employers are connected persons.

Transfer of assets abroad

Where assets are transferred abroad with the purpose of avoiding tax and the taxpayer has the power to enjoy these assets either now or in the future, then any income or benefits received from these assets will be deemed to be income chargeable to tax.

Controlled foreign companies (CFCs)

There are no CFC rules in Gibraltar. However, under the general anti-avoidance rules, the Commissioner may disregard any CFC or transaction with such a CFC where the Commissioner believes that it is fictitious or artificial.

Tax credits and incentives

Foreign tax credit

Relief is available in Gibraltar in respect of foreign tax paid. This applies to any person who has paid or is liable to pay tax under the Income Tax Act in respect of profits or gains derived from sources within Gibraltar or within any other jurisdiction who can prove to the satisfaction of the Commissioner of Income Tax that one has paid or is liable to pay income tax in the other jurisdiction in respect of the same profits or gains.

The relief available in respect to those profits or gains shall be of an amount equal to the lesser of the two following amounts:

- The taxation under the Income Tax Act in respect of the said profits or gains.
- The income tax in the other country, territory, or jurisdiction in respect of that income.

Development aid

In order to encourage private development in Gibraltar, promoters and developers of approved projects are offered certain incentives, such as tax relief, import duty relief, and rates relief.

In order to qualify for the above reliefs, the project needs to be a new project that is for the economic benefit of Gibraltar and the aim of which is:

- to create a tangible immovable asset in Gibraltar that will remain in existence after the applicant has ceased to derive the benefits under the licence
- to provide more than two additional units of housing accommodation in Gibraltar
- to contribute materially to the development of the tourism industry in Gibraltar
- to afford any new employment opportunities or career prospects in Gibraltar, or
- to materially improve the economic or financial infrastructure of Gibraltar.

The project needs to be completed within a specified time (dependent on the type of project) following the issue of the licence, and the applicant must not expend less than the prescribed amount for the project.

Applications for development aid must be made to the Minister for Trade.

Deduction of approved expenditure on premises

For taxpayers with an interest in a building situated in Gibraltar, an allowance is available for approved expenditure on the painting, decorating, repair, or enhancement of the frontage of that building.

The approved amount will be available as a deduction against the taxpayer's income. This deduction is in addition to any deduction, relief, or allowance given in accordance with any other provision of the Income Tax Act in respect of the same expenditure.

The claim for the deduction must be made within two years after the end of the year of assessment with respect to which the deduction is claimed.

Property investment incentive

Owners of property constructed in Gibraltar during the period from 1 July 2016 to 31 December 2018 that is rented for residential purposes will receive a tax credit equal to the tax payable on the profits earned on the first 24 months of rent occurring in the first five years after the completion of construction of that property.

Commercial property rate incentives

There are early payment discounts available on property rates, depending on the business conducted from the premises.

Green incentives

A one-off tax deduction is available against assessable income (with the percentage to be verified and subject to the discretion of the Commissioner of Income Tax) on the investment made by an individual, company, or business that makes a significant improvement to the Energy Performance Certificate (EPC) rating of their premises.

Training costs

Training costs borne by an entity for employees studying for a qualification are allowed as an expense against the profits of a business at the rate of 150%. It needs to be shown that the costs are relevant to the work, either current or planned, carried out by an employee for their employer.

Small business and start-up incentives

All newly established businesses in Gibraltar are able to claim 100% of their eligible capital allowances in the first year of trade.

Businesses with ten employees or less will receive a credit of GBP 100 per employee in respect of social insurance contributions. For new businesses in the first year of operation, the credit is extended to 20 employees.

A tax credit equal to the lower of 200% or GBP 5,000 of architectural fees and fees charged by the government in respect of successful planning applications is available in the first three years of operation.

New businesses set-up in Gibraltar between 5 July 2016 and 30 June 2017 are eligible for a tax credit equal to the tax due, up to a maximum of GBP 50,000 *per annum,* over each of the first three financial years of trading. This incentive is subject to the following conditions:

- It must be a new business set-up in Gibraltar and not the transfer of a business already existing in Gibraltar.
- The business must employ at least five people.
- The business must be a company or limited partnership but not an individual trading in its own name.
- The tax credit does not carry forward from one year to the next. Consequently, if the company does not make a profit and is not able to use the credit, it will be lost.

Withholding taxes

There are no withholding taxes (WHTs) in Gibraltar, except in the following cases:

- Payments to subcontractors in the construction industry. Unless the subcontractor is in possession of an exemption certificate, tax is withheld at the rate of 25% of the amount that relates to the labour and profit element of the contract.
- Payments to employees under the PAYE system. Under the PAYE regulations, employers are obligated to deduct an amount of tax in accordance with the employee's tax code.

Tax administration

Taxable period

The taxable period is the accounting period of the company, which begins on the later of the beginning of the accounting period and the date when the company first receives a source of taxable income and ends on the earlier of the end of the accounting period, 12 months from the beginning of the accounting period, or the date on which trade ceased.

Tax returns

Companies with income subject to tax in Gibraltar are required to file a return and calculate their tax liability for the year. The return, together with the estimated liability, needs to be accompanied by payment of the tax due nine months after the date of the company's financial year end.

Companies with assessable income of more than GBP 1.25 million are required to file audited accounts together with the tax return.

Where companies have assessable income of less than GBP 1.25 million, the accounts can be accompanied by an Independent Accountant's Report.

Companies with no assessable income are still required to file tax returns. The accounts to be filed depend on the size of the company as determined by the CA 2014. Full audited accounts are required except where the company qualifies as 'small', which would mean satisfying two of the following criteria for two consecutive years:

- Net turnover of less than GBP 10.2 million.
- Total assets of less than GBP 5.1 million.
- Average employees of less than 50.

Where the company is 'small' and has no assessable income, only an abridged balance sheet needs to be filed.

Payment of tax

Companies are required to make payments on account of future liabilities on 28 February and 30 September in each calendar year. Each payment should be equal to 50% of the tax payable for the relevant accounting period. The relevant accounting period is a prior accounting period whose tax payable date (i.e. nine months after the date of the company's financial year end) precedes the first payment on account date for the accounting period in question. The relevant table in Schedule 10 of the Income Tax Act can be used to determine the correct relevant accounting period for the purposes of calculating the payments on account.

The balance of tax due (i.e. the actual liability less payments on account) is payable on the date of filing of the return.

Penalties and fines

The following penalties and fines are applicable:

- For the late payment of tax, there is a penalty of 10% of the amount of tax due on the day immediately after such payment was due. If unpaid within 90 days, a further amount of 20% of the tax due and the surcharge mentioned that remains unpaid shall become immediately due and payable. A surcharge imposed shall be deemed to be part of the taxation payable.
- Failure to file a return by the due date will result in a penalty of GBP 50, with a further penalty of GBP 300 if the return is not submitted within three months after the due date. If the failure to file continues beyond six months, an additional penalty of GBP 500 is payable.
- Failure to respond to a notice or request to submit information or documentation will result in a fine of GBP 200 on the day the failure occurs and a further penalty of GBP 1,000 if the failure to comply continues one month after the applicable day for delivery of the accounts as referred to in the notice. Failure to comply beyond a three month period, if convicted, can result in imprisonment.
- For fraudulently, recklessly, or negligently delivering to the Commissioner an incorrect return, accounts, or information, there is a fine of up to 150% of the difference between the actual tax due and the tax due as per the original declaration. The amount of the penalty will depend on:
  - the amount of the tax lost and/or delayed
  - the gravity of the offence (i.e. if deliberate or an honest mistake), and
  - the level of cooperation in the investigation.

- The Commissioner of Income Tax may publish details of a person who has failed to pay tax due under the Income Tax Act or under the PAYE regulations in the Gibraltar Gazette if:
  - the Commissioner has notified the person of the Commissioner's intention to do so 30 days prior to the publication
  - the person has failed to pay tax due to an amount of GBP 5,000, and
  - the tax due to be collected or paid has not been collected or paid for a period of at least three months after the due date.
- Failure to notify the Commissioner of an arrangement, the main benefit of which is to avoid the payment of tax, will result in a fine of GBP 200 on the day the failure occurs and a further penalty of GBP 1,000 if the failure to comply continues one month after the applicable day for providing the information.

Tax audit process

The Gibraltar tax system is based on self-assessment. However, the Income Tax Office has powers to make an enquiry into the tax return of a company within a period of 12 months from the date when the return is due to be filed or, if filed later than the deadline, 12 months from the date it was filed. If the Commissioner of Income Tax believes a return to be fraudulent, the above time limits will not apply.

A taxpayer may appeal against a disputed assessment by notice in writing addressed to the Commissioner within 28 days of the date of service of the notice of the assessment.

Statute of limitations

The Commissioner has up to six years following the date of assessment to revise any incorrect assessments. There is no limit where the incorrect assessment is as a result of fraud, wilful default, or neglect.

Topics of focus for tax authorities

There are currently no particular topics of focus for the tax authorities.

Other issues

Intergovernmental agreements (IGAs)

Gibraltar has entered into Model 1 IGA reciprocal agreements with both the United States (US) and United Kingdom. The Gibraltar/UK agreement was signed 21 November 2013 and the Gibraltar/US agreement was signed 8 May 2014. Legislation in the form of regulations have been passed.

Information will be exchanged by the Competent Authorities nine months after the year-end. The first due date for exchange by the Competent Authorities was 30 September 2016 for the years ended 31 December 2015 and 2014 for UK reportable accounts and was 30 September 2015 for the year ended 31 December 2014 for US reportable accounts. The reporting deadline for reportable accounts is 31 July.

The Gibraltar government has committed to be an early adopter of the OECD Common Reporting Standard (CRS). The legislation was enacted on 22 December 2016. The first date that information was exchanged by the Competent Authorities was 30 September 2017 for the period ended 31 December 2016. The reporting deadline for reportable accounts is 31 July.

Gibraltar

On 25 May 2017, the Gibraltar government published an amendment to the Income Tax Act 2010. The amendment, which entered into operation on 5 June 2017, introduces the Country-by-Country Reporting Regime into Gibraltar as part of Article 13 of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan.

Under this regime, where a Gibraltar tax resident company is the ultimate parent entity of a multinational enterprise (MNE) group with consolidated revenue of at least EUR 750 million, it will be obligated, for fiscal years commencing on or after 1 January 2016, to file, within 12 months of the end of the fiscal year, a CbC report containing the following information with regards to each jurisdiction in which the group operates:

- Revenue.
- Profit or loss before tax.
- Income tax paid.
- Income tax accrued.
- Stated capital.
- Accumulated earnings.
- Number of employees.
- Tangible assets other than cash or cash equivalents.

The report also requires identification of each constituent entity of the group, setting out for each entity the jurisdiction of tax residence (where different also the country of registration) as well as the nature of the main business activity.

The regulations also impose a requirement for a Gibraltar constituent entity to report in cases where it is not the ultimate parent entity, these are either where (i) the ultimate parent entity is not required to provide a report in its jurisdiction of residence, (ii) the jurisdiction of residence of the ultimate parent entity does not have a qualifying competent authority agreement with Gibraltar at the date the report is required, or (iii) there has been a systematic failure by the jurisdiction of tax residence of the ultimate parent entity and the Commissioner has notified the Gibraltar constituent entity that the failure has occurred. In these cases, the first reporting period is for fiscal years commencing on or after 1 January 2017.

There are notification requirements in the regulations. A Gibraltar constituent entity must notify the Commissioner if it is an ultimate parent entity, a surrogate parent entity, or in cases where it will be filing a CbC report because there has been a systematic failure by the jurisdiction of tax residence of the ultimate parent entity and the Commissioner has notified the Gibraltar constituent entity of this. A notification must also be made by a Gibraltar constituent entity who does not fall into the above mentioned categories. This type of notification must provide the identity and the jurisdiction of tax residence of the constituent entity required to file the CbC report on behalf of its MNE group. These notifications must be made in writing no later than nine months after the year-end of the Gibraltar constituent entity.

Gibraltar has also signed Tax Information Exchange Agreements (TIEAs) with 27 jurisdictions, 26 of which have entered into force.

Greece

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Significant developments

By virtue of Law 4472/2017, published on 19 May 2017, any business income realised by legal persons/legal entities as of 1 January 2019 shall be taxed at a rate of 26%, with the exemption of credit institutions, for which the currently applicable rate of 29% shall continue to be applicable. The reduction of the corporate income tax (CIT) rate from 29% to 26% shall be applicable on the condition that there is no divergence from the medium-term budgetary objectives set in the Economic Adjustment Program following an assessment of the International Monetary Fund and the European Commission in collaboration with the European Central Bank, the European Stability Mechanism, and the Greek authorities.

Law 4472/2017 also provides for the following amendments, which will be applicable as of 1 January 2020.

The progressive tax scale for employment income/pensions will be amended as follows:

Taxable income (EUR*)	Tax rate (%)
0 to 20,000	20
20,001 to 30,000	29
30,001 to 40,000	37
Greater than 40,000	45

* euros

The progressive tax scale for the solidarity contribution will be amended as follows:

Taxable income (EUR)	Tax rate (%)
0 to 30,000	0
30,001 to 40,000	2
40,001 to 65,000	5
65,001 to 220,000	9
Greater than 220,000	10

Taxes on corporate income

Resident corporations are taxed on their worldwide income. Non-resident corporations are taxed in Greece on any Greek-source income they derive.

The CIT rate of legal entities is 29%.

By virtue of Law 4472/2017, published on 19 May 2017, any business income realised by legal persons/legal entities as of 1 January 2019 shall be taxed at a rate of 26%, with the exemption of credit institutions, for which the currently applicable rate of 29% shall continue to be applicable. The reduction of the CIT rate from 29% to 26% shall be applicable on the condition that there is no divergence from the medium-term budgetary objectives set in the Economic Adjustment Program following an assessment of the International Monetary Fund and the European Commission in collaboration with the European Central Bank, the European Stability Mechanism, and the Greek authorities.

Shipping companies

The Greek tonnage tax regime model intends to tax shipping activity and applies to Greek or foreign ship-owning companies with vessels flying a Greek flag and foreign ship-owning companies with vessels flying a foreign flag that maintain a ship management company in Greece that is exclusively engaged in ship management activities. The Greek tonnage tax regime applies to vessels of 'A' and 'B' category that are either flying a Greek or foreign flag. In the case of vessels flying a foreign flag, the foreign ship-owning company should maintain a ship management office in Greece. Category 'A' vessels include cargo vessels, tankers, steel hull vessels for dry or liquid cargo that fly to/between foreign ports, passenger vessels, drilling platforms, etc. Category 'B' vessels include small boats and any other motor vessels not listed under category 'A'.

Based on Law 4336/2015, the tonnage tax levied on certain categories of vessels flying a Greek flag (i.e. professional vessels, leisure yachts, ferries, etc.) has been expanded to vessels flying flags of the European Union (EU) or EU area member states, with exhaustion of the income tax liability of the ship owners on income earned from the related activity.

Said provision aligns the regime applying to said category of vessels following the European Commission's accusation of discriminatory treatment of foreign-flag vessels compared to Greek-flag ones.

The gross tonnage is calculated by multiplying coefficient rates by each scale of gross registered tonnage. This taxable tonnage is then multiplied by an age-corrected rate.

Various exemptions/reductions of the tonnage tax apply, such as:

- Vessels built in shipyards in Greece, under a Greek flag, are exempt from tax for the first six years.
- 50% reduction for vessels operating regular routes between Greek/foreign ports or solely between foreign ports.

The tonnage tax exhausts the tax liability of the owner, and, if the owner is a company, this extends to its shareholders. Tonnage tax also exhausts the tax liability in relation to operating profits and capital gains arising out of the sale of the vessel flying the Greek flag. Tonnage tax also exhausts the tax liability of the foreign ship-owning company flying a vessel under a foreign flag managed by a ship management company in Greece, as well as of the shareholders thereof. No CIT or dividend withholding tax (WHT) is levied on shipping profits.

This tax burdens the ship owners or ship-owning companies, while the ship management companies are jointly and severally liable for the payment thereof.

An obligation of the liable parties for submitting before the Ministry of Mercantile Marine an annual statement indicating the name, flag, total tonnage, and age of the vessel under the foreign flag is established.

For calculating the tonnage tax (tax rates and tax brackets, criteria) and the special tax return and payment of tax, the provisions on the tonnage tax payable for Greek-flagged vessels apply in analogy. A credit for the tonnage tax paid abroad is provided.

Annual contribution imposed on foreign ship management companies

An annual contribution (referring only to fiscal years 2016 through 2019) is imposed on offices or branches of foreign enterprises that have been established in Greece by virtue of Article 25 of Law 27/1975 and that are engaged in the chartering, insurance, average (damage) settlements, purchase, chartering or shipbuilding brokerage, or chartering of insurance of ships under Greek or foreign flag of total tonnage over 500 shipping tons, as well as the representation of ship owner companies or undertakings, whose object is identical to the above-mentioned activities.

Greek and foreign companies of Law 27/1975 that are engaged in the management of vessels flying a Greek or foreign flag (that are subject to tonnage tax), as well as in other activities approved by the license of operation, are exempt. Passenger coastal ships or merchant vessels that perform internal routes are exempt.

This contribution is imposed on the total amount of imported foreign exchange, calculated on a minimum 50,000 United States dollars (USD), and, for the years 2016 through 2019, the tax scale is as follows:

Bracket of annual total foreign exchange (USD)	Rate (%)	Tax per bracket (USD)	Total foreign exchange (USD)	Total tax (USD)
200,000	7	14,000	200,000	14,000
200,000	6	12,000	400,000	26,000
Excess amount	5			

A special tax return for calculating the contribution on the basis of the imported foreign exchange of the previous year should be filed within March of each year. Upon filing of said tax return, one-quarter of the annual contribution is payable. The remaining contribution is paid in three instalments (June, September, and December).

The distribution of profits by a foreign ship-owning company maintaining an office or branch in Greece by virtue of Article 25 of Law 27/1975 that is exclusively engaged in the chartering, insurance, brokerage, etc. of vessels to Greek individual tax residents is subject to tax at a rate of 10%.

This tax applies to dividends paid or credited and shall be rendered to the Greek state by the beneficiary of the dividend.

The 10% tax also applies to cases of distributions of profits by the above-mentioned companies in the form of extraordinary fees and percentages (bonus) to Board of Directors (BoD) members, directors, and officials, in addition to the regular remuneration, exhausting the tax liability of the beneficiaries for said income.

The Greek tonnage tax system is under investigation by the European Committee as to its compliance with the EU State Aid rules. Based on the preliminary findings of the European Committee, certain amendments may be required in order for the Greek tonnage tax regime to comply with the EU State Aid rules.

Local income taxes

No municipal or local taxes on income are paid at a local level.

Corporate residence

A legal entity or other entity is considered as tax resident in Greece if one of the following conditions is met:

- It has been incorporated or established according to the Greek legislation.
- It has its registered seat in Greece.
- The place of effective management is located in Greece.

The determination by the tax authorities that the effective management of a legal entity is exercised in Greece is made on the basis of the actual facts and circumstances of each case and by taking into account mainly the place of exercising the day-to-day management, the place of making strategic decisions, the place where the annual general meeting of shareholders or partners is held, the place where the books and records are kept, the place where the meeting of the members of the BoD or other executive management board takes place, and the residence of the members of the BoD or other executive management board. The residence of the majority of the shareholders or partners may also be taken into consideration.

For determining a legal entity as being tax resident in Greece, the exercise of effective management in Greece for any period during the tax year is sufficient.

Companies that are established and operate according to Law 27/1975 ‘on the taxation of vessels [etc.]’ and L.D. 2687/1954 ‘on the investment and protection of foreign capital’ are explicitly excluded from the application of these provisions on tax residence.

Permanent establishment (PE)

The definition of a PE of foreign legal entities in Greece is similar to the one included in the Organisation for Economic Co-operation and Development (OECD) Model Convention on the Double Tax Treaties (DTTs) for the Avoidance of Double Taxation; however, where a DTT applies, its provision will override the domestic definition.

The term ‘permanent establishment’ includes especially:

- A place of management.
- A branch.
- An office.
- A factory.
- A workshop.
- A mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

In order for a construction site in Greece to constitute a PE, a time period of at least three months is required, instead of the time period of 12 months provided in the OECD Model Convention.

A distinction applies between the cases of maintaining a PE through a dependent agent and not maintaining a PE when performing activities through an independent agent (e.g. broker, general commission agent).

Other taxes

Value-added tax (VAT)

The standard VAT rate is 24% (applicable, *inter alia*, to all standard and processed foods, transportation services, food services, repair services, medical and dental services, and entertainment tickets [excluding theatre tickets]).

A reduced VAT rate of 13% applies, *inter alia*, to fresh food, to care of children, the elderly, and the disabled, and to accommodation in hotels or similar establishments (including holiday accommodation and letting of places in camping or caravan sites). A super reduced rate of 6% for medicines of CN3003 and 3004, and vaccines of CN3002 intended for human consumption, is applicable. The aforementioned rate is also applicable for children's books, colouring and drawing books, newspapers, magazines, and theatre tickets.

Supplies of goods and services to individuals and legal entities subject to VAT and established in EU countries (intra-Community supplies) are exempt from VAT (zero rated). Exports of goods and certain services to non-EU countries are also exempt (zero rated).

With the following exceptions, real estate leases are generally exempt from VAT. Lease contracts for shopping centres and logistics centres may be subject to VAT on the condition that the taxable person opts for the submission to taxation of the leasing right. Additionally, a right to elect to subject leases of property used for the exercise of professional activities, either independently or as part of mixed contracts, to VAT applies.

By virtue of Article 74 of L. 4509/2017, an extension of the reduced VAT regime (30% reduction) until 30 June 2018 was granted for the following islands of the Aegean Sea:

- Chios
- Kos
- Leros
- Samos

Moreover, by virtue of Law 4334/2015, for transactions exceeding EUR 3,000 between entrepreneurs that are obligatorily settled through the use of a professional bank account or bank cheque and for transactions exceeding EUR 1,500 between entrepreneurs and individuals that are obligatorily settled through the use of a credit or debit card or e-banking or bank deposit or a bank cheque, the intermediary bank is obligated to withhold the relevant VAT amount corresponding to the total amount of the transactions and to pay said VAT directly to the Greek state within five days from said payment, by issuing the respective certificate on the collected amount of VAT to VATable persons. Banks should not charge any fee or other charges for the implementation of the above-mentioned services. The above provision is known as the 'VAT split payment' provision.

By this provision, an obligation to immediate payment of the VAT due is imposed by the separation/split of the transaction value from the corresponding VAT due and the block of the VAT amount until its payment to the Greek state ('split payment' system).

The recipient of the invoice or the retail receipt must pay the transaction through the use of a bank payment instrument, separating/splitting the VATable value from the corresponding VAT, so that the credit institution may transfer the VAT due automatically to a blocked bank account.

The procedure of application of said provision and any other issue relating to the payment and refund of VAT will be regulated by a decision to be issued by the Independent Authority for Public Revenue. However, up to date, no such Decision has been issued, and the provision remains, in practice, inactive. Moreover, by virtue of L. 4446/2016, the quantitative threshold of annual turnover up to which taxable persons may pay the VAT to the state upon settlement of the invoices (special regime of Article 39 (b) of the Greek VAT Code) was increased from EUR 500,000 to EUR 2 million.

Moreover, by virtue of Article 67 of L. 4484/2017, Article 39 (a) of the Greek VAT Code (L. 2859/2000) was amended as regards the goods and services that are subject to the domestic reverse-charge mechanism.

Based on the new provision, the domestic supply by a taxable person to another one of mobile telephones, being devices, game consoles, tablet personal computers (PCs), and laptops, are subject to the reverse-charge mechanism.

The above amendment constitutes an incorporation of the relevant provisions of Article 199a of EU VAT Directive (2006/112/EC) into the Greek legislation.

Further clarifications have been granted through Circular 1150/2017.

The above provisions are applicable as of 1 August 2017.

Customs duties

Many goods imported into Greece from outside the European Union are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff.

Excise taxes

Excise taxes are imposed on energy and electricity products (e.g. petrol, natural gas, electricity), manufactured tobacco, alcoholic products, and coffee. The tax rates vary depending on the category of products.

Uniform Tax on the Ownership of Real Estate Property (ENFIA)

The ownership of real estate property/property rights in Greece is subject to the ENFIA, which consists of a principal tax imposed on each real estate property and a supplementary tax imposed on the total value of the property rights on real estate property of the taxpayer subject to tax.

More specifically, said tax is not imposed on the objective value of real estate property, but is determined on the basis of various factors, according to the final registration of the property at the land registry or ownership title.

The principal tax on buildings is calculated by multiplying the square metres of the building by the principal tax ranging from EUR 2 to EUR 13 per square metre and other coefficients affecting the value of the property (e.g. location, use).

The principal tax on land is calculated by multiplying the square metres of the land by the principal tax ranging from EUR 0.0037 to EUR 11.25 per square metre and other coefficients affecting the value of the property (e.g. location, use).

The supplementary tax is imposed on the total value of the rights to property at a rate of 5.5‰. Self-used real estate is taxed at the reduced rate of 1‰.

Real estate transfer tax

Each transfer of real estate, which is not subject to VAT, is subject to real estate transfer tax. The real estate transfer tax is imposed at a rate of 3% on the taxable value of the property.

Stamp taxes

Rentals of non-residential properties are subject to 3.6% stamp duty (with the exception of shopping centres and logistics centres subject to VAT).

In general, loans and interest may be subject to a 2.4% stamp duty. However, there are a number of exemptions, the main one covering bank loans and bond issues.

Other stamp duties may apply in certain limited cases.

Contribution tax on capital accumulation following incorporation

A 1% tax contribution is imposed on capital accumulation (share capital increase) by:

- business companies and joint ventures
- associations of all degrees and any other form of company, legal entity, or union of persons or society aiming to make profits, and
- branches of foreign companies (unless of EU origin).

For Greek *Société Anonyme* (SA) companies, an additional 0.1% duty is payable on capital to the competition committee.

The capital concentration tax is no longer imposed upon the incorporation/establishment of legal entities.

Payroll taxes

Employers are liable to submit payroll withholding taxes on monthly salary payments (following the grossing-up to the yearly salary) at the following tax scale:

Taxable income (EUR)	Tax rate (%)
Less than 20,000	22
20,001 to 30,000	29
30,001 to 40,000	37

Taxable income (EUR)	Tax rate (%)
Greater than 40,000	45

Reductions may apply depending on the amount of the annual taxable income received by individual taxpayers and by the number of the dependent children the individual taxpayer has.

As of 1 January 2020, the aforementioned progressive tax scale will be amended as follows:

Taxable income (EUR)	Tax rate (%)
Less than 20,000	20
20,001 to 30,000	29
30,001 to 40,000	37
Greater than 40,000	45

Additionally, based on Law 4387/2016, the special solidarity contribution has been incorporated into the Income Tax Code (ITC), and its extraordinary character has been abolished. Moreover, the employers shall submit withholding of the special solidarity contribution on salary payment, based on the following progressive rate:

Taxable income (EUR)	Tax rate (%)
0 to 12,000	0
12,001 to 20,000	2.2
20,001 to 30,000	5.0
30,001 to 40,000	6.5
40,001 to 65,000	7.5
65,001 to 220,000	9.0
Greater than 220,000	10.0

As of 1 January 2020, the above-mentioned progressive scale will be amended as follows:

Taxable income (EUR)	Tax rate (%)
0 to 30,000	0
30,001 to 40,000	2
40,001 to 65,000	5
65,001 to 220,000	9
Greater than 220,000	10

Benefits in kind are, in principle, subject to payroll taxes. However, to the extent that it is difficult to proceed to an evaluation of such benefits at the time of their granting, no employment withholdings should be effected thereon, but their value (assuming such benefits are taxable) shall be added to the employment income of the beneficiaries and be taxed upon the clearance of the annual income tax return filed by the employees.

Social security contributions

Social security contributions are due on salary and benefits in cash or in kind granted by an employer to its employees, with the exception of specifically enumerated extraordinary benefits of social character (e.g. marriage gifts, birth gifts). The imposition of social security contributions depends on the social security fund in which the employee is registered.

For the primary social security fund (IKA-ETAM), social security contributions are withheld at 16% at the level of the employee and contributed at 25.06% at the level of the employer. The monthly social security contribution cap for the IKA is currently set at EUR 5,860.80.

Following a major reform on the social security legislation, the Unified Social Security Body (EFKA) automatically integrates all the main social security funds.

Branch income

Profits of branches of foreign companies are subject to CIT.

Income determination

Inventory valuation

Inventories are stated at the lower of cost or market (replacement value). The Greek tax system recognises various valuation methods, such as first in first out (FIFO), last in first out (LIFO), weighted average, etc.

Capital gains

In general, capital gains are included in the taxable profits of Greek companies.

The income derived from the goodwill arising upon the transfer of Greek government bonds or Greek treasury bills that are acquired by legal entities that do not qualify as Greek tax residents and do not maintain a PE in Greece is tax exempt.

Capital gains tax on sale of listed shares

Capital gains derived from the sale of listed and non-listed shares are considered business income taxable at the standard CIT rate.

Capital gains derived from the sale of listed and non-listed shares by foreign legal entities that are tax resident abroad shall be taxable in Greece only if they maintain a PE in Greece.

The sale of listed shares is also subject to a transaction duty at a rate of 0.2%.

Dividend income

Dividend income is generally taxable. For subsidiaries established in third countries, any dividend WHT that may have been paid is credited against the Greek CIT payable (up to the amount of tax that would arise in Greece).

However, a tax exemption of intra-group dividends received by Greek tax resident legal entities or PEs of foreign legal entities in Greece applies, provided that:

- the legal entity distributing the profits is included in the forms enumerated in Annex I, Part A of Directive 2011/96/EE, as in force

- the legal entity distributing the profits is tax resident in an EU member state and is not considered as tax resident in a third country in application of the provisions of a DTT concluded with such third country
- the legal entity distributing the profits is subject to one of the taxes listed in Annex I, Part II of Directive 2011/96/EE or any other tax substituting one of those taxes
- the recipient taxpayer holds at least a minimum participation of 10% of the value or the quantity of the share or principal capital or voting rights of the distributing legal entity
- the minimum participation percentage is held for at least 24 months (although the exemption may be provided prior to the completion of 24 months secured by a guarantee), and
- the respective dividends have not been deducted at the level of the entity distributing the dividends.

In case of further distribution of the reserve formed by tax-exempt dividends received from Greek or foreign subsidiaries established in an EU member state, said amount shall not be included in the taxable income of the legal entity proceeding to said distribution, but may be subject to dividend WHT.

Based on the general anti-abuse rule introduced, the tax exemption in the case of collection and payment of dividends is alleviated in case it is considered that a 'non-genuine arrangement' exists (i.e. an arrangement that has not been put into place for valid commercial reasons reflecting the economic reality).

Should the aforementioned tax exemption of intra-group dividends not apply, any underlying CIT and dividend WHT that may have been paid by a Greek or foreign subsidiary established in an EU member state are credited against the Greek CIT payable (up to the amount of tax that would arise in Greece).

Stock dividends

Stock dividends are treated as cash dividends for CIT purposes.

Interest income

Interest income is generally taxable.

Partnership income

Both general partnerships (*Omorrythmi Etairia* or OE) and limited partnerships (*Eterrorythmi Etairia* or EE) are not tax transparent. They are subject to tax based on general rules (i.e. at a CIT rate of 29% plus a 15% WHT on distributions). Business income generated by partnerships that maintain single entry accounting books is taxed at a unified tax rate of 29%. In addition, any subsequent distribution of profits is not subject to dividend taxation.

Rents/royalties income

Income derived from rents and royalties is taxed as ordinary income.

Foreign income

Resident corporations are taxed on their worldwide income. Foreign income received by a domestic corporation is taxed together with other income. If related income tax is paid or withheld abroad, a tax credit is generally available up to the amount of the applicable Greek income tax.

Losses from foreign sources may not be set off against profits generated in Greece. Exceptionally, losses from EU and European Economic Area (EEA) member states may be set off with profits arising in those EU or EEA member states, provided that they are not exempt on the basis of the DTT concluded and applied by Greece.

Deductions

Depreciation

Mandatory depreciation on a fixed annual basis applies by using fixed depreciation rates stipulated in the law. The transfer of depreciated amounts between fiscal years is not permitted.

The rates of depreciation are determined on the basis of the following table:

Category of assets of the enterprise	Rate of depreciation per tax year (%)
Buildings, installations, facilities, industrial and special installations, non-building facilities, warehouses, and stations, including their annexes (and special loading and unloading vehicles)	4
Plots of land used for mining and quarries, unless used for ancillary mining activities	5
Public means of transportation, including airplanes, trains, vessels, and ships	5
Machinery and equipment (aside from personal computers and software)	10
Means of transportation of individuals	16
Means of transportation of goods ('internal transports of goods')	12
Intangible assets, royalties, and expenses of multiannual depreciation	10
Personal computer equipment, principal and ancillary and software	20
Other fixed assets of the enterprise	10
Equipment and instruments used for the purposes of performing scientific and technological research	40

Specifically for intangible assets and royalties, the rate may be adapted on the basis of the lifetime of the right.

An option for the lessee to depreciate a leased asset is provided in cases where there is a financial leasing agreement, provided that specific conditions are met. A financial leasing agreement is defined as any oral or written agreement by which the lessor (owner) is obligated, in return for a rent, to provide to the lessee (user) the use of an asset, provided that one or more of the following criteria are met:

- The ownership of the asset is passed on to the lessee following the end of the lease agreement.
- The lease agreement includes a term of preferential offer for the purchase of the equipment at a price below market value.
- The period of the lease covers at least a percentage of 90% of the financial life of the assets as it derives from the above-mentioned table, even in cases where the ownership title is not transferred after the end of the lease agreement.
- At the time of concluding the lease agreement, the present value of the rents amounts to at least 90% of the market value of the asset that is leased.
- The assets that are leased are of such special nature that only the lessee may use them without proceeding to important modifications.

Goodwill

There are some court cases that support the deductibility of goodwill as a start-up expense, but the specifics of each case must be carefully considered.

Organisational and start-up expenses

Based on the provisions of Law 4308/2014 (Greek Accounting Standards), any amount of start-up expenses shall be, under conditions, tax deductible within the year that they have been incurred, to the extent that they do not fall within a category of assets (including tangibles and intangibles).

Any expenses incurred for the acquisition of an asset that are directly related to the latter asset and are necessary for its use are included in the acquisition cost of said asset (e.g. concerning real estate property the real estate transfer tax, notary fees, registration fees, etc.).

Interest expenses

Interest deductibility restrictions apply.

Non-deductible expenses include interest expenses on loans undertaken by the enterprise from third parties, to the extent that they exceed the interest that would arise if the interest rate was equal to the interest rate of loans on open deposit/withdrawal accounts provided to non-financial enterprises, as indicated in a Statistical Bulletin of the Central Bank of Greece at the prior time period closest to the date such loan was undertaken.

The above interest deductibility restrictions do not apply to inter-bank loans, bonds, and inter-company loans issued by SAs.

Bad debt

The amounts of bad debt provisions and the write-off thereof are deductible, as follows:

- For uncollected due debt up to the amount of EUR 1,000 for a time period exceeding 12 months, the taxpayer may form a provision at a percentage of 100% of the said claim.
- For uncollected due debt exceeding the amount of EUR 1,000 for a time period exceeding 12 months, the taxpayer may form a provision according to the following table:

Duration of late payment (in months)	Provision (%)
Greater than 12	50
Greater than 18	75
Greater than 24	100

The condition for the deduction of the provision for the aforementioned two cases is that all appropriate actions have been taken to ensure the right of collecting the said claim.

The formation of provisions of bad debt is prohibited in the following cases:

- For due debt of shareholders or partners of the enterprise with a minimum participation percentage of 10% and the subsidiary companies of the enterprise with a minimum participation percentage of 10%, unless the claim of such debt is pending before court or court of arbitration, or if the debtor has filed an application for bankruptcy or for a procedure of rationalisation or an enforcement procedure has commenced against the debtor.
- For due debt that are covered by insurance or any guarantee or other contractual or *in rem* security or for debts of the state or local authorities or for those that have been provided by a guarantee of those bodies.

It is provided that a claim may be written off, provided that the following conditions are cumulatively met:

- An amount corresponding to the debt has been previously recorded as income.
- It has been previously written off from the books of the taxpayer.
- All legal actions for the collection of the debt have been exhausted.

Banks may deduct provisions of bad debt at a percentage of 1% on the amount of the annual average of real grants, as indicated by their monthly accounting statements. Aside from the aforementioned deductibility percentage, banks may deduct from their income additional special provisions regarding their clients, for which the settlement of interest has ceased. Moreover, specific provisions on leasing and factoring companies are included.

Charitable contributions

The tax deductibility of donations is not expressly regulated in the respective Greek tax legislation (in contrast to the previously applicable Greek ITC providing for the tax deductibility of specifically enumerated donations, up to a certain amount). Thus, the deductibility of charitable contributions shall be examined in light of the generally applicable deductibility criteria, focusing on the productivity of such expenses on a case-by-case basis.

Fines and penalties

Fees from activities constituting a criminal offence, fees from penal clauses, fines, and penalties are not recognised as deductible expenses.

Taxes

Taxes, other than income tax, extraordinary contributions, and VAT corresponding to non-deductible expenses that are not deductible as input VAT, are recognised as deductible expenses.

Other significant items

A general rule on the deductibility of all real and evidenced business expenses realised for the benefit or in the frame of the usual transactions of the company, the value of which is not deemed as higher or lower than the market value, and duly registered in accordance with the rules of recording of transactions is established, with the exception of the restrictively enumerated expenses that are not deductible.

The non-deductible expenses include:

- Some cases of loan interest (*see Interest expenses above*).

- Every kind of expense concerning the acquisition of goods or receipt of services of a value exceeding EUR 500, provided that the partial or total payment was not made through a means of bank payment.
- Unpaid insurance contributions.
- Provisions, with the exception of the explicitly regulated bad debt provisions (*see Bad debt above*).
- Fees and penalties, including additional payments.
- Provision or receipt of services in cash or in kind that constitute a criminal offence.
- The income tax, including the freelancers' duty and extraordinary contributions, as well as the VAT corresponding to non-deductible expenses, provided that it is not deductible as input VAT.
- Deemed income in case of self-use of property, to the extent that the latter exceeds a percentage of 3% of the objective value of the property.
- Expenses for the organisation and conducting of informative conferences and meetings concerning the hospitality (meals and stay) of clients or employees if exceeding the amount of EUR 300 per participant and to the extent that the total annual expense exceeds a percentage of 0.5% of the annual gross income of the enterprise.
- Entertainment expenses, with the exception of such expenses realised by taxpayers having as a main object the provision of entertainment services.
- Private consumer expenses.
- Total of expenses that are paid to tax residents in non-cooperative states or states with a preferential tax regime, unless the taxpayer proves that these expenses refer to real and usual transactions that do not have as their objective the transfer of profits or income or capital with the purpose of tax avoidance or evasion.
- Expenses relating to tax-exempt dividends.

Net operating and capital losses

Losses can be carried forward five years. Carrybacks are not permitted.

Pursuant to a rule on the abuse of provisions on the transfer and setoff of losses, in cases where the direct or indirect ownership or voting rights of an enterprise are changed at a percentage exceeding 33% during a tax year, the carryforward of tax losses ceases to apply unless the taxpayer can prove that the change in ownership occurred for commercial or business purposes.

Payments to foreign affiliates

Royalties, interest, and service fees paid to foreign affiliates are deductible expenses under certain requirements and conditions.

Special restrictions on transactions with non-cooperative states and states with preferential tax treatment

Greek tax law has established rules in relation to non-cooperating states and states with preferential tax treatment.

Non-cooperating states are defined as states that are not EU member states and have not concluded agreements of administrative assistance in the tax sector with Greece or with, at least, 12 other states. Non-cooperative states are enumerated in a Ministerial Decision to be issued annually.

Pursuant to the Ministerial Decision, the non-cooperating states for 2017 are specified as follows:

- Andorra
- Antigua and Barbuda
- the Bahamas
- Bahrain
- Brunei
- the Cook Islands
- Dominica
- former Yugoslav Republic of Macedonia (FYROM)
- Grenada
- Guatemala (until 30 September 2017)
- Hong Kong
- Lebanon (until 31 August 2017)
- Liberia
- Malaysia (until 30 April 2017)
- Marshall Islands
- Monaco (until 31 March 2017)
- Panama
- Philippines
- St. Lucia (until 28 February 2017)
- US Virgin Islands
- Vanuatu

A legal entity, irrespective of its legal form, is considered located in a preferential tax regime, even if its residence of registered office is located in an EU member state, in cases where it is not subject to taxation in this state or is *de facto* not subject to taxation, or is subject to tax on income or capital at an amount that is equal to or lower than 50% of the tax that would have been due, in accordance with Greek tax legislation, if such entity were resident or were maintaining a PE in Greece.

Pursuant to a Circular issued in November 2017, the states with preferential tax treatment for 2017 are specified as follows:

- Albania
- Andorra
- Anguilla
- the Bahamas
- Bahrain
- Belize
- Bermuda
- Bonair
- Bosnia and Herzegovina
- British Virgin Islands
- Bulgaria
- Cayman islands
- Cyprus
- Former Yugoslav Republic of Macedonia (FYROM)
- Gibraltar
- Guernsey
- Hashemite Kingdom of Jordan
- Hungary *
- Ireland
- Isle of Man
- Jersey
- Liechtenstein
- Macau
- Marshall Islands
- Monaco
- Montenegro
- Montserrat
- Nauru
- Oman
- Paraguay
- Qatar
- Republic of Maldives
- Republic of Moldova
- San Marino
- Saudi Arabia
- Seychelles
- Sri Lanka
- St. Eustatius
- Turks and Caicos
- United Arab Emirates
- Vanuatu

* To be noted that Hungary is considered a state with a preferential tax regime only for 2017.

Group taxation

Group taxation is not permitted in Greece.

Transfer pricing

Related entities are obligated to document the prices of their intra-group transactions.

An exemption from maintaining a transfer pricing documentation file is provided if:

- the above transactions or transfer of operations amount to up to EUR 100,000 annually and the total turnover of the liable party does not exceed EUR 5 million annually, or
- the above transactions or transfer of operations amount to up to EUR 200,000 annually and the total turnover of the liable party exceeds EUR 5 million annually.

The transfer pricing documentation file is accompanied by the 'Summarized Table of Transfer Pricing Information', which is submitted electronically to the tax administration within the deadline for the submission of the annual income tax return.

The transfer pricing documentation file is kept at the registered seat of the liable party for the whole time period that the books and records are required to be kept, and should be provided to the tax administration within 30 days from the receipt of the relevant request.

The obligation of updating the respective transfer pricing file is provided in case of a change of market circumstances that affect the data included therein. The update is made in the tax year in which the change takes place.

The option of obtaining an Advance Pricing Arrangement (APA) of the methodology of specific future intra-group transactions with related parties is integrated in the Code of Tax Procedures. The object of the APA constitutes the total of the criteria used for the determination of the prices of intra-group transactions during a specific time period, which include mainly the transfer pricing methodology used, comparable or reference data, and the respective adjustments, as well as the critical assumptions on future developments. The object of the APA may constitute every other specialised matter concerning the pricing of transactions with related parties.

The validity of the APA decision cannot exceed four years, and it cannot enter into force retroactively (i.e. the tax year that has lapsed at the time the application for the APA has been submitted). The issuance of the APA decision does not impede the subsequent application of a mutual settlement procedure according to the applicable DTT.

The APA decision may be renewed, revoked, or cancelled by a decision of the tax administration, provided that the legal conditions are met.

The delayed submission of the Summary Information Table of transfer pricing information file incurs a penalty calculated at a percentage 1/1,000 of intra-group transactions (not below EUR 500 and not exceeding EUR 2,000).

The penalty for inaccurate submission of the Summary Information Table of transfer pricing information is calculated at a percentage 1/1,000 of the intra-group transactions (not below EUR 500 and not exceeding EUR 2,000), to the extent that the inaccuracy is higher than 10% of the transactions.

The penalty for the non-submission of the Summary Information Table of transfer pricing information is calculated at a percentage 1/1,000 of the intra-group transactions (not below EUR 2,500 and not exceeding EUR 10,000).

The penalty for the non-submission of the transfer pricing documentation file (imposed upon the expiration of the one-month deadline) is calculated at EUR 20,000 (after the 90th day or the non-submission in general).

A repetition within five years of the first infringement incurs double the initial penalty, whereas a second repetition within five years from the first infringement incurs quadruple the initial penalty.

Country-by-country (CbC) reporting regime

On 28 July 2017, the Greek Parliament ratified Law 4484/2017, providing for new transfer pricing documentation requirements. The new law supplements the EU Council Directive 2016/881 on mandatory automatic exchange of information in the field of taxation that was initially incorporated in Greek legislation by Laws 4170/2013 and 4474/2017. The new requirements largely follow the guidance on CbC reporting provided under Action 13 of the OECD's Base Erosion and Profit Shifting (BEPS) initiatives. In order to enable the Greek tax authorities to analyse potential transfer pricing risks, said requirements provide for the preparation and filing of a CbC report.

The Greek CbC reporting obligations require Greek ultimate parent entities controlling a multinational group of entities (MNEs) with annual total consolidated group revenues exceeding EUR 750 million to file CBC reports with the Greek tax authorities. In exceptional cases, Greek entities belonging to MNEs without a Greek resident ultimate parent company may also be obligated to file a CbC report. The new provisions also provide for notification requirements regarding the entity liable to file the CbC report.

The new requirements are applicable to fiscal years starting on or after 1 January 2016. A penalty regime is provided in case of a delayed filing, inaccurate filing, or non-filing of the CbC report.

Thin capitalisation

The thin capitalisation rules are determined in connection to the taxable profits before interest, tax, depreciation, and amortisation (EBITDA). More specifically, interest expenses are not deductible to the extent that the surplus of interest expenses compared to interest income exceeds a percentage of 30% of EBITDA.

The aforementioned limit does not refer to net interest expenses that do not exceed the amount of EUR 3 million.

Any excess amount of non-deductible interest expenses may be carried forward indefinitely to future years and will be deductible in future years to the extent that these future years indicate an uncovered EBITDA amount.

The aforementioned rules do not apply to credit institutions, leasing companies, and factoring companies that are licensed by the Bank of Greece or respective regulatory authorities of other EU member states.

Controlled foreign companies (CFCs)

The taxable income of a taxpayer with tax residence in Greece shall be increased by the undistributed income of a legal person or legal entity with tax residence in another country, under the following conditions:

- The taxpayer, alone or together with affiliated persons, directly or indirectly owns shares, voting rights, or equity in excess of 50% or is entitled to receive more than 50% of the profits of that legal person or legal entity.

- The above legal person or legal entity is subject to taxation in a non-cooperative state or in a country with a preferential tax regime (*see the lists in the Deductions section*).
- More than 30% of the net income before taxes earned by a legal person or legal entity falls into at least one of the categories of income derived either from interest, dividends, royalties, income from immovable property, or income from insurance, banking, or other financial activities.
- It is not a company whose principal class of shares is subject to trading on a regulated market.

The above do not apply to legal persons or legal entities with tax residence in the European Union or residence in a country that is an EEA member unless the establishment or the financial activity of such legal entity constitutes a fictitious situation with the view to avoid taxation.

Tax credits and incentives

Foreign tax credit

Tax paid abroad for income taxable in Greece is credited but is limited to the amount of Greek tax due.

Deferred taxation

The concept of deferred taxation applies on the basis of the International Financial Reporting Standards (IFRS) to entities supervised by the Bank of Greece (namely banks and leasing companies, as well as factoring companies). In this respect, said entities may convert tax assets into tax credits in return for shares issued to the Greek state. Specific rules and conditions apply.

Incentives for the maintenance of workplaces

Legal entities that suffer a reduction of turnover for two consecutive accounting periods without reducing their workforce can enjoy a reduction of the tax rate by three percentage units. However, a revocation of the granted benefit and imposition of further tax in case of reduction of personnel or increase of the turnover within the three-year period is provided.

Other tax incentives

On 16 June 2016, Law 4399/2016 'Statutory framework for the establishment of Private Investments Aid Schemes for the regional and economic development of the country - Establishment of Development Council and other provisions' has been ratified by the Greek Parliament. The new Law provides a general framework, which is expected to be specified for each aid scheme through ministerial decisions to be issued. In essence, the provisions of the new Law will start to apply following the issuance of the relevant ministerial decisions. Up to date, the Ministry of Development has issued the required ministerial decisions for four (out of eight in total) aid schemes.

Under the new Incentive Law, an explicit reference to the provisions of the General Block Exemption Regulation (GBER) of the European Commission (651/17.07.2014, Law 187/1/26.06.2014) is being made for first time.

The new Law is structured into two sections: (i) the General Section, which includes the main regulations and restrictions of the GBER and refers to all aid schemes, and (ii) the Special Section, which describes the specific aid schemes, to which the provisions of the General Part and of the GBER are applied.

In comparison to other types of aid, the new Incentive Law focuses mainly on the tax incentives.

A threshold is being provided for the types of aid available to individuals' investment projects, as well as to companies and groups of companies, in order to achieve dispersion of the beneficiaries of state aid.

Special categories of aid are being determined, either (i) on the basis of the performance of the companies (extroversion, mergers, employment increase, sectors, high added value), or (ii) on territorial basis (highland, border areas and areas with increased migration burden, industrial areas, innovations zones). Companies that fall under the special categories may be reinforced through capital aids, in case the latter are not provided, or by additional capital aids, in case the latter are provided.

General Section

The General Section regulates the beneficiaries of the aids, the terms and prerequisites for participation, the covered investment projects, the eligible expenses, the types of aids, the procedure regarding the filing of applications and evaluation of investments projects, as well as the issues regarding the implementation and completion of investments projects.

Beneficiaries of the aid schemes are any individual companies, commercial companies, cooperatives, social cooperative companies of Law 4019/2011, groups of producers, agricultural partnerships of Law 4015/2011, companies under formation or under merger, on the condition that they have been incorporated or merged before the commencement of the project, and joint ventures, provided that they have been registered with General Commercial Registry (GEMI).

As regards the terms and prerequisites for participation, it is provided that the compulsory nature of own-participation is abolished. The participation of the beneficiary in the cost of the investment project can take place either through own equity or through external financing. The main prerequisite is that 25% of the total investment cost does not contain state aid, support, or subsidy.

The minimum investment amount ranges from EUR 50,000 (for social cooperative companies) to EUR 500,000 (for large companies).

The investment projects that fall under the aid schemes should have the character of initial investment (buildings, machinery, intangible) and meet certain conditions (indicatively, creation of new plants, extension of existing plants' capacity, etc.).

The investment projects that are covered by the new Law relate, in principal, to all economic sectors, subject to certain exceptions (sector of steel, coal, synthetic fibres, shipbuilding, etc.). Under conditions, the covered investment projects could also relate to:

- Production or co-production and distribution of heat from renewable energy sources and production of electricity by small hydroelectric projects.
- Tourism.

- Processing and marketing of agricultural products, fisheries, and aquaculture products.
- Logistics services.

In respect of the eligible expenses, these are divided into: (i) eligible expenses of regional state aid nature based on the Regional State Aid Map (capital expenditure in tangible and intangible assets, employment cost of new employees) and (ii) eligible expenses of non-regional state aid, which aim to broaden and enrich the investment options towards new qualitative directions. The maximum amounts and percentages of regional state aids and non-regional state aids are also being determined. Based on the general framework, the maximum amounts and percentages of each individual aid scheme are being specified, in accordance with the provisions of the Special Section of the new Law.

Further, with regard to the types of aid, the following types are provided:

- Tax exemption (exemption from the payment of CIT on profits, before taxes, generated from the total business activity of the company, following the deduction of the CIT that corresponds to the profits distributed to the company's shareholders).
- Subsidy of funds in order to cover part of the eligible expenses of the investment project.
- Subsidy of leasing for the acquisition of new machinery and other equipment (which cannot exceed the period of seven years).
- Subsidy of employment cost.
- Fixed CIT rate for a period of 12 years from the completion of the investment project, exclusively for investment projects of major size.
- Funding of corporate risk through Funds of Funds.

All types of aids can be provided either separately or in combination thereof and are all taken into account for the determination of the total aid amount of each investment project. The subsidy of funds and the leasing subsidy are not granted to companies that did not generate any profits in any of the seven tax years prior to the year in which the relevant application was filed. The types of aid are granted (and, respectively, the benefit starts to apply), following a relevant certification, either in lump sum (following the issuance of the decision certifying the completion and the commencement of the productive operation of the project) or gradually (according to the specific requirements per each type of aid granted).

Moreover, as regards the support and implementation of the new Law (filing of applications, documentation file, evaluation, etc.), all procedural issues will be carried out through the State Aid Information System of the Ministry of Finance, Development, and Tourism. The evaluation process includes the stage of completion and legality control and the evaluation stage and is carried out either through the method of comparative evaluation or through the method of direct evaluation. Investment projects that fall under the aid schemes are audited at any time and at any stage of implementation of the investment project or at any stage of fulfilling their long-term liabilities.

It is also provided that the investment project is completed following the commencement of the productive operation of the investment and in any case within the period prescribed in the relevant ministerial decision, which may not exceed three years from the date of issuance of that decision. An extension for two years is also provided, under certain conditions

Special Section

Aid schemes

In the Special Section of the new Incentive Law, the following aid schemes and the relevant aid granted per scheme are being prescribed:

Aid scheme	Types of aid granted
Machinery equipment	Tax exemption.
General entrepreneurship	Tax exemption, subsidy of leasing, and subsidy of employment cost.
New independent small and medium enterprises (SMEs)	Tax exemption, subsidy of funds, subsidy of leasing, and subsidy of employment cost.
Innovative character aid for SMEs	
Clusters	
Integrated regional and sector projects	
Intermediary funding organisations (Funds of Funds)	
Major investments	Public funding to private investors through: (i) equity or 'virtual' equity investment or sponsorship, or (ii) loans for funding of corporate risk directly or indirectly to eligible companies.
	• Fixed CIT rate for 12 years from the completion of the investment project, until the exhaustion of the aid and up to the amount of EUR 10 million. • Alternatively, tax exemption at a percentage of 10% of the eligible investment cost and up to the amount of EUR 5 million. • Possibility to make use of the 'fast track' procedure.

The beneficiaries, the eligible expenses, the type of aids, the percentage of aids, the implementation procedure, as well as the evaluation and audit process are being specifically prescribed per each separate scheme of aid.

The maximum annual amount of state aid budget per each scheme of aid is set at EUR 150 million, for which no prior notification is required and which is deemed compatible with the internal market, in accordance with the provisions of GBER.

Finally, it is noted that, up to date, the Ministry of Development has issued the required Ministerial Decisions for four (out of eight) aid schemes, while the Ministerial Decisions for the following aid schemes are still pending to be issued: innovative character aid for SMEs, clusters, integrated regional and sector projects, and intermediary funding organisations (Funds of Funds).

The procedure for the submission of applications through the State Aid Information System started on 19 October 2016. Depending on the aid scheme, different deadlines apply for the submission of applications from the interested enterprises.

Withholding taxes

WHT rates are as follows:

Type of income	WHT rate (%)
Dividends	15

Type of income	WHT rate (%)
Interest	15
Royalties and other payments	20
Fees for technical projects, management fees, and consultancy and other related services	20
By exception, fees received by contractors of every kind of technical projects and lessors of public, municipal, association, or port proceeds	3% on the value of the project under construction or lease payment

Legal entities tax resident in Greece are not subject to WHT in relation to royalties, fees received for the provision of consultancy and other related services, and management fees, unless provided to general government bodies.

Legal entities that are not tax resident in Greece and do not maintain a PE in Greece are not subject to Greek WHT in relation to technical services, consultancy services, or other related services and management fees.

By virtue of the provisions of the Ministerial Circular 1007/2017, it is clarified that the fees for technical services, management fees, fees for consulting services, and the remuneration for similar services received by an EU legal entity through its PE in Greece are not subject to WHT.

The above exemption does not include the fees received by EU legal entities from the services provided to the general government bodies, as well as the fees for technical services received by the EU legal entities.

Conversely, non-EU foreign legal entities that maintain a PE in Greece are subject to Greek WHT in relation to the provision of the aforementioned services.

Legal entities that are tax resident in Greece or foreign legal entities that maintain a PE in Greece are not subject to WHT in relation to royalty payments.

The exemption from the obligation of WHT for payments of dividends, interest, and royalties by a Greek subsidiary to its parent company includes payments of dividends, interest, and royalties to Greek parent companies.

For the exemption from dividend WHT, the following conditions apply:

- The receiving legal entity should own shares, parts, or a participation of at least 10%, on the basis of the value or number, in the share capital, right to profits, or voting rights of the distributing taxpayer.
- The minimum holding percentage of shares or parts or participations should be held for at least 24 months (subject to providing a bank guarantee, in which case the exemption may apply prior to completing the 24-month holding period).
- The receiving legal entity should be:
  - included in the forms enumerated in Annex I Part A of Directive 2011/96/EU, as in force
  - tax resident in an EU member state according to the legislation of such state and not be considered as tax resident in a third country in application of the terms of the DTT concluded with such third country, and
  - subject, without the option or exemption, to one of the taxes mentioned in Annex I Part B of Directive 2011/96/EU, or to any other tax that may in the future replace one of those taxes.

A general anti-abuse rule is applicable by virtue of which the tax exemption in case of collection and payment of dividends is alleviated in case it is considered that a 'non-genuine arrangement' exists. A 'non-genuine arrangement' is an arrangement that has not been put into place for valid commercial reasons reflecting the economic reality.

For the exemption from WHT for interest and royalty payments, the following conditions apply:

- The receiving legal entity should directly own shares, parts, or a participation of at least 25%, on the basis of the value or number, in the share capital, right to profits, or voting rights of the paying taxpayer; the paying taxpayer directly owns shares, parts, or a participation of at least 25% in the share capital of the receiving entity; or a third legal entity directly owns shares, parts, or a participation of at least 25% in the share capital of the receiving entity and the paying legal entity.
- The minimum holding percentage of shares or parts or participations should be held for at least 24 months (subject to providing a bank guarantee, in which case the exemption may apply prior to completing the 24-month holding period).
- The receiving legal entity should be:
  - included in the forms enumerated in Annex I Part A of Directive 2003/49/EU, as in force
  - tax resident in an EU member state according to the legislation of such state and not be considered as tax resident in a third country in application of the terms of the DTT concluded with such third country, and
  - subject, without the option or exemption, to one of the taxes mentioned in Annex I Part B of Directive 2003/49/EU, or to any other tax that may in the future replace one of those taxes.

Payments of interest of bank loans, including default interest, as well as interest of intra-bank deposits, are exempt from WHT.

Interest received from Greek government bonds and treasury bills by legal entities that are not tax resident in Greece and that do not maintain a PE in Greece are not subject to WHT.

The following table provides a summary of the WHTs applicable under the respective DTTs entered into by Greece:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident individuals and companies	15	15	20
Non-resident individuals and companies:			
Non-treaty	15	15	20 (1)
Treaty:			
Albania	5	5	5
Armenia	10	10	5
Austria (3)	5/15 (4)	8	7
Azerbaijan	8	8	8
Belgium	5/15 (7)	5/10 (6)	5
Bosnia and Herzegovina	5/15 (2)	10	10
Bulgaria	10	10	10
Canada	5/15 (7)	10	0/10 (13)
China	5/10 (2)	10	10

Greece

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Croatia	5/10 (2)	10	10
Cyprus	25	10	0/5 (5)
Czech Republic	Domestic	10	10
Denmark	38	8	5
Egypt	10	15	15
Estonia	5/15 (2)	10	5/10 (11)
Finland	47	10	0/10 (9)
France	Domestic	10	5
Georgia	8	8	5
Germany	25	10	0
Hungary	45	10	10
Iceland	5/15 (2)	8	10
India	Domestic	Domestic	Domestic
Ireland	5/15 (7)	5	5
Israel	Domestic	10	10
Italy	15	10	0/5 (9)
Korea, Republic of	5/15 (2)	8	10
Kuwait	5	5	15
Latvia	5/10 (2)	10	5/10 (11)
Lithuania	5/15 (2)	10	5/10 (11)
Luxembourg	38	8	5/7 (8)
Malta	5/10 (2)	8	8
Mexico	10	10	10
Moldova	5/15 (2)	10	8
Morocco	5/10 (2)	10	10
Netherlands	35	8/10 (12)	5/7 (8)
Norway	40	10	10
Poland	Domestic	10	10
Portugal	15	15	10
Qatar	5	5	5
Romania	45	10	5/7 (8)
Russia	5/10 (2)	7	7
San Marino	5/10 (2)	10	5
Saudi Arabia	5	5	10
Serbia	5/15 (2)	10	10
Slovakia	Domestic	10	10
Slovenia	10	10	10
South Africa	5/15 (2)	8	5/7 (8)
Spain	5/10 (2)	8	6
Sweden	Domestic	10	5
Switzerland	5/15 (2)	7	5
Tunisia	35	15	12
Turkey	15	12	10
Ukraine	5/10 (2)	10	10
United Arab Emirates	5	5	10
United Kingdom	Domestic	0	0
United States	Domestic	0/Domestic (10)	0
Uzbekistan	8	10	8

Notes

1. The non-resident legal person, legal entity, or individual pursuing business activity may elect to be taxed on income from royalties and fees for technical services, administration fees, and fees for consulting or similar services in accordance with the rules applicable to tax residents who receive such fees and then credit the WHT against the income tax due.
2. The rate of 5% applies in case the beneficiary is a company (excluding a partnership) and directly holds at least 25% of the capital of the paying company.
3. It should be taken into account that such rates are based on the DTT applicable as of 1 January 2011, whilst other rates have been applicable in the past.
4. The rate of 5% will apply if the beneficial owner is a company that directly holds at least 25% of the voting power of the company paying the dividends.
5. The rate of 5% is applicable only for the right to use cinematograph films.
6. Rate of 5% applies to loans not incorporated into negotiable instruments and granted by banks.
7. A rate of 5% is applicable to shareholders of 25% and above.
8. The rate of 5% applies if the royalties consist of payments of any kind received as a consideration for the use of or the right to use any copyright of literary, artistic, or scientific work, including cinematograph films.
9. Exemption (‘0’ rate) applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.
10. Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) received from sources within Greece by a resident or corporation of the United States (US) not engaged in trade or business in Greece through a PE therein, shall be exempt from Greek tax but only to the extent that such interest does not exceed 9% *per annum*; but such exemption shall not apply to such interest paid by a Greek corporation to a US corporation controlling, directly or indirectly, more than 50% of the entire voting power in the paying corporation.
11. The 5% rate is applicable if the royalties consist of payments of any kind received as a consideration for the use of industrial, commercial, or scientific equipment, and the 10% rate is applicable for all the other cases.
12. The 8% rate is applicable when the beneficiary of the interests is a bank or a financial institution, 10% rate is applicable for all the other cases.
13. Exemption (‘0’ rate) applies to copyright royalties and other like payments in respect of the production or reproduction of any cultural or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on films or videotapes or other means of reproduction for use in connection with television broadcasting).

In general, it should be noted that certain DTTs may include specific clauses in specific cases that are not all captured in the table; therefore, a careful review of each DTT is highly advisable.

Tax administration

Taxable period

The taxable period is the calendar year, which may end either on 30 June (for legal persons or legal entities keeping double entry books) or 31 December. The taxable year should not, in any case, exceed 12 months.

The exceptional case of closing the accounting period, for income tax purposes, at a date other than the 31 December or 30 June is limited only to Greek legal entities/other entities that are directly or indirectly owned at a percentage exceeding 50% by foreign legal entities/other entities.

Tax returns

CIT returns of Greek SAs, limited liability companies (LLCs), and branches of foreign companies are filed on a special form by the last day of the sixth month following the end of the tax year.

Tax returns are required to be submitted electronically.

The CIT return constitutes the basis for the direct assessment of tax, which arises without a further action by the tax administration, simultaneously with the submission of the tax return by the taxpayer.

The taxpayer also has the right to amend the tax return by paying the respective difference in tax or by establishing one's rights for a refund of tax paid in excess according to the amended tax return.

Moreover, the taxpayer may request the issuance of a corrective tax assessment act in case of filing an amending tax return for which an administrative assessment tax act has been issued, and the tax administration is obligated to issue such corrective tax assessment if the amending tax return is accepted.

Payment of tax

100% prepayment of the current year's CIT, less tax withheld at source, based on the tax return is paid in eight equal monthly instalments, the first of which should be paid upon filing.

CIT and tax prepayment based on the tax return are paid in eight equal monthly instalments, the first of which should be paid upon filing of the CIT return (i.e. until the last day of the sixth month following the end of the tax year) and the remaining seven until the last day of the seventh month of the filing of the CIT return, which, however, may not extend beyond the same tax year.

For newly established companies, the prepayment is reduced to 50% for the first three years of operations.

Tax audit process

Tax audit procedures

The tax audit commences with the issuance of an audit order for open tax years, usually not more than five. The order concerns the audit of all tax issues (CIT, VAT, WHT, capital gain tax, etc.). The duration of the audit may vary from a few weeks to a few months, in certain cases.

The tax administration performs a tax audit from its offices on the basis of the financial statements, tax returns, and other documents that are submitted by the taxpayer, as well as the documents and information in its possession.

The performance of a complete on-site tax audit must be notified to the taxpayer by a previous written notification. A complete on-site tax audit is performed without prior notification in cases where indications of tax avoidance exist.

The tax administration may have access to the books and records and to other documents of the taxpayers, as well as to the receipt of copies thereof. The tax administration has the same rights with regard to books and records that are kept electronically. It is noted that the legal entity subject to keeping books and records must maintain these books and records for at least five years.

An extension of the on-site tax audit may be granted once for six months, as well as for another six months in extraordinary cases.

The right for a new audit of a tax period already audited is provided only in case new data arises that affects the calculation of the tax liability. 'New data' is defined as all data that could not have been known to the tax administration upon the commencement of the original tax audit.

The election of the cases subject to audit will be made on the basis of risk analysis criteria. Exceptionally, cases may be elected on the basis of other criteria, according to a decision of the General Secretary of Public Revenue. It should be noted that, based on the recently enacted Law 4389/2016, the General Secretarial for Public Revenue is abolished and a new Independent Public Revenue Authority is formed aiming to the determination, the assessment, and the collection of tax, customs, and others public revenues.

The tax administration may use the following audit techniques for the indirect determination of the taxable basis:

- The proportionality principle.
- The analysis of the liquidity of the taxpayer.
- The net position of the relation between the sales price to the total turnover.
- The amount of bank deposits and expenses in cash.

The procedure of notification of the taxpayer of the results of the tax audit is provided. More specifically, a temporary corrective assessment of tax is issued in case a differentiation of tax arises on the basis of the tax returns of the taxpayer and the results of the audit.

Following the submission of such decisions and within 20 days from the receipt of the notification thereof, the taxpayer may submit its views in writing, whilst after that point a final corrective assessment of tax sheet is issued, which is notified to the taxpayer, within a month from the end of the deadline for submitting the taxpayer's views in writing.

Audit Centre for Taxpayers with Great Wealth

The special audit authority 'Audit Centre for Taxpayers with Great Wealth', competent for the whole Greek territory, performs provisional, temporary, and ordinary tax audits, as well as the audit of real estate property and of the annual expenses of individuals. The audit of foreign real estate companies not disclosing their ultimate beneficiary individuals and of Greek real estate companies in which a foreign legal entity participates without disclosing the ultimate beneficiary individuals are also assigned to the Audit Centre for Taxpayers with Great Wealth. Moreover, the Audit Centre for Taxpayers with Great Wealth is also competent for the certification and enforced collection of revenue of taxpayers with great wealth.

Audit Centre for Large Enterprises

The 'Audit Centre for Large Enterprises' is responsible for the performance of ordinary audits of taxpayers with annual gross income exceeding EUR 25 million for the fiscal year closing within 2009, of affiliated enterprises drafting consolidated financial statements irrespective of their gross income on the condition that the gross income of at least one of the affiliated enterprises exceeds EUR 25 million for the fiscal year closing within 2009, and unaudited cases prior to any business restructuring effected until 2011, irrespective of the gross revenues and the competent tax authority responsible for the taxation of their income, on the condition that the company or any of the companies resulting from the business restructuring falls within the ambit of the Audit Centre for Large Enterprises. The Audit Centre for Large Enterprises is also competent for the enforced collection of revenue of large enterprises located in the whole Greek territory.

Following the audit and the notification of tax audit findings, the company may in turn:

- File a mandatory administrative recourse within the framework of the special administrative procedure (out-of-court settlement procedure) before the Directorate for Dispute Resolution with the claim of reviewing any act of the tax authorities (including the tax assessment act), in case the content of the tax assessment act is questioned within a deadline of 30 days for Greek tax residents and 60 days for foreign tax residents from the notification of the act or the realisation of the failure. The direct filing of a recourse before the competent administrative courts against acts of the tax administration is inadmissible.
- Take the case to court (filing of a recourse) against the explicit/tacit negative reply of the Dispute Resolution Directorate. For tax/customs cases exceeding EUR 150,000, the competent court is the Court of Appeal (of first and last instance, which could normally issue a decision within six to 12 months; said timeframe may be longer, taking up to one to two years in case the competent court is the Court of First Instance [i.e. for disputes of an amount less than EUR 150,000]). The Supreme Administrative Court may take up to three to four years.
- Criminal sanctions are also imposed on the company's legal representative under certain conditions.

Moreover, based on the provisions of Law 4438/2016, which was enacted on 28 November 2016, a Mutual Agreement Procedure is introduced in the Code of Tax Procedures, designated to cover the cases of elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises. Based on these provisions, the taxpayer may file a claim for the initiation of a Mutual Agreement Procedure by application of the Double Tax Conventions as well as the European Convention on the elimination of double taxation in connection with the adjustment of transfers of profits between associated undertakings. The details of application of this new procedure are determined by virtue of a Ministerial Circular issued by the Independent Authority for Public Revenue.

The Ministerial Circular issued by the Independent Authority for Public Revenue provides guidelines as regards the procedure for claiming the initiation of a Mutual Agreement Procedure, the content, the competent authorities for examining the relevant claims, the process for achievement of a Mutual Agreement, the notification of the outcome of the Mutual Agreement Procedure to the taxpayer, and the procedure for accepting such Agreement, as well as any relevant issue with respect to the above.

Tax auditors' practice

In the past, complexity of the Greek tax legislation and the vagueness of its requirements enabled the tax auditors to dispute either the company's results reflected in its accounting records or to disallow expenses. This is true in all tax audits and, in spite of companies' endeavours to comply with the tax requirements, tax audits have always resulted in assessment of additional taxes and penalties.

The amount of additional taxes depends mainly on the following:

- Company's vulnerability because of nature of business and transactions.

- Taxes already paid on the basis of the company's income tax returns.
- Profits declared by competitors.
- Weaknesses and shortcomings that the tax auditors might reveal if a full audit is carried out.

In respect of deductible expenses, the legislation prescribes, among other requirements, that such expenses must be realised for the benefit of the company or in its ordinary course of normal business activity to represent, a valid transaction at a value that is not over or under the market value based on the data available by the tax administration, properly recorded in the company's books in the respective period to which they relate, and can be evidenced by appropriate documentation, without defining what a business expense is. Consequently, the tax auditors dispute the deductibility of various items arguing that, in their opinion, they are not contributing to the company's business income.

Greek SAs and LLCs whose annual financial statements are subject to a statutory audit by individual Certified Auditors and audit firms may optionally obtain an 'annual tax certificate' from their certified auditors upon the completion of a tax audit conducted, confirming compliance with Greek tax legislation. The tax audit is conducted on specific tax areas as defined by a special audit program issued by the Ministry of Finance in cooperation with the Committee of Accounting Standardization and Auditing (ELTE). The audit program is updated annually and is in accordance with the provisions of International Standard on Non-Audit Assurance Engagements 3000.

Statute of limitations

The tax administration may issue an administrative, estimated, or corrective tax assessment within five years from the end of the year in which the deadline for filing the respective tax return lapsed.

This five-year prescription period may be extended for one year if:

- the taxpayer files an initial or amending tax return within the fifth year of the prescription period
- an application for the granting of information from a foreign state has been filed and commences from the date of the receipt of the respective information by the tax authority, or
- a mandatory administrative recourse has been filed and commences from the issuance of a decision that is not subject to recourse.

Exceptionally, for cases of tax avoidance, the tax administration has the right to issue an administrative, estimated, or corrective tax assessment within 20 years from the end of the year in which the deadline for filing the respective tax return lapsed.

In case of a corrective tax assessment resulting in an amendment of the tax assessment act for a year for which the prescription period of the state's right to audit has lapsed, the adaptation is made to the last year for which said right has not been prescribed.

Other issues

Intergovernmental agreements (IGAs) and cooperation

Greece and the United States have reached an agreement in substance and Greece has consented to disclose this status on the US Foreign Account Tax Compliance Act

(FATCA) arrangements with effect from 30 November 2014. The IGA was ratified by L. 4493/2017, which was published in the government gazette in October 2017.

Common Reporting Standard (CRS) regime

By virtue of L. 4378/2017 and L. 4474/2017, Greece proceeded on 30 September 2017 to the exchange of information on accounts held by financial institutions. The exchange of information will take place in September of each respective year, and the deadline for the submission of the information to the tax authorities by the financial institutions is set in May of each year.

Base erosion and profit shifting (BEPS)

Greece adheres, in general, to the BEPS guidelines.

Measures that have been adopted and that are in the spirit of the BEPS guidelines include the CFC legislation and General Anti-Avoidance Rule (GAAR) applicable.

Choice of business entity

The main differences between a subsidiary (i.e. *Société Anonyme* [SA] or limited liability company [LLC]) and a branch of a company, from a corporate establishment perspective, are the following:

- A subsidiary is a separate legal entity from its parent company, whereas a branch does not form a separate legal entity, does not have its own shareholders, and, consequently, the funds needed for its operation are transferred from the overseas parent company.
- The parent company of a branch must be either the equivalent of a Greek SA or an LLC, whereas there is no such restriction for subsidiaries.
- The day-to-day management of a branch is exercised by the legal representative, a person appointed by the parent company, whereas an SA is represented by its BoD and an LLC is administered and directed by the administrator(s).
- No minimum capital is required for the establishment of a branch or LLC; nevertheless, the share capital of the parent company should be, in principle, at least EUR 24,000 if the parent company has the legal form of an SA. However, from a practical perspective, the competent Greek General Commercial Registry might accept the establishment of a branch of an EU based SA, even if the share capital of the parent company is less than EUR 24,000.
- An SA appears to be a more popular type of company than a branch and an LLC. In particular, certain investors still tend to opt for the establishment of an SA company, particularly if they would like to participate in public tenders, etc.

The main legal differences between an SA and an LLC in Greece from a company law/establishment perspective are the following:

- An SA is managed by a BoD consisting of at least three members, whereas an LLC can be managed by only one individual, the administrator (legal entities are permitted to be appointed as BoD members or administrators). Both BoD members and administrators have to acquire a Greek tax registration number and a Greek residence permit (if applicable) prior to the establishment of the relevant companies. It should also be noted that the acquisition of a residence permit for non-EU citizens is a time consuming procedure.
- The shareholders of an SA are not required to be registered with the Greek tax authorities (however, if the said shareholders are also BoD members, they are

required to be registered with the competent Greek tax authorities), whereas the partners of an LLC have to be registered with the Greek tax authorities.
- Establishment/incorporation of an SA is performed through the so-called One Stop Shop Authority (i.e. Notary Public). Any appropriate documents (applications, declarations, certificates, etc.) required for establishment process should be produced and submitted to the Notary Public by the founders of the SA, as said persons are defined in the Articles of Association (AoA) of the SA under establishment, or their representatives appointed by virtue of an (duly legalised as to the signature of the founders) authorisation. After the submission of the necessary documentation to the competent One Stop Shop Authority, the said authority accomplishes all the necessary steps for the establishment of the Greek SA, including the granting of the Greek tax registration number. Depending on the particular activity of the SA under establishment, the satisfaction of particular regulatory requirements, such as the acquisition of certain licences, might be required.
- Establishment/incorporation of an LLC is performed through the One Stop Shop Authority (i.e. Notary Public). Any appropriate documents (applications, declarations certificates, etc.) required for the establishment process should be produced and submitted to the Notary Public by the founders of the LLC, or their representatives appointed by virtue of written authorisation (duly legalised as to the signature of the founders). After the submission of the necessary documentation to the competent One Stop Shop Authority, the said authority accomplishes all the necessary steps for the establishment of the Greek LLC, including the granting of the Greek tax registration number. Depending on the particular activity of the Greek LLC under establishment, the satisfaction of particular regulatory requirements, such as the acquisition of certain licences, might be required. SA and LLC companies are supervised by the Greek Ministry of Development (joint supervision by the General Commercial Registry and the competent Prefecture of the registered seat of the SA), which necessitates certain filings to be performed (e.g. minutes of BoD, general announcements, financial statements).

The 'Private Company' (PC)

- The PC constitutes a legal entity and is commercial in nature, even if its object is not *per se* commercial. The capital of the PC can be freely determined by the partners and can amount to zero, whilst its partners participate in the PC by means of capital, non-capital, and guarantee contributions.
- The PC is not entitled to acquire, either directly or indirectly, its own capital parts.
- The PC has its registered seat in the municipality referred to in its AoA, while the transfer of the registered seat of the PC in another country of the European Economic Area does not necessarily result in the dissolution of the PC, provided that the recipient country recognises the transfer and the continuity of legal personality. The PC is not obligated to have its actual seat in Greece, whilst the PC is capable of establishing various types of secondary establishments either in Greece or abroad.
- The term of the PC is definite; if not otherwise stipulated in the AoA of the PC, the PC has a term of 12 years following its establishment.
- The PC is administered and represented by one or more administrators.
- The administrator represents the PC and conducts in its name all actions pertaining to the administration of the PC, the management of its assets, and, in general, the pursuit of its objects.
- The establishment of the PC is effected by means of its registration with the Greek General Commercial Registry (GEMI).
- The PC is dissolved: (i) at any time following a resolution of the partners, (ii) when its definite term has expired, unless the term of the PC is extended by virtue of a

resolution of the partners, (iii) if the PC defaults, and (iv) in all other circumstances contemplated by the law or the AoA.

Greenland

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Significant developments

The Greenlandic Parliament has implemented the Danish Companies Act with effect from 1 January 2018. The implementation of the Danish Companies Act has implied that the Greenlandic Business Register (GER) has been dissolved and that all companies registered in GER are automatically transferred to the Danish Business Register (CVR). It is intended that Greenlandic entities will receive a CVR no. identical to its previous GER no. In the event that a Greenlandic entity's GER no. already exists as a Danish entity's CVR no., the Greenlandic entity will be granted a new CVR no. Further, the implementation of the Danish Companies Act provides new possibilities of establishing a company in Greenland through the digital platform *Virk.dk* and digital solutions regarding changes to existing companies. Therefore, any registrations and changes to existing Greenlandic entities must from now on be performed via *Virk.dk*.

Taxes on corporate income

Greenlandic companies are taxable to Greenland on their worldwide income, except for income from real estate outside of Greenland, which is exempt. Non-resident companies are liable to tax in Greenland on business profits derived through a permanent establishment (PE) in Greenland. Further, non-resident companies are tax liable in Greenland for business profits derived in relation to the exploration for or exploitation of oil, gas, and minerals, regardless of the existence of a PE. Very few double tax treaties (DTTs) offer relief since Greenland only has full-fledged DTTs covering corporate tax with Denmark, the Faroe Islands, Iceland, and Norway.

The corporate tax rate is 30% for both Greenlandic and foreign companies. On top of the corporate tax, there is a 'surcharge' of 6% of the corporate tax payable; consequently, the effective corporate tax rate is 31.8%. Oil and mineral licence holders are exempt from the 6% surcharge according to current practice.

There are no industry-specific or special-tax regimes in Greenland. However, it is determined in all oil exploration licences that oil licensees pay a so-called 'surplus royalty' on top of the corporate tax.

Oil companies

All companies with mineral exploration licences (current and future) are required to pay a government royalty as a condition for grant of a production licence. The royalty terms form part of the licence conditions and vary with the age of the licence.

On licences issued prior to 2014, oil companies pay a 'surplus royalty' of 7.5%, 17.5%, and 30%, which should be paid when the internal rate of return exceeds, respectively, 21.75%, 29.25%, and 36.75% plus the official Danish discount rate, and pay ('carry') the state-owned oil company's 12.5% share of the costs (8% for licences in the 'open door area'). Newer licences apply a gross royalty of 2.5% and a surplus royalty of 7.5%, 17.5%, and 30%, which should be paid when the accumulated turnover exceeds 35%, 45%, and 55%, respectively. Further, the state participation is reduced to 6.25% (carried).

Nonetheless, the model licence terms for upcoming rounds in Baffin Bay contain surplus royalty levels of 7.5%, 10%, and 12.5% at 35%, 45%, and 55% internal rates of return, respectively. In other words, royalty levels are likely to differ between licences and should therefore be scrutinised.

Mining companies

The standard licence terms for mining licences also include provisions on royalties. The standard term gross royalties are 5.5% on gemstones, 5% on uranium and Rare Earth Elements (REE), and 2.5% on all other minerals (excluding oil & gas). Paid or due corporate taxes and dividend withholding taxes (WHTs) may generally be deducted in the calculation of royalties due, except for uranium licences and gemstone licences. For gemstone licences, there is an additional 'surplus royalty' imputed on gross profits exceeding 40%. Detailed provisions apply.

The concrete licence terms should always be consulted rather than the standard licence terms.

Hydroelectric energy

There has been a minor amendment that authorises that companies with a public licence to produce hydroelectric energy may be tax exempt to the extent this follows from the relevant licence. The purpose of this is to allow for replacement of corporate taxes with other payments stipulated by a licence grant, such as turnover based royalties or other forms of payment. This system duplicates the system already in place for licences under the Natural Resources Act (*råstofloven*), which comprises the exploitation of oil, gas, and minerals.

Local income taxes

There are no municipal or local corporate income taxes or similar charges in Greenland; however, WHT rates differ by municipality (*see the Withholding taxes section*).

Corporate residence

A corporation is resident in Greenland for tax purposes if it is registered in the Danish Companies Register with its principal seat of business in Greenland or if it has its effective seat of management in Greenland. The effective seat of management is typically the place where the management decisions concerning the company's day-to-day operations are made.

Permanent establishment (PE)

Non-resident companies are liable to tax in Greenland on business profits derived through a PE in Greenland. Generally, Greenland may be assumed to rely on the principles of the Organisation for Economic Co-operation and Development (OECD) model tax treaty in the determination of whether a PE exists. There is virtually no published practice on the issue. Apart from income from a PE, foreign companies are tax liable on income in connection with the exploration and exploitation of oil, gas, and minerals, regardless of whether a PE exists. This includes all activity ultimately serving the extractive industries, including all kinds of subcontractors and service providers to the industry.

Other taxes

Value-added tax (VAT)

There is no VAT in Greenland.

Import duties

There are no general import duties on operating equipment in Greenland. However, if present in Greenland for more than an eight-month period, operating equipment has to be declared to the Greenlandic tax authorities for statistical purposes. There are import duties on some assets, such as cars, etc.

There are also import duties on alcohol, cigarettes, food products, etc. The fares vary depending on the exact goods in question.

Excise duties

There are Greenlandic excise duties on fishing of some fish species, alcohol produced in Greenland, lottery and gambling activities, motor vehicles, and various other excise taxes. The duties depend on the exact circumstances.

Property taxes

There are no property taxes in Greenland.

Stamp taxes

Stamp tax is payable on a few documents, such as a deed of transfer of real estate and ships (1.5% of the transfer sum), including on transfer of shares in companies that own ships.

Capital gains taxes

There are capital gains taxes on receivables, equity instruments, real estate, financial contracts (derivatives), and depreciable assets, including oil, gas, and mineral licences. The tax rate is identical to the general corporate tax rate, effectively 31.8% (30% for oil, gas, and mineral licence holders).

Losses on financial instruments may only be deducted from gains on financial assets.

Payroll taxes

Other than social security contributions (*see below*), no additional payroll taxes are applicable in Greenland.

Social security contributions

Employers are obligated to pay 0.9% of all paid wages and salaries as social security contributions.

All Danish, Greenlandic, and Faroese employers are subject to Danish social security payments (ATP). This applies to both foreign and Danish employees. However, foreign employees are exempt unless they are working in Greenland for more than six months.

Foreign employers are exempt from ATP unless they employ Danish employees who are not residents in Greenland.

Branch income

Greenlandic PEs of foreign companies, and taxable income connected to oil, gas, and mineral activities, are taxed under the same rules and rates as Greenlandic resident companies. There is no branch profits remittance tax or other similar tax on branch profits. As a branch is considered to be the same legal entity as the headquarters, interest paid from the branch to the headquarters is not tax deductible.

Unusually, if one foreign company has more than one location or PE in Greenland, these are treated as separate taxable entities with no possibility of consolidation.

Income determination

Taxable income is generally calculated as income determined for accounting purposes, which is adjusted and modified for several items as prescribed by the tax laws. One typical timing difference is depreciation.

Inventory valuation

There are no formal rules about inventory valuation in Greenland. Generally, inventory is valued at acquisition cost according to a first in first out (FIFO) principle.

Capital gains

Capital gains are subject to capital gains taxes. *See Capital gains taxes in the Other taxes section for more information*.

Dividend income

Income from dividends is generally included in taxable income. There is no relief, such as participation exemption or the like, meaning that any form of Greenlandic holding structure is generally inefficient. Dividends from foreign companies, however, are tax free, provided that the recipient holds at least 25% of the shares in the distributing company for at least one year.

Interest income

Interest income is generally included in taxable income.

Rental income

Rental income is generally taxable in Greenland; however, rental income from real estate located outside of Greenland is not taxable.

Royalty income

Royalty income is taxable in Greenland.

Partnership income

Partnership income is treated similarly to other income. Partnerships are generally fiscally transparent.

Unrealised gains/losses

Unrealised gains/losses are not taxable in Greenland. Greenland does not use a mark-to-market principle on capital gains.

Stock transactions

Gains and losses on equity transactions are taxable.

Foreign currency exchange gains/losses

Foreign exchange gains/losses are taxable in Greenland if realised; however, only foreign exchange gains/losses on receivables are taxable, not on debentures.

Foreign income

Greenlandic companies are taxable to Greenland on their worldwide income, except for certain income relative to foreign real estate; consequently, income from foreign PEs is taxable to Greenland.

The income of a foreign subsidiary may be taxed in the hands of its Greenlandic parent company if the subsidiary constitutes a controlled foreign company (CFC). *See Controlled foreign companies (CFCs) in the Group taxation section for more information*.

Deductions

The general deduction scheme is fairly standard, although the Greenlandic Tax Agency seems to have a restrictive view of the kinds of expenses that are deductible. One very unusual feature is that dividends paid are deductible for the distributing company.

Depreciation and amortisation

Tax depreciation is not required to be in coherence with book depreciation.

Operating assets can be depreciated by 30% a year on a declining-balance basis, ships and aeroplanes can be depreciated by 10% on a straight-line basis, and buildings and installations can be depreciated by 5% on a straight-line basis. Oil and mineral licences can be depreciated over ten years (oil) and four years (minerals) on a straight-line basis. If the lifetime of the licence is shorter than ten or four years, the licences are depreciated over the lifetime of the licence on a straight-line basis.

Depreciation allowances that are recaptured as part of a capital gain on the sale of an asset are generally fully taxable.

Unusually, companies are allowed a depreciation relief corresponding to gains on divested depreciable assets; however, this rule may not reduce the company's income to less than zero (or less than the balance of depreciable assets in the case of operating assets).

Goodwill
Goodwill can be depreciated as an operating asset (i.e. by 30% on a declining-balance basis).

Start-up expenses
No specific rules in Greenlandic tax law govern the treatment of start-up expenses. Instead, these expenses are treated according to general tax law.

Interest expenses
Interest expenses are generally deductible under Greenlandic tax law. However, there are some limitations (*see Thin capitalisation in the Group taxation section*).

Bad debt
Companies can deduct losses on bad debt for Greenlandic tax purposes only to the extent the losses are realised. Note that there is a high threshold for when a loss is deemed to be realised.

An exception to this rule is that financial institutions shall deduct provisions for bad debt and guarantee liabilities in accordance with the accounting rules applicable to them. The same applies to mortgage institutions, but only if they are domiciled in Greenland.

Charitable contributions
Contributions to charity are not deductible for Greenlandic tax purposes.

Pension expenses
Pension expenses are deductible as operating expenses.

Payments to directors
Payments to directors are deductible as operating expenses.

Research and development (R&D) expenses
R&D expenses may be deductible or not, depending on whether they are deemed operating expenses or capital expenses.

Bribes, kickbacks, and illegal payments
There is no published practice on the deductibility of bribes, kickbacks, return commissions, and the like. In Danish and Greenlandic practice, illegal payments are generally not deductible. Since 2008, any bribery payments, whether in or outside Greenland and whether towards a national or international authority, have been a criminal offence. Consequently, it may reasonably be inferred that no such payments are deductible.

Fines and penalties
Fines and penalties are not deductible for Greenlandic tax purposes.

Taxes
Income taxes are, in general, not deductible for corporate tax purposes. Excise duties are deductible.

Other significant items

A highly unusual item is that dividends distributed are deductible in the hands of the distributing company. If a decision to distribute is made before the deadline for filing the income tax return (1 May) on the basis of the preceding year's profits, the deduction may be carried back into the preceding year.

Net operating losses

Tax losses can be carried forward for up to five years. However, oil and mineral licence holders can carry losses forward indefinitely.

Tax losses may not be carried back and utilised in previous income years.

Tax losses are forfeited at 'significant' change of ownership or, unusually, activity of the company. Dispensation is available. 'Significant' is interpreted as 30% of ownership rights.

Payments to foreign affiliates

A Greenlandic corporation can claim a deduction for royalties, management fees, and similar payments made to foreign affiliates, provided that such amounts are made on an arm's-length basis and reflect services received. Interest at normal commercial rates paid to foreign affiliates generally will be allowed as a deduction but is subject to thin capitalisation (*see Thin capitalisation in the Group taxation section*).

Group taxation

Joint taxation is not possible in Greenland.

Transfer pricing

Greenlandic transfer pricing rules apply to transactions between related parties (e.g. intra-group transactions). The rules apply when a company or person directly or indirectly owns more than 50% of the share capital or 50% of the voting rights in another company.

Companies are obligated to disclose in the annual tax return certain information regarding type and volume of intra-group transactions. There is currently no practice regarding requirements for transfer pricing documentation.

Thin capitalisation

Greenland limits interest deductions according to the thin capitalisation rule. This rule works to disallow gross interest costs and capital losses on related-party debt to the extent the overall debt-to-equity ratio exceeds 2:1. Related-party debt is defined so as to include external bank debt if group member companies or shareholders have provided guarantees to the bank. This rule does not apply if the controlled debt is less than 5 million Danish kroner (DKK).

Controlled foreign companies (CFCs)

According to the Greenlandic CFC rules, a Greenlandic company has to include in its taxable income the CFC income of a foreign subsidiary if all of the following criteria are met:

- The Greenlandic company, alone or together with other group companies, individual owners, and/or their next of kin, controls the foreign company.
- During the income year, the subsidiary's financial assets, on average, make up more than 10% of the subsidiary's total assets.
- The foreign company is taxed 'substantially lower' than under Greenlandic taxation.

There is no black or white list that exempts subsidiaries resident in certain countries.

CFC income is defined in some detail and includes a broad spectrum of passive and financial income.

Tax credits and incentives

There are no tax credits or tax incentives in Greenland in general. However, current oil licence holders do, in their surplus royalty basis, qualify for an extra deduction in their capital and operating expenditure of 21.75%, 29.25%, and 36.75%, respectively, plus the Danish discount rate, provided that the surplus royalty basis never has been positive. This is akin to the so-called 'uplift' known to other oil tax regimes.

Newer licences are subject to different royalty regimes, including different 'uplift' regimes. *Please refer to Oil companies in the Taxes on corporate income section*.

It is also possible for mineral licence holders to get a tax holiday from the corporate tax. However, this is only possible if the corporate tax is replaced entirely by other forms of fiscal levies or duties that provide the Greenlandic government with at least the same income as the corporate tax would have done.

Foreign tax credit

According to Greenlandic tax law, relief is generally available to credit foreign tax paid on non-Greenlandic source profits against the Greenlandic tax on the same profits. If relief is offered by treaty, the level of relief is capped at the level offered by the treaty. There are only treaty provisions to this effect with Canada, Denmark, the Faroe Islands, Iceland, and Norway.

Withholding taxes

Greenland has the following WHTs:

- Dividends: 36% to 44%, depending on the local municipality (may be reduced by treaty). It should be noted that paid dividends are deductible in the corporate tax base.
- Interest: There is no WHT on interest.
- Royalties: 30% (may be reduced due to treaty reduction).

Treaty rates are as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Denmark	35	0	10
Faroe Islands	No relief (36% to 44%)	0	25
Iceland	35	0	15

Recipient	WHT (%) Dividends	Interest	Royalties
Norway	35	0	10

Limited international general anti-abuse

Greenland has introduced a limited international general anti-abuse rule whereby a taxpayer will not be granted the advantages of a DTT if it is reasonable to conclude, in light of all relevant circumstances, that granting this advantage is one of the principal aims of the arrangement or transaction, unless it is satisfied that granting the advantage in the concrete circumstances is in accordance with the content and purpose of the provision in question.

Tax administration

Taxable period

The taxable period is the calendar year. Permission can be granted to use a 12-month period other than the calendar year, provided that the period starts on the first day of a calendar month.

Tax returns

Tax returns are completed on the basis of audited financial accounts with adjustments for tax. Tax returns should be filed no later than four months following the end of the income year, meaning 1 May for companies using the calendar year as the income year. However, if the company submits tax returns via the official web portal for tax return submissions, the deadline is 15 June.

The tax system, in practice, is based on self-assessment. Tax assessments are made by the tax authorities on the basis of the tax return.

Payment of tax

The corporate tax is due for payment by 20 November of the following year. Greenland does not have an on account tax system, so there are no advantages in paying the tax prior to this date.

Penalties

A tax surcharge of DKK 200 per day (maximum DKK 5,000) is levied for late submission of the tax return.

Tax audit process

Tax audit is a rather informal procedure, whereby questions for clarification and/or documentation may be asked by the Greenlandic Tax Agency. There are few rules governing audit other than statutory limitation rules.

Statute of limitations

The general statute of limitations is 31 October in the fifth calendar year after that of the end of the relevant income year.

Topics of focus for tax authorities

There does not seem, presently, to be particular focus areas of the Greenlandic Tax Agency, and none have been publically announced.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

In relation to the US FATCA, a Model 1 Intergovernmental Agreement (IGA) is treated as ‘in effect’ by the US Treasury as of 29 June 2014. The United States and Greenland have reached an agreement in substance, and Greenland has consented to disclose this status. In accordance with this status, the text of such IGA has not been released, and financial institutions in Greenland are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

Guatemala

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Significant developments

There have been no significant corporate tax developments in Guatemala during the past year.

Taxes on corporate income

The tax system of Guatemala is a unitary system, whereby income of all kinds, other than capital gains, is lumped together and subject to a single tax. The components of gross income subject to tax are usually business income, interest, dividends, rent, salaries, and services. Companies are subject to income tax only on their Guatemala-source income. Dividends and other income payable abroad are taxed separately by way of withholding taxes (WHTs).

For income tax purposes, there are two main systems that taxpayers may subscribe to: the system on earnings from lucrative activities and the simplified optional system on income from lucrative activities. The taxpayer chooses what system the company is registered for. Once a system is chosen, it cannot be modified until the next tax period. The request for the modification must be requested before the tax authorities at least one month prior to the new tax period.

These systems are explained below.

System on earnings from lucrative activities

Under the system on earnings from lucrative activities, the tax is determined and paid at the end of each quarter, without prejudicing the end-of-period final tax liquidation. The tax rate is 25% on net income.

This system allows taxpayers to deduct costs and expenses incurred during the period, according to requirements established by law.

Simplified optional system on income from lucrative activities

Under the simplified optional system on income from lucrative activities, the tax is payable under flat tax withholdings (the tax is to be retained by either the customer or the recipient of services) or by direct remittances to the tax office made monthly within the first ten working days of the month following the invoice date. The tax rate is 5% on gross income that ranges from 0.01 Guatemalan quetzales (GTQ) to GTQ 30,000 and 7% on the excess.

Local income taxes

There are no specific state or provincial government taxes on income other than the two systems previously described.

Corporate residence

The place of incorporation determines corporate residence. Entities incorporated under Guatemalan laws are required to have their fiscal and corporate residence in Guatemalan territory.

Permanent establishment (PE)

PE includes activities conducted in the country in a continuous manner, either in a fixed business place or facilities conducting work of any kind, except for insurance and refinancing activities, brokers, independent agents, etc. acting in the normal turn of events.

Other taxes

Value-added tax (VAT)

A 12% VAT is levied on the sale or transfer of merchandise and on non-personal services rendered or effected in Guatemala. The tax is payable to the government by way of the invoice method, whereby the tax charged to the customers is offset by the VAT paid over purchases, and the government collects the net resulting amount. The issuance and circulation of credit titles is VAT-exempt.

Sale of goods

The taxable amount on the sale of goods includes the sales price, less any discounts provided under sound commercial practices, plus other charges shown on the invoice.

Services

The taxable amount of services includes the price of the service, less any discounts provided under sound commercial practices, plus financial charges and products used to render the services.

Imports and leases

The tax base for imports is the value declared for import duties computation purposes.

The tax base for leases of movable or immovable property is the value of the lease.

Exempted sales and services

The following items are exempt from VAT:

- Importations made by:
  - cooperatives legally constituted as registered on imported machinery, equipment, and other goods relating to the activity or service of the cooperative
  - individuals and juridical entities under temporary importation regulations, and
  - diplomatic and consular missions accredited before the Guatemalan government.
- Banking institution services and their agents.

- The issuance, circulation, and transfer of credit bonds, value bonds, and stocks of any kind.
- Interest accrued by credit bonds and other obligations issued by mercantile partnerships, negotiated through an authorised stock exchange.
- Exports of goods and services.
- Contributions and donations to educational, cultural, assistance, or security service partnerships, constituted as not-for-profit entities.

VAT return

The amount payable to the *Superintendencia de Administración Tributaria* (SAT), Guatemala's tax authority, is the difference between the debits and credits accrued during the tax period (one month) and is paid monthly by filing a tax return in the calendar month following the end of each tax period.

Refunds of VAT

The VAT credit can be claimed on monthly, quarterly, or semiannual tax periods. The refund of VAT credit corresponds to exporter taxpayers who cannot offset the VAT credit with VAT debits.

In addition, the VAT credit can be claimed by those taxpayers who have a high percentage of sales to entities exempt from VAT.

Import duties

The Customs Duties on Imports (DAI) are contained in the Central American Tariff System (SAC), which contains the tax rates applicable to goods imported into the Guatemalan Territory, ranging from 0% to 20%.

The import duties apply to the customs value declared by the importer.

Excise taxes

Excise taxes are applicable to specific activities, such as fuel distribution tax, alcohol and beverages distribution tax, and tobacco distribution tax.

Fuel distribution tax

Product	GTQ per gallon
Premium fuel	4.7
Regular fuel	4.6
Aviation fuel	4.7
Diesel/gal oil	1.3
Kerosene (DPK)	0.5
Avjet turbo fuel	0.5
Naphtha	0.5
Petroleum liquid gas	0.5

Alcohol and beverages distribution tax

Product	Rate (%)
Beers	6.0
Other fermented cereal drinks	6.0
Wines	7.5
Sparkling wines	7.5

Product	Rate (%)
Vermouth wines	7.5
Ciders	7.5
Distilled alcoholic beverages	8.5
Alcoholic mixed beverages	7.5
Fermented drinks	7.5

Tobacco distribution tax

Tobacco distribution tax is 100% of the factory selling price of a 10-pack package.

Real estate taxes

Real estate taxes are assessed annually at GTQ 2 per thousand on declared property values from GTQ 2,000 to GTQ 20,000, at GTQ 6 per thousand on values from GTQ 20,000 to GTQ 70,000, and at GTQ 9 per thousand on values in excess of GTQ 70,000 (e.g. property valued at GTQ 1 million will pay real estate taxes of GTQ 9,000).

Transfer of property

VAT is payable on the first sale of real estate, and subsequent sales are taxed under the stamp tax regime.

Stamp taxes

Other than sales invoices, contracts, and documents subject to VAT, and other minor exemptions, a stamp tax must be paid on all documents covering commercial and legal transactions (e.g. collection of dividends), either by preparing the document on *papel sellado*, which is special stamped paper, or by affixing stamps on the documents. This tax is also assessed on documents issued abroad, other than drafts or promissory notes and commercial invoices from foreign suppliers. Letters of credit and acceptances involving international transfers of funds are generally exempt from stamp taxes.

The normal tax rate is 3% and is calculated on the face value of the documents or on the gross value of the related transaction.

The stamp tax on dividend payments or credits has been repealed, and a 5% income tax should be paid on dividend payments or credits in account equity.

Solidarity tax (Impuesto de Solidaridad or ISO)

The ISO tax rate of 1% is assessed on the net assets of a corporation, or on the gross income of a corporation, whichever is higher, and there is no limit on the amount to be paid. Tax paid may be credited against the corporation's income tax. If the ISO exceeds the income tax, no reimbursement is possible.

The tax is to be paid quarterly on the basis of the corporation's opening balance sheet for each fiscal period.

Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

Social security contributions

Corporations contribute 12.67% of their monthly payroll and employees contribute 4.83% of their monthly salary to social security.

Branch income

In Guatemala, branches are taxed as any other legal entity. There are no specific taxes for branches.

Income determination

Inventory valuation

For tax purposes, taxpayers are authorised to use any of the following methods for valuing stocks (i.e. inventory), provided they technically fit the taxpayers' business and are consistently applied:

- Cost of production.
- First in first out (FIFO).
- Weighted average.
- Historical price of assets.
- Estimated cost at a fixed price (additional for livestock activities).

Capital gains

The regime of capital income, capital gains, and capital losses is established with the following tax rates:

- Real estate equity income: 10%.
- Income from trading movables: 10%.
- Capital gains and losses: 10%.
- Incomes from lotteries and raffles: 10%.

Capital losses can be netted only against capital gains, up to a maximum of two years.

Dividend income

Dividends earnings and profits are subject to a 5% income tax.

Interest income

All interest income is subject to a 10% income tax.

Royalty income

Royalties are taxed at a 15% WHT rate.

Foreign income

Foreign-source income received by a domestic corporation is non-taxable under Guatemalan income tax law, provided that it does not relate to a service or activity rendered in Guatemalan territory.

Deductions

Taxpayers under the system on earnings from lucrative activities may deduct costs and expenses from gross income, including the following.

Depreciation

Depreciation is calculated annually using the straight-line method. The tax authority may authorise a different method on request of the taxpayer. The annual maximum rates allowed as deductible expenses are the following:

Asset	Rate (%)
Building and improvements	5
Machinery and equipment	20
Furniture and fixtures	20
Vehicles	20
Tools	25
Tree and vegetable species	15
Computer equipment	33.33
Any other depreciable asset	10

Intangible assets

Intangible assets (e.g. goodwill, trademarks, manufacturing processes, patents, software, know-how) may be deductible under the straight-line method of amortisation over a period that depends on the conditions of the acquisition or creation of the intangible asset concerned, and cannot be less than five years. Goodwill actually paid can be amortised over a period of a minimum of ten years.

Start-up expenses

Start-up expenses are deductible.

Interest expense

The deduction of interest expense may not exceed the result of multiplying the interest rate by three times the average net total assets reported by the taxpayer in the corresponding annual tax return.

Uncollectible accounts

Uncollectible accounts arising in normal business operations can be deducted individually or, alternatively, via an allowance for doubtful accounts, which shall not exceed 3% of the debit balances of accounts and notes receivable.

Charitable contributions

Duly proven donations made to the government, the municipalities, and their agencies, as well as to duly authorised not-for-profit welfare, social service, and scientific associations and foundations, universities, political parties, and guild entities, are deductible. The maximum deductible amount for income tax purposes of each period shall not exceed 5% of the donor's net income, up to a maximum of GTQ 500,000 per year.

Employee pension/retirement funds

The deduction of provisions to establish or increase employee pension and retirement funds or reserves is allowed, provided the government approves the related plans.

Severance compensation payments

Severance compensation payments are allowed as deductible expenses as well as limited allocations (not to exceed 8.33% of total annual salaries and wages) to a reserve for severance compensation. Provisions pertaining to actual liability for severance compensation per year are also allowed, provided the related plans, based on collective bargaining agreements, are approved by the employer and employees.

Fines and penalties

Charges, penalties, and interest charged by any government institutions are not deductible.

Taxes

All taxes are deductible, except income tax and VAT when these are not considered as a cost.

Net operating losses

Operating losses may not be carried forward for deduction from otherwise taxable profits. Guatemalan laws also do not permit carryback of losses.

Payments to foreign affiliates

Deduction for royalties will be allowed, up to 5% of gross income. The deductible expenses for technical services rendered from abroad shall not exceed 5% of gross income.

Expenses incurred abroad by non-residents in connection with income earned from Guatemalan sources cannot be deducted for income tax purposes by merely having the supporting receipts, as the regulations to the law do not permit such a deduction for these purposes, unless these expenses are related with the Guatemalan company operations and these expenses are needed for generating taxable income.

Group taxation

There is no consolidation for tax purposes, as each group entity is treated as an independent taxpayer that shall file its own tax returns.

Transfer pricing

All companies that have any transaction with a related party abroad should have a transfer pricing study.

From a Guatemalan transfer pricing perspective, the scope of application of the rules of valuation of transactions between related parties reaches any operation that has been carried out between a person living in Guatemala with a resident abroad.

Local legislation allows the selection of traditional methods and profit-based methods consistent with the Organisation for Economic Co-operation and Development (OECD) guidelines as well as a sixth method applicable to imports and exports.

Advance pricing agreements (APAs) are permitted, and it is also stated that the tax authority can reclassify activities according to its true nature in accordance with Tax Code statements.

Thin capitalisation

Thin capitalisation applies regarding deductible expenses for interest paid. The deductible amount for such costs may not exceed the value of multiplying the annual maximum simple interest rate determined by the Guatemalan Monetary Board for tax purposes by three times the amount of average total net assets submitted by the taxpayer in the annual income tax return.

Average total net assets is defined as the sum of total net assets of the previous year and total net assets at the end of the year in force (both values must correspond to the amounts filed in the annual income tax return of each period of final settlement) divided by two. Total net assets are defined by law to correspond to the book value of all goods that are actually the property of the taxpayer.

Controlled foreign companies (CFCs)

Guatemala does not have any provisions regulating CFCs.

Tax credits and incentives

Foreign tax credit

Guatemala has no provisions or agreements signed to avoid international double taxation, and no foreign tax credit is allowed.

Drawback industries (maquila)

The Law of Promotion and Development of Exports Activities and Drawback Industries is known in Guatemala as *maquila*. This law seeks to promote, encourage, and develop the manufacture of products within areas controlled by the Customs Authority for export to countries outside the Central American region, as well as to regulate exporting and drawback activities.

The exporter may apply for authorisation to operate under any of the following three systems provided by the law:

- Export under a temporary admission system.
- Export under the reimbursement of duties system.
- Export under the total added national component system.

Tax incentives and benefits of the law include the following:

- Exemption of taxes, import duties, and other charges on imports of machinery and equipment, including VAT.
- Discontinuance of VAT payments on temporary raw material imports.
- Exemption of income tax for ten years on profits obtained under this law.

Withholding taxes

The following WHT rates apply on payments to non-resident corporations or individuals:

Payment	WHT (%)
Dividends, international freight, telecommunications (1)	5
Interest (2)	10
Royalties; salaries; commissions; professional fees; professional, technical, economic, or financial assessment	15

Payment	WHT (%)
Other	25

Notes

1. For international news transmission supplied from abroad to local entities, the rate is 3%.
2. Interests will not be taxed (i.e. no withholding applies) when:
   - These interests are paid to a multilateral entity.
   - These interests are paid from a Guatemalan banking or financial entity to a similar entity abroad.

Non-residents can operate in Guatemala with or without PE; accordingly, income tax treatment depends of the circumstance as follows:

- Non-residents with PE will be subject to income tax, choosing one of the two methods of payment established for residents.
- Non-residents without PE will be subject to WHT, applying specific rates according to the nature of the services rendered.

Tax treaties

Guatemala has no tax treaties in force.

Tax administration

Taxable period

System on earnings from lucrative activities

Under the system on earnings from lucrative activities, the annual final tax liquidation period begins on 1 January and ends on 31 December of each year.

Simplified optional system on income from lucrative activities

Under the simplified optional system on income from lucrative activities, taxes are paid on a monthly basis.

Tax returns

System on earnings from lucrative activities

Under the system on earnings from lucrative activities, returns are due after the end of the fiscal period (31 December) but no later than 31 March of each year.

The income tax return shall be accompanied by the documents required by the regulations, which might include a:

- balance sheet
- statement of results of operations
- statement of cash flows, and
- statement of cost of production.

Documents must be duly certified by a professional or an independent accounting firm. The financial statements that accompany the return shall agree with both those recorded in the financial statements ledger and those destined for publication.

Both the income tax return and exhibits thereto shall be signed by the taxpayers, their agent, or their legal representative or by any other responsible persons so determined by this law and the Tax Code.

Simplified optional system on income from lucrative activities

Under the simplified optional system on income from lucrative activities, there is an obligation to file an annual informative tax return, which is due on 31 March of each year.

Payment of tax

System on earnings from lucrative activities

Under the system on earnings from lucrative activities, taxpayers are required to prepay their estimated annual income tax liability in quarterly instalments. The balance is due upon filing the return.

Taxpayers may choose one of the following procedures for computing estimated quarterly tax liability:

- Tax on income shown by partial closure of accounts or computation of presumed liquidation of operations at the end of each quarter.
- Tax on 5% of overall gross income earned during the corresponding quarter of the preceding year (5% of the 30% income tax rate equals 1.5%).
- Tax equivalent to one-fourth of the tax paid for the immediately preceding tax year.

Simplified optional system on income from lucrative activities

Under the simplified optional system on income from lucrative activities, tax is payable via flat tax withholdings (the tax is to be retained by either the customer or the recipient of services) or by direct remittances to the tax office made monthly within the first ten working days of the month following the invoice date.

Taxes on income are governed by the income tax law, *Ley de Actualización Tributaria*, and its related regulations. Administration of the law is vested with the SAT.

Taxpayers registered before the tax administration under this system will settle and pay the tax through the withholding system. Persons or entities obligated to withhold are those taxpayers who pay or credit into account for the acquisition of goods and services to the taxpayers registered under this system.

Tax audit process

The tax authorities can request specific information at any moment. If necessary, a tax audit can be carried out. The tax authorities must formally notify the taxpayer of any specific adjustments, and the taxpayer has 30 working days to file a response. After filing the response, the taxpayer will again be notified by the tax authorities if the adjustments are confirmed or overturned.

Statute of limitations

The right of the tax administration to checks, adjustments, corrections, or determinations of tax liabilities; settle and enforce interest and penalties; and enforce payment of taxpayers must be brought within four years. In the same period, taxpayers must exercise their right of recourse for overpaid or unduly charged taxes, interest, penalties, and fines.

Topics of focus for tax authorities

The tax authorities normally focus on the following:

- Deductible expenses.
- VAT credits.
- WHT.
- Capital gains.

Other issues

Accurate and current information regarding taxation in Guatemala is often difficult to obtain as the country lacks reporting services such as those available in other countries. It is also difficult to determine how the tax laws will be applied in practice in complex situations. The laws and regulations are limited and ordinarily cover only the most common situations. The system of legal precedent resulting from court decisions is narrowly used, and each issue is resolved by reference to the respective codes. Guatemala has shown little interest in tax planning, but it is possible to have informal consultations with the tax authorities and to obtain authoritative rulings in many cases. Discrepancies between government and management criteria are commonly brought to judgment by the Constitutional Court, whose binding sentences generally abrogate the laws in dispute.

Guernsey, Channel Islands

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Significant developments

There has been an extension of the 10% income tax rates to include regulated investment management services to individual clients from 1 January 2018. This does not include regulated investment management services provided in connection with collective investment schemes.

Taxes on corporate income

Resident corporations are liable to tax on their worldwide income. Non-resident corporations are subject to Guernsey tax on their Guernsey-source income.

Companies pay income tax at the current standard rate of 0% on taxable income.

Income derived from a banking business, insurance business, custody services business, licensed fund administration business, and regulated investment management services to individual clients (excluding collective investment schemes) is taxable at 10%.

'Banking business' is broadly defined as income that arises as a result of the provision of credit facilities by any type of company and the utilisation of customer deposits. Income derived from licensed fiduciaries (with regulated activities), licensed insurers (in respect of domestic business), licensed insurance intermediaries, and licensed insurance managers is also taxable at 10%.

Income derived from the exploitation of property located in Guernsey or received by a publicly regulated utility company is subject to tax at a higher rate of 20%. In addition, income from retail businesses carried on in Guernsey where taxable profits exceed 500,000 British pounds sterling (GBP) and income derived from the importation and/or supply of hydrocarbon oil and gas are also taxed at 20%.

Exempt companies

Some collective investment schemes (CISs) and unit trusts may qualify for exempt status, which will place them completely outside the Guernsey tax regime. In addition, anybody that forms part of, or contributes to, the overall structure of a CIS may claim exempt company status. This removes doubt in relation to the entities that are involved in the management or support of a CIS qualifying for exempt status. For each year for which exempt status is sought, a charge of GBP 1,200 is levied.

One of the following conditions, among others, must be met for the company to be considered exempt:

- The company is beneficially owned outside of Guernsey.
- No Guernsey-resident individual or company has a beneficial interest in the company (with the exception of shareholders, loan creditors, or nominees/trustees).

Loans to participators

If a company makes loans with preferential terms to an individual or entity connected with the company, this will be deemed to be income in the hands of the debtor, and the creditor company will be required to account for, withhold, and pay the tax. Certain exemptions apply.

Local income taxes

Guernsey does not operate any local government taxes.

Corporate residence

All Guernsey-registered companies are regarded as tax resident on the island unless granted exempt company status. In addition, a company will be treated as a resident in Guernsey (regardless of where it is incorporated) if shareholder control is exercised by persons resident on the island.

Permanent establishment (PE)

The Income Tax (Guernsey) Law, 1975 defines PE as including:

- a branch
- a factory, shop, workshop, quarry, or building site, or
- a place of management.

Note that the fact that a body's directors regularly meet at a particular place does not, in itself, make that place a PE of that body.

Other taxes

Value-added tax (VAT)

Guernsey does not operate a VAT or goods and service tax (GST).

Customs and excise duties

In accordance with the European Community (EC) Customs Code and the Implementing Regulation, Customs Import Duty is liable on all goods arriving in the Customs territory of the Community. The rates of duty are set by the European Community and are the same in all countries of the European Community.

The rates vary according to the commodity. Some may be as high as 22%, while, for other goods, the rate may be free.

The Channel Islands are not within the fiscal territory of the European Union (EU), and, as such, the Community Regulations that concern excise duties do not apply. Excise duty is classed as an internal tax.

The rates are reviewed annually by the States of Guernsey and set at budget time, which is usually in November. These cover Guernsey and Alderney, while Sark has its own rates set by the Chief Pleas.

An additional 15% rate of duty is applicable on some goods originating in the United States (US).

Property taxes

Income from Guernsey land and buildings is subject to Guernsey income tax at 20%. No other property taxes apply.

Transfer taxes

Guernsey does not levy transfer taxes.

In respect of the introduction of a Share Transfer Duty regime in Guernsey, which taxes sales of interests in entities that own either commercial or domestic real property in Guernsey at the same rate as applied under the Document Duty Law for standard conveyances, the Committee has continued to consult with the Guernsey Bar Council and other interested parties on the draft legislation and is intending to submit a Policy Letter for consideration shortly.

Stamp taxes

Guernsey does not levy any stamp duties.

Payroll taxes

The Employee Tax Instalment (ETI) Scheme is a scheme whereby the employer deducts income tax from its employees and pays this over to the Guernsey Income Tax Office.

The ETI Scheme applies to all employees. For the purposes of the ETI scheme, an employee is an individual holding or exercising an office or employment, including a company director, part-time workers, casual workers, and sub-contractors.

The ETI Scheme operates on a quarterly basis. Throughout each quarter, the employer should deduct tax from their employees on each payday. Details of the gross weekly or monthly wage and deductions made must be recorded and returned with the relevant remittance by the 15th day of the month following the end of the relevant quarter (e.g. tax deducted during the first quarter needs to be submitted by 15 April).

Social security contributions

An employer, for the purposes of Social Insurance, is anyone who has employees. An employee is anyone who is gainfully occupied in employment under a contract of service in Guernsey or Alderney.

In general, contributions are required from both employer and employee in respect of any employed person who is over school-leaving age and under 65. Employer social security contributions are levied on the gross employment income of the employee at 6.6%.

Employer social security contributions for 2018 are calculated on a monthly lower earnings limit of GBP 598, which is the level of earnings at which an employer becomes liable for the payment of contributions. The upper limit for 2018, which is the highest level of earnings on which contributions are calculated, is GBP 11,908 per month.

Branch income

Branch income is taxed in the same manner as companies, at the appropriate rate according to the activity being undertaken.

No further tax is withheld on the transfer of profits abroad to group companies, provided no Guernsey-resident individual has an interest in the company.

Income determination

Inventory valuation

Inventory is valued at the lower of historical cost or net realisable value. Use of last in first out (LIFO) is not permitted. Generally, there are no material differences between accounts prepared on a normal accounting basis and those prepared on a tax basis.

Capital gains

Capital gains are not subject to tax in Guernsey.

Dividend income

All dividends paid by a standard tax-paying company (0%) are deemed to have been paid from income arising after 31 December 2007 (i.e. after the introduction of the zero/ten tax regime), unless the company elects to have them treated otherwise.

Stock dividends

Stock dividends may be treated as income.

Interest income

Interest income received by a standard tax-paying company is taxable at 0%.

Please refer to the Taxes on corporate income section for further information on companies liable to tax at the company intermediate rate (10%).

Royalty income

Royalty income is treated as income for corporate income tax purposes. Any royalty income received by a standard-tax paying company is taxable at 0%.

Foreign income

Resident corporations are liable to tax on their worldwide income. Income tax is levied on foreign branch income when earned, and on investment income from foreign dividends, interest, rents, and royalties. Double taxation is mitigated either through unilateral relief (by giving credit for foreign taxation of up to three-quarters of the effective Guernsey rate) or by treaty relief.

Deductions

Normally, business deductions are allowed if they are incurred wholly and exclusively for the purpose of trade.

Depreciation

Annual allowances are granted for income tax purposes in respect of the following:

Assets	Basis	Rate (%)
Buildings:		
Stone, brick, concrete, or other substantial structures	Reducing-balance	1.25
Buildings of a less substantial construction	Reducing-balance	5
Farm Buildings	Straight-line	5 or 10 (depending on material utilised)
Motor vehicles, buses, lorries, and motorcycles	Reducing-balance	25
Computer hardware	Straight-line	20
Machinery and plant	Reducing-balance	20
Glasshouses:		
Expenditure in respect of initial allowance*	Straight-line	10
Other expenditure	Straight-line	5

* Section 123 (3) of the Law defines expenditure and circumstances on which initial allowances can be claimed in respect of glasshouses.

Goodwill

The amortisation of goodwill is not a deductible expense in Guernsey.

Start-up expenses

Pre-trading expenditure incurred within the 12 months prior to the commencement of trade, which would have been allowable had it occurred on the first day of trading, may be allowed as a deduction in computing the profits of the first accounting period.

Interest expenses

Interest is a deductible expense where it is incurred wholly and exclusively for the purposes of trade.

Bad debt

Bad and doubtful debts discovered in the accounting period to have become bad or irrecoverable may be deducted from taxable profits, but the deduction may not exceed the amount written off as such in the books of the business.

Charitable contributions

Charitable donations by companies are not deductible for Guernsey income tax purposes.

Fines and penalties

Fines or penalties incurred are not deductible for Guernsey income tax purposes.

Taxes

Income tax paid is not deductible in computing taxable income.

Net operating losses

Losses from one class of income may be used to offset the profits from another class of income if both classes are subject to tax at the same rate. Unrelieved trading losses may be carried forward to offset future trading income.

Upon cessation of trade, operating losses arising from balancing allowances may be carried back to the previous two years of charge to be relieved against past trading profits.

Payments to foreign affiliates

Guernsey-source royalties and long-term interest are subject to taxation at source. Relief is obtained by the retention of the tax deducted. Short-term interest, unless owed to an authorised bank, is not deductible, unless the advance in respect of which it is paid is used wholly and exclusively for the purposes of trade. Other fees must be paid on an arm's-length basis.

Group taxation

Group loss relief may be claimed when both companies are members of the same group and the companies are either carrying on business in Guernsey through a PE or incorporated in Guernsey. Loss relief is available only against income taxed at the same rate.

A claim for group loss relief must be made by the claimant company within two years after the end of the calendar year in which the relevant accounting period ended, and the claim must be accompanied by a declaration by the surrendering company that it consents to the surrender.

Transfer pricing

Guernsey does not currently have specific transfer pricing legislation in place. However, the general anti-avoidance provisions do apply.

Country-by-country reporting (CbCR)

Guernsey has formally committed to the Organisation for Economic Co-operation and Development (OECD) model of CbCR and has already put in place the relevant implementing regulations for entities with accounting periods commencing on or after 1 January 2016. In addition, Guernsey has signed up to the Multilateral Competent Authority Agreement (MCAA) to assist with the sharing of relevant information in relation to CbCR, as well as broadly adopting the OECD's CbCR implementation package, to facilitate its implementation of this base erosion and profit shifting (BEPS) minimum standard.

Multinationals having global revenues of 750 million euros (EUR) or more are required to file annual reports to tax authorities at three levels. The first element (which taxpayers are generally required to provide for fiscal 2016) is a 'country-by-country report' that gives a detailed picture of business results for each country where the business operates (including things like number of employees, revenues, pre-tax profit, and taxes paid). Companies will also need to give an overall picture of their global business, aggregating data from all of the countries where one operates. In addition, companies will be required to report separately to each country where they operate with business and tax information about the local entities and operations in that country.

The disclosure of this business information will be accessible, through automatic information exchanges, to tax authorities wherever they have a presence (subject to certain conditions). Groups will need to consider how to explain their operational purpose of business arrangements, which may include tax advantages.

The deadline for submission of the CbCR report to the Guernsey tax authority is within 12 months of the end of the accounting period to which it relates.

Where there is no reporting obligation, there is a requirement to notify the Director of Guernsey Income Tax of the name of the entity that is undertaking the reporting and to provide certain other information. An entity must notify the Director by 30 November in the year following the last day of the accounting period if it is a constituent entity.

Thin capitalisation

Guernsey does not currently have specific thin capitalisation legislation in place. However, the general anti-avoidance provisions do apply.

Controlled foreign companies (CFCs)

Guernsey does not currently have specific anti-avoidance legislation in relation to CFCs. However, the general anti-avoidance provisions do apply.

Tax credits and incentives

In view of the low rate of tax, no special incentives are available to local businesses in Guernsey.

Foreign tax credit

Guernsey has signed full double taxation treaties (DTTs) with Cyprus, Hong Kong, Isle of Man, Jersey, Liechtenstein, Luxembourg, Malta, Mauritius, Monaco, Qatar, Seychelles, Singapore, and the United Kingdom (UK) and tax information exchange agreements (TIEAs) with 60 jurisdictions.

If no bilateral agreement exists, relief available to Guernsey-resident companies is the lesser of the other territory's effective rate or three quarters of the Guernsey effective rate.

Withholding taxes

Companies paying dividends to Guernsey resident individuals are required to deduct or account for the difference between the tax incurred by the company and the shareholder's individual tax rate (20%) on actual distributions.

A company is required to withhold tax when it is acting as an agent and making payments to a non-resident liable to Guernsey tax.

Guernsey does not levy any other forms of withholding tax (WHT).

Double taxation treaties (DTTs)

The table below sets out the rates of WHT applicable to the most common payments of dividends and interest under Guernsey domestic law where such a liability arises and the reduced rates that may be available under an applicable DTT. Please refer to specific treaties to ensure the values are up to date.

Guernsey, Channel Islands

Recipient	WHT (%) Dividends	Interest
Resident corporations	0 (1)	0/10 (1)
Resident individuals	20 (2)	0 (3)
Non-resident corporations and individuals:		
Non-treaty	0	0
Treaty (4):		
Cyprus	0	0
Hong Kong	0	0
Isle of Man	0	0
Jersey	0	0
Liechtenstein	0	0
Luxembourg	0/5/15 (5)	0
Malta	0	0
Mauritius	0	0
Monaco	0	0
Qatar	0	0
Seychelles	0	0
Singapore	0	0
United Kingdom	N/A (6)	N/A (6)

Notes

1. Resident corporations receiving dividends and interest are not subject to any WHT.
2. For resident individuals, if the income has been taxed on the paying company at 0%, a 20% deduction should be made. If the income has been taxed on the paying company at 10%, 10% WHT should be applied. If the income has been taxed on the paying company at 20%, there should be no deduction at source.
3. Resident individuals are paid interest gross, without any WHT; however, individuals are required to file an annual tax return and pay 20% income tax on any interest received.
4. Where a reduced rate of withholding is allowed by any treaty, whether on dividends or interest, it is usual for this reduced rate to be stated not to apply to amounts that are in excess of a normal commercial rate of interest, or where the dividend or interest is effectively connected to a PE in Guernsey of the recipient; such general limitations are not specifically indicated in the table. Moreover, note the general requirement for dividends and/or interest to be beneficially owned by the recipient in order to access benefits under a treaty.
5. Dividends paid by a company that is a resident of Guernsey to a resident of Luxembourg may be taxed in Luxembourg. However, such dividends may also be taxed in Guernsey, and if the beneficial owner of the dividends is a resident of Luxembourg, the tax charged may not exceed 5% of the gross amount of the dividends if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends or 15% of the gross amount of the dividends in all other cases.
6. The Explanatory Note to the Guernsey-United Kingdom DTT specifically excludes dividends and interest from the scope of the DTT.

Tax administration

Taxable period

The tax year runs from 1 January to 31 December, although companies can adopt a year-end of their choice.

Tax returns

It is compulsory for all Guernsey companies to file their tax returns online.

Companies are required to file their income tax return on 30 November following the calendar year in which the accounting period ends. Should a company meet the conditions below, a simplified return may be filed without either a computation or financial statements.

In order to qualify for a simplified return, a company must have none of the following:

- Guernsey employees (other than directors).
- Guernsey-resident individual beneficial owners.
- Income from utilities (e.g. Guernsey water or electricity companies).
- Income from Guernsey properties.
- Income from a banking business.
- Income from domestic insurance business.
- Income from a licensed fund administration business providing administration services to unconnected third parties.
- Income from the provision of custody services.
- Income from the provision of regulated investment management services to individual clients.
- Income from the importation/supply of hydrocarbon oil and gas.
- Income from a retail business where the profits are above GBP 500,000.
- Loans to Guernsey participators.
- Distributions made to Guernsey-resident individuals.

Should a company have Guernsey-resident individual beneficial members and/or make loans to participators, it will be required to submit quarterly returns accounting for distributions and loans advanced.

Payment of tax

In Guernsey, tax is payable in two instalments, on 30 June and 31 December in the year of charge (calendar year). If liabilities have not been determined, this may necessitate initially raising estimated assessments based on prior year figures and raising a final assessment when the figures are agreed. Once the Income Tax Office has received the company's income tax return, they will issue an assessment detailing the final balancing income tax payment due. This amount will be due to be paid within 30 days of the issuing of the final assessment.

Tax audit process

The Income Tax Office will assess each company tax return as and when it is received, and the turnaround time from submission of a return to the issue of a final assessment varies dependent upon the workloads of the Income Tax Office but is generally dealt with in around three months.

Statute of limitations

The Director can raise an assessment in respect of any income that has not been assessed at any time no later than six years after the end of the year of charge in which the income arose.

Topics of focus for tax authorities

There are no current areas that the Guernsey Income Tax Office is particularly focusing on in regards to corporate taxpayer compliance.

Other issues

US-Guernsey intergovernmental agreement (IGA)

On 13 December 2013, Guernsey signed an IGA regarding the implementation of Foreign Account Tax Compliance Act (FATCA). The IGA has been ratified by Guernsey's Parliament and is embodied in The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations 2014. Its operative provisions came into force from 30 June 2014.

UK-Guernsey IGA

On 22 October 2013, Guernsey signed a FATCA-style IGA with the United Kingdom (UK-Guernsey IGA) under which mandatory disclosure requirements may be imposed in respect of 'Investors in the Fund' who are UK resident or who are non-UK entities controlled by one or more UK resident individuals, unless a relevant exemption applies. The UK-Guernsey IGA has been ratified by Guernsey's Parliament and is embodied in The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations 2014. Its operative provisions came into force from 30 June 2014.

Common Reporting Standard (CRS)

Guernsey adopted global CRS on Automatic Exchange of Information on 1 January 2016. The first reporting took place in 2017.

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Significant developments

On 27 November 2017, the Minister of Finance presented the National Budget 2018. The following measures were proposed and will come into effect after the relevant Enactment has been passed:

- A reduction in the Tributor's Tax from 20% to 10%.
- Replacement of the current 2% of the gross proceeds regime with a sliding scale percentage that is based on the price of gold.
- Removal of the value-added tax (VAT) on the provision of all educational services.
- Full deduction for employers and businesses of capital costs and expenses related to provisions of day care services to employees and the construction of handicap facilities.
- Tax amnesty.
- Filing of corporate tax returns without audited financial statements.
- Exemption from VAT on supply of logs and rough lumber to the sawmilling industry.
- Reduction in the rates of excise tax on the importation of overland transportation used for tourism purposes in Regions 1, 7, 8, and 9.
- Removal of VAT on vehicles that are less than four-years old, which are used to transport more than 21 persons.
- Removal of excise tax flat rate of 6,900 United States dollars (USD) and replacement with a VAT of 14% on vehicles four-years old and older that carry between 22 and 29 passengers.
- Exemption of excise tax on vehicles principally designed to accommodate liquefied petroleum gas (LPG) with an engine capacity not exceeding 2000 cc and not exceeding four years of age from the date of manufacture to the date of importation.
- Exemption of machinery and equipment from the payment of customs duties to set up 75 refilling stations for such vehicles, as determined by the Commissioner General.

Taxes on corporate income

Resident companies are liable to tax on their worldwide income. Non-resident companies that carry on a trade or business in Guyana are subject to tax on the income that is derived from Guyana.

The current rates of corporate tax are as follows:

Type of company	Corporate tax rate (%)
Telephone companies	45
Commercial companies *	40
Other companies (non-commercial)	27.5

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Type of company	Corporate tax rate (%)
Both non-commercial and commercial	27.5/40

* A commercial company means any company carrying out commercial activities solely. Where dual activities are carried out by a company, the portion of the activity relative to commercial activities shall be so deemed. 'Commercial activity' means an activity carried out by a company trading in goods not manufactured by it and includes an activity of a commission agency, a telecommunications company, a body corporate licensed to carry on banking business in Guyana, and an insurance company carrying on in Guyana insurance business, other than long-term insurance, as defined in section 2 of the Insurance Act.

Minimum Corporation Tax (MCT)

Commercial companies (other than insurance companies) are subject to tax at the rate of 40% of chargeable profits or 2% MCT of turnover, whichever is higher. Any excess MCT over tax at the normal rate is carried forward for setoff against corporate tax payable in subsequent years, provided that in no year is the tax payable reduced to less than 2% of turnover.

Local income taxes

There are no additional income taxes imposed on companies.

Corporate residence

Corporate residence is determined by reference to the location of the central management and control of the business of a company. There are no specific provisions within the law, and, as such, common law principles established by the courts are generally applied in determining residence. The place of incorporation is regarded as merely one of the factors to be taken into account in determining where central management and control are located.

Permanent establishment (PE)

There are no specific provisions in the legislation dealing with PE, so common law principles are applied.

Other taxes

Value-added tax (VAT)

VAT is charged at the rates of 14% or 0% on the taxable supply of goods and services within Guyana by a registered person.

Zero-rated supplies include goods for export and international travel. Exempt supplies include educational services, residential rent, and financial services.

Customs duties

Customs duty is paid on all goods imported into Guyana. The rates of duty vary between 5% and 150%, depending on the classification of the item in question. Rates of duty are highest on 'luxury items', which include perfumes.

Excise taxes

Excise tax is imposed on specific imported or home-produced products. These products include alcoholic beverages, tobacco products, petroleum products, and motor vehicles.

Property taxes

Property tax is an annual tax charged on the net property of a person at the end of each year. 'Property' for the purpose of this tax refers to movable or immovable rights of any kind and effects of any kind. Net property is the amount by which the total value of the property exceeds the total value of all debt owned by the person at that time.

The tax is payable on 30 April at the following rates:

Net property of a company (GYD*)	Property tax rate (%)
On the first 1.5 million	0
On every dollar of the next 5 million	½
On every dollar of the remainder	¾

* Guyanese dollars (GYD)

Stamp taxes

Stamp duty is levied at various rates on several instruments, including affidavits, statutory declarations, deeds of conveyance, mortgages, share transfers, awards of arbitrator, powers of attorney, agreements, bills of exchange, receipts, and policies of insurance.

Capital gains taxes

Capital gains tax is imposed at the rate of 20% on the net chargeable gains derived from the disposal of capital assets. Gains derived from the disposal of an asset within 12 months of its acquisition are treated as ordinary income and subject to corporate tax at the applicable rates. Gains derived from the disposal of assets held for more than 25 years are exempt from tax.

Payroll taxes

Employers are required to deduct and remit pay-as-you-earn (PAYE) to the tax authority by the 14th day of the month following that in which the employment income was paid. The rate of tax is 28% for persons earning less than GYD 180,000 per month and 40% for persons earning in excess of GYD 180,000 per month.

Employment income includes salaries, wages, overtime pay, leave pay, sick bonus, stipends, commissions, compensation for termination of service, and the estimated value of any accommodation provided.

Social security contributions

As an employer, a company is also required to deduct and remit social security contributions on behalf of employees. Social security contributions are due on monthly earnings of employees up to GYD 240,000 and weekly earnings up to GYD 50,385. The rates of contribution are 8.4% for employers and 5.6% for employees.

Branch income

A branch is subject to tax in Guyana on all income directly or indirectly accruing in or derived from its operations in Guyana. The tax rates applicable on branch profits are the same as on corporate profits. In addition, branch profits, after deduction of corporate tax and reinvestments, are subject to withholding tax (WHT) at the rate of

20%. The position noted may be varied by the provisions of any applicable double tax treaties (DTTs).

Income determination

Inventory valuation

Inventory is valued at the lower of cost and net realisable value. Cost is generally determined using the average cost method for accounting and tax purposes, but the first in first out (FIFO) method is also acceptable.

Capital gains

Gains derived from the disposal of an asset within 12 months of its acquisition are treated as ordinary income and subject to corporate tax at the applicable rates. Gains derived from the disposal of assets held for more than 25 years are exempt from tax. Otherwise, gains are subject to capital gains tax. *See Capital gains taxes in the Other taxes section for more information*.

Dividend income

Corporate tax is payable on dividends received by resident companies from non-resident companies. However, dividends paid by resident companies to other resident companies are exempt from tax.

Interest income

Interest income is taxed at the applicable rate of corporate tax.

Royalty income

Royalty income is taxed at the applicable rate of corporate tax.

Foreign income

Income earned by a non-resident company in Guyana is subject to tax in the year the income was earned. There is no deferral regime in Guyana.

Deductions

All revenue expenses wholly and exclusively incurred in the production of income are generally deductible.

Depreciation

Tax depreciation rates (wear and tear allowances) apply to the following classes of assets, as follows:

Class of assets	Depreciation rate (%)
Aircraft	33 ⅓
Boats	10
Buildings (housing and industrial)	5
Furniture and fittings	10
Motor vehicles	20
Office equipment, including computers and computer software	50
Other	15

Class of assets	Depreciation rate (%)
Plant and machinery	20

Buildings that house machinery are depreciated using the straight-line method. Other assets may be depreciated using the declining-balance or straight-line methods.

Goodwill

Goodwill expense is generally not allowable in arriving at chargeable income.

Start-up expenses

No specific rules exist in respect of start-up expenses, but such expenses are generally not deductible.

Interest expenses

Interest expense incurred in the production of income is deductible. There is no restriction to the deductibility of this expense.

Bad debt

A bad debt is deductible where it has been incurred in the trade in which the company is engaged and has been respectively estimated to the satisfaction of the tax authority to have become bad in the year of income when the claim is made.

Charitable contributions

Charitable donations are not deductible unless they are made under a deed of covenant.

Fines and penalties

Fines and penalties are not generally deductible.

Taxes

Taxes are not generally deductible in arriving at taxable profit.

Net operating losses

Companies may carry forward losses for an unlimited number of years, but the losses may not reduce the taxable income in any year by more than 50%. Loss carrybacks are not permitted.

Payments to foreign affiliates

A corporation engaged in business in Guyana may claim a deduction for royalties and interest charges paid to foreign affiliates, provided the appropriate WHT is deducted and properly accounted for. Deductions for administrative, technical, professional, or other management services fees paid to a non-resident company or branch, referred to as 'head office expenses', are restricted to 1% of the annual turnover.

Group taxation

There is no provision under the legislation for group taxation in Guyana. All companies are taxed separately.

Transfer pricing

There is no transfer pricing legislation or rules in Guyana, although the issue has been discussed and is expected to be more formally considered in the future. However, the current Act contains a general anti-avoidance provision, and the tax authority monitors multinationals to ensure that their transactions are conducted at arm's length and in conformance with the applicable tax legislation.

Thin capitalisation

There are no thin capitalisation rules in Guyana.

Controlled foreign companies (CFCs)

CFCs are not covered under Guyana tax laws.

Tax credits and incentives

Various tax incentives are available, depending on the nature of the industry that the companies are engaged in, including the following:

- Customs duty and VAT exemption on most plant, machinery, and equipment.
- Customs duty and VAT exemption on raw materials and packaging materials used in the production of goods by manufacturers and small businesses.
- Unlimited carryover of losses from previous years.
- Accelerated depreciation on plant and equipment.
- Full and unrestricted repatriation of capital, profits, and dividends.
- Tax deduction for scientific research expenses.
- Initial and annual allowances.
- Tax holidays.

Tax holidays are granted in respect of pioneering activities, that is, to companies whose trade or business are wholly of a developmental and risk-bearing nature and likely to be instrumental to the development of the resources of and beneficial to Guyana.

This does not include trade or business carried on by a gold or diamond mining company or a company carrying on petroleum operations.

Tax holidays are granted for a period of up to ten years.

Foreign tax credit

Foreign tax relief is available under DTTs with Canada, the United Kingdom, and Caribbean Common Market (CARICOM) countries.

Unilateral relief is also available for foreign taxes paid in non-treaty countries with tax systems and legislation similar to those in Guyana. For British Commonwealth countries, the relief is 50% of the relief that would be available if the foreign country were a treaty country. For other countries, the relief is 25% of such available relief. The available relief is the lower of the tax rate in Guyana and the tax rate in the other country.

Withholding taxes

WHT is chargeable on gross payments to non-residents and must be remitted to the tax authority within 30 days of making the payment. In cases where the treaty rate is higher than the statutory rate, the lower statutory rate applies. The rates of WHT for various payments are shown in the table below.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	20	20	20
Treaty:			
Canada	15	15	10
United Kingdom	10	15	10
CARICOM	0	15	15

Tax administration

Taxable period

The tax year is the calendar year. Tax is assessed during a tax year on income earned during the year of assessment, which is generally the calendar year preceding the tax year. Companies with an accounting year other than a calendar year may, however, be allowed to account for taxes by adopting their accounting year as their income year.

Tax returns

Tax returns must be filed by 30 April of the tax year.

Payment of tax

Corporate tax is payable in advance quarterly instalments on the preceding year's tax liability. Advance tax payments are due on 15 March, 15 June, 15 September, and 15 December of the calendar year prior to the tax year. However, the Commissioner of Inland Revenue may require the company to calculate the payments based on estimated income for the current year.

Any balance of tax due must be paid by 30 April of the tax year.

Penalties

Failure to file a tax return and pay the balance due by 30 April of the tax year incurs a further charge of 10% on the outstanding tax. A flat fee of GYD 50,000 will be applied to each loss/deficit return submitted after the prescribed time.

Tax audit process

Companies are generally selected at random for audits, and the frequency is usually every three years. Companies are generally required to provide financial information and supporting documentation to the tax personnel.

The tax authority is the Guyana Revenue Authority.

Statute of limitations

A company carrying on business in Guyana is required to keep proper accounts and records and is required to retain these accounts for a period of at least eight years after the completion of the transactions, acts, or operations to which they relate.

The Commissioner is empowered to raise an assessment for tax or additional tax within seven years after the expiration of the year of assessment.

Topics of focus for tax authorities

The following issues are currently being focused on by the tax authorities:

- Tax evasion and corruption.
- Strengthening tax administration.
- Creation of tax policies and forecasting analysis capability.
- Business registrations and compliance.

Other issues

Intergovernmental agreements (IGAs)

Guyana has entered into the following IGAs:

- United States (US) Foreign Account Tax Compliance Act (FATCA).
- Income Tax (Exchange of Information) (United States of American) Order.

Foreign investment restrictions

There are no restrictions on the repatriation of capital and investment income, and residents and non-residents have unlimited access to foreign exchange markets and to repatriate funds.

Exchange controls

There are no exchange control rules in place in Guyana.

Choice of business entity

Businesses operating in Guyana may establish a local company or register an external company. Additionally, companies may operate through a joint venture.

Honduras

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Significant developments

Since 1 January 2017, Decree No. 170-2016 reforms the tax code, establishing new tax dispositions, including the taxpayers' obligations and rights.

Effective 2 March 2017, the tax authority agreement No. 005-2017 establishes the tax levied on the production and importation of cigarettes, sodas, beer, and alcoholic beverages.

Effective 31 December 2017, all taxpayers are obligated to comply with the new Invoice, Other Fiscal Documentation, and Printers Registry Regime (*Regimen de Facturación, Otros Documentos Fiscales y Registro Fiscal de Imprenta*).

Effective 20 April 2018, the Law on the regulation of public finances, control of exonerations, and anti-evasion measures was reformed, derogating the payment of the 1.5% minimum tax, establishing that in 2018 the payments will be 0.75% of the revenues ranging from 300 million Honduran lempiras (HNL) to HNL 600 million and 1% for those that exceed HNL 600 million.

Taxes on corporate income

Honduran resident companies are taxed on territorial income. Non-resident companies are subject to corporate income tax (CIT) only on income derived from Honduran sources.

The CIT rate for a resident company is 25% of its net taxable income.

Non-resident companies providing sea, land, and aerial transport services are subject to 3% income tax on the annual gross income from Honduran sources in cases where the tax calculation resulting from the application of the CIT rate is less, based on the taxable base established by the corresponding regulation.

Minimum tax

Domiciled companies that have obtained gross income equal to or greater than HNL 300 million for the 2018 fiscal year will not be subject to the payment of 1.5% minimum tax. The domiciled companies with revenues ranging from HNL 300 million to HNL 600 million will instead be subject to payment of 0.75% minimum tax, and those that exceed HNL 600 million will be subject to payment of 1% minimum tax.

Solidarity Contribution

The Solidarity Contribution is a non-deductible surcharge levied on all companies on taxable income over HNL 1 million. The Solidarity Contribution tax rate is 5%.

Income tax anti-evasion measures

A law created in response to tax evasion and fraud establishes payment of an income tax of 1% on gross income equal to or greater than HNL 100 million for all taxpayers who report losses for two years in a row or two out of five. The 1% tax paid will be considered as a credit in the resulting income tax, surtax, or net asset payable in the annual returns. There are some exemptions to the rule.

Municipal income taxes

Industry, commerce, and services tax

Companies doing business in Honduras are levied the following municipal tax on annual gross income:

From (HNL)	To (HNL)	Range (HNL)	Tax per ´000
0	500,000	500,000	0.3
500,001	10,000,000	9,500,000	0.4
10,000,001	20,000,000	10,000,000	0.3
20,000,001	30,000,000	10,000,000	0.2
30,000,001	And over		0.15

Corporate residence

The place of incorporation is regarded by Honduran authorities as the corporate residence. Non-resident companies are companies incorporated/registered outside of Honduras.

Permanent establishment (PE)

There is a provision in the transfer pricing rules that provides the following definition of PE:

"Permanent establishment is a fixed place of business where a natural or juridical person resident or domiciled in another state performs part or all of its activities in Honduras. Likewise, a foreign resident will be considered to have a permanent establishment in Honduras when it acts in the national territory through an independent agent that is not acting under the regular framework of its activity."

There are some exceptions to the rule.

There is no treaty definition of PE since, at the present time, Honduras is not a signatory of any double taxation treaty (DTT) with another jurisdiction in the world.

Other taxes

Sales tax

Sales tax is charged on all sale and purchase transactions of goods and services made in Honduran territory.

The general sales tax rate is 15%. It applies to most goods and services, with the exception of machinery and equipment, basic grains, pharmaceutical products, raw materials for the production of non-taxable goods, petroleum products, school supplies, and insecticides, among others.

The import and sale of beer, other alcoholic beverages, cigarettes, and other tobacco products are subject to 18% sales tax.

There is a 15% sales tax applicable to some PCS, cellular, internet broadband, cable TV, and energy services, depending on the amount of consumption billed by the supplier.

There is an 18% sales tax levied on first class and business class air tickets.

Customs duties

The duty assessed by the Honduran government at the time of customs clearance ranges between 0% and 15% for most items.

Honduras is a member of the Central American Common Market (CACM), which also includes Costa Rica, El Salvador, Guatemala, and Nicaragua. Honduras' rates on most goods from outside CACM are currently within the 0% to 15% range. Under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) with the United States (US), about 80% of US industrial and commercial goods can enter the region duty-free, with the remaining tariffs to be phased out over ten years. Nearly all textile and apparel goods that meet the Agreement's rules of origin are duty-free and quota-free, promoting opportunities for US and regional fibre, yarn, fabric, and apparel manufacturing (the Agreement's tariff treatment for textile and apparel goods was made retroactive to 1 January 2004).

It is necessary to first obtain the appropriate Harmonized System (HS) classification number for determining when a particular product can enter the CAFTA-DR region duty-free. With this number, it is then possible to check the country and product-specific tariff elimination schedule.

Ad valorem import taxes can be as high as 20%. In addition, imports are subject to the sales tax of 15% or 18% that applies to the sum of the cost, insurance, and freight (CIF) value, the *ad valorem* duty, and the customs fees.

Excise taxes

There is an excise tax levied on the production and importation of cigarettes, sodas, beer, and alcoholic beverages.

Cigarettes are levied at HNL 433.12 per thousand units.

Excise tax on sodas, beer, and alcoholic beverages are levied according to the following table:

Description	Tax rate per litre (HNL)
Soda/other prepared drink	0.72
Beer	5.10
Wine	6.40
Brandy, cognac, vermouth	34.55
Whisky	34.55

Description	Tax rate per litre (HNL)
Rum 40°	21.04
Rum 38°	19.99
Rum 36°	18.93
Gin, vodka, tequila, liquor, creams, prepared beverages	34.55
Aguardiente 45°	15.04
Aguardiente 40°	12.37
Aguardiente 38°	10.35
Aguardiente 30°	7.42

Net assets tax

The net assets tax is an annual 1% tax on the net asset value of the company. It applies to the gross value of assets less reserve for accounts payable and any accumulated depreciation allowed under the income tax law and other deductions allowed by law. The law also allows a special deduction of HNL 3 million.

The net assets tax is in lieu of CIT when CIT is less than the amount due for net asset tax. Resident companies during their preoperative period (i.e. the period in which the company started operations but has not issued its first invoice) and companies operating in free trade zones (FTZs), among others, are exempt from the net assets tax.

Non-resident companies are not liable for the net assets tax.

Transfer taxes

Transfer taxes are levied on real estate transactions at HNL 1.5 per every HNL 1,000.

Stamp taxes

There are no provisions for stamp taxes in Honduras.

Capital gains tax

In general, a 10% tax is applied on capital gains, regardless of the person's residence status. Under the Zolitur law territory, a special regime, the tax rate is a 4% flat tax on capital gains.

The payment of capital gains tax must be made within ten business days after the agreed amount of the transaction has been determined.

In instances where a transaction is subject to the capital gains tax and a non-resident is involved, the buyer has an obligation to withhold 4% of the transaction amount as an advance payment to this tax and must pay it to the government within ten business days of the date of the transaction.

The government offices make a corresponding 10% withholding tax (WHT) on capital gains on payments made due to purchase and sale transactions of goods, indemnifications, purchase of rights, and securities.

Payroll taxes and contributions

Payroll taxes and contributions are paid by employers at the following rates:

- Social security tax contributions are assessed as follows:

    - Sickness and maternity: 2.5% for employees on income, up to a maximum monthly ceiling of HNL 7,717.50 on income.
    - Invalidity, old age, and death: 2.5% for employees on income, up to a maximum monthly ceiling of HNL 8,882.30 on income.
    - Professional risk: 0.2% for employees on income, up to a maximum monthly ceiling of HNL 7,717.50 on income.
- Institute of Professional Education (*Instituto Nacional de Formación Profesional* or INFOP): 1% over the accrued amount.
- Housing fund (*'Régimen de Aportaciones Privadas' or RAP/'Fondo Social para la Vivienda'* or FOSOVI): 1.5% on the excess of the employee's income of HNL 8,882.30. Note that this contribution is optional.

Special temporary contributions

For the term of five years starting 1 January 2014:

- Under the Special Temporary Security Contribution on Financial Transactions (*Contribución Especial por Transacciones Financieras Proseguridad Poblicional*), financial transactions are subject to a contribution of HNL 2.00 per thousand or fraction of a thousand, with some exceptions.
- Companies providing mobile communication services will pay a special temporary contribution of 1% on gross monthly income.
- Under the special temporary contribution for the protection of the environment from the mining sector, there is a 2% contribution on the freight on board (FOB) value of the exports.
- The special temporary contribution from the food and beverages business under special tax regimes is 0.5% on gross monthly income.
- The cooperatives special contribution is 3.6% on annual net surplus.

Municipal taxes

Companies doing business in Honduras are also subject to the rules and regulations of the respective municipalities. Taxes and obligations are ruled by the *'Plan de Arbitrios'*. Some of these tax obligations include the following:

- Industry, commerce, and service tax, which is based on gross income per year (*see the Taxes on corporate income section*).
- Public services fee, which is paid for services such as waste management.
- Real estate tax, which is a tax on urban and rural real estate.
- Sign tax, which is a tax on public advertising.

Branch income

Branch income is subject to income tax on income generated from a Honduran source at the rates applicable for corporate income.

Income determination

Income is computed in accordance with generally accepted accounting and commercial principles, subject to certain adjustments required by the tax law.

Inventory valuation

Inventories are generally valued using the first in first out (FIFO), last in first out (LIFO), and weighted-average cost methods.

Capital gains

Capital gains are not generally subject to CIT, but may be subject to capital gains tax. *See Capital gains tax in the Other taxes section for more information*.

Dividend income

The income from dividends is considered 'other income', thus non-taxable under the general income tax rates. There is a 10% WHT rate applicable on the dividends paid to non-residents.

In the first quarter of 2015, the government abolished the double taxation on dividends. Any dividends or distribution of profits that were subject to the corresponding 10% dividend WHT will not be taxed again in case of redistribution.

Stock dividends

Stock dividends are also not taxable.

Interest income

Honduran Bank interests are subject to a 10% WHT at the moment the interest is given, when the sum is over HNL 50,000. Interests from abroad are considered as other income. For income tax reconciliation, interest income is considered non-taxable when subject to the 10% WHT.

Royalty income

Royalties are taxed in the same manner as general income if the recipient is a local company or branch. If the recipient is a non-resident, then the application of a WHT will apply.

Foreign income

Deferral and anti-deferral of foreign income are not regulated in Honduras.

Deductions

The net taxable income of an enterprise is determined by deducting all the ordinary and necessary expenses incurred in the generation of income, including amortisation and depreciation; municipal taxes; donations made in favour of the state, the central district, the municipalities, and legally recognised educational institutions, charities, and sporting facilities; mandatory employer-employee contributions to the social security system; and 'reasonable' charges for royalties and management services.

In general, all expenses incurred in the generation of taxable income are considered as deductible for income tax purposes. However, there are some 'non-deductible' expenses, even if incurred in the generation of income (e.g. interest paid to owners or shareholders, capital losses).

Depreciation

Depreciation may be computed using the straight-line method. Companies may also obtain authorisation from the tax authorities to use other depreciation methods. However, after a company selects a depreciation method, it must apply the method consistently thereafter. The following are the applicable straight-line method rates for some common assets.

Asset	Rate (%)
Buildings	2.5 to 10
Plant and machinery	10
Vehicles	10 to 33
Furniture and office equipment	10
Tools	25

Goodwill

Goodwill can be amortised over a period of five years.

Start-up expenses

Organisation or reorganisation expenses are deductible for the total amount as long as they do not exceed 10% of the initial capital stock. These expenses can be amortised over five years.

Interest expenses

Interest expenses are deductible as long as they are incurred in order to generate income. Interest paid to stockholders, owners, or their spouses is not deductible.

Bad debt

Taxpayers can record a bad debt provision of 1% of the total credit sales, which will not exceed 10% of the accounts receivable balance.

Charitable contributions

Contributions to organisations legally recognised by the government are deductible.

Capital losses

Capital losses are not deductible to determine the net taxable income. Capital losses can only be netted against capital gains, which are subject to a tax rate of 10% (*see Capital gains tax in the Other taxes section*).

Contingent liabilities

Provisions for contingent liabilities, such as severance pay, are not deductible for tax purposes; actual payments during the fiscal period, for those liabilities, are considered to be deductible expenses.

Fines and penalties

Fines and penalties are not deductible.

Taxes

With the exception of the Solidarity Contribution, net asset taxes, CIT, and sales tax (i.e. if sales tax paid is used as a credit to net the sales tax payable to the government), taxes and contributions paid to district or municipalities are deductible expenses when determining taxable income.

Net operating losses

Companies engaged in agriculture, manufacturing, mining, and tourism may carry forward losses for three years. However, certain restrictions apply. Losses may not be carried back.

Payments to foreign affiliates

Payments to foreign affiliates are deductible as long as the service is effectively received.

Group taxation

No provisions exist for group taxation in Honduras.

Transfer pricing

Transfer Pricing Law was issued by the Honduras National Congress through Decree 232-2011 on 10 December 2011 to regulate every commercial and financial transaction performed between related parties. Transfer Pricing Regulations were later issued by Agreement 027-2015 on 18 September 2015 establishing and expanding the procedures for the application of transfer pricing legislation in Honduras.

The scope of application of this law reaches any operation that is performed between natural or legal persons domiciled or resident in Honduras with related natural or legal persons non-resident or non-domiciled and those under a special regime who enjoy fiscal benefits.

The Honduras tax authority allows taxpayers the request of an Advance Price Agreement (APA) to establish the values for the commercial or financial transactions performed with related parties prior the implementation of such transactions and for a specific time.

Related parties

For tax effects, it is considered that two or more natural or legal persons, domiciled or not, are related parties when:

- An individual, entity, or corporation participates, directly or indirectly, in the direction, control, or capital of the other.
- Same individuals, entities, or corporations participate, directly or indirectly, in the direction, control, or capital of one of them.
- They constitute a decision unit.
- They conduct direct or indirect commercial or financial transactions, indirect being those transactions that aim to reduce the income tax base, amongst Honduras resident or domiciled individuals or entities located within another jurisdiction qualified as a tax haven.
- They have the same counsellors or administrators.

When participation is defined in terms of capital or control over voting rights, a direct or indirect participation of more than 50% will be required in either case.

Comparability analysis

Comparability, for transfer pricing matters, is known as the analysis of two or more assets (tangible or intangible), services, or similar companies with the purpose of revealing their correlation and likeness and, in this manner, to be able to determine if it is possible to calculate or adjust the material differences that affect their price.

Among the comparability items we should take into account are included the following:

- Features of the good or service.
- Operations or activities carried out, assets used, and risks undertaken.
- Contractual terms.
- Economic or market circumstances economics.
- Business strategies.

Selection and hierarchy of the methods to apply the arm's-length principle

According to Decree 232-2011 and the Organisation for Economic Co-operation and Development (OECD) Guidelines, to determine if the operations are in accordance with the arm's-length principle, any of the following methods should be applied:

Transactional methods

- Comparable Uncontrolled Price Method (CUP).
- Resale Price Method (RPM).
- Cost Plus Method ('Cost Plus').

Based on income

- Profit Split Method (PSM).
- Transactional Net Margin Method (TNMM).

Honduras Transfer Pricing Legislation considers the application of a sixth method for goods traded on transparent international markets. Taxpayers may apply methods other than the above-mentioned methods, provided it can be demonstrated that it cannot apply any of the above methods in a reasonable and reliable way to determine the conditions of the free and full arm's-length principle.

Range of prices on arm's length

From the application of any transfer pricing method, one may obtain a range of prices whenever there exists two or more comparable transactions. These methods will be adjusted through the application of statistic methods, among them can be included the use of the interquartile range. Other statistic methods may be used in the frame of an amicable proceeding.

Taxpayer's obligations

Income taxpayers that are related parties and perform commercial and financial transactions among them have the obligation to:

- Determine for tax purposes their income, costs, and deductions with the application of prices and profit margins that would be implemented in comparable commercial and financial transactions with third parties.
- Notify to the tax authority the selected method to determine the commercial and financial transactions value in arm's-length conditions.

- File a transfer pricing return before the tax authority with sufficient analysis to assess the transactions performed with related parties.

Thin capitalisation

At the present time, there are no provisions for thin capitalisation in Honduras.

Controlled foreign companies (CFCs)

At the present time, there are no provisions in the Honduras legislation for CFCs.

Tax credits and incentives

Companies operating under a special tax regime are exempted from CIT, sales tax, customs duties, and some municipal taxes. These special tax regimes are the following:

- FTZs.
- Industrial processing zone (*Zona Industrial de Procesamiento* or ZIP).
- Temporary import regime (*Régimen de Importación Temporal* or RIT).
- Tourism incentive law.
- Law promoting the generation of electric energy with renewable resources (*Ley de Promoción a la Generación de Energía Eléctrica con Recursos Renovables*), which provides tax exemptions for ten years for projects generating 50MW and over.
- In the regulations for the FTZs there is a consideration for international service companies (e.g. business processing operations [BPOs], call centres and contact centres, shared service centres) that will have the same tax exoneration provided by this regime.
- The Call Centre and BPO Promotion Law, which provides a tax holiday on import of tools, parts, accessories, furniture and office equipment, and all goods involved with the company's active business as well as an income tax holiday on revenue from all the business activities carried out within the FTZs.

Companies must comply with some governmental requirements to operate under one of the above-mentioned special regimes.

Companies under special tax regimes are allowed to sell their partial or total production in the local market; income from local sales will be subject to the regular corporate tax regulations.

The Organic Work Regions and Economic Development Law (*Ley Orgánica de las Zonas de Empleo y Desarrollo Económico*) allows the beneficiaries of this law to use reduced rates for income tax, sales tax, property tax, real estate tax, and flat tax.

There is a reform to the tariff and customs legislation that grants tax exonerations in general; the government established in the Decree No. 278-2013 a list of the valid tariff and customs tax exonerations decrees that continue to have the corresponding benefits (*contact your local PwC practice for more information*).

There is also a reform to the income tax legislation that grants tax exonerations in general; the government established in the Decree No. 278-2013 a list of the valid income tax exonerations decrees that continue to have the corresponding benefits (*contact your local PwC practice for more information*).

Effective 1 January 2014, the term of tax exoneration is limited to 12 years to those companies under special tax regimes with no specific term for their tax benefits specified in their corresponding resolution issued by the government.

Effective 5 June 2014, the Law for the Promotion and Protection of Investment (*Ley para la Promoción y Protección de las Inversiones*) was amended, establishing a 15-year term for tax stability agreements, except for Public and Private Alliances projects. At the same time, it repeals the special income tax discounts granted by this law.

Drawback industries

Special benefits exist for industries that import semi-manufactured materials for assembly in Honduras and export finished products. Benefits consist of duty-free imports of raw materials for subsequent export as manufactured products. Machinery for these industries may also be imported duty-free.

Foreign tax credit

There are no provisions for foreign tax credits in Honduras.

Withholding taxes

WHT for residents

Distribution or payment of dividends or any other form of distribution of retained earnings or reserves to resident or domiciled individuals and/or legal entities is taxed via WHT at 10%.

The tax authority is empowered to withhold 3% on CIF from import operations for commercial purposes as an advance payment to income tax to those companies or individuals not duly registered with the tax authority, not complying with CIT filing, or in liquid arrears for any tax administered by the *Servicio de Administracion de Rentas (SAR*). There are some exceptions to the rule.

WHT for non-residents

For non-residents in Honduras, any income derived from Honduran sources is taxable under the following table of the Income Tax Law:

Income source	WHT (%)
Real estate and movable property rent, except dividends and interest	25
Royalties from mining operations and other natural resources	25
Salaries paid for services and other remuneration for rendering of services within national territory or abroad	25
Profit transfers from branch office to head office	10
Dividends	10
Royalties	25
Interest paid on commercial operations, bonds, securities or negotiable instruments, and other types of obligations	10
Income from operation of airplanes, ships, and vehicles	10
Income from operation of telecommunication companies	10
Insurance premiums	10
Income obtained from public shows	25
Films and video tapes for cinemas, TV, video clubs, and cable TV	25
Any other income not mentioned previously	10

Tax treaties

Honduras has not signed any tax treaties with foreign jurisdictions.

Tax administration

The SAR is the tax authority in Honduras and is responsible for the administration of the tax system. Taxpayers may request approval from the SAR regarding direct or indirect taxes (e.g. accelerated depreciation methods on new assets acquired by corporations with monetary activities requiring constant technological update, higher installed production capacity and productive re-conversion processes in order to maintain and strengthen their competitive advantage).

Taxable period

The statutory tax year runs from 1 January through to 31 December. However, taxpayers may apply to use a special tax year by requesting an authorisation from the SAR.

Tax returns

Companies must file a CIT return on 30 April every year.

Payment of tax

Mandatory advance tax payments are payable each quarter, based on the income tax paid for the preceding tax year. Final tax is due with the CIT return on 30 April every year.

Tax audit process

The audit cycle can begin after (i) the date the tax return should have been filed or (ii) sometime after the taxpayer made a request before the tax authority (e.g. tax credit, loss carryforward).

Statute of limitations

The statute of limitation for legal actions is applicable for taxpayers, in order to challenge and request payment, and for the fiscal authority, to review, notify, and request payment. Such limitation is established according to the following terms:

- Four years for those conducting operations in the customs regime and five years for registered taxpayers.
- Ten years for those who have the obligation to be registered and currently are not.
- Seven year in other cases.

Limitation of actions and powers of the fiscal authority will be interrupted according to the following:

- Determination of the tax by the fiscal authority counted from the day following notification of resolution.
- Notification of the judicial action for collection, counted from the day following the notification.
- Notification of the resolution in which the fiscal authority confirms assessment, interests, penalties, or fines in liquid payable amounts, counted from the day following the resolution's notification.

- Legal appeal filed by the taxpayer, counted from the day following the filing of the appeal.
- Express acknowledgement from the debtor, counted from the day following the acknowledgement.
- Payment plan agreement granted to taxpayers according to law, counted from the day following the formal agreement.
- Exercise of the appropriate legal actions, counted from the day following their initiation.

Relapse in the lack of complete or partial payment from the taxpayer, as established in the Tax Code, will be considered as criminal tax fraud.

Limitation of the taxpayer to request credit will be interrupted according to the following:

- Legal appeal filed by the taxpayer.
- The lawsuit presentation before the judicial authorities.

Topics of focus for tax authorities

The tax authority is currently focused on the adoption of the fiscal and customs tax regularisation and amnesty (*Amnistía y Regularización Tributaria y Aduanera*) by the taxpayers. Under this amnesty benefit, taxpayers pay the tax and customs debt without interest, fines, or surcharges, whether or not they have payment plans with the tax authorities.

Other issues

US Foreign Account Tax Compliance Act (FATCA)

The government of Honduras signed the intergovernmental agreement (IGA) regarding FATCA with the government of the United States, formalising the exchange of information for tax purposes on American and Honduran citizens and/or companies.

Hong Kong

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Significant developments

New legislation enacted

The following pieces of legislation were enacted in the past 12 months:

- Two-tier profits tax rates: Inland Revenue (Amendment) (No.3) Ordinance 2018, which implements the two-tier profits tax rates in Hong Kong, was gazetted on 29 March 2018. Effective from the year of assessment 2018/19, the first 2 million Hong Kong dollars (HKD) of assessable profits of corporations and unincorporated businesses will generally be taxed at 8.25% and 7.5%, respectively. The remaining assessable profits will be subject to the normal tax rate at 16.5% and 15% for corporations and unincorporated business, respectively. As an anti-avoidance measure, a group of 'connected entities' can only nominate one entity within the group to enjoy the reduced tax rate for a given year of assessment.
- Concessionary tax regime for aircraft leasing and management operations: Inland Revenue (Amendment) (No. 3) Ordinance 2017 was enacted on 7 July 2017. The Ordinance introduced, among others, a concessionary tax regime for the aircraft financing and leasing businesses in Hong Kong by (i) offering a concessionary profits tax rate of 8.25% for the assessable profits derived from qualifying aircraft leasing activities and qualifying aircraft leasing management activities carried out in Hong Kong and (ii) deeming the taxable net lease payments derived by a qualifying aircraft lessor from leasing of aircraft to an aircraft operator as 20% of the gross lease payments less deductible expenses, excluding tax depreciation allowance, when certain specified conditions are met. The concessionary tax regime applies to sums received or accrued on or after 1 April 2017.
- Increase in stamp duty on certain transactions: Stamp Duty (Amendment) Ordinance 2018 was gazetted on 19 January 2018. It increases the stamp duty rate on transfer of Hong Kong residential properties to a flat rate of 15%, with certain exemptions. One common exemption is the acquisition of residential property by a Hong Kong permanent resident who does not own any residential property at the time of acquisition. In this case, the applicable stamp duty ranges from a fixed amount of HKD 100 (for property consideration of up to HKD 2 million) to 4.25% of the consideration (for property consideration exceeding HKD 20 million). The 15% flat rate applies retrospectively from 5 November 2016, unless specifically exempted or provided otherwise.
- Close the loophole in stamp duty: Stamp Duty (Amendment) (No. 2) Ordinance 2018 was gazetted on 20 April 2018. It tightens the situation where the 15% flat rate is not applicable. Pursuant to the Ordinance, unless specifically exempted or otherwise provided, any instrument executed on or after 12 April 2017 for acquisition of more than one residential property under that instrument will be subject to stamp duty at a flat rate of 15%, even if the acquirer is a Hong Kong

permanent resident who does not own any residential property in Hong Kong at the time of acquiring the multiple residential properties.

Taxes on corporate income

Hong Kong adopts a territorial basis of taxation. Profits tax is payable by every person (defined to include corporation, partnership, and sole proprietorship) carrying on a trade, profession, or business in Hong Kong on profits arising in or derived from Hong Kong from that trade, profession, or business. However, capital gains and receipts that are capital in nature are not subject to tax. Dividends from local companies chargeable to tax are exempt, whereas dividends from overseas companies are generally offshore in nature and not subject to tax in Hong Kong. The tax residence of a person is generally irrelevant for profits tax purposes. The tax treatments of public and private companies are the same.

Certain income that would not otherwise be subject to Hong Kong profits tax is deemed to arise in or be derived from Hong Kong from a trade, profession, or business carried on in Hong Kong and thus becomes taxable in Hong Kong. This includes royalties received by a non-resident for the use of or right to use a patent, design, trademark, copyright material, secret process or formula, or other property of a similar nature in Hong Kong, or for the use of such intellectual properties outside Hong Kong, but the royalties paid can be claimed as a deduction by a person for profits tax purposes.

Effective from the year of assessment 2018/19, a two-tiered profits tax rate is introduced in Hong Kong. The following table shows the applicable tax rates for companies and unincorporated businesses:

Rates of tax	Where the two-tiered rate applies * (%)	Where the two-tiered rate does not apply (%)
Companies:		
First HKD 2 million	8.25	16.50
On the remainder	16.50	
Unincorporated businesses:		
First HKD 2 million	7.50	15.00
On the remainder	15.00	

* As an anti-avoidance measure, a ‘group of connected entities’ can only nominate one entity within the group to enjoy the two-tiered tax rate for a given year of assessment.

There are special rules for determining the tax liabilities of certain industries, such as shipping, air services, and financial services. There is also a special tax framework for Islamic bonds (i.e. *sukuk*) that provides for the same tax treatments for *sukuk* vis-à-vis their conventional counterparts.

Incomes from certain qualifying debt instruments (QDIs) are either tax exempt or subject to a concessionary tax rate (i.e. 50% of the regular profits tax rate). However, there is a specific anti-avoidance provision under which the concessionary tax rate/ tax exemption does not apply to incomes derived from QDIs by a person who is an associate of the issuer of the QDIs.

Offshore investment funds (i.e. funds with central management and control outside Hong Kong) having fund managers and investment advisors with full discretion for making investment decisions in Hong Kong can be exempt from Hong Kong profits tax on profits derived in Hong Kong, provided the specified conditions are met. The offshore funds tax exemption covers different types of offshore funds (e.g. hedge funds and private equity funds), but the qualifying conditions are different for different types of funds. There are also specific anti-avoidance provisions in the Inland Revenue Ordinance (IRO) deeming certain resident persons to be subject to profits tax on their share of the non-resident person's tax-exempt profits.

Profits derived from the business of reinsurance of offshore risks and qualifying offshore captive insurance business are subject to profits tax at a concessionary tax rate (i.e. 50% of the regular profits tax rate).

Qualifying profits derived by a qualifying corporate treasury centre are subject to profits tax at a concessionary tax rate (i.e. 50% of the regular profits tax rate) under specified conditions.

Effective from 1 April 2017, qualifying profits derived from qualifying aircraft leasing activities and qualifying aircraft leasing management activities carried out in Hong Kong are subject to profits tax at a concessionary tax rate (i.e. 50% of the regular profits tax rate) under specified conditions. In addition, the taxable net lease payments derived by a qualifying aircraft lessor from leasing of aircraft to an aircraft operator will be deemed as 20% of the gross lease payments less deductible expenses, excluding tax depreciation allowance.

Corporate residence

In general, for Hong Kong profits tax purposes, corporate residency is not important in determining taxability of an entity. The decisive factors for taxability are (i) whether a corporation is carrying on a trade, profession, or business in Hong Kong, and (ii) whether the profits are arising in or derived from Hong Kong.

However, where it is necessary to determine the corporate residence, such as for the purpose of a comprehensive double tax agreement (CDTA), companies incorporated in Hong Kong and companies that are normally managed or controlled/centrally managed and controlled (depending on the provisions of the relevant CDTA) in Hong Kong are generally considered as a Hong Kong tax resident.

Permanent establishment (PE)

For Hong Kong profits tax purposes, whether a foreign corporation is carrying on a trade, profession, or business in Hong Kong and the source of profits, rather than whether there is a PE in Hong Kong, are the decisive factors in determining taxability. The existence of a PE is generally irrelevant for Hong Kong profits tax purposes except in the situation where a CDTA of Hong Kong is applicable.

Other taxes

Value-added tax (VAT)

Hong Kong does not have a VAT, goods and services tax, or sales tax.

Customs duties

There is no tariff on general imports in Hong Kong.

Excise tax

Duties are levied on limited categories of dutiable commodities (i.e. tobacco, liquor, methyl alcohol, and hydrocarbons), regardless of whether they are imported or locally manufactured.

Property tax

Property tax is charged annually to the owner of any land or buildings (except government and consular properties) in Hong Kong at the standard rate of 15% on the net assessable value of such land or buildings. Net assessable value of a property is the consideration payable to the owner for the right to use the land or buildings less rates paid by the owner and a 20% notional allowance.

Rental income derived by a company from a Hong Kong property is subject to profits tax. The company that is subject to profits tax may apply for an exemption from property tax in respect of the property. If no exemption is applied, the property tax paid can be used to offset against the profits tax payable by the company.

Stamp duty

Stamp duty is charged on transfer of Hong Kong stock by way of sale and purchase at 0.2% of the consideration (or the market value if it is higher) per transaction. Hong Kong stock is defined as stock the transfer of which must be registered in Hong Kong.

For conveyance on sale of immovable property in Hong Kong, the stamp duty payable depends on the type of property transferred (i.e. residential property vs. non-residential property) and the property consideration. Currently, stamp duty on transfer of properties is charged as follows:

1. Transfer of residential property: A flat rate of 15%, with certain exemptions. One common exemption is acquisition of a single residential property by a Hong Kong permanent resident who does not own any other residential property in Hong Kong at the time of acquisition (*see 2 below*).
2. Acquisition of a single residential property by a Hong Kong permanent resident who does not own any other residential property in Hong Kong at the time of acquisition and some other specified circumstances: Scale 2 rates ranging from HKD 100 (for property consideration of up to HKD 2 million) to 4.25% (for property consideration exceeding HKD 20 million).
3. Transfer of non-residential property: Scale 1 rates ranging from 1.5% (for property consideration of up to HKD 2 million) to 8.5% (for property consideration exceeding HKD 20 million).

The stamp duty payable is computed by applying the relevant rate to the consideration or market value of the property (whichever is higher). When Scale 1 or Scale 2 rates are applicable, marginal relief is available for transfer where the consideration is marginally above the lower bound of each rate band.

For lease of immovable property in Hong Kong, stamp duty is calculated at a specified rate of the annual rental that varies with the term of the lease. Currently, the applicable rate ranges from 0.25% (for lease period of not more than one year) to 1% (for lease period of more than three years).

Exemption is available for certain transactions, such as transfer of shares between associated corporate bodies, transfer of shares or units of exchange traded funds listed in Hong Kong, and certain stock borrowing and lending transactions, provided that the specified conditions for exemption (if any) are satisfied.

Special Stamp Duty (SSD)

There is an SSD on resale of residential property within 36 months from the date of acquisition. The SSD is imposed on top of the stamp duty payable on conveyance on sale or agreement for sale of residential property, with a few exemptions. The SSD payable will be calculated based on the stated consideration or the market value (whichever is higher) of the resold property at the regressive rates indicated below.

- 20% for residential properties held for six months or less.
- 15% for residential properties held for more than six months but for 12 months or less.
- 10% for residential properties held for more than 12 months but for 36 months or less.

Buyer's Stamp Duty (BSD)

A BSD is payable on acquisition of Hong Kong residential properties by any person (including Hong Kong and foreign companies) other than a Hong Kong permanent resident. The BSD is charged at a flat rate of 15% on the stated consideration or the market value of the property acquired, whichever is higher. The BSD is imposed on top of the stamp duty and the SSD (if applicable), with exemptions in certain situations.

Business registration fees

Every person who carries on a business in Hong Kong is required to apply for business registration with a fee within one month from the date of commencement of the business. The business registration certificate has to be renewed either on an annual basis or every three years with a payment of a business registration (renewal) fee. Special registration and licence fees are applicable to banks and deposit-taking companies.

Capital duty

There is currently no capital duty in Hong Kong.

Government rates and rent

Rates are an indirect tax levied on properties in Hong Kong. Rates are charged at 5% of the rateable value, which is the estimated annual rental value of a property at the designated valuation reference date of 1 October.

Privately owned land in Hong Kong is normally held by way of a government lease under which rent is payable to the Hong Kong Special Administrative Region (SAR) Government in return for the right to hold and occupy the land for the term (i.e. the duration) specified in the lease document. Currently, government rent is calculated at 3% of the rateable value of the property and is adjusted in step with any subsequent changes in the rateable value.

Payroll taxes

In Hong Kong, there are no payroll taxes other than the Mandatory Provident Fund (MPF) contribution (*see below*).

Mandatory Provident Fund (MPF) contribution

Under the MPF scheme, an employer is required to make a mandatory contribution for an employee in the amount equal to 5% of the monthly income of that employee. The maximum level of income for contribution purpose is HKD 30,000 per month. An employer may make voluntary contributions in addition to the mandatory contribution required.

Branch income

The tax rate for branches is the same as that for corporations. The Hong Kong profit of a foreign corporation with a branch in Hong Kong is determined according to the accounts maintained for the Hong Kong operation (or business). If the Hong Kong accounts do not disclose the true profits arising in or derived from Hong Kong attributable to the Hong Kong operation, the Hong Kong profit of the branch for profits tax purposes will be computed according to the ratio of turnover in Hong Kong to total turnover (or the proportion of Hong Kong assets over total assets) on the worldwide profits. Alternatively, the Hong Kong Inland Revenue Department (HKIRD) tax assessor may estimate the profits of the Hong Kong branch. In certain situations, the profits of the Hong Kong branch can be estimated based on a fair percentage of the turnover in Hong Kong.

Income determination

Inventory valuation

Inventory may be stated at the lower of cost or market value. Last in first out (LIFO) may not be used for tax purposes. First in first out (FIFO) must be consistently applied.

The prevailing accounting standards require financial assets and liabilities held for trading purpose (e.g. shares and securities held as trading stock) to be carried at market value, with fluctuations in values of such assets and liabilities taken to the profit and loss accounts, irrespective of whether the profits or losses are realised. Following the court decision in the *Nice Cheer* case, the increases (unrealised gains) in the market values of trading securities are not taxable while the decreases (unrealised losses) may be deductible when they are recorded in the financial statements.

There are special tax provisions for valuation upon cessation of a business under which inventory is valued at market value, unless it is sold to a person carrying on business in Hong Kong, who may deduct a corresponding amount as the cost of the inventory in computing the assessable profits.

Capital gains

Gains from realisation of capital assets or receipts that are capital in nature are not taxed.

Dividend income

Dividends from local companies chargeable to tax are exempt, whereas dividends from overseas companies are generally offshore in nature and not subject to Hong Kong profits tax. Hong Kong corporations may declare bonus issues (i.e. stock dividends), which are not taxable in the hands of the recipients.

Interest income

Hong Kong sourced interest income received by or accrued to a corporation carrying on a trade or business in Hong Kong is subject to profits tax. Exemption is provided to interest income derived from any deposit placed in Hong Kong with a financial institution, unless the deposit secures a borrowing where the interest expense is deductible. This exemption, however, does not apply to interest accruing to a financial institution.

Interest accruing to a bank or financial institution will be deemed to be sourced and taxable in Hong Kong if the interest arises through or from the carrying on of business in Hong Kong by the bank or financial institution.

Interest income arising through or from the carrying on of an intra-group financing business in Hong Kong by a corporation (other than a financial institution) will be deemed to be sourced and taxable in Hong Kong.

Royalties

Royalties paid or accrued to a non-resident for the use of or right to use in Hong Kong or outside Hong Kong (if the royalties are deductible in ascertaining the assessable profits of a person for Hong Kong profits tax purposes) a trademark, patent, design, copyright material, secret process, or other property of a similar nature, or for the use in Hong Kong of cinema or television tape or any sound recording, are deemed to be taxable in Hong Kong.

A total of 30% of the sum receivable is deemed to constitute profits subject to tax in normal situations. Where such royalties are received by or accrued to an associated corporation, however, 100% of the sum is deemed to constitute profits under certain circumstances.

Partnership income

Partnership business is taxed as a single entity, although an individual partner can use its share of losses incurred by a partnership to offset against the assessable profits of its other business. In general, there is no special registration requirement other than business registration for a partnership. The assessable profits of a partnership are basically determined in the same way as those of a corporation, with certain special rules (e.g. salaries or other remunerations paid to a partner or a partner's spouse are not deductible).

Unrealised exchange gains/losses

In general, unrealised exchange gains/losses are taxable/deductible if they are recognised in the profit and loss accounts in accordance with Generally Accepted Accounting Principles (GAAP), provided that they are revenue in nature and with a Hong Kong source. The nature and source of exchange gains/losses are determined by the nature and source of the underlying transactions. Exchange gains/losses arising from ordinary business transactions (e.g. trade receivables or payables) are taxable/deductible whereas exchange gains/losses arising from capital transactions (e.g. sale of capital assets) are non-taxable/non-deductible.

Foreign income

Hong Kong resident corporations are not taxed on their worldwide income. Foreign-sourced income, whether or not remitted to Hong Kong, is not taxed. As such, there is no specific tax provision dealing with deferral or non-remittance of foreign earnings. Nor does Hong Kong have any controlled foreign company (CFC) legislation.

Deductions

Expenses that are incurred for producing profits chargeable to tax and that are not capital in nature are generally tax deductible. In addition, special tax relief is available for certain capital expenditure. There are special rules for deduction of certain expenses (e.g. interest expenses).

Accounting treatments are usually followed in determining the assessable profits, except when there is an explicit rule in the IRO. Accrued expenses recognised in the profit and loss accounts in accordance with GAAP are usually deductible if they are incurred for producing profits chargeable/subject to Hong Kong profits tax and are not capital in nature.

Expense items for which a tax adjustment is necessary in determining the amount of taxable profits from the accounting profits include: tax depreciation allowance vs. accounting depreciation, expenses that are capital in nature, general provisions that are non-deductible, and non-deductible interest expenses on borrowings used to finance non-income producing assets.

Set out below are the Hong Kong profits tax treatments of some common expense items.

Tax depreciation of fixed assets

Tax depreciation allowances/deductions are available for capital expenditure incurred on the construction of buildings or structures and in the provision of machinery and plant for trade or business purposes, as follows:

- Industrial buildings and structures: An initial allowance of 20%, in addition to an annual allowance of 4%, of the cost of construction or cost of purchase from a developer is granted for an industrial building or structure occupied for the purpose of a qualifying trade. Provision is made for balancing allowance or charge in the year of assessment in which the building is disposed of to adjust the written-down value of the building to the disposal price. Balancing charges are restricted to the total of initial and annual allowances previously given.
- Commercial buildings and structures: An annual allowance of 4% of the capital expenditure incurred on the construction is applicable. A balancing allowance or charge applies upon disposal. Balancing charges are restricted to the total annual allowances previously given.
- Plant and machinery: An initial allowance of 60% of the capital expenditure on plant and machinery is given for the year of assessment during the basis period in which the expenditure is incurred. An annual allowance is also given for depreciation at three prescribed rates on the reducing value of each of the three depreciation rate 'pools'. The three prescribed rates are 10%, 20%, and 30%, and the reducing value of each of the three depreciation rate pools is original cost less initial and annual allowances and sales proceeds. Provision is made for balancing charges when plant and machinery within one of the three depreciation rate pools is sold or disposed of and the reducing value of that pool is less than the sale price, which is capped at the original amount incurred in the pool. In addition, balancing allowances or charges may be applicable upon cessation of business. Otherwise,

sales proceeds are deducted in calculating the reducing value on which the annual allowance is calculated.

Book depreciation is adjusted for tax purposes in accordance with the above depreciation allowances granted under the IRO.

Goodwill

Cost of acquisition of goodwill/amortisation of goodwill is not deductible as it is capital in nature.

Organisational and start-up expenses

In general, company formation/start-up expenses that are incurred before the commencement of a trade, profession, or business and that are for the establishment of the overall income producing structure are capital in nature and not tax deductible.

Research & development (R&D)

There is a specific provision allowing the deduction of expenditure incurred on R&D (including payments made to an approved research institute and in-house expenditure), provided that certain specified conditions are met.

Interest expenses

There is no thin capitalisation rule in Hong Kong. However, except in some specified circumstances (e.g. interest expenses paid to an overseas associated corporation by a corporation carrying on an intra-group financing business in Hong Kong where certain conditions are met), interest expenses paid to an overseas recipient (whether a related or unrelated party) are generally not deductible if the overseas recipient is not subject to Hong Kong profits tax on the interest income. In addition, deduction of interest expense is subject to stringent and complicated rules that are designed to guard against loan arrangements with an intention to avoid Hong Kong profits taxes.

Bad debts

A bad or doubtful debt incurred in any trade, business, or profession, proved to the satisfaction of the HKIRD to have become bad during the basis period for a year of assessment, is deductible. The deduction is limited to debts that were included as a trading receipt in ascertaining the taxpayer's assessable profits or debts in respect of money lent in the ordinary course of a money-lending business in Hong Kong.

If any bad or doubtful debt that has previously been allowed as a deduction is ultimately recovered, it will be treated as taxable profits of the basis period in which it is recovered.

Charitable contributions

A deduction is allowed for cash donations to approved charities made in the basis period for a year of assessment if the aggregate of such donations is not less than HKD 100. The deduction is limited to 35% of the assessable profits of the year of assessment.

Pension expenses

A deduction is allowed for regular/ordinary contributions to a mandatory provident fund scheme or recognised occupational retirement scheme made by an employer in respect of an employee to the extent that the contributions do not exceed 15% of the employee's total emoluments for the period to which the contributions relate.

Special payments, other than the ordinary contributions to a mandatory provident fund scheme or recognised occupational retirement scheme, are capital in nature but can be deducted evenly over a five-year period under a specific provision of the IRO.

There are also specific rules for deduction of provisions for contributions to a mandatory provident fund scheme or recognised occupational retirement scheme.

Payments for directors

Director fees or other remunerations paid by a corporation to its directors are generally deductible under the normal deduction rule. Nevertheless, no deduction is allowed on salaries or other remunerations paid to a sole proprietor or any partners or partners' spouses of a partnership business.

Contingent liabilities

Generally speaking, general provisions for expenses are not deductible, whereas specific provisions are deductible if the HKIRD is satisfied that the amount has been incurred (i.e. the taxpayer has a legal/contractual obligation to pay such amount in the future) and that the provision represents a reasonably accurate estimate of the future liability.

Special deductions

There are special deduction rules for expenditures incurred:

- for refurbishment of a building or structure, other than a domestic building or structure
- on environmental protection installation and machinery
- on environment-friendly vehicles
- on machinery or plant used specifically and directly for any manufacturing process, computer hardware (other than that which is an integral part of machinery or plant), computer software, and computer systems (collectively known as prescribed fixed assets)
- for registering trademarks, designs, or patents used in the production of taxable profits, and
- on the purchase of patent/know-how rights and specified intellectual property (IP) rights (i.e. copyrights, registered trademarks, or registered designs), provided certain specified conditions are met.

Fines and penalties

Fines and penalties are generally not deductible, as the HKIRD does not consider them to be expenses incurred for producing profits chargeable/subject to tax.

Taxes

Taxes paid on corporate profits are generally not deductible for the purpose of calculating the assessable profits. However, the HKIRD generally accepts that a foreign tax that is an expense that must be borne regardless of whether or not a profit is derived (e.g. a foreign withholding tax [WHT] levied on the gross amount of interest or royalties received), as opposed to a charge on the profits themselves, is deductible under the general deduction provision. Where interest income or gains from the sale of a certificate of deposit or bill of exchange are deemed to be subject to profits tax, a deduction is allowed for foreign taxes of substantially the same nature of Hong Kong profits tax paid in respect of the same income, provided that the taxpayer is not eligible for double taxation relief under a CDTA.

Net operating and capital losses

Net operating losses incurred in an accounting year can be carried forward indefinitely to offset future profits of the business. A corporation carrying on more than one business may have losses in one business offset profits of the others, with any balance being carried forward. Net operating losses cannot be carried backward.

Capital losses are not tax deductible.

Payments to foreign affiliates

Royalties and service fees paid/payable by a Hong Kong corporation to foreign affiliates are deductible, provided they are incurred for the production of profits chargeable/subject to tax. There is no special restriction on the deductibility of these payments.

In general, interest payable by a Hong Kong corporation to a foreign affiliate is not deductible if the recipient is not chargeable/subject to Hong Kong profits tax on the interest income received (except where either the payer or the recipient is a financial institution as defined in the tax law). Interest expenses on money borrowed from a non-Hong Kong associated corporation by a corporation in the ordinary course of its intra-group financing business carried on in Hong Kong are deductible, provided that certain specified conditions are met.

Group taxation

Hong Kong does not have a consolidated or group taxation regime.

Transfer pricing

Currently, there is no specific and comprehensive transfer pricing legislation in Hong Kong. While a few existing provisions in the IRO may be employed by the tax authority to tackle non-arm's-length transactions, such provisions are primarily aimed at transactions with closely connected non-residents or tax avoidance transactions rather than specific legislation on transfer pricing.

There are two Departmental Interpretation and Practice Notes (DIPNs) issued by the HKIRD to address the transfer pricing issues in Hong Kong. DIPN 45 focuses on the administrative/procedural issues involved in providing double tax relief in a treaty context, such as when such relief is available and what are the procedures for claiming such relief. DIPN 46 outlines the HKIRD's view on the legislative framework for transfer pricing in Hong Kong (including the statutory provisions in the IRO and the articles in a CDTA that are relevant to transfer pricing) and provides guidance on numerous transfer pricing related issues, such as the application of the arm's-length principle and the acceptable transfer pricing methodologies, which are largely in line with the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines. The DIPN also spells out the documentation that taxpayers should consider retaining to support their transfer pricing arrangements and explains the interaction between the transfer pricing and sourcing rules in Hong Kong.

In general, the HKIRD currently adopts the arm's-length principle and will seek to apply the OECD transfer pricing guidelines except where they are incompatible with the express provisions in the IRO. Transfer pricing rules will be implemented by the Hong Kong SAR Government through the enactment of Inland Revenue (Amendment) (No. 6) Bill 2017, which was gazetted on 29 December 2017. The proposed transfer pricing rules follow the OECD guidelines and adopt the arm's-length principle. Domestic transactions without any Hong Kong tax advantage are excluded from the application of the transfer pricing rules. The Bill also introduces rules for transfer pricing documentation and advance pricing arrangement (APA) application. Once enacted, the transfer pricing rules and the APA statutory regime, as provided in the Bill, will have retrospective effect from 1 April 2018.

An APA programme is available in Hong Kong. The objectives of the APA programme are to help taxpayers obtain tax certainty on their complex or significant transfer pricing arrangements and reduce the risk of double taxation arising from related-party transactions. Resident enterprises or non-resident enterprises with a PE in Hong Kong may apply for an APA in respect of their transactions with associated enterprises under a CDTA, provided that certain conditions (including the threshold for an APA application) are met.

Currently, the HKIRD is primarily focused on bilateral APA or multilateral APA applications in respect of cross-border, related-party transactions involving countries that are CDTA partners with Hong Kong.

DIPN 48, issued by the IRD, provides guidance on various aspects of the APA regime, such as the timeframe and threshold for an APA application, the various stages involved in the APA process, an audit involving years covered by a concluded APA, and possible rollback of the transfer pricing methodology agreed under an APA to prior years. The appendices of the DIPN include various sample documents for use in an APA application.

Country-by-country (CbC) reporting regime

To implement the minimum standard under Action 13 of the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, the Hong Kong SAR Government has proposed to introduce CbC report filing requirements in Hong Kong in the Inland Revenue (Amendment) (No. 6) Bill 2017, gazetted on 29 December 2017. The Bill seeks to, among others, introduce a transfer pricing regulatory regime and mandatory three-tiered transfer pricing documentation requirement (including CbC report) in Hong Kong. The Bill has not yet been enacted into law as of the end of May 2018.

Key features of the proposed CbC reporting regime are summarised as follows:

- The Hong Kong ultimate parent entity of a multinational enterprise group with annual consolidated group revenues of 750 million euros (EUR) (i.e. about HKD 6.8 billion) or above (i.e. a reportable group) will be required to file a CbC return in Hong Kong.
- A Hong Kong entity of a reportable group that is not the group's ultimate parent entity will also be required to file a CbC return in Hong Kong if the ultimate parent entity is not required to file a CbC report in its own jurisdiction of tax residence or if Hong Kong is not able to obtain the CbC report from that jurisdiction.
- The CbC report filing requirement will apply retrospectively to accounting periods beginning on or after 1 January 2018.

- Generally speaking, the deadline for filing a CbC return is within 12 months after the end of the accounting period to which the return relates. Where surrogate parent filing applies and a later deadline for filing CbC reports is prescribed in the laws or regulations of the jurisdiction of tax residence of the surrogate parent entity, the later deadline will be taken as the filing deadline in relation to the CbC return concerned.

Thin capitalisation

Hong Kong does not have thin capitalisation rules. *For restrictions on deduction of interest expenses, see Interest expenses in the Deductions section*.

Controlled foreign companies (CFCs)

Hong Kong does not have a CFC regime.

Tax credits and incentives

Foreign tax credits

Foreign tax credits are available if foreign taxes are payable/paid on income derived from a jurisdiction that has entered into a CDTA with Hong Kong and the same income is subject to tax in Hong Kong. *See the Withholding taxes section for a list of jurisdictions that have entered into a CDTA with Hong Kong*.

Foreign investment incentives

Hong Kong does not have any specific incentives for foreign investment, except that offshore funds may be exempt from profits tax under certain circumstances.

Other tax incentives

Please refer to the Taxes on corporate income *section for other tax incentives that can be enjoyed by both foreign and Hong Kong companies*.

Withholding taxes

There is no WHT on dividends and interest. Royalties received by non-residents (*see Royalties in the Income determination section*) are subject to a WHT (*see the applicable WHT rates for corporations below*).

Resident consignees are required to furnish quarterly returns to the HKIRD showing the gross proceeds from sales on behalf of their non-resident consignors and to pay to the Commissioner of Inland Revenue (CIR) a sum equal to 0.5% of such proceeds. The HKIRD normally accepts this as satisfying the Hong Kong tax obligations of the non-resident.

Hong Kong has so far entered into 40 treaties with different jurisdictions. The following table shows the applicable WHT rates for payments made from Hong Kong payers to non-treaty and treaty country corporate recipients. The rates shown in the table are the lower of the domestic and treaty rates. For WHT rates on payments received by Hong Kong recipients from treaty country payers, please refer to the summaries of the respective treaty countries.

Hong Kong

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (1)**	**Royalties (2)**
Non-treaty	0	0	2.475 to 4.95 (2)
Treaty:			
Austria	0	0	2.475 to 3 (3)
Belarus	0	0	2.475 to 3 (4)/2.475 to 4.95 (5)
Belgium	0	0	2.475 to 4.95 (5)
Brunei	0	0	2.475 to 4.95 (5)
Canada	0	0	2.475 to 4.95 (5)
China, the People's Republic of	0	0	2.475 to 4.95 (5)
Czech Republic	0	0	2.475 to 4.95 (5)
Finland (8)	0	0	2.475 to 3 (3)
France	0	0	2.475 to 4.95 (5)
Guernsey	0	0	2.475 to 4 (6)
Hungary	0	0	2.475 to 4.95 (5)
India (8)	0	0	2.475 to 4.95 (5)
Indonesia	0	0	2.475 to 4.95 (5)
Ireland	0	0	2.475 to 3 (3)
Italy	0	0	2.475 to 4.95 (5)
Japan	0	0	2.475 to 4.95 (5)
Jersey	0	0	2.475 to 4 (6)
Korea	0	0	2.475 to 4.95 (5)
Kuwait	0	0	2.475 to 4.95 (5)
Latvia	0	0	0/2.475 to 3 (7)
Liechtenstein	0	0	2.475 to 3 (3)
Luxembourg	0	0	2.475 to 3 (3)
Malaysia	0	0	2.475 to 4.95 (5)
Malta	0	0	2.475 to 3 (3)
Mexico	0	0	2.475 to 4.95 (5)
The Netherlands	0	0	2.475 to 3 (3)
New Zealand	0	0	2.475 to 4.95 (5)
Pakistan	0	0	2.475 to 4.95 (5)
Portugal	0	0	2.475 to 4.95 (5)
Qatar	0	0	2.475 to 4.95 (5)
Romania	0	0	2.475 to 3 (3)
Russia	0	0	2.475 to 3 (3)
Saudi Arabia (8)	0	0	2.475 to 4.95 (5)
South Africa	0	0	2.475 to 4.95 (5)
Spain	0	0	2.475 to 4.95 (5)
Switzerland	0	0	2.475 to 3 (3)
Thailand	0	0	2.475 to 4.95 (5)
United Arab Emirates	0	0	2.475 to 4.95 (5)
United Kingdom	0	0	2.475 to 3 (3)
Vietnam	0	0	2.475 to 4.95 (5)

Notes

1. Hong Kong does not impose WHT on dividends and interest currently. However, the treaties provide for a maximum WHT rate on dividends and interest should Hong Kong impose such WHT in the future. Some of the treaties also provide for a reduced WHT rate on dividends and interest if conditions specified in the treaties are met.
2. With the introduction of two-tier profits tax rates, there are two possible sets of domestic WHT rates on royalties paid to non-resident corporations:

i. If the two-tier tax rates apply, the WHT rates are 2.475% for the first HKD 2 million of assessable profits and 4.95% for the remaining amount.
ii. If the two-tier tax rates do not apply, the WHT rate for the whole amount of assessable profits is 4.95%.

The 2.475% and 4.95% rates are determined by applying the relevant two-tier rates, which are 8.25% and 16.5%, respectively, on the deemed assessable profits of the royalties. In the normal situation, the deemed assessable profits are 30% of the royalties received by or accrued to a non-resident corporation. Hence, the effective WHT rate ranges from 2.475% (when the assessable profits are HKD 2 million or less and the two-tier rates are applicable) to 4.95% (applies to the assessable profits in excess of HKD 2 million when the two-tier rates are applicable or when the two-tier rates are not applicable).

In the situation where a person carrying on a trade or business in Hong Kong has, at any time, wholly or partly owned the IP in respect of which the royalties are paid and the non-resident corporation is an associate of the Hong Kong payer, the deemed assessable profits are 100% of the royalties received by or accrued to a non-resident corporation. Hence, the applicable WHT rates are 8.25% for the first HKD 2 million of assessable profits and 16.5% for the remaining amount if the two-tier rates are applicable.

3. The domestic WHT rate ranges from 2.475% (when the assessable profits are HKD 2 million or less and the two-tier rates are applicable) to 4.95% (applies to the assessable profits in excess of HKD 2 million when the two-tier rates are applicable or when the two tier-rates are not applicable), capped at 3% according to the treaty.
4. For payments for the use of, or the right to use, aircraft, the effective WHT rate ranges from 2.475% (when the assessable profits are HKD 2 million or less and the two-tier rates are applicable) to 3% (applies to the assessable profits in excess of HKD 2 million when the two-tier rates are applicable or when the two tier-rates are not applicable). For other cases, the effective WHT rate ranges from 2.475% (when the assessable profits are HKD 2 million or less and the two-tier rates are applicable) to 4.95% (applies to the assessable profits in excess of HKD 2 million when the two-tier rates are applicable or when the two tier-rates are not applicable).
5. Since a rate specified in the treaty is higher than the domestic WHT rates, the effective WHT rate ranges from 2.475% (when the assessable profits are HKD 2 million or less and the two-tier rates are applicable) to 4.95% (applies to the assessable profits in excess of HKD 2 million when the two-tier rates are applicable or when the two tier-rates are not applicable).
6. The domestic WHT rate ranges from 2.475% (when the assessable profits are HKD 2 million or less and the two-tier rates are applicable) to 4.95% (applies to the assessable profits in excess of HKD 2 million when the two-tier rates are applicable or when the two tier-rates are not applicable), capped at 4% according to the treaty.
7. The 0% rate applies to payments for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experience. For other cases, the WHT rate ranges from 2.475% (when the assessable profits are HKD 2 million or less and the two-tier rates are applicable) to 4.95% (applies to the assessable profits in excess of HKD 2 million when the two-tier rates are applicable or when the two tier-rates are not applicable), capped at 3% according to the treaty.
8. Not yet ratified.

Tax administration

Taxable period

A year of assessment (or tax year) begins on 1 April of a year and ends on 31 March of the following year. The period that is used to compute the taxable profits for a year of assessment is called the basis period, which is normally the financial year ended in the year of assessment.

Tax returns

Tax returns are issued on the first working day of April each year. The filing deadline is usually within a month from the date of issue. However, corporations whose financial year ended after 30 November and are represented by a tax representative are normally granted with an extension for filing their returns. The exact filing due date depends on the accounting year-end date of the taxpayer.

The basis of assessment is the accounting profits of the financial year ending within the year of assessment, with appropriate adjustments for tax purposes. A tax return is usually filed together with a tax computation showing the tax adjustments to the accounting profits in arriving at the taxable profits or allowable tax losses for a given year of assessment.

Corporate taxpayers are also required to attach their audited accounts as supporting documents when filing a profits tax return, unless they qualify as a small corporation as defined by the HKIRD (i.e. mainly those with gross income for a basis period of not exceeding HKD 2 million plus a few other conditions). Small corporations are not required to attach supporting documents with their profits tax returns but are still required to keep those documents and submit them upon request. A branch of a foreign corporation doing business in Hong Kong is required to file a profits tax return annually, and the HKIRD may require audited accounts of the foreign corporation to support the Hong Kong branch's profits tax return.

Notice of assessment will be issued after the tax return has been examined by the HKIRD. Taxpayers may be subject to post-assessment investigation or field audit under the computerised random selection procedures of the HKIRD at a later date.

Payment of tax

Tax is usually payable in two instalments. The dates of payment of tax, which generally fall between November of the year in which the return is issued and April of the following year, are determined by the CIR and specified in an assessment notice. A system of provisional tax payments applies whereby estimated tax payments are made during the current year. The provisional profits tax payable is normally estimated based on the previous year's profits tax liability. The provisional profits tax already paid is credited against the final profits tax assessed for a year of assessment, which is determined after filing of the return.

Taking a company with an accounting year end date of 31 December as an example, the final tax payment for the company for a given tax year is usually due in November of the year in which the return is issued, whereas the provisional tax payments (to be paid in two instalments) are usually due in November of the current year and January of the next year.

Tax audit process

There is no specific tax audit cycle in Hong Kong. Tax audit targets are selected with reference to certain criteria determined by the HKIRD.

Statute of limitations

An additional assessment may be made by an HKIRD tax assessor if a taxpayer chargeable to tax has not been assessed to tax or has been assessed at less than the proper amount. The assessment must be made within the relevant year of assessment or within six years after the end of that year of assessment. The time limit for making additional assessments is extended when a taxpayer either has not been assessed, or is under-assessed, due to fraud or wilful evasion. In that case, an additional assessment may be made up to ten years after the end of the relevant assessment year.

A statement of loss is not an assessment, and the above six-year time limit does not apply to issue or revision of a statement of loss. A tax loss year remains technically open until the sixth year after the first year in which the taxpayer has an assessable profit after utilising all the tax losses brought forward.

Topics of focus for tax authorities

Profits tax issues that are often subject to close scrutiny of the tax authority include offshore claim of profits, capital claims of income, transactions with related parties and closely connected non-residents, and deductibility of expenses (e.g. interest expenses, share-based payments, intra-group management/service fees).

General anti-avoidance rules (GAARs)

The IRO includes a GAAR (i.e. section 61A) allowing the HKIRD to disregard a transaction or counteract the tax benefit conferred by a transaction if the sole or dominant purpose of entering into such a transaction is to obtain a tax benefit. Whether the sole or dominant purpose of entering into a transaction is for obtaining a tax benefit will be assessed according to a set of factors stipulated in section 61A. Another GAAR in the IRO is section 61, which empowers the HKIRD to disregard a transaction that reduces or would reduce the amount of tax payable by any person if that transaction is considered artificial or fictitious. Although both GAARs could be used, in practice, section 61A is more often invoked by the HKIRD in tackling tax avoidance schemes.

Specific anti-avoidance provision for related-party transactions

In addition to the general anti-avoidance provisions described above, there is a specific anti-avoidance provision dealing with transactions with closely connected non-residents. Under the specific provision, if a resident person carries on a business with a closely connected non-resident person such that no profits or less than the ordinary profits are derived by the resident person in the course of such business, the non-resident person can be assessable and chargeable to tax in respect of profits derived from such business in the name of the resident person.

Other issues

Base Erosion and Profit Shifting (BEPS)

The Inland Revenue (Amendment) (No. 6) Bill 2017 was gazetted on 29 December 2017. The Bill seeks to, among others, (i) introduce a transfer pricing regulatory regime and a mandatory three-tiered transfer pricing documentation requirement in Hong Kong, (ii) implement a statutory APA regime, and (iii) remove the ring-fencing features in certain concessionary tax regimes in Hong Kong. The Bill was introduced into the Legislative Council for scrutiny in January 2018 and has not yet been passed as of May 2018.

Multilateral Instrument (MLI)

Hong Kong, as represented by mainland China, was one of the signatories to the MLI. In implementing the MLI, Hong Kong has taken a pragmatic approach by (i) opting in the provisions of the MLI that represent the BEPS minimum standards (e.g. the principal purpose test for preventing treaty abuse and the requirement for allowing a minimum three-year period for a person to prevent its case for Mutual Agreement Procedure) and (ii) opting out of the other provisions that are not mandatory, for instance, those provisions addressing hybrid mismatches and artificial avoidance of PE.

Hong Kong is currently going through the necessary domestic legislative process to implement the MLI as domestic legislation, and the MLI is not yet effective for Hong Kong.

Automatic exchange of financial account information (AEOI) / Common Reporting Standard (CRS) regime

The Inland Revenue (Amendment) (No. 3) Ordinance 2016, which commenced operation on 30 June 2016, put in place a legislative framework for Hong Kong to implement the AEOI/CRS regime. Reportable financial institutions are required to identify the reportable financial accounts held by tax residents of reportable jurisdictions or held by passive non-financial entities whose controlling persons are tax residents of reportable jurisdictions in accordance with the specified due diligence procedures, collect the required information of those reportable accounts, and furnish such information to the HKIRD. Such information will be exchanged on an annual basis. Hong Kong will only conduct AEOI with a reportable jurisdiction when an arrangement is in place with the reportable jurisdiction concerned to provide the basis for exchange. There are currently 75 reportable jurisdictions. As of May 2018, Hong Kong has signed bilateral Competent Authority Agreements for AEOI with 15 jurisdictions.

Tax information exchange agreements (TIEAs)

Currently, Hong Kong has entered into seven TIEAs with different jurisdictions as shown in the following table.

- Denmark
- Faroes
- Greenland
- Iceland
- Norway
- Sweden
- United States

All of the above TIEAs are ratified and effective.

In addition to the signing of the HK-US TIEA, Hong Kong signed a Model 2 intergovernmental agreement (IGA) with the United States in November 2014 to facilitate financial institutions in Hong Kong to comply with the Foreign Account Tax Compliance Act (FATCA).

Foreign investment restrictions

In general, Hong Kong does not impose restriction to foreign investors to make investments in Hong Kong, and wholly foreign owned companies are allowed. The only exception is the restriction on foreign ownership of Hong Kong's licensed television/ sound broadcasters, of which the collective foreign ownership ceiling is 49% of the voting power. In addition, an approval from the Broadcasting Authority must be obtained for holding, acquisition, or exercise of voting control by a foreign investor of more than 2% of a licensee.

Exchange controls

Hong Kong does not have any foreign exchange control. There is no restriction on entry or repatriation of capital or remittance of profits from investments. Funds can be freely remitted to persons outside Hong Kong by various means (e.g. dividends, interest, royalties, service fees, branch profits).

Choice of business entity

The principal forms through which a business can be conducted in Hong Kong are as follows:

- Company incorporated in Hong Kong (either private or public via listing on the Stock Exchange of Hong Kong).
- Branch of a foreign company.
- Representative or liaison office of a foreign company.
- Joint venture (can be set up either as a company or partnership).
- Partnership.
- Sole proprietorship.

Of the above, privately incorporated companies and branches of foreign companies are most commonly used by foreign investors, as limited liability is usually desirable.

Intellectual property (IP) regulations

The Intellectual Property Department is responsible for monitoring the IP regime and ensuring the protection and enforcement of IP rights in Hong Kong. The Department is also responsible for investigating complaints against infringements and has extensive powers of search and seizure. Registration and protection of patents, copyrights, trademarks, and registered designs are each governed by a separate ordinance.

Merger and acquisition (M&A) activities

There are no specific restrictions on M&A activities in Hong Kong. The following tax considerations are relevant in the M&A context:

- Dividends or other forms of distribution of profits (e.g. distribution of branch profits to the head office) are generally not taxable.
- Capital gains arising from an M&A transaction are not taxable in the hands of the transferor, whereas amortisation of the goodwill in the transferee's accounts is not tax deductible due to its capital nature.
- Gains derived from transfer of revenue items (e.g. trade receivables) in an asset deal will be subject to profits tax.
- For a share deal, stamp duty is payable on the transfer of Hong Kong shares at 0.2%, unless an exemption applies; for an asset deal, stamp duty is payable on conveyance of immovable property in Hong Kong at various rates up to 15%, depending on the type of immovable property transferred and the date of the transfer (*see Stamp duty in the Other taxes section*).
- There is no special tax concession/incentive relating to M&A transactions.
- Tax losses in the acquired company can generally be carried forward indefinitely to set off against future assessable profits. However, there are specific anti-avoidance provisions in the IRO that prevent the transfer of shares of a company with accumulated tax losses to owners of a profitable company for the sole or dominant purpose of utilising the tax losses (i.e. offsetting the tax losses against the profits generated from other trade, profession, or business of the transferee).
- Pending the enactment of specific tax legislation dealing with corporate amalgamation, the HKIRD has issued some guidance on the profits tax treatment of various issues arising from corporate amalgamation on its website. In addition to the utilisation of tax losses, the guidance also covers issues such as the profits tax treatment of fixed assets and trading stocks transferred, and the profits tax return filing positions of the amalgamating and the amalgamated companies in the year of amalgamation, etc.

Hungary

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Significant developments

As of 1 January 2018, the following significant changes were introduced to the Hungarian tax system. The changes are mainly related to CIT, personal income taxes (PITs) and related contributions, and indirect taxes.

Corporate income tax (CIT)

- The formal and content requirements as included in Base Erosion and Profit Shifting (BEPS) Action 13 were implemented in Hungary in Decree No. 32/2017 of the Ministry for National Economy, which has replaced, as of 1 January 2018, the Decree No. 22/2009 of the Ministry of Finance, the former decree governing the details of the transfer pricing documentation requirements.
- International Financial Reporting Standards (IFRS) has been adopted in Hungary. For many companies, the mandatory adoption is postponed from 2017 to 2018.

Local business tax (LBT)

When deducting the cost of goods sold and the value of intermediated services from their net sales revenue, companies that qualify as related parties under the Corporate Tax Act are only required to determine their local tax base from consolidated data if the related-party relationship was formed after 1 October 2016 as a result of a demerger.

Value-added tax (VAT)

Extending the scope of the reduced VAT rate

From 1 January 2018, the VAT rate on internet access services and on fish for consumption purposes is reduced from 18% to 5% and from 27% to 5%, respectively. Furthermore, the VAT rate on the edible by-products and meat offal of domestic swine is also reduced to 5%.

The catering sector is also benefited from VAT rate cuts because from 1 January 2018 the VAT rate on meals provided and certain non-alcoholic beverages prepared locally in bars and restaurants is reduced from 18% to 5%.

Online data supply

As of 1 July 2018, taxpayers will be required to report to the Hungarian tax authority certain data regarding business-to-business (B2B) invoices that are issued by invoicing software and have a VAT content of at least 100,000 Hungarian forint (HUF). Such reports will have to be made electronically, through an online connection, using a specific XML format.

Customs duties

As of 1 January 2018, Act CLII of 2017 on Implementing the Union Customs Law entered into force replacing the previous customs legislation and incorporating procedural rules and setting electronic methods of contact as a general way to maintain relation with the customs authority.

Excise duties

As of 1 January 2018, the tax and customs authority sends a draft tax return to the taxpayer by the 10th day of the month following the reference month with the data and information underlying the tax declaration. Taxpayers have five days to take corrective action from the time of receipt.

Environmental protection product fee

The fee for electrical and electronic products became unified as of 1 January 2018: HUF 57 per kilogram (instead of HUF 57 to 304 per kilogram depending on the product type).

The range of electrical and electronic products subject to the product fee was modified.

As of 1 January 2018, the category of commercial packaging material (packaging of drinks) no longer exists. Metal packaging of drinks became part of the general packaging material category but with a higher fee rate than for other metal packaging.

Preferential tax rates were introduced relating to hybrid and electronic cars.

Special tax of financial institutions

Decreasing tax rates and a new tax base have been implemented in connection with the special tax of financial institutions.

Social tax

As of 1 January 2018, the employer social charge rate has been additionally reduced from 22% to 19.5%. Consequently, the employers' payroll expenses have been reduced by 2% (2.5/123.5). Also, the rate of healthcare tax has been reduced from 22% to 19.5% as of 2018 in line with the reduction of the employer social charge rate. As a result, public dues payable for business meals, corporate events, and certain fringe benefits have been reduced from 43.66% to 40.71% in total.

Taxes on corporate income

Resident taxpayers are subject to all-inclusive or unlimited CIT liability. Non-residents are subject to CIT on their income from their Hungarian branch's business activities.

The CIT rate is 9% of a positive CIT base.

Minimum tax base

If a company's CIT base or the pre-tax profit, whichever is higher, is less than 2% of its total revenues reduced by the income of its foreign permanent establishments (PEs) (i.e. the 'minimum tax base'), the company can choose to file a declaration and pay CIT according to the general provisions or to pay CIT on its minimum tax base.

Real estate holding companies

The owner of a real estate holding company is subject to Hungarian CIT in the case of alienation or withdrawal of its shares in the real estate holding company.

The tax base of the owner of a real estate holding company in cases of share transfers and share capital decreases is the positive amount of the consideration minus the acquisition price of the shares less the costs of acquisition and of administration. The tax rate is 9%.

A company and its related parties are defined as real estate holding companies if at least 75% of the book value of their assets is domestic real estate and if they have a foreign shareholder that is not resident in a country that has a double tax treaty (DTT) with Hungary or the treaty allows such capital gains (from land/real property-rich shares) to be taxed in Hungary.

Please note that the definition of the payer for CIT purposes is very different from the definition used for stamp duty purposes.

As an amendment as of 1 January 2018, regulated real estate holding companies can opt to keep their accounts, and report their annual statements, in accordance with IFRS.

Energy suppliers' income tax

Mines, energy producers, and energy distribution system operators are subject to energy suppliers' income tax. The scope of the definition of 'energy suppliers' also includes universal suppliers and authorised distributors of electricity and natural gas.

The base of energy suppliers' income tax is similar to the CIT base, however, with less adjustments applicable to the accounting profits. The tax rate is 31%.

If the energy supplier entity possesses a development tax incentive or a tax incentive in relation to investments aimed at increasing energy efficiency (*see the Tax credits and incentives section*), then it is possible to claim this tax incentive for up to 50% of energy suppliers' income tax liability as well. Additionally, the settled amount of mining royalty can be claimed for up to HUF 1.5 billion from energy suppliers' income tax liability.

As of 30 June 2017, a new extra deduction is available in connection with the installing and maintenance of electric vehicle charging stations, unless the taxpayer has already opted for a CIT base deduction with respect to the investment.

From an accounting point of view, energy suppliers' income tax falls under the same treatment as CIT (so it is a non-deductible item for CIT purposes as well). DTTs also are covering this levy.

Advertisement tax

Advertisement tax applies to certain advertising services, including advertising services made available over the internet. The tax applies in respect of advertisements that are published in Hungarian, or where the advertisement is not published in Hungarian but is available on a website/webpage that is mainly in Hungarian.

In the case of primary taxpayers (*see below*), the tax base is based on total trading revenue. Till an amending act in June 2017, the advertising tax rate was 0% of the tax base up to HUF 100 million, and 5.3% above HUF 100 million. The amending act set a unified tax rate of 0% in the period from 1 January 2017 to 30 June 2017; however, from 1 July 2017, it is increased to 7.5%, while the tax base up to HUF 100 million, under certain conditions, is tax free. Furthermore, the amending act stipulates that taxes declared and paid by the taxpayers for tax years ended before 30 June 2017 are considered overpayments defined by the Act on the Rules of Taxation; consequently, the taxpayers can request a claim on refund, also defined in the Act on the Rules of Taxation, from 1 July 2017.

The amending act discontinues the tax liability on self-promotion as, consequently, after the law came into force, advertisement tax liability arises only for publishing as business activity.

Primary and secondary taxpayers

The company providing the advertising service is the primary taxpayer, and the rate above applies to the company's sales that are within the scope of the tax. The tax is not a withholding tax (WHT), and the customer is not obligated to withhold tax on payments made to the advertising service provider.

The person/company that orders and pays for the advertisement is considered to be the secondary taxpayer. Secondary tax obligation does not arise if:

- the secondary taxpayers are in possession of a declaration from the primary taxpayers stating that they are the primary taxpayers and that they will fulfil their obligations under the regulation
- the primary taxpayers apply for a registration to the database of the Hungarian tax authority, stating that they are primary taxpayers and that they fulfil their obligations on time or they do not have advertisement tax payment obligation in the tax year because they will not exceed the HUF 100 million threshold, or
- the secondary taxpayers notify the tax authority with the name of the primary taxpayer and the value of the services and they are able to prove that they requested the declaration but have not received it.

Otherwise, the secondary taxpayer is subject to a tax equivalent to 5% of the value of the advertising fee (provided that the secondary taxpayer spends at least HUF 2.5 million in a month for advertisement services). In addition, such advertisement expense would not be a deductible CIT expense for the secondary taxpayer when filing its CIT return (in cases when such annual spending exceeds HUF 30 million).

The amended legislation makes it clear that for online advertisements, the person or organisation that has right of disposal over the advertising space qualifies as the publisher of the advertisement (i.e. the subject of the advertising tax). In addition, the obligation to determine the advertising tax base from the consolidated data of related companies no longer applies.

Furthermore, if a publisher of advertisements fails to comply with its obligation to make a declaration to the advertiser in relation to advertising tax, it must, on request, fulfil that obligation to the national tax authority. Failure to comply with such a request will attract a default fine of HUF 500,000. Repeated failure to comply in respect of the same advertiser will be subject to a further default fine of HUF 10 million, and any further instance of non-compliance will be subject to a fine equalling triple the amount of the previous fine. Failure to comply with the registration obligation will incur fines (in the amount of HUF 1 billion) according to the same regime. Further, in the case of failure to file a return on advertisement taxes, the tax authority will levy a deemed tax of HUF 3 billion, which the taxpayer concerned may challenge by submitting contrary evidence within a statutory deadline of 30 days.

Local business tax (LBT)

All municipalities are entitled to levy LBT. LBT is deductible for Hungarian CIT purposes and is not normally treated as 'income tax' in the application of the tax treaties.

The LBT base is the total trading revenue reduced by the cost of goods sold, subcontractors' work, the costs of materials, mediated services, and research and development (R&D) costs. These items are deductible under a decreasing scale at taxpayers with larger turnover (with the effect that lower margin businesses may have higher effective LBT rates). In order to prevent tax avoidance, the taxable base is calculated on a consolidated basis for affiliated entities that have a gross margin at less than 50% in Hungary in case the related-party relationship was formed as a result of a division carried out after the date 1 October 2016.

As LBT is payable in each municipality where the taxpayer is active, there are detailed rules to allocate the taxable base among these locations and a separate PE definition is applicable for LBT purposes. The allocation is based on a formula (formulary apportionment) based on tangible asset and payroll cost figures.

As of 1 January 2018, PE for LBT purposes shall also include solar power plants, in accordance with the rules set out by the municipality on which the solar power plant is located.

General service fees, depreciation, and labour costs are typically not deductible for LBT purposes. Interest and dividend income and the LBT base of a foreign PE of a Hungarian company are exempt from LBT. Royalty exemptions, on the other hand, have been significantly narrowed down in line with the Organisation for Economic Co-operation and Development (OECD) nexus approach (from mid-2016, with an applicable grandfathering period).

The amended rules allow credit institutions and financial enterprises that have opted for gross settlement when determining their net revenue to deduct from their LBT base the amount of purchased receivables accounted against expenditure on other financial services. The selected option can be applied retroactively to the LBT bases of tax years beginning in 2015 and 2016.

Furthermore, amendments have reduced the gap between the rules on adjustments to the LBT base (royalty, R&D) and the corporate tax base. As a result, effective from 1 July 2016, the definition of royalty was made narrower.

In addition, only amounts deducted from the corporate tax base may also be deducted from the LBT base as direct cost of basic research, applied research, and experimental development. As for the definition of royalty, a transitional provision permits application of the previous rules until the tax year ending on or before 30 June 2021.

The LBT rate may differ from municipality to municipality but is capped at 2% by law.

As of 1 January 2018, sport organisations (as per the definition laid down in Act I of 2004 on Sport) are not liable to pay LBT after their total trading revenue deriving from the sale of admission tickets or season passes, display of advertisements, permanent transfer or temporary lease of player contracts, providing services to sponsors, income from media rights, and other utilisation of their sports venues in accordance with the Act on Sport.

Furthermore, as of 20 June 2017, if the tax rate determined by the local government was set at a specific tax rate (for a minimum of two years), it cannot be increased to the detriment of the taxpayer during the first two calendar years of said period.

Prepayment option of LBT

As of 20 June 2017, taxpayers have the option to make prepayments in order to comply with LBT liability that will accrue in the future. At the time of prepayment, a separate tax return shall be filed accordingly.

Innovation contribution

Companies defined as such in the Accounting Act, except for small and medium-sized enterprises (SMEs) and branches, are also subject to innovation contribution. The tax base of the innovation contribution is the same as the LBT base. The tax rate is 0.3%. As this tax is payable to the central budget, there are no formulary apportionment rules.

Corporate residence

Corporations are residents for CIT purposes if they are incorporated in Hungary, although foreign corporations may also be deemed to be Hungarian residents for CIT purposes if their place of effective management is in Hungary. Tax residents also include the Hungarian trust asset (*see Hungarian trust in the Other issues section for further information*).

Foreign entities may carry out business through resident corporations or through branch offices (PEs for tax purposes). Commercial representative offices may be opened for auxiliary activities that do not create a taxable presence.

Permanent establishment (PE)

Hungary treats PEs as ‘distinct and separate enterprises’, and profit is attributed to a PE based on the principles set out in the OECD guidelines.

In the CIT Act, a PE is defined as fixed business premises (machinery or equipment) through which the entrepreneurial activity of an enterprise is partly or wholly carried on, regardless of the title of the taxpayer to those premises. A PE may consist of any of the following: a place of management; offices, including representative offices registered in Hungary; factories and workshops; and mines, crude oil or natural gas wells, quarries, or other places from which natural resources are extracted.

Construction sites (including assembly) and related supervisory activities constitute a PE if they last, in the aggregate, for at least three months in a calendar year. All activities carried out at the same construction site qualify together as a single PE, regardless of whether they are based on separate contracts or were ordered by different persons. Construction sites are defined as sites that represent a unit for economic, business, and geographical purposes.

PEs are also created by the direct utilisation of natural resources by a foreign person. A foreign person (except from real estate funds established in a European Economic Area [EEA] member state and not being subject to any tax that may be substituted for CIT) is deemed to have a PE in Hungary if it utilises natural resources or immovable property for consideration, including the alienation or capital contribution of any rights related to the immovable property or natural resources.

A non-resident enterprise is considered to have a PE with respect to activities undertaken on its behalf by another person if its agent is authorised to conclude contracts in Hungary on behalf of the non-resident entity and the agent regularly exercises this right or maintains a stock of goods and products from which it regularly makes deliveries in the name of the non-resident entity.

The insurance of risks occurring in Hungary and insured on behalf of the non-resident person by another person constitutes a PE of the foreign insurer, except for reinsurance activities.

Furthermore, as mentioned above, a foreign taxpayer must also be treated as having a PE if it has a Hungarian branch.

The definition of a PE does not include the following:

- Establishments used solely for the purpose of storing and presenting the goods or products of a non-resident person.
- The stockpiling of goods and products of a non-resident person solely for the purpose of storing, presenting, or processing by another person.
- Establishments used for collecting information, or purchasing goods and products, exclusively for the non-resident person.
- Establishments used for other activities of a preparatory or auxiliary nature.
- Activities of independent agents, provided they are acting in their ordinary course of business.

Note that a different definition of a PE is applicable for LBTs, and no definition is available for special taxes.

Other taxes

Value-added tax (VAT)

VAT is payable on sales of goods and the supply of services. VAT is also payable on the importation of goods, on the intra-Community acquisitions of goods, and on the purchase of certain services provided to Hungarian taxable persons by foreign taxable persons.

VAT rates

The general VAT rate is 27%.

A reduced VAT rate of 18% is applicable for some products (e.g. milk, certain dairy products, products made from cereals, flour, and starch). The 18% VAT rate is also applicable to commercial accommodation services and to services that grant admission to musical and dancing events.

A reduced VAT rate of 5% is available for new residential property, certain pharmaceutical products, audio books, printed books, newspapers, district heating services, certain live performance activities, certain products of the animal sector (e.g. live and processed large animals, such as pig, sheep, goats, cattle, poultry, eggs), fresh milk, internet access services, local dining services (i.e. meals and non-alcoholic beverages prepared locally in bars and restaurants), fish for consumption purposes, and the edible by-products and meat offal of domestic swine.

Exempted, out of scope transactions

Certain services are exempt from VAT, including, but not limited to, medical, cultural, sporting, and educational services provided as public services. VAT exemption is also available for financial and insurance services. The intra-Community supplies of goods, services, and exports are also treated as exempt transactions.

Generally, the supply of a building or parts of a building, the land on which it stands, and the rental of real estate are VAT exempted. An option is available to apply VAT on the supply or rental of this real estate. VAT exemption cannot be applied to the supply of building plots.

There are some special transactions that may be out of scope of the Hungarian VAT, provided that special conditions are met. These include the acquisition of any contributions in kind, the acquisition of any assets by way of succession, and the transfer of business as a going concern.

Reverse-charge mechanism

A domestic reverse charge applies between Hungarian taxable persons for the following activities:

- Services related to immovable property (e.g. construction, maintenance).
- Sales of certain steel products.
- Sales of waste materials.
- Sales of carbon quotas.
- Sales of real estate and land if the application of VAT was chosen.
- Sales of certain agricultural products (e.g. maize, wheat, barley, rye).
- Leasing staff or making available personnel and the use of student-work placement offices.

VAT recovery

VAT deduction is available only for the business-related element of purchases that were made partially for non-business purposes.

If a taxpayer has a negative VAT balance in a VAT period, the amount can be recovered, provided that the VAT balance reaches or exceeds an absolute value of HUF 1 million for monthly filers, HUF 250,000 for quarterly filers, or HUF 50,000 for annual filers.

As a general rule, the deadline for remitting VAT reclaims is 75 days, irrespective of the amount concerned. However, if all incoming invoices, regarding which the VAT was deducted in the VAT return, are settled (paid fully to the suppliers) until the due date of the related VAT return, a 45-day deadline can be applied. The preferential deadline is applicable for taxpayers qualified as a 'reliable taxpayer' by the Hungarian tax authority.

Directive for refunds of foreign taxable persons

Taxable persons with their establishment in a European Union (EU) country, other than Hungary, or in Switzerland, Lichtenstein, or Norway, can recover local VAT. The refund applications have to be submitted electronically. Reclaim requests should be submitted to the tax authority of the country where the EU-registered taxable person is established.

Reporting obligations

All types of intra-Community transactions have to be reported in the periodic Intra-Community List in Hungary.

Taxpayers registered in Hungary have to submit domestic recapitulative statements about those transactions where the VAT amount reaches or exceeds HUF 1 million together with the basic data of the related business partner. In respect of the incoming invoices, those cases also have to be considered and included where the sum of the VAT on all transactions carried out by the same partner in a given VAT period reaches or exceeds HUF 1 million. Taxpayers liable to file the statement may opt to report their transactions even below this threshold to the tax authority. If a domestic recapitulative statement has to be prepared (i.e. there are transactions with a VAT amount higher than the referred threshold), the VAT return can only be submitted in electronic form.

As of 1 July 2018, taxpayers will be required to report to the Hungarian tax authority certain data regarding B2B invoices that are issued by invoicing software and have a VAT content of at least HUF 100,000. Such reports will have to be made electronically, through an online connection, using a specific XML file format.

This online reporting obligation will have an impact to the aforementioned domestic recapitulative statement because as of 1 July 2018 the domestic recapitulative statement will have to be submitted only regarding incoming B2B invoices that have a VAT content of at least HUF 100,000.

An Electronic Road Freight Control System (EKAER) number needs to be requested from the tax authority for specific road shipments. The taxpayers who do not fulfil this reporting obligation can face serious consequences (e.g. the tax authority is entitled to levy a default penalty of up to 40% of the value of goods transported, and also to seize the goods).

Group taxation for VAT

The VAT Act allows all companies that have established business presences in Hungary and qualify as related enterprises to form a VAT group. The essence of a VAT group is that its members act under a single VAT number in their transactions (i.e. they issue invoices under a shared VAT number and submit a single, joint tax return) and the supplies of products and services between the members do not qualify as business transactions from a VAT perspective.

Customs duties

Hungarian customs legislation and policies have been fully harmonised with EU legislation.

As of 1 January 2018, the EU customs legislation comprises the following main regulations:

- Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.
- Commission Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.
- Commission Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.
- Commission Delegated Regulation (EU) 2016/341 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446.
- Council Regulation 1186/2009/EEC setting up a Community system of reliefs from customs duty.
- Council Regulation 2658/87/EEC on the tariff and statistical nomenclature and on the Common Customs Tariff.

New national customs regulation entered into force as of 1 January 2018 (Act CLII 2017 on Implementing the Union Customs Law). Some of the main changes compared to the previous legislation are as follows:

- Procedural regulation became an integral part of the national customs law.
- The procedure of customs audit (e.g. right to comment on the customs authority's assessment) changed.
- By the main rule, information (such as declarations, applications, or decisions) will be provided and exchanged electronically between the customs authority and economic operators.

As a general rule, non-compliance resulting in a customs shortfall attracts a customs penalty of 50% of the customs duty deficit.

Excise duties

The following goods are subject to excise duty:

- Mineral oils.
- Alcohol and alcoholic beverages. Any product with an alcohol content of 1.2% or more by volume qualifies as an alcohol product.
- Beers.
- Still wines.
- Sparkling wines.
- Other still fermented beverages.
- Other sparkling fermented beverages.
- Intermediate alcoholic products.
- Tobacco products.
- Energy products (electricity, natural gas, and coal).

As of 1 January 2018, the excise duty rates are as follows:

- Mineral oils: HUF 110,350 to HUF 129,200 per thousand litres or HUF 4,655 to HUF 116,000 per thousand kilograms, depending on the world market price of crude oil and on the type of mineral oil.
- Electricity: HUF 310.5 Ft/MWh.

- Coal: HUF 2,516/1,000 per kilogram.
- Natural gas: HUF 0.3038/kWh or HUF 28/nm3 depending on usage.
- Alcohol products: HUF 333,385 per hectolitre of pure alcohol. Special rules are applicable to spirits manufactured in private distilleries and contract distillation.
- Beer: HUF 1,620 per alcohol degree and per hectolitre, HUF 810 per alcohol degree and per hectolitre for beer produced in a micro-brewery.
- Still wines: HUF 0 per hectolitre.
- Sparkling wines: HUF 16,460 per hectolitre.
- Other still fermented beverages: HUF 9,870 per hectolitre for other fermented beverages, HUF 0 per hectolitre for still wine of an actual alcoholic strength by volume not exceeding 8.5% volume mixed with carbonated water without added flavouring, where the ratio of still wine exceeds 50%.
- Other sparkling fermented beverages: HUF 16,460 per hectolitre.
- Intermediate alcoholic products: HUF 25,520 per hectolitre.
- Cigarettes: HUF 16,200 per thousand cigarettes plus 25% of the retail sale price, but a minimum of HUF 29,200 per thousand cigarettes. The tax base per cigarette also depends on the length of the cigarette (without filter). It is double if the length of the cigarette is 8 cm to 11 cm, triple if the length is 11 cm to 14 cm, and so on.
- Cigars and cigarillos: 14% of the retail price, but a minimum of HUF 4,180 per thousand cigars or cigarillos.
- Fine-cut and other tobacco: HUF 17,300 per kilogram.
- Refill liquid: HUF 55 per millilitre.
- Other consumables that contain tobacco or are consumed with tobacco: HUF 10 per each tobacco containing product or products consumed along with tobacco products for single use, HUF 70 for liquid per millilitre.

The Customs Body of the National Tax and Customs Authority is responsible for excise duty (and municipal tax authorities for the excise duty of private distillers). The European Union's excise duty and energy tax rules apply in Hungary.

Property and land taxes

Hungarian municipalities have the right to levy property tax and land tax at their own discretion until the below caps are reached.

Property tax

The owner of a building is subject to property tax liability annually on the first day of the calendar year.

As of 1 January 2018, advertising media deployed on any real estate property located in the area of jurisdiction of any municipal government shall also be subject to property tax.

The local government can determine the tax base in either of the following ways:

- The net floor space of the building expressed in square metres, with a maximum tax rate of HUF 1,100 per square metre.
- The adjusted market value of the building, with a maximum tax rate of 3.6% of the adjusted market value.
- In case of advertising media placements (*see above*), the tax base shall be calculated based on their net surface area, with an annual maximum tax rate of HUF 12,000 per square metre.

Land tax

The owner of land is subject to land tax liability annually on the first day of the calendar year. Undeveloped plots of land situated within the area of jurisdiction of a local government, including peripheries, are subject to this tax. The local government can determine the tax base in either of the following ways:

- The actual area of the plot expressed in square metres, with a maximum tax rate of HUF 200 per square metre.
- The adjusted market value of the plot, with a maximum tax rate of 3% of the adjusted market value.

Stamp duties

The most common types of stamp duty are gift duty and duty on transfers of property for consideration. Stamp duty is levied on movable and immovable property and property rights if they were acquired in Hungary, unless an international agreement rules otherwise.

Gift duty

Gift duty arises on the date when a contract concerning a gift is concluded.

Transfers of movable property, immovable property, and property rights without consideration are subject to gift duty. In these cases, however, gift duty is only incurred if the transaction was formally documented; except for movable property with a market value of more than HUF 150,000, where gift duty must be paid in any event.

The base of gift duty is the net value of the gift, which is the market value minus any liabilities related to the gift. The general duty rates vary, depending on the type of property: 9% on residential property and 18% on other assets. In general, the transaction shall be reported to the state tax authority within 30 days.

Transfers of movable assets without consideration and acquisitions of claims without consideration, including waivers of claims and assumptions of debts, are exempt from gift duty, provided that the recipient is a company. However, this exemption only applies if in the country where the non-resident beneficiary is based, both the rate of the tax corresponding to the corporate tax and the rate of the tax on the sale of the shareholding are no less than 9%. The same conditions apply to the exemption of preferential exchange of shareholdings, preferential asset transfer, and transfer of assets between related parties.

Duty on transfer of property for consideration

The obligation to pay duty on the transfer of movable and immovable property for consideration arises on the date when the contract is concluded.

Transfer of real estate, property rights, and the transfer of companies that own domestic real estate are subject to stamp duty. In this latter case, stamp duty only applies for acquisitions of direct or indirect participations (stocks, shares, co-operative shares, investor shares, converted investor shares) of at least 75% in a company that owns domestic real estate. For stamp duty purposes, a company that owns domestic real estate is a company (i) in which the book value of the domestic real estate represents at least 75% of the assets or (ii) that holds at least 75% of the shares of another company in which the book value of the domestic real estate represents at least 75% of the assets. Note that for classification purposes, liquid assets, receivables, prepaid expenses, and accrued income have to be disregarded when determining the 75% ratio. The stamp duty for the transfer of real estate and the transfer of companies that own domestic real estate is 4% up to HUF 1 billion and 2% of the amount exceeding HUF 1 billion, up to a maximum of HUF 200 million per real estate. In the case of real estate agents, the preferential 2% property transfer duty can only be applicable if they agree to resell the real estate to a buyer or lessee within two years. Otherwise, the duty is 3%. There is a relieved 2% rate applicable for real estate investment funds and to real estate investment trusts (REITs) as well.

There are special rules for real estate trading companies and financial leasing service providers. Under certain circumstances, exemptions are available more generally.

Stamp duties are also levied on certain court procedures (e.g. Court of Registration) and on submissions to certain authorities (e.g. appeals to the tax authority). Stamp duty is, for instance, levied in an amount of:

- HUF 100,000 on the registration of a private stock company
- Free of charge on the registration of a limited liability company
- HUF 600,000 on the registration of a European company
- HUF 100,000 on the registration of any other entity with legal personality (except from European companies)
- HUF 50,000 on the registration of a branch office, and
- HUF 50,000 on the registration of a representative office.

Registration tax

Registration tax is charged on passenger cars, motor homes, and motorcycles before they can be registered and put into service in Hungary. The registration tax is also payable by fleet operators. The duty is payable with the first domestic registration, import, intra-Community purchase, or in the case of a conversion.

The registration tax rate is applied as follows:

- Passenger cars: HUF 45,000 to HUF 4.8 million, depending on the technical features of vehicles (cc, engine type) and environmental classification.
- Hybrid cars: HUF 76,000.
- Purely electrical vehicles, plug-in hybrid electrical vehicles, increased range plug-in hybrid electrical vehicles, and zero-emission vehicles: HUF 0.
- Motorcycles: HUF 20,000 to HUF 230,000, depending on technical features of the motorcycles (cc).

The registration tax is levied by the Customs Body of the National Tax and Customs Authority.

Employment-related tax and social security contributions (social tax) payable by employers

The social tax base is the gross income paid to the employee. The tax rate is 19.5% as of 1 January 2018.

The rate of training fund contribution on employment income is 1.5%. The tax base is the gross income paid to the employee.

Mining royalty

Mineral resources and geothermal energy, at the places where they are found in nature, are state property and subject to concession.

The mining company must pay a mining royalty, based on the quantity of the mineral resources extracted under authority permit.

Public health product tax

The first domestic distributor of certain products, as well as the acquirer of goods that are brought from abroad and used for the domestic manufacture of own products that will be sold in Hungary, are liable to pay a product tax. The duty rates are as follows:

- Beverages (depending on sugar content and tariff number): HUF 7 per litre (HUF 200 per litre for syrups and concentrates).
- Energy drink (depending on tariff number, methyl-xanthine, and taurine content): HUF 40 or HUF 250 per litre.
- Cocoa powder with added sugar (depending on tariff number, sugar, and cocoa content): HUF 70 per kilogram.
- Other pre-packed product with added sugar (depending on tariff number, sugar, honey, and cocoa content): HUF 130 per kilogram.
- Salty snacks (depending on tariff number and salt content): HUF 250 per kilogram.
- Seasonings (depending on tariff number and salt content): HUF 250 per kilogram.
- Flavoured beer and alcoholic beverages (depending on tariff number and sugar or sweetener content): HUF 20 per litre.
- Fruit jam (depending on tariff number and sugar content): HUF 500 per kilogram.
- Alcoholic drinks (depending on tariff number and herb content): HUF 20 to HUF 900 per litre.

Taxpayers are allowed to deduct up to 10% of their tax liability to finance 'health promotion programmes'.

Environmental protection product fee

The following products are subject to the environmental protection product fee: other crude oil products, tyres, packaging materials, batteries, commercial printing paper, other plastic products, other chemical products (soaps, detergents, cosmetics), printing or copy paper for office use, and electrical and electronic products (based on customs tariff numbers applicable on 1 January 2010).

The following entities are liable to pay the product fee:

- The first domestic distributor or user for own purposes.
- In the case of domestically manufactured other crude oil products, the first buyer from the first domestic distributor or user for own purposes.
- In the case of toll manufacturing, the party that orders the toll manufacturing.

Product fee rates from 1 January 2018 are as follows:

- Tyres: HUF 57 per kilogram.
- Packaging materials: HUF 19 to HUF 1,900 per kilogram.
- Other crude oil products: HUF 114 per kilogram.
- Batteries: HUF 57 per kilogram.
- Paper-based advertisement materials: HUF 85 per kilogram.

- Electrical and electronic products: HUF 57 per kilogram.
- Printing or copy paper for office use: HUF 19 per kilogram.
- Other plastic products: HUF 1,900 per kilogram.
- Other chemical products: HUF 11 to HUF 57 per kilogram.

The Tax Body of the National Tax and Customs Authority controls the payment and reporting of the product fee and carries out product fee inspections. The product fee is self-assessed. The product fee returns must be submitted quarterly to the tax authority via its electronic system. An advancement payment is payable for the fourth quarter.

The product fee penalty is generally 100% of the product fee shortfall in cases of non-payment or underpayment.

Environmental load charges

Environmental pollution charges were introduced to protect the natural environment, to reduce its impairment, to encourage the users of the environment to engage in activities aimed at the preservation of the natural environment, and to provide funding from the central budget for environmental protection and nature preservation.

Emitting entities liable to pay charges include those who operate point-source emitters subject to registration, pursue activities subject to a water right permit, or who do not use available public drainage systems and dispose of their sewage under a water right permit or a permit from the local water management authorities.

Qualifying materials include sulphur dioxide, nitrogen oxides, mercury, phosphorous, cyanides, and others.

The load charge is calculated on the basis of the quantity of emitted materials multiplied by the fee rate (and, in certain cases, by vulnerability and sludge disposal factors, taking into account average concentration). Basically, the amount of the fee payable depends on the hazard level of the emitted material (e.g. HUF 50 per kilogram for sulphur-dioxide).

Food chain supervision fee

The purpose of the food chain supervision fee is to raise revenue for the operation of a regulatory body tasked with the official supervision of the food chain.

The supervision fee is payable by the following natural persons, legal persons, or unincorporated organisations:

- Persons who place animals on the market that are kept for food production, breeding, or experimental purposes.
- Persons who place food or fodder crops, seeds, plant products, and planting material on the market.
- Registered or authorised food businesses.
- Registered or authorised feed businesses.
- Persons who manufacture or place on the market veterinary medicines or veterinary medicinal products.
- Persons who manufacture or place on the market ‘EEC fertiliser’ or other products subject to authorisation.
- Persons involved in the handling, use, further processing, and transport of animal by-products or placing derived products on the market.

- Businesses engaged in the transport of live animals.
- Persons operating facilities for the cleaning and disinfection of vehicles used for transport of live animals, isolation facilities for receiving animals from different stocks, livestock loading ramps, assembly centres, trading sites, feeding and watering stations, rest stations, and livestock fairs.
- Persons manufacturing and storing plant propagation material.
- Persons operating a registered or authorised laboratory.
- Persons placing devices on the market that are used for marking animals.

As of 16 June 2017, any person who is not established in Hungary, but nevertheless engaged in the pursuit of the activities defined by the Food Chain Act, has a FELIR identifier, and is registered by the state tax authority as a taxpayer liable for payment of VAT, is liable to declare and pay the supervision fee.

As the main rule, the annual supervision fee is 0.1% of the total trading revenue (excluding excise duty and public health product tax) derived in the preceding year from these activities.

The taxpayers concerned have to comply with their reporting obligation by 31 May. The annual supervision fee is payable in two equal instalments: the first instalment by 31 July, and the second by 31 January.

Telecommunication tax

The telecommunication tax applies to telecommunications service providers. The telecommunication tax rate is HUF 2 per minute for calls made and HUF 2 per message sent for private individuals, and HUF 3 per minute for calls made and HUF 3 per message sent for parties other than private individuals. The monthly ceiling is HUF 700 per number for private individuals and HUF 5,000 per number for entities other than private individuals.

Tax on financial transactions

The scope of the tax on financial transactions includes payment service providers with a registered address or branch office in Hungary, credit institutions entitled to provide foreign currency services, special services intermediaries entitled to provide intermediated foreign currency services, and financial institutions that engage in the granting and negotiation of credit and cash loans but to not qualify as payment service providers.

The financial transaction tax applies to the following payment services:

- Bank transfers.
- Direct debits.
- Postal cash payments.
- Cash payments from payment accounts (including cash withdrawals using a credit card).
- Cash transfers.
- Bank card payments.
- Letters of credit.
- Cashing cheques.
- Foreign currency exchanges.
- Debt repayments.
- Commissions and banking fees.

- Other transactions in which the amount of the transaction is deducted from the payment account credit balance.

If certain conditions are fulfilled, no tax will be payable for transactions such as:

- Technical transfers between accounts held at the same bank.
- For investment services, transfers between the payment account and the client account if the investment service provider is a related party of the financial service provider.
- Payments from limited purpose accounts (long-term investment accounts, voluntary pension accounts, subsidised accounts for minors [START account], and custodial accounts).
- Cash pool related payment transactions within the same financial service provider.
- Transactions between financial service providers (including, among others, financial institutions, investment companies, etc.).
- Payment transactions from social security and family allowance administrative accounts.
- Unapproved (or approved but incorrectly made) payment transactions and their corrections.

In general, the tax base is the amount of the transaction (debit amount, amount paid, amount of currency sold, etc.). In most cases, the tax rate is 0.3% of the transaction but the amount payable may not be more than HUF 6,000 per transaction. This cap is not applicable to transactions in which the duty is payable by the State Treasury or Magyar Posta Zrt, or in case of cash withdrawal. In the case of (card) payment transactions initiated by the payer through the payee, a flat-rate tax of HUF 800 per year is payable. Also, if such payment includes transactions executed with the use of a contactless payment feature, the duty payable is reduced to HUF 500 per year.

Special tax of financial institutions

In Hungary, there is a special tax levied of financial institutions. The tax base of financial institutions is the amended balance sheet total figure calculated from the financial statements of the second tax year preceding the current tax year. In 2017 and 2018, the tax rate is 0.21% of the tax base exceeding HUF 50 billion. Below HUF 50 billion, the tax rate is 0.15%. Financial institutions are also subject to 30% tax on their profit before taxation; however, this tax liability is creditable against the special tax of financial institutions calculated on the balance sheet totals.

Insurance premium tax

Insurance premium tax is applicable on voluntary vehicle liability insurance policies (CASCO) and on property and casualty insurance policies in Hungary.

The insurance tax should be paid by the insurance companies after the gross insurance premium received on insurance policies insuring risks located in Hungary. Insurance companies subject to the tax include:

- insurance companies headquartered in Hungary
- foreign insurance companies' Hungarian branches, or
- insurance companies providing cross-border insurance services if these entities, which are headquartered abroad, render taxable insurance services in Hungary.

The above-mentioned entities should apply two different tax rates. For voluntary vehicle liability insurance policies, the rate of the tax is 15%; for property and casualty insurance, the rate is 10%.

We note that this tax should be paid neither after the mandatory vehicle liability insurance, nor after life and health insurance.

Accident tax

The base of the accident tax is the yearly fee of compulsory motor vehicle liability insurance. The tax rate is 30%, but the maximum rate shall not be more than HUF 83/day/vehicle.

Branch income

Foreign companies may establish branch offices in Hungary. A branch office is an organisational unit of a foreign company without legal personality, vested with financial autonomy, and registered in the Hungarian companies register as a branch office of the foreign company. The provisions of the Hungarian Accounting Act apply to branch offices, which must prepare reports using double-entry bookkeeping. Statutory audits are obligatory, except for the branches of corporations whose registered office address is in the European Union.

A branch office is regarded as established when it has been entered into the companies register. A branch office may start operating once the application for registering the branch office has been submitted to the Court of Registration, provided that it indicates ‘under registration’ on its corporate correspondence. Until a branch has been registered, it cannot carry out any activities that are subject to official permission. A branch office is considered dissolved upon its removal from the companies register.

Branch offices are treated as PEs for taxation purposes. They have to determine their tax base according to the general rules applicable to Hungarian companies. The profit for the year (calculated on the basis of the Hungarian accounting system and adjusted by specific provisions of the Corporate Tax and Dividend Tax Act or CDTA) is subject to CIT of 9%. The definition of PE is similar to that in the tax treaties but somewhat broader. For treaty countries, the respective treaty definition applies.

A foreign company’s CIT base is determined for all its domestic PEs (except for branches) collectively and for its branches separately. A branch should account for costs and revenues as if it were independent from its foreign parent company.

For a Hungarian PE, earnings before taxes are reduced by cumulated administrative costs incurred proportionately at the headquarters and any of its PEs, with the maximum proportion defined as the revenues of the PE compared to all revenues of the foreign company.

However, if there is a treaty between Hungary and the other country, the provisions of the treaty have priority over domestic law. Consequently, the provisions of the treaty have to be followed in the first instance, and all costs related to the activity of the branch have to be allocated to the branch, without the above restrictions in domestic law, and all profit realised with respect to the branch must also be allocated to the branch. The allocation method must be consistent from year to year, unless there is a good reason for changing it.

The foreign parent must continuously provide the assets and funds required for the operation of the branch office and the settlement of its liabilities. The employees of a branch office are in a legal relationship with the foreign company, and the foreign parent exercises employer's rights. A branch is considered to be related to its parent company/headquarters. Consequently, the prices used in inter-company transactions have to be at arm's length, and the transfer pricing documentation requirements have to be taken into consideration.

Income determination

The CIT base should be calculated by modifying the accounting pre-tax profit by adjustments and deductions as provided by the CDTA.

Inventory valuation

Inventories are generally valued at their historical cost unless their fair market value is significantly lower than their book value, in which case the fair market value should be recorded. In most cases, the cost is determined on the basis of first in first out (FIFO) or average cost.

Capital gains

Capital gains (losses) are treated as ordinary income (losses) for tax purposes. The gain on the sale of depreciable assets equals the sales revenue reduced by the tax value of the asset for CIT purposes.

If a participation is registered within 75 days, or an intangible asset is registered within 60 days, of acquisition and held continuously for at least one year, capital gains from the sale or contribution in kind of the participation, or the intangible asset, are exempt from CIT in general. Prior to an amendment as of 1 January 2018, there used to be an additional requirement concerning the minimum share of the given capital (at least 10% or above).

Stock transactions

Shareholders of a real estate holding company are also subject to CIT on their income from the alienation of the shares in the real estate holding company. Transfers of direct or indirect participations in companies that own real estate may be subject to CIT in certain cases where the shareholder is a foreign resident.

Dividend income

Except in the case of controlled foreign companies (CFCs) (*see the Group taxation section*), dividends received and accounted for as income in the given tax year are tax-free.

Interest income

No specific provision exists in Hungary for interest income; consequently, interest income is taxable for CIT purposes.

Intellectual property (IP) related income

The IP regime has recently changed in Hungary. In the transition period, both the old and new regime may be applicable, as follows:

- The old regime is applicable to IP acquired or produced till 1 January 2016.

- The new regime is applicable to IP acquired or produced after 30 June 2016.
- In the case of IP acquired or produced between 1 January 2016 and 30 June 2016, special rules apply.
- The old IP regime cannot be used after 30 June 2021.

Under the old IP regime, royalty includes gross income derived from (i) the licensing of the use or exploitation of patents, industrial design, and know-how; (ii) the right of use of trademarks, trade names, and business secrets; (iii) permission to use copyrights and similar rights attached to protected work; and (iv) transfers of the property described above (except for trademarks, trade names, and business secrets).

Under the new IP regime, royalty includes the profit (net income) gained through (i) the licensing of the use or exploitation of patents, utility models, plant variety rights, supplementary protection certificates, patented topography of micro-electronic semiconductors or a copyrighted software, or from registration as an orphan medicinal product (together referred to as 'exclusive rights'); (ii) the sale of exclusive rights, or from their de-recognition as non-monetary, in-kind contribution; and (iii) the supply of goods and services connected to the value of exclusive rights.

Royalty income

50% of the net income (gross income in case of the old regime) arising from royalty is exempt from tax, but up to 50% of the profit before tax. Based on the new regime, further limitations apply (Nexus approach) to the IP asset related tax incentives if the IP asset is acquired from a related party or R&D services to produce the IP asset are rendered by a related party.

IP reserves

Gain on sale of a non-reported IP asset that is transferred to tied-up reserves and used within five years (three years in the case of the old regime) for the acquisition of another IP asset generating royalty income is exempt from tax.

Reported IP

Gain on sale of a reported IP asset is exempt from tax. *The details of the exemption are described under Capital gains above*.

Development reserve

50% of pre-tax profit may be assigned as development reserve. The maximum value of the reserve is HUF 500 million annually. In general, the period within which the development tax reserve can be released, consistently with the cost of investment, is four years. This amount is basically available as a lump-sum tax depreciation for the relevant asset prior to the asset being acquired.

Unrealised exchange gains/losses

Hungarian taxpayers are able to use foreign currency for bookkeeping purposes. In case gains or losses are hitting the P/L though, those are tax effective. Note that there is a tax deferral available for unrealised exchange gains/losses.

Foreign income

Taxpayers resident in Hungary and foreign entrepreneurs (i.e. PEs) must calculate their CIT base exclusive of any income that is subject to taxation abroad if so prescribed by an international treaty. In any other case, a foreign tax credit is available for income taxes paid abroad (*see Foreign tax credit in the Tax credits and incentives section for more information*).

In Hungary, there are no provisions under which income earned abroad may be tax deferred.

Deductions

In general, costs and expenses incurred in relation to the taxpayer's income-generating business activity are deductible for CIT purposes.

Accrued expenses are recognised for taxation purposes in the tax year they affect.

Depreciation and amortisation

Accounting depreciation that is accounted as expenditure, and thus included in the accounting profit, should be added to the CIT base. Tax depreciation calculated according to the CDTA reduces the tax base, even if the tax depreciation is higher than the accounting depreciation. The tax depreciation of tangible assets should be calculated using the straight-line method on the basis of the historical value from the time when the asset was first used for business purposes.

Examples of tax depreciation rates include the following:

Assets	Depreciation rate (%)
Computers and other high-tech machinery	33 or 50
Vehicles	20
Other tangible assets	14.5
Buildings (long-life structure)	2
Rented buildings	5

Assets newly acquired since 2003 can be depreciated at 50% annually; these instruments include, among other items, machinery and IP.

Generally, there is no prescribed amortisation rate for intangibles; the historical value, the residual value, and the useful life should be considered. However, goodwill can be amortised at an annual rate of 10%, provided that the business of the taxable person is in line with its intended purpose and that amortisation of goodwill can also be recognised for accounting purposes. Additionally, extraordinary amortisation might also be recognised for CIT purposes.

In the case of transformations, specific amortisation rules apply.

Organisational and start-up expenses

Companies are not obligated to capitalise the costs of formation/reorganisation. The capitalisation of these costs is at the company's discretion, but the company should comply with its accounting policy. Furthermore, only the direct costs of formation/reorganisation that are not classified as investments or renovations and are likely to be recovered ultimately can be capitalised.

Interest expenses

Interest expenses are generally deductible if the following conditions are met:

- Interest incurs in relation to the company's profit generating activity.
- Thin capitalisation rules are fulfilled (*see Thin capitalisation in the Group taxation section*).
- Interest is not paid to a CFC.
- Interest is in line with the transfer pricing principles (in a related-party setting).

Bad debt

Under the Accounting Act, bad debts are only deductible for CIT purposes if they are supported by legally valid third-party documents stating that the receivable cannot be collected. Expenses claimed that cannot be enforced in court and expired claims are not deductible for CIT purposes.

In addition to the above, 20% of eligible bad debts are deductible from the CIT base if the debt was not settled within 365 days from the due date.

Charitable contributions

Grants made or assets that are transferred without consideration, as well as liabilities assumed or services provided free of charge, will qualify as business expenses if the taxpayer has a declaration from the recipient stating that the recipient's profit will not be negative without the income received.

Grants will always qualify as non-business expenses if they are provided to a foreign person or foreign resident company.

In the case of film and sports (football, basketball, handball, ice hockey, water polo, and volleyball) sponsorship grants, the amount of support is deductible both from the CIT base (as an expense) and from the CIT amount, provided that an official sponsorship certificate is available.

Tax base allowance regarding R&D

A tax base allowance is only applicable for R&D activities if the taxpayer carries out basic research, applied research, or experimental research activities within its own scope of activities.

'R&D activities carried out within the taxpayer's operations' shall mean R&D activities carried out:

- using the taxpayer's own assets and employees, at the taxpayer's risk and benefit
- R&D activities carried out by the taxpayer's employees using the taxpayer's own assets on behalf of others, or
- (joint) R&D activities carried out under an R&D agreement (e.g. cost sharing agreement).

The direct cost of the R&D activity or the amount of depreciation on the research activity (if the cost of R&D activity is capitalised) is deductible when calculating the pre-tax profit. Additionally, an extra deduction is granted from the tax bases in the form of a downward tax base adjustment.

300% of the direct costs of research activity (up to a maximum of HUF 50 million) are deductible from the tax base if the research activity is carried out jointly with a higher education institution, the Hungarian Academy of Sciences, or a research institute established by them.

The same deductibility rule is applicable if a cooperation agreement is concluded with a research institution operating either as a central budgetary organ or as a majority state-owned business organisation.

Taxpayers may also deduct from their CIT base the direct costs of R&D activity carried out with own assets and employees of their related parties if, based on the choice and the declaration of the related party, the deduction was not utilised by the related parties and the R&D also serves the business of the taxpayer who utilises the deduction.

As of June 2016, entities with a negative tax base may claim 4.5% of tax base deductions applied on account of R&D activities as a social tax allowance, subject to meeting the following criteria: deriving at least 40% of total revenues from R&D activities, maintaining at least one trainee position, and having no decrease exceeding 10% in the average statistical headcount of R&D personnel in the tax year. If applied, 50% of the above tax base deduction will be regarded as a loss carryforward already used.

Employee benefit expenses

Employee benefits and the fringe benefit tax payable on them are tax-deductible.

From 2017, the CIT base may be reduced, up to the amount of the pre-tax profit, by the aggregate of the investment cost and the increment of cost of accommodation facilities for workers, as defined by the Act on Personal Income Tax, rather than the costs and expenditures recognised in the tax year in which the relevant construction or renovation project is completed. The CIT base may also be reduced by the rent of property rented for the purpose of providing accommodation facilities for workers.

As of 1 January 2018, the sum shown as the cost of a building of long-life structure, built for providing rental units to their workers and directly serving the said activities, or shown as any increment to that cost, in the tax year when the investment or renovation was completed can also be deducted from the pre-tax profit.

Bribes, ‘kickbacks’, other illegal payments

Bribes, ‘kickbacks’, and illegal payments are not recognised as business costs for CIT purposes and are non-deductible from the tax base.

Fines and penalties

Fines and penalties are not deductible for CIT purposes.

Taxes

Taxes are usually deductible for CIT purposes, except for CIT, recoverable VAT, and the income tax of energy suppliers and public utility service providers.

Net operating losses

Losses can be carried forward according to the following:

Year the tax loss was generated	Period of utilisation
Prior to the tax year starting in 2015	Until the tax year including 31 December 2025
During the tax years starting after 2015	During the following five tax years

In the case of acquisition or legal transformation, the company's tax losses carried forward cannot be utilised if:

- the majority of the company's shares are directly/indirectly acquired by an independent entity (an entity who was not one of the company's owners in the preceding two financial years)
- the activity of the company changes significantly in the two years following the transformation, or
- the successor company does not generate any revenue from at least one activity of the predecessor.

Losses carried forward may only be used to offset up to 50% of the tax base calculated without losses carried forward. However, losses carried forward and acquired by the successor company in the course of corporate transformation may be written off in a tax year only in proportion to the ratio of the sales or other revenues gained in the tax year in respect of the continued business activity and the average sales or other revenues gained by the predecessor company in the last three tax years preceding the transformation.

Note that earlier tax losses must be used first (FIFO principle), and the losses of predecessors are also deductible from the successor company's CIT base if the aforementioned conditions are met.

Losses cannot be carried back (except for agricultural companies, who may account for deferred losses by self-revision or by correcting the amount of tax paid in the previous two tax years).

See Tax base allowance regarding R&D above for a new rule in relation to entities with a negative tax base effective as of June 2016.

Payments to foreign affiliates

There is no general restriction on the deductibility of a consideration due to a foreign entity, provided the payment is a justifiable business cost. General anti-avoidance provisions (abuse of law, substance-over-form) may also result in non-deductibility. If the parties are considered to be related parties under the definition of the CDTA, the Hungarian tax office is entitled to adjust the Hungarian party's tax base to reflect the market price (arm's-length price) if the parties did not make the adjustment themselves.

Considerations due for services are only deductible if the actual performance of the services is supported and the Hungarian taxpayer can prove that it benefits from the service.

Thin capitalisation rules may apply to interest on any non-banking debt in excess of three times the equity (*see Thin capitalisation in the Group taxation section*).

The consideration paid to a CFC is not deductible for CIT purposes unless the taxpayer is able to prove and keeps documentation that it serves the purposes of business operations. *For further details on the CFC rules, see the Group taxation section.*

Group taxation

Group taxation is not available for CIT purposes in Hungary. However, in the case of certain taxes (e.g. LBTs), an aggregated tax base has to be determined for related parties if certain conditions are met.

See Value-added tax (VAT) in the Other taxes section for a description of group taxation for VAT purposes.

Transfer pricing

If parties qualify as related parties (as defined in the Hungarian CDTA) and the price applied differs from the arm's-length price, the CIT base must/may be modified by a transfer pricing adjustment. In addition, the foreign PEs of a Hungarian company and the Hungarian head office also qualify as related entities and are subject to transfer pricing regulations.

Taxpayers are obligated to prepare transfer pricing documentation for every transaction between related parties (including in-kind contributions), subject to certain exemptions.

Transfer pricing documentation is not required to be prepared:

- For transactions between a resident taxpayer's PE and a related company if the resident taxpayer under the provisions of an international treaty adjusts the corporate tax base ensuring that it does not include the foreign taxable income.
- For transactions covered by an advanced pricing agreement (APA) issued by the state tax authority.
- If the consideration due for goods or services supplied by a third party is recharged in full to a related party.
- In the case of cash transferred without consideration.
- If the value of the transaction does not exceed HUF 50 million during the tax year.
- In the case of individuals, small or micro enterprises, transactions conducted on the stock exchange, or at an officially set price.

Taxpayers are allowed to prepare consolidated transfer pricing documentation if the consolidation does not jeopardise comparability, and the contracts:

- have the same subject matter and all their terms and conditions are identical and laid down in advance
- closely relate to each other, or
- in the case of consolidation, taxpayers are obligated to include arguments for the consolidation (i.e. why the taxpayer believes that criteria of consolidation are met).

When determining transfer prices applied between related companies, taxpayers are allowed to apply traditional transaction methods or transactional profit methods. If the above methods are not applicable, companies may use any other method.

According to Decree No. 22/2009 of the Ministry of Finance, taxpayers are allowed to prepare two types of documentation: standalone or centralised transfer pricing documentation. These rules apply to the years from financial year (FY) 2010 to FY 2017.

According to Decree No. 22/2009 of the Ministry of Finance, standalone documentation must include the following:

- Functional and risk analysis.
- Industry and company analyses.
- Economic analysis (including financial analysis, benchmarking analysis, and the process of selecting the most appropriate transfer pricing method).

According to Decree No. 22/2009 of the Ministry of Finance, centralised transfer pricing documentation must consist of two main parts:

- The core documentation, which includes the standard data for each company within the group that is resident in any EU member state.
- Country-specific documentation, which describes the agreements between the taxpayer and its related parties.

Taxpayers are required to indicate in their CIT returns if they prepare centralised documentation.

The formal and content requirements as included in Base Erosion and Profit Shifting (BEPS) Action 13 were implemented in Hungary in Decree No. 32/2017 of the Ministry for National Economy, which has replaced, as of 1 January 2018, the Decree No. 22/2009 of the Ministry of Finance, the former decree governing the details of the transfer pricing documentation requirements.

According to Decree No. 32/2017 of the Ministry for National Economy, taxpayers have to prepare a Master File and a Local File as transfer pricing documentation. The new rules have to be applied in the documentation to be prepared for FY 2018 first. At the taxpayer's discretion, the new rules may also be applied to transfer pricing documentation relating to tax liabilities for FY 2017, provided that the due date of the documentation is not earlier than the date on which the Decree enters into force.

According to Decree No. 32/2017 of the Ministry for National Economy, the Local File must include the following:

- Functional and risk analysis.
- Industry and company analysis.
- Economic analysis (including financial analysis, benchmarking analysis, and the process of selecting the most appropriate transfer pricing method).
- Copies of APAs and advance tax rulings issued by foreign tax authorities that concern the local company's documented transactions.

According to Decree No. 32/2017 of the Ministry for National Economy, the Master File must include the following:

- The organisational structure and the presentation of the group (including the supply chain, inter-company agreements, functional and risk analysis, and business reorganisation, if any).
- Information about the intangible assets, the financial transactions, the financial performance, and the taxation of the group.
- A list of APAs and advance tax rulings issued by tax authorities.

In addition to the above, taxpayers are allowed to prepare a so-called simplified documentation for certain low-value adding services if criteria set in the Hungarian legislation are met. Both Decree No. 22/2009 of the Ministry of Finance and Decree No.

32/2017 of the Ministry for National Economy allow the preparation of the simplified documentation.

As per the CDTA, taxpayers are required to apply the interquartile range when determining and presenting the arm's-length nature of the transfer prices of their inter-company transactions if they meet all the specified conditions, as defined in Decree No. 22/2009 of the Ministry of Finance and Decree No. 32/2017 of the Ministry for National Economy.

According to Decree No. 22/2009 of the Ministry of Finance, the conditions are the following:

- the arm's-length price is determined by applying a transfer pricing method other than comparable uncontrolled price (CUP) method
- the arm's-length price or range is determined based on information from databases that are publicly accessible or verifiable by the tax authority, and
- the comparability analysis covers the data of at least ten comparable companies for at least three financial years or the sample range exceeds 15%.

According to Decree No. 32/2017 of the Ministry for National Economy, the conditions are the following:

- the arm's-length price or range is determined based on information from databases that are publicly accessible or verifiable by the tax authority, and
- the comparability analysis covers the data of at least ten comparable companies for at least three financial years or at least 30 observations are taken into account or the sample range exceeds 15%.

The transfer pricing documentation does not have to be submitted to the tax authority, but has to be available no later than the filing date of the CIT return in any given year; otherwise, a default penalty may be assessed in an amount up to HUF 2 million for missing or incomplete documentation for each year. In the case of a repeat offence, it is up to HUF 4 million for each missing or incomplete documentation. For the repeated offence of the same documentation, the penalty may go up to four times of the penalty levied for the first time.

Country-by-country (CbC) reporting

In addition to the above, Hungary has implemented CbC reporting legislation. The new statutory obligation pertains to Hungarian resident companies that were, in the fiscal year preceding the reporting fiscal year, members of a multinational company group with a total annual consolidated group revenue exceeding 750 million euros (EUR) (or an amount in HUF approximately equivalent to the same, calculated according to the monthly average Hungarian Central Bank exchange rate for January 2015).

Under the general rule, a Hungarian resident ultimate parent entity must file a CbC report with the Hungarian tax authority within 12 months of the last day of its reporting fiscal year. The ultimate parent entity must also notify the tax authority about the last day of the fiscal year and that it is a reporting entity (i.e. an entity required to file a CbC report).

Hungarian resident entities that do not qualify as reporting entities are obligated to notify the tax authority about the name and tax residence of the reporting entity.

The first CbC reports and notifications must have been filed for the fiscal year commencing on or after 1 January 2016 within 12 months of the last day of that fiscal year. As a general rule, however, in future fiscal years notifications must be made no later than the last day of the reporting fiscal year. Any change in the information reported must be reported within 30 days of such change occurring. The CbC reports and notifications must be submitted electronically.

Failing to submit reports or notifications, late submission, or providing incorrect, false, or incomplete information may be subject to a default fine of up to HUF 20 million.

Thin capitalisation

As a general thin capitalisation rule, interest payable is not a fully deductible expense for CIT purposes if the amount of a company's outstanding liabilities owed to non-financial institutions exceeds three times the value of the equity.

Debt means the average daily balance of outstanding loans, outstanding debt securities offered privately, bills payable (with the exception of bills payable to suppliers), and any other liability shown in the balance sheet that entails the payment of interest from the taxpayer's profit. Debt includes non-interest bearing loans as well. Debt also includes third-party loans (unless provided by a bank).

Equity means the average daily balance of registered capital, capital reserve, accumulated profit reserve, and tied-up reserve. This means that revaluation reserves and current year profit and loss have to be disregarded when computing the equity for Hungarian thin capitalisation purposes.

Hungarian intra-group financing companies are exempted from the thin capitalisation calculation.

Controlled foreign companies (CFCs)

As of 18 January 2017, the definition of a CFC has been changed in line with the Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD). In accordance with the new definition, a foreign person shall qualify as a CFC in case the taxpayer:

- controls more than half of its voting rights or its subscribed capital, directly or indirectly, or is entitled to more than half of its after-tax profit, and
- the effective corporate tax paid abroad amounts to less than half of the corporate tax the person would have been liable to pay under the presumption it was established in Hungary (essentially lower than 4.5%).

A foreign person is not deemed a CFC if there is real economic substance (i.e. adequate personnel, equipment, assets, and location to effectively carry out business activities) attributable to that person.

As a general rule, companies that have PEs with a low effective tax rate, and companies that have direct or indirect subsidiaries subject to a low effective tax rate, can expect adverse tax consequences. Nevertheless, the wording of the legislation is open to different interpretations; so further clarification is recommended. There are anti-deferral rules also inspired by the ATAD directive applying on certain passive income items of the CFC with credit given for the taxes paid by the CFC.

Tax credits and incentives

Foreign tax credit

Unilateral foreign tax credit is available for income taxes paid abroad, up to the Hungarian tax payable on the creditable income (at a maximum of 90% of income tax paid abroad).

The foreign income has to be classified by country of origin and revenue type. The deducted tax may not exceed the lesser of either the applicable foreign tax or the applicable tax based on the taxation treaty between Hungary and the given country.

If there is no taxation treaty, 90% of the tax payable abroad is credited against the tax liability, up to a hypothetical tax liability calculated by using the average Hungarian tax rate. Ordinary tax credit is applicable if so described by a tax treaty. The average tax rate is the CIT rate, reduced by the applicable tax allowances, divided by the tax base. Indirect costs should be allocated in proportion to the revenue of the branch office to the total revenue of the whole company.

Development tax incentive

Each development tax incentive may be claimed for a 13-year period (beginning on the completion of the development) on the CIT returns over a maximum period of 16 years from the original application for the incentive. For development incentives that have been submitted to the Ministry for National Economy prior to 1 January 2017, the utilisation period is 10 years from the completion of the investment and 14 years from the application. In any given tax year, the tax incentive is available for up to 80% of the tax payable but is limited, in total, to the state aid intensity ceiling.

Claiming the tax relief is subject to a government decree, based on authorisation by the European Commission, if the total amount of state aid required for the investment project exceeds the amount that can be provided at the same municipality for an investment project with eligible expenses exceeding EUR 100 million. If the investment is below this threshold, taxpayers only need to notify the Ministry for National Economy before starting the investment. However, the beneficiary will also have to obtain prior consent of the European Commission if it has closed down the same or a similar activity in the European Economic Area in the two years preceding the aid application or intends to close down the same or a similar activity elsewhere in the European Economic Area in the two years after the completion of the investment.

Tax incentives are available for investments if:

- the net present value of the investment is at least HUF 3 billion, or
- the net present value of the investment is at least HUF 1 billion in certain designated areas and provided that in the four years following the year in which the tax incentive is first used against the tax base:
  - the annual average number of employees has increased by at least 50 compared with either the year before the investment was made or the average number of employees for the three years preceding the investment (by 25 in certain designated areas), or

- the annual wage costs have increased by 300 times the minimum wage effective on the first day of the tax year (by a multiple of 150 in certain designated areas) compared with either the annual wage costs of the year before the investment was commenced or the average annual wage cost for the three years preceding the investment.

Further incentives may be granted, provided certain criteria are met, to companies that invest:

- at least HUF 100 million in equipment for zoogenic food production
- at least HUF 100 million in environmental protection projects (including energy efficiency)
- at least HUF 100 million in the production of films and videos
- at least HUF 100 million in basic research, applied research, and experimental development projects
- at least HUF 100 million in projects financed by an issue of stock market-quoted shares if (i) the project is started before the last day of the third calendar year following the date of issue, (ii) the total nominal value of the shares issued by the fifth year following the start of the project continuously reaches 50% of the value of the registered shares, (iii) the total issue price reaches 50% of the eligible costs, and (iv) at the date of the application for the incentive the company has at least 25 shareholders or at least 25% of the issued shares are owned by shareholders where each of them does not have more than 5% of the issued shares' nominal value
- at least HUF 500 million in projects initiated by SMEs, or
- at least HUF 100 million in projects implemented and operated in a free entrepreneurship zone.

As of 24 November 2017, development tax incentives may be also applicable to investments carried out in certain designated areas of:

- at least HUF 6 billion at net present value, or
- at least HUF 3 billion at net present value aimed at creating new employment opportunities if the investment project results in the diversification of existing establishments into new products or new process innovations.

Tax incentives may also be granted for projects that create new jobs. The restrictions prescribed in the CDTA regarding the headcount of staff and the percentage of new entrants to the labour market that may be claimed for such investments have been abolished, although the conditions prescribed in the relevant decree must still be met.

In addition, the law stipulates that a taxpayer will be required to submit the details of the investment in their tax returns submitted for the tax year in which the investment is put into operation, including, in particular, the date of completion and the eligible expenses actually incurred at present value.

Regional aid map of Hungary

Large enterprises based in Budapest are not eligible for tax incentives, while those in Pest County are only able to claim tax incentives for projects aimed at starting a new economic activity in certain assisted areas (available tax incentive is 20% or 35%).

Aid intensity is 25% in the Western Transdanubia region and 35% in the Central Transdanubia region. In the Northern Hungary, Northern Great Plain, Southern Great Plain, and Southern Transdanubia regions, the maximum aid intensity is 50%.

Free entrepreneurship zone

The free entrepreneurship zone contains over 1,000 settlements in the unprivileged areas of Hungary designated by the government and coordinated by the regional business development agency that is comprised of individual regions, separated by public administration, borders, and topographical lot numbers, that are treated jointly for regional development purposes.

In accordance with the latest amendment to the Government Decree on the establishment of free entrepreneurship zones, the list of eligible areas has been broadened to include over 1,200 settlements. The amendment sets out an extended period of applicability until 31 December 2020.

Tax Credit for Growth (TCG)

The rules of the TCG entitle the taxpayer to pay the tax on that part of pre-tax profit that exceeds the quintuple of the pre-tax profit of the preceding year (tax falling on the credit for growth) in the following two fiscal years instead of paying it in the current year.

As a consequence, the TCG is, in practice, a deferral of the tax payment liability. The applicant is eligible for payment of the tax according to the TCG rules if: (i) it became subject to CIT at least in the year three years before the current year; (ii) during this period it did not participate in any transformation, merger, or demerger; and (iii) it reports this choice to the tax authority by the deadline of the CIT top-up. Companies that choose to take advantage of the TCG are already entitled to waive payment of the tax falling on the credit for growth at the CIT top-up of the current year. A preferential rule is attached to the TCG: the amount of the tax falling on the credit for growth not yet due can be reduced if the taxpayer engages in fixed asset investment or increases its employee headcount in the two fiscal years following the choice.

As of 19 July 2017, taxpayers utilising the TCG shall pay interest starting from the day that follows the due date determined based on the standard payment deadline for the TCG. The interest shall be calculated at a rate of 1/365 of the Central Bank base rate in effect on the given day for each calendar day, determined in accordance with the rules applicable to self-audit surcharges.

Tax credits on investments to comply with energy efficiency targets

A CIT incentive on investment projects aimed at increasing energy efficiency has been introduced in January 2017; however, the applicable rules were clarified in a Government Decree No. 176/2017 published on 4 July 2017.

As a particular feature, the tax incentive does not have a territorial restriction, and investment projects carried out even in the capital may be eligible, given all other conditions are fulfilled. The tax incentive may be applied to up to 70% of the calculated CIT liability.

Projects become eligible for the incentive given their initial energy-efficiency goals are met according to a certificate issued by energy auditors or auditing organisations listed by the Hungarian Energy and Public Utility Authority subsequent to the installation of the investment. Moreover, prior to commencing the project, a preliminary audit has to be carried out (also by an organisation described above) reflecting the rate of possible energy savings on the planned investment.

The rate of energy savings is to be measured considering the baseline regulations, or, in exceptional cases, against the energy consumption of a similar asset with the lowest energy efficiency (and attainable savings via installing the former) currently available on the market.

The tax incentive is applicable up to 30% of eligible costs (but not more that the HUF equivalent of EUR 15 million at present value), which can be increased by 20% for small enterprises, and 10% for medium-sized enterprises. The tax incentive can be used, at the earliest, in the tax year in which the investment became operational and in the subsequent five tax years.

Tax holidays

Tax holidays may be granted in relation to film and theatre subsidies, developments, and SMEs.

Other tax incentives

Film, performing arts, and spectator sports incentives

In Hungary, companies are encouraged to subsidise film production, performing arts, and spectator sports through the high rate of tax savings available. As sponsors, companies are able to achieve tax savings of up to 104.75% of the financial support they provide for film makers, performing artists, or sport clubs. Also, the option of allocating some of the payable CIT to support sports and culture is available. These two regimes are not applicable in parallel within the same tax year.

The total amount of donations for performing arts (including supplementary donations and donations in the frame of disposition of tax) shall not exceed 80% of the annual revenue of the association realised from sale of tickets in the European Economic Area in the prior year and it cannot exceed HUF 1.5 billion.

From 2017, the period for applying the tax incentive for providing financial support to film productions, performing arts organisations, and sports organisations for popular team sports is extended to include the eighth calendar year (previously it was the sixth tax year) following the year in which the support was provided.

Rules for applying sports incentives have been amended as of 1 July 2017. The list of eligible sports, defined as spectator sports, now comprises football, handball, basketball, water polo, ice hockey, and, as a new addition, volleyball.

Tax incentive for SMEs

A tax incentive is available for SMEs (basically, those with a maximum of 250 employees; annual net revenue of a maximum of EUR 50 million; or a maximum annual balance sheet total of EUR 43 million). SMEs that take a loan from a financial institution for the acquisition or production of tangible assets may deduct the total amount of the interest paid on the loan from their tax due without any cap. However, taxpayers engaged in certain business sectors cannot use this tax incentive (e.g. transportation, agricultural activity).

In order to be eligible for the above tax incentives, the wages and salaries need to be kept at a certain required level, according to relevant regulations.

Tax incentive for business start-ups

From 2017, pre-tax profits may be decreased by three times the cost of shareholdings acquired in start-up companies. The tax incentive can be used in four equal instalments, in the tax year of acquisition and in the three subsequent tax years, but only up to HUF 20 million per tax year.

The definition of start-up companies has been slightly amended as of 30 June 2017. A start-up company shall mean a legal person registered according to the Government Decree on the Registration of Start-up Companies, and, additionally, the average statistical number of employees in the start-up company is two or more in the tax years when claiming the allowance. Having an R&D fellow as at least one of the two employees is not a requirement any more pursuant to the amendment of 30 June 2017.

Withholding taxes

Under the domestic rules, there is no WHT on dividends, interest, or royalties paid to non-individuals.

Tax administration

As a significant development in the area of tax administration in Hungary, a new Act on Rules of Taxation has been introduced with an effective date of 1 January 2018 (new ART). Along with its modified content and structure, the governing rules for tax procedures and tax audits have been set out in a separate new act, the Act on Tax Administration Procedure.

The primary goal of the above revamp is a change in the overall perspective of the tax authority, an aim to create a regulatory environment that is brief, transparent, and easy to follow for taxpayers. In addition, the new Act aims to strengthen the service provider nature of the tax authority. Note that to a large extent this major change is a reshuffle of the rules among different pieces of legislations in order to achieve a more coherent and transparent situation.

Taxable period

CIT must be calculated by reference to the accounting year, which is either the calendar year or, for group companies, the group's accounting year.

Tax returns

Returns must be lodged by the last day of the fifth month following the last day of the accounting year (31 May for a calendar year taxpayer). The tax payable is determined by self-assessment.

Tax returns may be submitted either electronically or in paper format. However, those who are legally obligated to submit monthly tax and contribution returns (e.g. employers and payers) may only submit tax returns electronically.

From 1 January 2017, entities subject to LBT may file their tax returns with the competent local municipality through the national tax authority. The national tax authority will forward tax returns to the competent local tax authorities in an electronic format only.

Payment of tax

CIT instalments must generally be reported and paid quarterly or monthly (above HUF 5 million tax payable). The final payment is due by the last day of the fifth month following the last day of the accounting year (31 May for a calendar year taxpayer). In the case of taxpayers with total trading revenues of over HUF 100 million, 100% of the expected final payment is due by the 20th day of the last month of the accounting year (top-up obligation). However, a late payment penalty is only levied if the company fails to pay at least 90% of the expected final payment by the above deadline. The late payment penalty is 20% of the difference between the tax advances paid (including the top-up payment) and 90% of the actual CIT liability.

Tax audit process

Generally, the tax authority selects the taxpayers subject to tax audit based on certain criteria, which are communicated to the public, and an elaborate risk assessment model. Tax audits can vary in the following ways: the tax authority can (i) re-audit tax returns, (ii) monitor the redemption of government guarantees, (iii) audit the fulfilment of certain tax obligations, (iv) gather data and information, (v) monitor compliance with duty payment obligations, or (vi) re-audit previously audited tax periods.

In accordance with the new ART, the rules for tax audits have been simplified. Instead of the previously existing seven different types, there are two types defined in the Act (note that as part of the reshuffle, four out of the five disappearing types are, in fact, remaining, but in other legislations).

During a compliance audit, the tax authority may inspect whether the taxpayer complied with its individual administrative tax obligations prescribed by relevant legislation, and, in addition, may gather data and may inspect the authenticity of economic events concerned.

When carrying out a tax audit, the tax authority inspects whether the taxpayer's tax assessment and the taxpayer's obligation to file tax returns have been fulfilled.

A tax audit period can cover any years that are not lapsed (five years after the last day of the calendar year in which the taxes should have been declared or reported, or paid in the absence of a tax return or declaration) or not closed by a re-audit of tax returns. The tax audit starts when a company receives the notice of audit and finishes when that company receives the report containing the tax authority's findings.

The deadline for the completion of the tax audit has also been re-codified. According to the general rule, a tax audit is to be completed within 30-120 days, although in special cases (e.g. related tax audit, request for assistance from foreign tax authorities) can be extended three times by 90 days.

In order to avoid audits lasting for several years, tax audit deadlines cannot be suspended in special cases either (*see above*), and the audit shall not exceed 365 days regardless of any ongoing related tax audit or outstanding input from foreign authorities.

Once the tax authority has completed the audit process, it issues its minutes. The minutes detail all the findings of facts of the audit and serves as the background of the tax assessment, and the basis on which the tax authority will pass its first-instance resolution. Upon receipt of the minutes, the taxpayer has the opportunity to submit its remarks to the minutes and raise any disagreement with the findings of the audit.

As one of the most important amendments as of 1 January 2018, the rules for the taxpayer to dispose new evidence during tax proceedings have been significantly modified. Upon the receipt of the minutes, the taxpayer is able to submit its remarks to the minutes and present evidence supporting its case within a 30-day deadline (increased from 15 days). In the course of subsequent proceedings (e.g. if a taxpayer submits an appeal regarding the first-instance resolution), taxpayers will not be able to allege any new facts or present any new proof that the taxpayer was already aware of but did not disclose upon the request of the tax authority in its remarks to the minutes.

In case of a dispute, the tax assessment of the tax authority may be appealed and challenged before the second-instance tax authority, which has the right to annul the first-instance resolution and decide on the merits of the case, or to instruct the first-instance tax authority to carry out a new audit if the facts and circumstances have not been appropriately and fully developed.

The decision of the second-instance tax authority is final and binding. Following the receipt of this decision, the company may litigate the case before the courts in Hungary. The court may uphold, amend, or annul the Resolution of Second Instance and, if it is necessary, may order a new process in relation to the tax audit.

The superior tax authority or the minister in charge of taxation (minister appointed for the supervision of the tax authority, i.e. Minister of Ministry for National Economy in Hungary) may take supervisory regulatory action on request by the taxpayer. The superior tax authority or the minister can also amend or annul the unlawful resolution, and, if it is necessary, a new procedure can be ordered. The deadline to initiate a supervisory measure has been set at one year following the final decision.

Statute of limitations

In general, the statute of limitations is five years from the end of the calendar year in which the tax return should be filed. Certain self-corrections interrupt the term of limitation.

Topics of focus for tax authorities

The tax authority will take more stringent measures against ‘aggressive tax planning’ (tax planning that takes advantage of unintended administrative or legal loopholes) using its international experience and cooperation agreements.

Generally, the following categories of taxpayers may expect to be scheduled for tax audits:

- Taxpayers that have significant tax deductions, tax allowances, and subsidies related to investments in relation to royalty.
- Taxpayers that deduct R&D expenses.
- Large taxpayers’ transfer pricing documentations.
- Taxpayers whose main activity is selling used cars.
- Taxpayers that provide accommodation or real estate services.
- Taxpayers that provide training services.

The tax authority will also pay more attention to the actual content of transactions conducted between related parties and to the methods companies use to determine the arm's-length price.

Special taxpayer categories

From 2016, the total tax difference charged to taxpayers classified as 'reliable' has to be reduced by the total tax difference credited to these taxpayers during the current year and the preceding five years. 'Reliable' taxpayers receive benefits, while 'risky' taxpayers fall under stricter rules.

The criteria for classifying taxpayers as reliable or high-risk has changed, along with the related legal consequences.

Reliable taxpayer

The tax authority classifies a taxpayer as 'reliable' if all criteria defined are met, including:

- at least three years of continuous operation (or being VAT-registered)
- no more than HUF 500,000 net tax debt
- not being classified as a risky taxpayer, and
- the balance of the taxpayer's total tax liability is positive.

Further conditions are that in the year in question and in the preceding five years:

- the tax difference on the taxpayer's expense should not be more than 3% of the total calculated tax liability of the year in question
- the taxpayer is not under foreclosure procedure
- the taxpayer is not under bankruptcy or under liquidation procedure, forced cancellation, or enhanced regulatory supervision by the tax authority, and
- the taxpayer's tax number is not under suspension or cancellation procedure.

Furthermore, the taxpayer cannot be classified as reliable if the sum of the default penalties in the previous two years before the year in question is more than 1% of the total calculated tax liability of the year in question.

Risky taxpayer

The tax authority classifies as 'risky' those taxpayers that are not under liquidation or forced cancellation, but are publicly listed due to a high tax deficit, tax debt, or employing an unreported workforce, or if the tax authority has had to apply business closure measures against the taxpayer repeatedly within a year, or the taxpayer's seat is located at a premise of seat service. The classification of a risky taxpayer lasts for one year, but will be cancelled in the subsequent quarter if the taxpayer settles its tax deficit or the tax debt and the related penalty and default.

Other rules

In line with the renewed profile of the tax authority as a service provider, start-up companies will be eligible for assistance as a part of a six-month mentoring period. The exact rules are currently in the development phase, but currently comprises lectures and personal consulting sessions offered to new businesses.

Other issues

Principal forms of doing business

- Branch.
- Partnership.
- Limited liability company.
- Private company limited by shares.
- Public company limited by shares.

Mergers and acquisitions (M&A) from a business and tax perspective

Mergers in Hungary are tax-free transformations if they qualify under the definition of preferential transformation. Preferential transformation means that a company, without going into liquidation, transfers all its assets and liabilities to another company in exchange for the issue to its shareholders of securities representing the capital of that other company and cash payment up to 10% of the total nominal value of the shares acquired in connection with the transformation, merger, division, or, where the shares have no nominal value, the percentage they represent in the subscribed capital.

In a preferential transformation, the predecessor company does not have to amend its tax base by the difference between the adjusted book value and the book value. The adjusted book value means the historical value of assets less any depreciation deducted from the tax base plus the readjusted amount of extraordinary depreciation. Furthermore, for shareholders, the income accounted in excess of the historical value of the shares they acquire in the preferential transformation is also not taxable for CIT purposes for as long as the shareholder holds its participation.

In any other case, if two companies merge, the difference between the market value and the book value of the assets and liabilities is taxable for the successor company. Furthermore, the predecessor company may decrease its tax base by the amount of the difference between the adjusted book value of its assets and their book value if the adjusted book value is the higher of the two. The company will increase its tax base if the book value is higher than the adjusted book value.

International Financial Reporting Standards (IFRS) adoption

Companies defined in Section 4 of Decision no. 1606/2002/EC (mainly companies listed on the stock exchange) have to prepare their consolidated annual reports according to IFRS. However, non-listed subsidiaries of EU-listed entities are exempt from the preparation of IFRS consolidated financial statements.

In Hungary, IFRS will be adopted in a multi-stage procedure. From 1 January 2018, the transition to stand-alone IFRS reports will be obligatory for credit institutions, financial enterprises, and listed companies. From 1 January 2018, the adoption of IFRS is also mandatory for cooperative credit institutions and other credit institutions taking part in the integration of cooperative credit institutions and smaller credit institutions. The companies applying IFRS for stand-alone purposes will have to base their tax liability calculations (e.g. CIT, LBT, and energy suppliers' income tax) on IFRS as well. Companies that prepare IFRS reports at the head office level and/or companies that are subject to mandatory audit in Hungary are also able to opt to use stand-alone IFRS books in Hungary.

Foreign Account Tax Compliance Act (FATCA) agreement with the United States (US)

Hungary and the United States signed an intergovernmental agreement (IGA) on 4 February 2014 in order to implement the US FATCA. The Hungarian IGA is based on the 'Model 1 A' Agreement, which means a reciprocal information exchange between the Hungarian tax authority and the US Internal Revenue Service (IRS). As part of the negotiations regarding the IGA, Hungary can include further entities and accounts into Annex II of the Agreement with exempted or deemed-compliant status compared to the originally issued Model Agreement. Changes to the local legislation for FATCA and IGA purposes have successfully been adopted by the Hungarian Parliament.

Hungary has reporting obligation by the end of September each year. The first information exchange between the Hungarian tax authority and the US IRS was in September 2015.

Common Reporting Standard (CRS) agreement within the OECD

The CRS, developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

Hungary has reporting obligation by the end of September each year. The first information exchange between the Hungarian tax authority and the US IRS took place in September 2017.

Hungarian trust

Under a Hungarian trust contract, the settlor entrusts the trustee to manage (in its own name but for the benefit for the beneficiary) the assets, rights, and receivables (trust asset) transformed thereto by the settlor. A trust contract cannot have a term longer than 50 years.

The trustee can be either a natural person or a legal entity, and its private fortune is handled separately from the trust asset/fortune. The trustee is liable for the tax administration (tax number, tax returns, etc.) and the bookkeeping of the trust. The Hungarian National Bank keeps an authentic registry of the Hungarian trustees.

The trust asset is subject to Hungarian CIT and LBT and is considered to be tax resident under domestic law (thus, may have access to treaty benefits).

The Hungarian trust is a good business opportunity for companies since it may be inserted into a structure tax neutrally.

Iceland

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Significant developments

Capital gains tax

The capital gains tax rate was raised from 20% to 22% on 1 January 2018.

Tax administration

On 1 January 2018, the Internal Revenue Directorate took over the responsibility as an appeal authority on tax residency from the Finance Ministry.

Multilateral Instrument

On 7 July 2017, the Icelandic Finance Minister signed the Multilateral Instrument Treaty as a part of the base erosion and profit shifting (BEPS) programme.

Thin capitalisation rules

As of 1 January 2019, the interest deduction limitation rules will also apply when lender has full and unlimited tax liability in Iceland.

Double tax treaties (DTTs)

A DTT between Iceland and Austria entered into force 1 March 2017.

Pension contributions

The minimum pension contribution by employers is 10% as of today but rises to 11.5% on 1 July 2018.

Taxes on corporate income

Resident corporations pay tax on their worldwide income less operating expenses. Deductible operating expenses are comprised of all the expenses and costs needed to provide, insure, and maintain income.

Corporate income tax (CIT) for limited liability companies (LLCs) and limited partnership companies is assessed at a rate of 20%. CIT for other types of legal entities (e.g. partnerships) is assessed at a rate of 37.6%.

Non-resident corporations receiving payments for services or business operations carried out in Iceland, as well as corporations operating a permanent establishment (PE) in Iceland or receiving a profit from such establishments, are subject to CIT for their Icelandic income at the same rate as applies to resident corporations.

Corporate residence

In general, all corporations incorporated and registered in Iceland are considered to be tax residents in Iceland. The same applies to corporations that have their home address in Iceland according to their articles of association or if the management of the company is carried out in Iceland.

Foreign corporations are regarded as Icelandic tax residents if the effective management is carried out in Iceland.

The Internal Revenue Directorate can decide with a ruling whether a corporation's residence is in Iceland. The ruling can be appealed to a court of law.

Permanent establishment (PE)

The definition of a 'permanent establishment' is in order with the Organisation for Economic Co-operation and Development (OECD) definition of a PE in Article 5. The main difference is that a building site or construction or installation project constitutes a PE only if it lasts more than six months, not 12 months as in the OECD Model Treaty. Another difference is that if a foreign company owns servers or similar computer systems to support the business's primary field of business, that in itself does not constitute a PE if used in relation to data storage and gathering.

Other taxes

Value-added tax (VAT)

VAT is a consumption tax levied on all stages of domestic business transactions. VAT is levied on all goods and services, as well as on the imports of goods and services, unless specific exemptions apply.

VAT rates

The general VAT rate is 24%.

The following goods and services are subject to a reduced VAT rate of 11%:

- Rental of hotel and guest rooms and other accommodation.
- Transportation of passengers, such as for whale watching, horseback riding, and snowmobile tours.
- The services of travel agencies and tour operators for services used in Iceland.
- Admission fees to spas, saunas, sanatoriums, and health facilities.
- Subscription to radio and television.
- Newspapers, periodicals, and magazines.
- Books, both Icelandic and translated, musical notation as well as their audio recordings. Same applies to compact discs and other similar media as well as electronic media.
- Geothermal hot water, electricity, and fuel oils used for heating houses and swimming pools.
- Food and other consumables for people as detailed in an addendum to the VAT Act.
- Access to roads and other transport-related constructions.
- Compact discs, records, audio cassettes, and other equivalent mediums for music only and not videos. Same applies to electronically published music without video.
- Condoms, reusable cloth diapers, and diapers inserts.

- Admission fees to baths, saunas, and spa areas that are not subject to exemption due to sporting activities.
- Guiding services.

Certain services and goods are zero-rated, which means that there is, in fact, no VAT charge. Zero-rated VAT mainly applies to exported goods and services provided abroad.

VAT entities

Businesses engaged in the trade of taxable goods and services for business purposes must register and collect VAT.

Services exempt from VAT

The VAT Act details certain services that are exempt from the tax, such as healthcare services, social services, the operation of schools, various education services, cultural activities, athletic activities, public transportation, postal services, sale of real estate (not including the rental of hotel and guest accommodation), rental of car parking lot, insurance activities, services of financial banks (as well as securities trading), lotteries and betting pools, artistic activities, funeral services, and all services of ministers of the church.

Those selling taxable goods and services totalling less than 2 million Icelandic króna (ISK) per 12-month period are also exempt from collecting and remitting VAT.

Agent for non-resident parties

Non-residents who are engaged in taxable transactions in Iceland but are neither domiciled nor have permanent residence in Iceland must appoint a VAT agent with residence in Iceland to report on their behalf. Both parties are liable for the VAT payments (responsible for ensuring remittance of VAT). If a non-resident does not appoint a VAT agent, the purchaser of the services/goods is responsible for paying the VAT (reverse charge).

If the non-resident is only providing e-services, one can apply for an Icelandic ID number to report/pay the VAT oneself (i.e. without a VAT agent).

VAT accounting periods and due dates

VAT is generally filed and paid on a bimonthly basis. The due date for payment of VAT is one month and five days after the end of the settlement period. For example, the due date for the January and February payments is 5 April.

If the VAT is not paid on the due date, a 1% penalty charge is added for every day up to a total of 10%. Late penalty interests also apply as of one month after the due date.

A special fee for late filing, ISK 5,000, applies if the tax authorities have estimated the VAT due to non-filing.

VAT reimbursement

Foreign enterprises, which are neither residents of Iceland nor have a PE, may obtain reimbursement of VAT paid on goods and taxable services that have been purchased or imported for the commercial purposes of such enterprises in Iceland.

Such reimbursement can be effected to foreign enterprises that would be subject to registration in Iceland according to Article 5 and Article 6 of the VAT Act if the enterprises in question were engaged in such business in Iceland. This means that such enterprises as travel agencies, insurance companies, banks, and other financial institutions cannot obtain such reimbursement.

Another prerequisite is that the enterprise shall neither have sold goods nor taxable services in Iceland during the period to which the application refers.

Parties domiciled abroad can get partial VAT reimbursement on goods they have bought in Iceland if they take them abroad with them within three months from the date of purchase. They then must provide the goods, along with any necessary documents, to the appropriate reimbursement company or to the customs authorities on the date of departure, and the purchase price must amount to at least ISK 6,000.

Customs duties

The Directorate of Customs controls import, transit, and export and also collects duties, taxes, and various state revenue. The general rule is that import duties (customs, excise duties, VAT, and various other charges) are to be paid on imported goods unless otherwise stated in the law. For import of some products, other conditions, such as an import licence, may need to be submitted.

Iceland, Liechtenstein, Norway, and Switzerland are members of the European Free Trade Association (EFTA). The EFTA Convention established a free trade area among its member states. In addition, the EFTA states have jointly concluded free trade agreements with a number of countries in Central and Eastern Europe as well as in the Mediterranean region, Mexico, and Singapore. Also, the EFTA states entered into the Agreement on the European Economic Area (EEA) in 1992. The current contracting parties are, in addition to the three EFTA states, the European Community (EC) and the 25 EC member states. Iceland also has a bilateral agreement with its two neighbouring countries, Greenland and Faeroe Islands.

Excise tax

There is no excise tax in Iceland.

Property taxes

A municipal property tax is applied annually on the assessed value of real estate in Iceland.

Stamp taxes

Stamp duty is levied on documents regarding change of ownership of real estate and land and ships registered in Iceland. However, stamp duty is not applicable when the change of ownership is related to a merger or division of a company.

The stamp duty rate is 0.8% and 1.6%, depending on whether the rightful owner is an individual or a legal entity.

When issuing deeds and purchase agreements of real estate and land, the stamp duty is levied on the officially registered value of the real estate and land. The same applies to the deeds and purchase agreements of ships.

All other documents bear no stamp duty.

Turnover taxes

There was an agricultural charge of 1.2% of agricultural turnover, but it was abolished as of tax assessment 2017 (i.e. for turnover in 2016).

Payroll taxes

There are no payroll taxes applicable other than those that apply for social security contributions, pension contributions, and rehabilitation fund (*see below*).

Social security contributions

Employers are responsible for social security contribution. The general rate is 6.85%. An additional social security contribution for fishermen is 0.65%. The social security contribution for taxpayers who have submitted the A1 form is 0.425%.

Pension contributions

The minimum contribution by employers into their employees' pension fund is 10% of each employee's salary until 30 June 2018. The contribution increases to 11.5% on 1 July 2018. An employer's additional contribution into private pension funds is 2% against a maximum 4% contribution from the employee.

Rehabilitation fund

Employers must pay 0.1% of all salaries to VIRK, The Icelandic Rehabilitation Fund.

Taxes on natural resources

Excise duties on fuel

An excise duty for liquid fossil fuels is paid to the treasury. In this context, liquid fossil fuels are oils and petrol.

The duty is levied as ISK per litre, as follows:

Excise duty	ISK per litre for the year 2017	ISK per litre for the year 2018
General excise duty on petrol	26.80	27.35
Specific excise duty on petrol	43.25	44.10
Excise duty on oils	60.10	61.30

Tax on electricity/hot water

A special tax is collected from parties selling electricity and/or hot water at the last stage of trading (i.e. sales to users). Parties are exempted from the tax if the sale amount is less than ISK 500,000 per year.

Carbohydrate tax

Carbohydrate tax is paid on liquid fossil fuel (i.e. gas and diesel oil, petrol, aviation fuel, and petroleum gas). Corporations licensed for carbohydrate research, and/or processing, as well as anyone who directly or indirectly participates in the processing or distribution of carbohydrates, must pay a processing tax, which is independent of processing performance, and a carbohydrate tax on profits.

The tax is levied as ISK per litre or kg, as follows:

Carbohydrate tax	ISK per litre or kg for the year 2017	ISK per litre or kg for the year 2018
Gas and diesel oil	6.30/litre	9.45/litre
Petrol	5.50/litre	8.25/litre
Fuel oil	7.75/kg	11.65/kg
Petroleum gas	6.90/kg	10.35/kg

Bank taxes

Financial services permitted to operate as banks and savings banks are subject to 0.376% tax on total debt exceeding ISK 50 billion at year-end.

Financial Activities Tax (FAT)

A 5.5% tax is levied on all salary payments made by financial institutions, including insurance companies. The tax is collected monthly.

Additional FAT

An additional 6% is levied and collected on total salary payments in excess of ISK 1 billion. This tax is paid by the same entities that are subject to the general FAT.

Accommodation tax

Those who sell accommodation that is subject to VAT are liable to collect and return a tax of ISK 300 for each sold night. The tax increased from ISK 100 to ISK 300 on 1 September 2017.

National Broadcasting Fee

There is a National Broadcasting Fee of ISK 17,100 per year. The fee shall be paid by all taxable individuals from the age of 16 to 70 years old. Additionally, all domestic parties are required to pay the tax.

Branch income

A branch is treated as an extension of a trading activity of the overseas parent company incorporated in another jurisdiction and is not a separate legal entity.

Due to the fact that a branch acts in the name of the overseas parent company, a branch's income is taxable in accordance with the parent company (i.e. if the parent company is an LLC, the branch is subject to a CIT rate of 20%; otherwise, it is subject to tax at 37.6%).

Tax treaties may allow Icelandic CIT as a credit against foreign income tax imposed on the parent company.

There is no branch profits remittance tax on the repatriation of profits to the parent company.

Income determination

Inventory valuation

The valuation method of raw materials and finished goods is on a first in first out (FIFO) basis or via the average cost method. When computing the value of produced goods, both direct and indirect production cost must be taken into account. For tax purposes, inventories can be further written down at a rate of 5% of calculated value.

Last in first out (LIFO) is not permitted.

Capital gains

Capital gains are treated as taxable income in the year that transfer of ownership occurs and, as such, taxed as part of the general corporate income. Capital gains are generally not subject to withholding tax (WHT). There are rules that allow full deduction of net capital gains from the sale of shares, so, in general, corporations are not subject to taxation on capital gains from sale of shares.

Dividend income

Dividend income is treated as taxable income and taxed as a part of corporate income. There are extensive rules that allow full deduction of the dividend, so, in general, corporations are not subject to taxation on dividends. Dividends are subject to WHT (currently 22%), which is a temporary payment towards the final tax assessment.

Interest income

Interest income derived from bank deposits, mutual and investment funds, bonds, or other financial deeds; any kind of exchange rate profit; and any other income from monetary assets are subject to 22% tax.

Interest income of foreign parties is subject to 12% WHT in Iceland.

Royalty income

Royalties paid to residents are taxed at the standard CIT rate. Gross royalties paid to a non-resident are taxable at the standard 20% CIT rate and subject to withholding.

Profit from derivatives

Profits from derivatives are treated as profits/losses from sales and are subject to 22% tax. Losses from derivatives can be used against profits from derivatives within the calendar year.

Foreign income

Income earned abroad is generally taxed as a part of corporate income since a resident company is subject to CIT on its worldwide income.

Controlled foreign company (CFC) rules stipulate that profits of companies in low-tax jurisdictions must pay income tax of such a profit in direct proportion to shares, regardless of distribution. A low-tax jurisdiction is defined as a jurisdiction where the CIT rate is less than two-thirds of Iceland's CIT rate (i.e. 13.3%, being two-thirds of 20%). *See Controlled foreign companies (CFCs) in the Group taxation section for more information*.

Double taxation of foreign income is avoided either through tax treaties or domestic tax provisions.

Deductions

Deductible operating expenses are comprised of all the expenses and costs needed to provide, insure, and maintain income (e.g. interest expense, employee expense, travel expense, insurance expense).

Depreciation

Assets	Depreciation rate (%)
Ships, ship equipment, and personal vehicles	10 to 20*
Aircraft and accessories	10 to 20*
Heavy machinery, industrial machinery, and equipment	10 to 30*
Rigs, pipeline systems, and more for the use of research and production of hydrocarbons	10 to 30*
Office equipment	20 to 35
Machinery, equipment, and vehicles that are not covered in the above categories	20 to 35
Residential, commercial, and office accommodation	1 to 3
Factory buildings, garages, warehouses, etc.	3 to 6
Greenhouses, piers, and lots connected to these assets	6 to 8
Boreholes, powerlines, and temporary work camps	7.5 to 10
Purchased proprietary rights for ideas and trademarks, such as copyrights, publishing rights, information rights, patents, and logos	15 to 20
Purchased goodwill	10 to 20

* The depreciation base for these assets is their purchase value less earlier depreciations (book value).

The method used to calculate depreciation is the straight-line method.

Goodwill

Purchased goodwill can be written down at 10% to 20% per year.

Start-up expenses

Purchased fishing rights (quotas) cannot be depreciated.

Start-up costs for agricultural production rights can be depreciated without revaluation over five consecutive years. The following assets can be depreciated in full in the year they are initiated or paid with steady payments over five years:

- Start-up costs, such as enterprise registration and obtaining operation licences.
- Cost of research, developments, marketing, and obtaining patents and trademarks. If the use of individual assets does not fall into the same depreciation category, the depreciation base will be dependent on how much of it is used, so that if an asset is used for three-quarters or more for the same operation, the whole asset will have the same depreciation percentage.

Interest expenses

Interest expenses are deductible, provided that the loan was taken for business purposes. It shall be kept in mind that interest limitation rules apply between related parties if certain conditions are fulfilled. *See Thin capitalisation in the Group taxation section for more information.*

Bad debt

As a general rule, 5% of bad debt can be written off. Certain conditions must be met in order to write off a higher percentage of bad debts.

Charitable contributions

Charitable contributions at up to 0.75% of total income are deductible.

Pension expenses

Payments to obligatory pension funds for employees at a minimum of 10% of wages (or according to the minimum contribution in a collective agreement) are deductible.

Fines and penalties

Fines and penalties are not deductible.

Taxes

Taxes levied on business profit are not considered to be deductible; consequently, CIT is not deductible. However, social security contributions and other labour taxes are deductible.

Net operating losses

Operating losses may be deducted from income from business and independent economic activity. Tax losses can be carried forward for ten years and utilised over ten years from the year that the loss was incurred.

No carryback of losses is allowed.

Payments to foreign affiliates

An Icelandic corporation can claim a deduction for royalties, management fees, and similar payments made to foreign affiliates, provided that such amounts are made on an arm's-length basis and reflect services received. Interest at normal commercial rates paid to foreign affiliates generally will be allowed as a deduction on the condition that the loan terms are comparable to those that would have been agreed upon by unrelated parties.

Group taxation

Companies may opt for consolidated taxation if a company owns at least a 90% share in another company. Consolidated taxation means, among other things, that losses of one company can be offset against profits of other companies. Consolidated taxation cannot be extended to non-resident companies or PEs of foreign companies.

Transfer pricing

When pricing or terms of business or financial arrangements between related parties are different from what might be expected to be in similar transactions between unrelated parties, tax authorities have the power to evaluate what the correct pricing should be and reassess taxes of the party in question. This applies to the general purchase and sale of goods and services, tangible and intangible assets, and any financial instruments. Tax authorities can reassess taxes for up to six years prior to the year in which the reassessment takes place.

Legal entities are considered related when they are part of a group, when they are under the direct and/or indirect majority ownership or management control of two or more legal entities within the group, when majority ownership of one legal entity over another is present in a direct or indirect manner, or when they are entities directly or indirectly majority owned or under the administrative control of individuals who have family ties (e.g. individuals in a marriage or registered partnership, siblings and persons related to each other in a direct line).

If a legal entity's operating revenues in one fiscal year, or total assets at the beginning or at the end of the fiscal year, exceeds ISK 1 billion, it is bound to documentation duties from the next fiscal year regarding transactions with related legal entities abroad. The legal entity in question must then record information about the nature and extent of transactions with the related legal entity and information on what the price is based on.

The legal entity is obligated to keep data regarding transactions with related legal entities for seven years. If the tax authorities request access to documentation, the legal entity has 45 days to respond.

In addition to specific rules regarding transfer pricing in domestic law, it should be noted that there are also certain provisions in domestic law that contain the so-called 'arm's-length principle', which states that when a deal or transaction between the parties significantly differs from the norm in such transactions, the tax base can be determined and reassessed according to what the tax authorities consider to be normal in such circumstances.

Country-by-country (CbC) reporting regime

If applicable, CbC reports have to be filed no less than 12 months after the end of the company's fiscal year.

Thin capitalisation

Thin capitalisation rules are included in the Income Tax Act. The rules limit interest deduction to 30% of earnings before interest, taxes, depreciation, and amortisation (EBITDA).

The rules do not apply if:

- interest payments to companies within arms' length are under ISK 100 million
- the lender is a resident of Iceland
- it is demonstrated that the equity ratio does not deviate more than 2% from the equity ratio of the group, or
- the taxpayer is a financial institution or insurance company or a company owned by such parties and conducts similar operations.

Controlled foreign companies (CFCs)

Any individual who either directly or indirectly owns a share in any kind of a company, fund, or organisation domiciled in a low-tax jurisdiction must pay income tax on the profit of such corporations in direct proportion to one's own share, regardless of distribution.

The same applies to taxpayers chairing companies, funds, organisations, or associations in a low-tax jurisdiction from which they receive direct or indirect benefits. In order for the above to apply, the foreign party must be domiciled in the low-tax jurisdiction, half the ownership of the foreign party must be directly or indirectly in the hands of Icelandic taxpayers, or they must have effective management and executive control within the income year.

CFC regulations do not apply if a fund or an organisation is protected by a DTT between Iceland and the low-tax country or if such entities are registered in another EEA member country where they have legitimate business operations and the countries have assigned a DTT between them.

Tax credits and incentives

Foreign tax credit

The Income Tax Act offers a foreign tax credit to mitigate the potential for double taxation. The credit applies only to taxes of a nature similar to the tax being reduced by the credit (i.e. taxes based on income). This credit is limited to the amount of tax attributable to foreign-source income.

Temporary reimbursements in respect of filmmaking in Iceland

On account of Act No. 43/1999 on Temporary Reimbursement in Respect of Filmmaking in Iceland, it is possible to have 25% of production expenses incurred in the production of films or television material in Iceland reimbursed. When more than 80% of the total production cost of a motion picture or television programme is incurred in Iceland, the reimbursement shall be calculated from the total production cost incurred within the EEA. Production costs refer to all costs incurred in Iceland deductible from the revenues of enterprises pursuant to the provisions of the Income Tax Act. Payments pertaining to employees and contractors are only to be included in production costs if they are verifiably taxable in Iceland.

Application for reimbursement of production costs shall be submitted to a committee of reimbursements in respect of filmmaking. The application, with supporting documentation, shall be submitted before production commences in Iceland.

Act No. 43/1999 on Temporary Reimbursements in Respect of Filmmaking in Iceland expires at year-end 2021. All projects approved by that date will be reimbursed in accordance with the law.

Temporary reimbursements in respect of music recording in Iceland

On account of Act No. 110/2016 on Temporary Reimbursement of Recorded Music, it is possible to have 25% of cost incurred reimbursed when recording music in Iceland that has been released and made accessible to the general public. When more than 80% of the total recording cost is incurred in Iceland, the reimbursement shall be calculated from the total production cost incurred within the EEA. Reimbursable cost refers to all costs that may be used for calculating the refund amount, cf. Article 6 of Act No. 110/2016.

Application for reimbursement of production costs shall be submitted to the Ministry. The application, with supporting documentation, shall be submitted lo later than six months after the latest audio file for which a refund is applied for.

Act No. 110/2016 on Temporary Reimbursements of Recorded Music expires at year-end 2022. All applications received by the Ministry prior to that time shall be processed.

Support for innovation enterprises

Innovative companies are entitled to a special deduction from CIT amounting to 20% of expenses incurred on the projects, provided certain conditions are met.

The maximum amount on which the deduction is calculated within each company shall not exceed ISK 300 million for each operating year. In the case of purchased research and development (R&D) services, maximum expenses shall not exceed ISK 450 million.

Act. No. 152/2009 on support for innovation enterprises expires at year-end 2019. All support approved by that date will remain valid.

Act on incentives for initial investments in Iceland

Incentives are offered to companies that are investing in commercial operations in Iceland. The investment projects need to meet requirements, such as being beneficial for the Icelandic economy and society, in terms of job creation, rural development, exports, and tax revenues and knowledge.

Approved investment projects will receive benefits in return, including derogations from taxes and charges. In addition, authorisation to fix the rate of income tax, in line with the current rate of income tax, for ten years can be granted, as well as exemption from customs and excise duties on importation or domestic purchase of construction materials, machinery, and equipment for the building and operation of the investment project.

Act. No. 41/2015 on incentives for initial investments in Iceland expires at the end of June 2020. Incentives granted prior to that time shall remain in force for the period according to the agreement in question.

Withholding taxes

Dividends paid to a resident company are subject to 22% WHT. Dividends paid to a non-resident company are subject to 20% WHT. The final taxation of dividends paid to a company within the EEA is nil, as WHT will be reimbursed in the year following payment upon filing a tax return.

Interest paid to a resident company is subject to 22% WHT, and interest paid to a non-resident company is subject to 12% WHT.

Gross royalties paid to a non-resident are taxable at the standard 20% CIT rate and subject to withholding.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-resident corporations	20	12	20
Non-resident individuals	22	12	36.94 to 46.24
Treaty rates:			
Albania	5/10 (2)	10	10
Austria	5/15 (1)	10	5
Barbados	5/15 (1)	10	5
Belgium	5/15 (1)	10	0
Canada	5/15 (1)	10	0/10 (3)
China, People's Republic of	5/10 (2)	10	10
Croatia	5/10 (1)	10	10
Cyprus	5/10 (1)	0	5
Czech Republic	5/15 (2)	0	10
Denmark	0/15 (1)	0	0
Estonia	5/15 (2)	10	5/10 (4)
Faroe Islands	0/15 (1)	0	0
Finland	0/15 (1)	0	0
France	0/15 (1)	0	0
Georgia	5/10 (2)	5	5
Germany	5/15 (2)	0	0
Greece	5/15 (2)	8	10
Greenland	5/15 (2)	0	15
Hungary	5/10 (2)	0	10
India	10	10	10
Ireland, Republic of	5/15 (2)	0	0/10 (5)
Italy	5/15 (6)	0	5
Korea, Republic of	5/15 (2)	10	10
Latvia	5/15 (2)	10	5/10 (4)
Liechtenstein	0/15 (6)	0	0/5 (9)
Lithuania	5/15 (2)	10	5/10 (4)
Luxembourg	5/15 (2)	0	0
Malta	5/15 (1)	0	5
Mexico	5/15 (1)	10	10
Netherlands	0/15 (1)	0	0
Norway	0/15 (1)	0	0
Poland	5/15 (2)	10	10
Portugal	10/15 (2)	10	10
Romania	5/10 (2)	3	5
Russia	5/15 (7)	0	0
Slovakia	5/10 (2)	0	10
Spain	5/15 (2)	5	5
Sweden	0/15 (1)	0	0
Switzerland	0/15 (6)	0	0/5 (9)
Ukraine	5/15 (2)	10	10
United Kingdom	5/15 (1)	0	5
United States	5/15 (1)	0	0/5 (8)
Vietnam	10/15 (2)	10	10

Notes

1. The lower rate applies to corporate shareholders with a minimum ownership of 10%.
2. The lower rate applies to corporate shareholders with a minimum ownership of 25%.
3. The lower rate applies to copyright royalties (except films, etc.) and royalties for computer software or patent, or for information concerning industrial, commercial, or scientific experience (except information provided in connection with a rental or franchise agreement).
4. The lower rate applies to royalties paid for the use of industrial, commercial, or scientific equipment.
5. The lower rate applies to the right to use computer software or patent concerning industrial, commercial, or scientific experience.
6. The lower rate applies to corporate shareholders with a minimum ownership of 10%, and which has been held for a period of at least 12 months preceding the date the dividends were declared.
7. The lower rate applies to Russian corporate shareholders with a minimum ownership of 25% of capital in the Icelandic company and the foreign capital invested exceeds 100,000 United States dollars (USD).
8. The higher rate applies to royalties for the use of trademarks, know-how in relation to a trademark, and films, etc.
9. The higher rate applies to royalties for the use of or the right to use any patent, trademark, design or model, plan, secret formula, or process.

Tax administration

Taxable period

The tax year is the calendar year. However, in certain circumstances and upon application, the Internal Revenue Directorate can allow a different fiscal year from the calendar year.

Tax returns

At the beginning of every year, the Internal Revenue Directorate determines the time limit for taxpayers to submit their tax returns and supporting documentation. The deadline for receipt of tax returns from corporations is generally 31 May each year. This deadline is extended upon application. Those who have their tax returns prepared by professional services can generally have the deadline extended until 10 September each year.

The final assessment must be completed no later than ten months after the end of the income year. Tax assessments for corporations will be available at the end of October.

Payment of tax

Advance tax payments are due on the first day of every month, except January and October. Corporations pay income tax in advance, which is in turn deducted from the final tax assessment in October each year. The advance tax is collected in the months of February to September and amounts to 8.5% of the income tax on each due date. In total, the advance tax payments amount to 68% of the income tax. Any deficit remaining when final tax is assessed must be paid in equal instalments by 1 November and 1 December.

Income tax payments on dividends and interest income are due every quarter. Due dates are 20 January, 20 April, 20 July, and 20 October, and the final deadline for payment is 15 days later.

Tax audit process

The Icelandic tax authorities select returns for examination using a variety of methods. Some returns are selected based on electronic selection; some are selected based on a formal supervisory plan. A tax audit can also be traced to information obtained by the tax authorities through efforts to identify participants of tax avoidance transactions.

The examination generally takes place by formal, written communication. The rules of the procedure are very strict, and the process can take from a few weeks to a year/ years.

Appeal rights involve two administrative levels and also two judiciary levels.

Statute of limitations

Tax authorities in Iceland have the right to reassess tax returns for CIT six years prior to the year of the assessment (i.e. the statutory period of limitation is six years). The statutory period only reaches a maximum of two years in time if tax returns have been filled out properly and all necessary information presented for tax authorities to establish a correct assessment. This means that in the year 2018, tax authorities can, in theory, reassess the company´s tax back to income year 2012.

However, the limitation has been prolonged to ten years in case of income and assets in low-tax jurisdictions.

Topics of focus for tax authorities

The topic of focus for tax authorities in Iceland is tax avoidance in general. It has been stated that they will increasingly focus on issues related to transfer pricing.

Other issues

Foreign currency financial statements/Accounting in foreign currencies

Companies can apply to the Registry of Annual Accounts for an authorisation to keep their books and prepare their annual accounts in a foreign currency. An application must be filed no later than two months before the beginning of the company's fiscal year. The authorisation is valid for five years, and the Registry of Annual Accounts is responsible for ensuring that the authorised companies continue to fulfil one or more of the following necessary conditions:

- The company's main business operations take place abroad or the company is a part of a foreign company group.
- The company owns foreign subsidiaries or shares in foreign companies, and its main business transactions are with those companies.
- The company's main place of business is Iceland, while a considerable number of their transactions are in foreign currencies.
- A considerable portion of the company's investments and related debts are in foreign currencies.
- The functional currency is registered at the Central Bank of Iceland or the company's commercial bank.

If the company deems that it no longer fulfils the conditions, it must notify the Registry of Annual Accounts. The Registry can postpone its decision of the authorisation's discontinuance for two fiscal years if the situation that is causing the fact that the company does not continue to fulfil the necessary conditions is deemed to be temporary.

The average exchange rate for the fiscal year must be used when converting income and expenses, depreciations included, into Icelandic króna. The exchange rate at the end of the fiscal year must be used when converting assets, debts, and capital. Exchange rate differences that may arise do not affect income on profit and loss accounts.

Rules of Foreign Exchange

In 2008, the Central Bank of Iceland issued rules on foreign exchange in order to restrict or temporarily prevent certain types of cross-border capital movements or foreign exchange transactions related thereto, which, according to the Central Bank of Iceland, can cause serious and considerable instabilities in exchange rates and financial matters. These rules were later added to Act No. 87/1992 on Foreign Exchange.

The Act on Foreign Exchange defines capital movements as:

- The issue, sale, or purchase of shares, debt instruments, drafts, unit shares in mutual funds, and other long-term and short-term securities.
- Deposits in and withdrawals from accounts with depository institutions.
- Lending, borrowing, and the issue of securities not related to international transactions with goods and services.
- The import and export of share certificates and domestic and foreign currencies.
- Forward contracts, options, currency and interest-rate swaps, and other related foreign exchange transactions in which the Icelandic króna is one of the denominated currencies.
- Presents, grants, or other transactions equivalent to the ones detailed above.

With new rules, which entered into effect on 14 March 2017, the restrictions on foreign exchange transactions and cross-border movement of domestic and foreign currency have largely been lifted. Restrictions on the following will remain in place, however: (i) derivatives trading for purposes other than hedging, (ii) foreign exchange transactions carried out between residents and non-residents without the intermediation of a financial undertaking, and (iii) in certain instances, foreign-denominated lending by residents to non-residents.

Cross-border mergers

Rules regarding taxation in relation to cross-border divisions and cross-border mergers between Icelandic LLCs and LLCs from EEA and EFTA countries are now in the Icelandic Tax Act. Tax will be levied on uncapitalised profit, which can be postponed for five years.

Base Erosion and Profit Shifting (BEPS)

The Icelandic government participated in full in formulating and approving the G20/OECD BEPS Action Plan.

The government has implemented Action 4 on interest limitation, Action 7 on definition of permanent establishment, and Action 13 on transfer pricing documentation and CbC reporting. Additionally, Iceland participated in the creation of the multilateral instrument (MLI) as represented in Action 15, and the MLI was been signed by the Icelandic government on 7 June 2017.

Although Iceland is not a European Union (EU) member state, it is a member of the European Economic Area, so its legislation must comply with EEA rules and avoid infringement of the four freedom principles as provided in the EEA Agreement.

Common Reporting Standard (CRS)

Icelandic authorities have implemented the CRS in its domestic legislation. The Standard is in accordance to The Standard for Automatic Exchange of Financial Account Information as developed by the G20/OECD in the year 2014.

India

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Significant developments

Expanded scope of ‘dependent agent’

The Finance Act, 2018 has expanded the scope of ‘dependent agent’. In line with Base Erosion and Profit Shifting (BEPS) Action Plans 7 and 1, the term ‘dependent agent’ will now include persons who play a principal role in conclusion of contracts leading to the conclusion of contracts.

Concept of ‘significant economic presence’ introduced

The Finance Act, 2018 has introduced the concept of ‘significant economic presence’ in domestic tax law. By virtue of this, the income of non-residents is deemed to accrue or arise in India if they have a significant economic presence in India.

The term ‘significant economic presence’ has been defined to include: (i) transactions carried out by a non-resident in India, including provision of download of data or software in India, if the aggregate payment arising from such transactions exceeds such amount as may be prescribed later, and (ii) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed in India through digital means.

Further, such transactions or activities shall constitute significant economic presence in India whether or not (i) the agreement is entered into in India, (ii) the non-resident has a residence or place of business in India, or (iii) services are rendered in India.

Though the above amendments are applicable from tax year 2018/19, the same would be in force post amendments made to Indian tax treaties on implementation of the Multilateral Instrument (MLI).

Income computation and disclosure standards (ICDS)

For the purposes of computation of income chargeable to income tax under the head ‘profits and gains of business or profession’ or ‘income from other sources’, ICDS were introduced by the government of India. There has been debate on applicability of these standards. The government of India, through the Finance Act, 2018, in order to bring certainty in the light of debate, has amended the provisions of the tax laws and made certain retrospective amendments.

Taxes on corporate income

A resident company is taxed on its worldwide income. A non-resident company is taxed only on income that is received in India, or that accrues or arises, or is deemed to accrue or arise, in India.

The corporate income tax (CIT) rate applicable to an Indian company and a foreign company for the tax year 2018/19 is as follows:

	Rate of CIT (%)					
	Turnover not greater than INR 2.5 billion in tax year 2016/17		Other domestic companies		Foreign companies	
Income *	**Basic**	**Effective****	**Basic**	**Effective****	**Basic**	**Effective ****
Less than 10 million Indian rupees (INR)	25	26.00	30	31.20	40	41.60
More than INR 10 million but less than INR 100 million	25	27.82	30	33.38	40	42.43
More than INR 100 million	25	29.12	30	34.94	40	43.68

* Surcharge is payable only where total taxable income exceeds INR 10 million.

** Effective tax rates include surcharge and health and education cess.

Minimum alternative tax (MAT)

Companies are liable to pay MAT on their adjusted book profits (other than income from life insurance business) where the tax liability under the normal provisions (excluding surcharge and health and education cess) of the Income Tax Act, 1961 ('the Act') for the tax year is not more than 18.5% (excluding surcharge and health and education cess) of such book profits. MAT credit is the amount paid over and above the normal tax liability, which can be carried forward and can be utilised for 15 years. However, MAT credit to the extent of difference between the foreign tax credits allowed against MAT over such credit allowable against the tax under the other provisions of the Act shall not be eligible to be carried forward.

Further, due to implementation of Indian Accounting Standards (Ind AS) by the government, which are converged with the International Financial Reporting Standards (IFRS), the government amended the MAT provisions of the Act, so as to provide the framework for the computation of book profit for the purpose of levying MAT in the case of companies required to comply with Ind AS in the year of adoption and thereafter. This framework was specified on the basis of the recommendations of the MAT Ind AS Committee constituted for this purpose.

MAT provisions are not applicable to foreign companies that do not have a permanent establishment (PE) in India. However, the Finance Act, 2018 has provided that MAT provisions shall not apply to foreign companies where their total income is solely derived from shipping business, exploration of mineral oils, business of aircraft, or civil construction in turnkey projects, and income thereon is offered to tax as per specific provisions provided under the Act.

Capital gains from transfer of securities, interest, royalties, and fees for technical services accruing or arising to a foreign company (which has a PE in India) have been excluded from chargeability of MAT if tax payable on such income is less than 18.5% (exclusive of surcharge, education cess, etc.). Further, expenditure, if any, debited to the profit and loss account corresponding to such income shall be added back to the book profit for the purpose of computation of MAT.

Income *	Rate of MAT (%)			
	Indian company		Foreign company (other than exempted)	
	Basic **	Including surcharge and health and education cess (effective tax rate)	Basic	Including surcharge and health and education cess (effective tax rate)
Less than INR 10 million	18.5	19.240	18.5	19.240
More than INR 10 million but less than INR 100 million	18.5	20.586	18.5	19.240
More than INR 100 million	18.5	21.548	18.5	20.202

* Surcharge is payable only where total taxable income exceeds INR 10 million.

** Basic rate of MAT is 9% in case of a company located in an International Financial Services Centre and deriving income solely in convertible foreign exchange.

Sick companies (i.e. companies whose losses have wiped out their net worth and that are doubtful of being revived and nursed back to profitability) are not subject to MAT.

A Special Economic Zone (SEZ) developer and a unit in an SEZ are also liable to pay MAT.

Tonnage tax scheme

The tonnage tax scheme, a presumptive tax provision, can be chosen by a non-resident company that has a place of effective management (PoEM) in India, owns at least one qualifying ship, and whose main objective is to carry on the business of operating 'qualifying ships'. The tonnage tax scheme is in place of CIT and is levied on the basis of tonnage of vessels owned, operated, or chartered by it instead of on net income generated by commercial operations. Under a presumptive tax system, taxpayers can opt to be taxed at a pre-designated tax rate on its revenues.

Under this scheme, deemed income shall be assessed at 7.5% of the amount paid or payable (whether in or out of India) for carriage of passengers, livestock, mail, or goods shipped from any port in India, and the amount received or deemed to be received in India on account of carriage of passengers, livestock, mail, or goods shipped to any port outside India shall be treated as profits and gains of business.

Treaty rates will apply to non-resident shipping companies if they are lower than the rates under the tonnage tax scheme.

A government company, or a public company formed and registered in India with the main object of operating ships, is eligible for a deduction not exceeding the lower of 50% of its profits and the sum transferred to a special reserve to be utilised in accordance with the provisions of the Act.

Local income taxes

There are no local, state, or provincial taxes on income in India at present.

Corporate residence

A company is treated as a resident of India in any previous year if:

- it is an Indian company, or
- its PoEM in that year is in India (*see below*).

A partnership firm, a limited liability partnership (LLP), and other non-individual entities are treated as resident in India if any portion of their control and management is in India. They are non-resident if their control and management is situated wholly outside India.

Place of effective management (PoEM)

Presently, a foreign company is considered resident in India if the control and management of its affairs is situated wholly in India.

To bring to tax those companies that are incorporated outside India but controlled from India, the condition of PoEM has been introduced. PoEM is an internationally recognised concept accepted by the Organisation for Economic Co-operation and Development (OECD).

A foreign company will be regarded as a resident in India if its PoEM is in India in that year. Since residency is determined for each year, PoEM is also required to be determined on a year-to-year basis. The concept of PoEM is one of substance over form. The term PoEM has been explained to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. To provide clarity and address certain concerns with regard to implementation of determination of residency of a foreign company on the basis of PoEM, the Central Board of Direct Taxes (CBDT) has issued a circular laying down guidelines. The guidelines laid down the concept of determination of PoEM based on bifurcation of companies engaged in active business outside India and other companies. The circulars clarify that the PoEM provisions shall not apply to a foreign company having turnover or gross receipts of INR 500 million or less in a tax year.

Permanent establishment (PE)

A PE is defined in India as a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Business connection

The Finance Act, 2018 has modified the scope of ‘business connection’ to align with the modified PE Rule as per the MLI.

‘Business connection’ includes business activities carried on by a non-resident through dependent agents. The scope of business connection under the Act is similar to the provisions relating to Dependent Agent Permanent Establishment (DAPE) in India’s Double Taxation Avoidance Agreements (DTAAs). The amendment provides that business connection shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident. It further states that the contracts should be:

- in the name of the non-resident

- for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use, or
- for the provision of services by that non-resident.

Further, as per the provisions of the Act, 'significant economic presence' would also constitute a business connection in India.

'Significant economic presence' means:

- any transaction in respect of any goods, services, or property carried out by a non-resident in India, including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed, or
- systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed in India through digital means.

However, only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India. It is also proposed that the transactions or activities shall constitute significant economic presence in India whether or not the non-resident has a residence or place of business in India or renders services in India.

Other taxes

Goods and services tax (GST)

The government of India took a landmark step and implemented the GST with effect from 1 July 2017. GST is an indirect tax, which is a transaction-based taxation regime.

For smooth GST implementation, the government has formed a GST Council. The Council consists of the State Finance Ministers representing their states. The GST Council provides recommendations to the government on various aspects of GST law, such as rate revisions and amendments in GST rules, etc.

Prior to GST, there were multiple indirect taxes leviable on various transactions at each stage separately by the Union Government and the states at varying rates. Such taxes included excise duty, service tax, value added tax (VAT)/central sales tax (CST), entertainment tax, luxury tax, lottery taxes, state cesses and surcharges, etc. All such taxes (except customs duty) have been subsumed under GST, and there is one single tax applicable on supply of goods and services. However, there are a few products that continue to be outside the ambit of GST, like petrol, diesel, aviation turbine fuel (ATF), natural gas, and crude oil.

GST regime

GST is a comprehensive 'consumption tax' levied on the supply of all goods and services. Indian GST is a dual model:

- Central GST (CGST), levied by the Central Government.
- State GST (SGST)/Union Territory GST (UTGST), levied by the State Government/ Union Territories.

In case of intra-state supply of goods and services, CGST+SGST/UTGST would become applicable, and in case of inter-state supply of goods and services, Integrated

GST (IGST) would become applicable. IGST is a sum of CGST and SGST/UTGST. The rate of GST varies from 5% to 28% depending upon the category of goods and services, the general rate of tax being 18%. Additionally, some categories of goods/services, like vehicles, aerated beverages, etc., notified by the government are subject to Compensation Cess under GST.

The threshold limit for the purpose of obtaining GST registration is INR 2 million aggregate turnover in a tax year (INR 1 million for some special category states, like the North Eastern states). For the purpose of the threshold, aggregate turnover shall be computed on an all India basis. For some specific categories of supplies and suppliers, the registration requirement is mandatory.

Similar to previous VAT laws, there is a concept of composition scheme under GST for small traders. Small traders having turnover of INR 10 million have an option to avail a composition scheme. Under the said scheme, GST at a lower rate (1% of the taxable turnover for manufacturers/traders and 5% in case of restaurants) would apply. The concept of composition scheme is not applicable for services, except restaurant services.

Import of goods and services

The import of goods under the GST regime will be subject to IGST and Compensation Cess (if applicable), along with Basic Custom Duty (BCD) and Social Welfare Surcharge (at 10% levied on the BCD). BCD and Social Welfare Surcharge paid at the time of imports are not available as credit under GST; consequently, they will always be a cost to the importer.

Similar to erstwhile service tax laws, on import of service, service recipient would be liable to pay IGST under reverse charge. Also, there are specified categories of goods and services notified by the government on which GST needs to be paid by the recipient under reverse charge.

Zero-rated supplies/Export of goods and services

Export of goods and services are zero rated under GST. Exporters can claim refund of input tax credit of inputs/input services used in export of goods/services, subject to fulfilment of prescribed conditions. Per GST laws, exporters will be provided provisional refund within seven days from the date of acknowledgement.

For claiming the zero rate on exports, there is a requirement to file a bond/Letter of Undertaking (LUT) to the jurisdictional tax authorities. Alternatively, the exporter can pay tax on output and claim refund of the same.

Also, the supplies to an SEZ for authorised operations have been made zero rated under GST. Unlike the erstwhile indirect tax regime, which involved a lot of paperwork for claiming export refund claims, a simplified online process for claiming refund of exports has been specified under GST. However, presently along with online refund application, documents need to be filed manually to claim refund claim.

To facilitate trade for small exporters, the concept of 'merchant exporter' has been introduced under GST. Accordingly, the merchant exporters will now have to pay nominal GST of 0.1% for procuring goods from domestic suppliers for export, subject to conditions specified in the notification.

Input tax credit

Per input tax credit provisions stipulated under GST law, a registered taxable person is eligible to claim input credit of such goods and services that are used or intended to be used in the course or furtherance of business. However, there is a specified list of goods and services mentioned below where credit will not be available under GST:

- Personal use of goods and services procured.
- Goods and services being used for effecting exempt supplies.
- Supply of the following goods and services:
  - Motor vehicles (credit available in certain cases where used for transportation business).
  - Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, except where such inward supply of goods or services of a particular category is used by a registered taxable person for making an outward taxable supply of the same category of goods or services.
  - Membership of a club, health, and fitness centre.
  - Rent-a-cab, life insurance, health insurance, except where the government notifies the services that are obligatory for an employer to provide to its employees under any law for the time being in force.
  - Travel benefits extended to employees on vacation, such as leave or home travel concession.
  - Works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service.
  - Goods or services received by a taxable person for construction of an immovable property on one's own account, other than plant and machinery, even when used in the course or furtherance of business to the extend capitalised.
  - Goods lost, stolen, destroyed, written off, or disposed of by way of gift or free samples.

Under GST, taxpayers are allowed to take credit of taxes paid on inputs (input tax credit) and utilise the same for payment of output tax liability. However, no input tax credit on account of CGST can be utilised towards payment of SGST/UTGST and vice versa. The credit of IGST is permitted to be utilised for payment of IGST, CGST, and SGST/UTGST in that order. Also, it is pertinent to note that the credit pool is state-specific (i.e. IGST, CGST, and SGST of one state cannot be used to offset output of IGST, CGST, and SGST liability of another state).

Compliances

There are three monthly returns for a normal taxpayer under GST *viz.* GSTR 1 for output (to be filed by the tenth day of the succeeding month), GSTR 2 for input tax credit (by the 15th day of the succeeding month), and GSTR 3 a monthly tax return (by the 20th day of the succeeding month), and one annual return (by 31 December of the succeeding tax year). The government has also issued a requirement to file monthly GSTR 3B (to be filed by the 20th day of the succeeding month), and such monthly return needs to be filed till December 2018.

Further, filing of GSTR 2 and 3 continues to be suspended. Recently, in a GST Council meeting, a new return design has been proposed. The highlights of the new design structure has been mentioned in the ensuing paragraphs.

Latest update

Recently, in the 27th GST Council meeting, the GST Council has approved the revised design of GST returns. The GST Council has also decided to make GSTN a 100% government-owned company by buying out the shares. The major decisions taken by the GST Council are mentioned below:

- All taxpayers shall file one simplified monthly return with due dates being staggered based on the taxpayer's turnover.
- Composition dealers and dealers having nil transaction will have facility to file returns on a quarterly basis.
- On the matching principle of GST, the supplier will continue to be required to upload the invoices in the system. For all business-to-business (B2B) supplies, the Harmonised System of Nomenclature (HSN) at the four-digit level will need to be used. The invoices can be uploaded any time. The system will automatically calculate tax liability, based on the details of invoices.
- The input tax credit will also be calculated automatically by the system based on invoices uploaded by suppliers, and the buyer will not be required to upload any invoices for claiming credits.
- To incentivise digital payment, 2% concession in the GST rate on business-to-consumer (B2C) supplies is proposed if payment is made through cheque or digital mode, subject to a ceiling of INR 100 per transaction.

Customs duty

Customs duty is levied by the Central Government on goods imported into, and exported from, India. The rate of customs duty applicable to a product imported or exported depends upon its classification under the Customs Tariff Act, 1975. With regard to exports from India, customs duty is levied only on a very limited list of goods.

The Customs Tariff is aligned with the internationally recognised HSN provided by the World Customs Organisation (WCO).

Customs duty is levied on the transaction value of the imported or exported goods. According to section 14 of the Customs Act, 1962 (CA), the concept of transaction value is the sole basis for valuation for the purpose of import and export of goods. While the general principles adopted for valuation of goods in India are in conformity with the World Trade Organisation (WTO) agreement on customs valuation, the Central Government has framed independent Customs Valuation Rules that apply to the export and import of goods.

The customs duty applicable to any product is composed of a number of components, which are as follows:

- The import of goods under the GST regime will be subject to IGST and Compensation Cess (if applicable)
- BCD is the basic component of customs duty levied at the effective rate under the First Schedule to the Customs Tariff Act (CTA) and applied to the landed value of the goods (i.e. the cost, insurance, and freight [CIF] value of the goods). The peak rate of BCD is 10%.
- BCD and Social Welfare Surcharge (at 10% levied on the BCD). BCD and Social Welfare Surcharge paid at the time of imports are not available as credit under GST; consequently, they will always be a cost to the importer.

The duty incidence arising on account of the IGST may be set off or refunded, subject to prescribed conditions. Where goods are imported, the Indian supplier may take credit of the IGST paid at the time of import for offset against the output IGST, CGST, and SGST liability. Also, the Central Government provides exemption from payment of BCD and IGST on import of certain specified goods, subject to fulfilment of prescribed conditions. For example, goods imported for petroleum operations are exempt from BCD.

Recently, during April 2018, the Central Board of Indirect Taxes and Customs (CBIC) notified the Pre-Consultation Regulations under customs law. Under the said regulations, before issuance of notice, importer will be informed in writing along with grounds for the intention of issuing the notice. The importer, within 15 days, is expected to respond in writing, including the option to be heard in person. In absence of response within the time period specified, the officer will proceed with issuance of notice.

E-way bills

The e-way bill is an electronic bill that will be required for the movement of goods in case the value of the consignment is above INR 50,000. The movement of goods may be (i) in relation to supply, (ii) for reasons other than supply, or (iii) due to inward supply from unregistered persons.

The bill can be generated from the GSTN portal, and every GST-registered taxpayer is required to comply with the requirement to issue an e-way bill.

Recently, with effect from 1 April 2018, the Central Government has notified the requirement to generate an e-way bill for inter-state goods movement. For intra-state goods movement, the government has provided that the e-way bill system will be introduced with effect from a date to be announced in a phased manner, but not later than 1 June 2018.

However, majority states like Maharashtra, Assam, Madhya Pradesh, and Himachal Pradesh, etc. have already started issuing notifications for issuance of an e-way bill for intra-state goods movement.

Advance rulings for customs and GST

To enable foreign investors to ascertain their indirect tax liabilities arising from proposed business ventures in India, the Central Government has constituted the Authority for Advance Rulings (AAR) as a high-level, quasi-judicial body. The functions of the AAR consist of giving advance rulings on a specific set of facts relating to specified matters under customs and GST.

Advance rulings may be sought by any resident/non-resident investor entering into a joint venture in India in collaboration with another non-resident or resident of India, or by a resident setting up a joint venture in India in collaboration with a non-resident. Through the Finance Act, 2005, this facility has also been made available to existing joint ventures in India. The Central Government is also empowered to include any other class or category of persons as eligible for the benefit of an advance ruling. Under the customs law, the Central Government has allowed a ‘resident public limited company’ to be eligible for an advance ruling. Under the erstwhile excise and service tax regime, advance rulings could be given only on a proposed transaction, whereas under GST, advance rulings can be obtained on a proposed transaction as well as a transaction being undertaken by the appellant.

In terms of GST provisions, the following matters/questions specified can be sought before the AAR:

- Classification of any goods or services, or both.
- Applicability of a notification issued under the provisions of the CGST Act.
- Determination of time and value of supply of goods or services, or both.
- Admissibility of input tax credit of tax paid or deemed to have been paid.
- Determination of the liability to pay tax on any goods or services, or both.
- Whether applicant is required to be registered.
- Whether any particular thing done by the applicant with respect to any goods or services, or both, amounts to or results in a supply of goods or services, or both, within the meaning of that term.

The comprehensive provision for advance rulings is provided under GST to ensure that disputes are minimal. Timelines are also given within which the ruling is to be given by the concerned authority. The aim is to provide certainty to the taxpayer with respect to one's obligations under the GST Act and an expeditious ruling, so that the relationship between the taxpayer and administration is smooth and transparent and avoids unnecessary litigation.

Property taxes

Property tax is levied by the governing authority of the jurisdiction in which the property is located. The rate of tax levied varies from city to city in India, and is generally related to the prevailing market prices for property in each locality.

Stamp duties

Stamp duty is a government tax that is levied on all legal property transactions. Stamp duty is a tax that is paid as evidence for any purchase or sale of a property between two or more parties. Stamp papers, which are bought either in the name of the buyer or seller, are valid for six months, provided the stamp duty is paid without any delay. No document that has not been duly stamped can be introduced as evidence in any court proceedings. Stamp duty is charged at both central and state levels. State level stamp duties vary from state to state, and on the document type. Stamp duty should be paid in full without any delay, failing which, a penalty is levied. Stamp duty has to be paid prior to execution (signature by an individual's party) of a given document, the next day, or on the day of document execution. Stamp duty is paid by a buyer in most cases. However, both the seller and the buyer have to bear the burden of stamp duty for property exchange cases. Stamp duty rates differ in various states across the country, as stamp duty in India is a state subject. However, the Central Government fixes the stamp duty rates of specific instruments.

Dividend distribution tax (DDT)

Indian companies distributing or declaring dividends are liable to pay DDT at 15% (*plus* surcharge [12%] and health and education cess [4%]). This rate is required to be grossed up; consequently, the effective rate of DDT is 20.56%. This tax is payable on declaration, distribution, or payment, whichever is earlier, and it is in addition to the CIT payable on business profits.

Further, the Finance Act, 2018 has introduced the levy of DDT on companies (not being a company in which the public are substantially interested) for making payment of:

- any sum by way of advance or loan to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power
- any sum by way of advance or loan to any concern in which such shareholder is a member or a partner and in which one has a substantial interest, or
- any sum by any such company on behalf, or for the individual benefit, of any such shareholder.

In those cases, the advance or loan or the sum of money will be treated as deemed dividend and on which 30% DDT (without gross up) shall be payable. The effective tax rate, including surcharge at 12% and health and education cess at 4%, is 34.944%.

Dividend income on which DDT is paid by the Indian company is exempt from tax in the hands of the recipient. However, non-corporate resident taxpayers earning more than INR 1 million of dividend are to pay tax at 10% (*plus* applicable surcharge and education cess) on the dividend income earned over and above INR 1 million in addition to the DDT paid by the company. However, the 'dividend income' in this paragraph does not include the 'deemed dividend income' as mentioned in the preceding paragraph.

A holding company does not have to pay DDT on dividends paid to its shareholders to the extent that it has received dividends from its Indian or foreign subsidiary company on which DDT has been paid by the respective subsidiary, subject to fulfilment of certain conditions.

Further, no tax will be chargeable/payable by a company located in an International Financial Service Centre, deriving income solely in convertible foreign exchange on profits distributed from the total profits, for any tax year on any amount declared, distributed, or paid by such company, by way of dividends (whether interim or otherwise) on or after 1 April 2017 out of its current income, either in the hands of the company or person receiving such dividend.

Securities transaction tax (STT)

STT is applicable to transactions involving the purchase/sale of equity shares, derivatives, units of equity-oriented funds through a recognised stock exchange, or the purchase/sale of a unit of an equity-oriented fund to any mutual fund. The STT leviable in respect of such transactions varies for each kind of instrument, whether delivery based or non-delivery based. Rate of STT varies from 0.001% to 0.125%, depending upon the nature of securities. However, securities transacted by any person on a recognised stock exchange located in an International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency are not subject to STT.

Payroll taxes and social security payments

Contributions representing 8.33% of the employees' pay needs to be remitted by the employer to the Employees' Pension Fund in respect of all Indian nationals working in an establishment covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, within 15 days of the close of every month. A 'foreign worker' holding a passport of a country with which India has signed a social security agreement is required to contribute to the social security system 12% of one's salary. A similar

12% of salary is contributed by resident employees' for the Employees' Provident Fund and Employees' Pension Fund. However, foreign workers can detach themselves from the scheme under a special provision on obtaining a 'detachment/coverage certificate' issued by an appropriate social security institution indicating the period of employment in India being less than the maximum period of detachment agreed in the agreement.

Branch income

Branches of foreign companies are taxed on income that is received in India, or which accrues or arises in India, at the rates applicable to foreign companies. There is no withholding tax (WHT) on remittance of profits by the branch to its head office.

Income determination

Income computation and disclosure standards (ICDS)

The CBDT has notified ten ICDS to be followed by all taxpayers that follow the mercantile system of accounting for the purpose of computation of income chargeable to income tax under the head 'profits and gains of business or profession' or 'income from other sources' and not for the purpose of maintenance of books of accounts. In case of conflict between the provisions of the Indian Income Tax Act and the ICDS, the provisions of the Act shall prevail to that extent. These standards have been implemented from tax year 2016/17.

The list of certain important points on implementation of ICDS is given below:

- Inventory has to be valued at lower of cost or net realisable value. Further, cost of inventory is to include taxes paid, irrespective of recoverable or not.
- Interest on compensation or enhanced compensation is to be offered to tax in the year of receipt.
- Any subsidy or grant received from the government, which is not adjusted to cost of asset, shall be offered to tax in year of receipt of such subsidy/grant even if the conditions attached to it are not yet fulfilled.
- Marked-to-market loss computed in accordance with ICDS shall only be allowed.
- Gain/loss on account of foreign currency fluctuation for monetary and non-monetary items shall be computed and allowed as per provisions of ICDS.
- Profits from construction contracts and/or service contracts shall be calculated based on the percentage of completion method. For service contracts with less than a 90-days period, the project completion method can be used. Further, for service contracts with indeterminate number of acts over a specific period of time, the straight-line method can be used. Retention money shall be included while computing contract revenue.
- It may be noted that ICDS does not recognise the concept of materiality and the concept of prudence.

Inventory valuation

Inventories are generally valued at cost or net realisable value, whichever is lower. Generally, there is conformity between book and tax reporting. The first in first out (FIFO) and weighted average cost methods are acceptable, provided that they are consistently applied.

Capital gains

Capital gains refer to the gains made on the transfer of a capital asset. Transfer includes sale, exchange, relinquishment, or extinguishment of rights in an asset. Capital assets are either short-term capital assets or long-term capital assets. Long-term capital gains are eligible for a concessional rate of tax and indexation of cost of purchase and cost of improvement (*discussed below*).

Short-term capital assets are capital assets held for a period of not more than 36 months. In case of listed shares, listed securities, or units of specified mutual funds or zero-coupon bonds, the short-term holding period is not more than 12 months, and in case of unlisted shares is not more than 24 months. Capital assets that do not qualify as short-term capital assets are considered as long-term capital assets.

Normally, long-term capital gains are determined after increasing the cost by a prescribed multiplier that varies with the period of holding, to adjust for inflation. In case of non-residents, capital gains on transfer of shares or debentures in Indian companies are computed in the foreign currency in which the shares or debentures were acquired, and the capital gains are then reconverted into Indian currency to compute the tax liability thereon.

Capital gains are taxed as follows:

- Long-term capital gains on the transfer of equity shares in a company acquired on or after 1 October 2004 shall be exempted only if STT was paid at the time of acquisition. This exemption stands withdrawn from 1 April 2018. Post such withdrawal, the long-term capital gains exceeding INR 100,000 will be taxed at the rate of 10% (plus surcharge and health and education cess). The said amendment will be applicable to units of equity oriented funds as well. The benefit of adjustment of cost of inflation index will not be available. In addition, the benefit of computation of long-term capital gains in foreign currency in the case of a non-resident will not be allowed.
- Other long-term capital gains are subject to taxation at 20% (plus the surcharge and health and education cess). However, long-term capital gains arising from the transfer of listed securities, units, or zero-coupon bonds on which STT is not paid are taxed at 10% (without adjusting the cost for inflation) or at 20% (after adjusting the cost for inflation), whichever is more beneficial to the taxpayer. These rates exclude surcharge and health and education cess.
- Long-term capital gains arising to a non-resident (not being a company) or a foreign company from transfer of unlisted securities, shares, debentures, etc. are taxable at 10% (plus surcharge and health and education cess) without any indexation benefit.
- Short-term capital gains on the transfer of listed shares in a company or units of an equity-oriented fund that are subject to STT are taxed at 15% (plus surcharge and health and education cess).
- Other short-term capital gains are subject to taxation at the normal rates.
- In the case of certain overseas financial organisations (e.g. off-shore funds and foreign institutional investors), long-term capital gains arising on the transfer of units purchased in foreign currency are taxable at 10% (plus surcharge and health and education cess) on the gross amount.
- Transfer of rupee-denominated bonds (issued by an Indian company outside India) held by a non-resident to another non-resident will be exempt from long-term capital gains. Further, the benefit of excluding the forex appreciation of rupee-denominated bonds in the capital gains computation at the time of redemption will

also be extended to secondary holders of such bonds. This is effective from tax year 2018/19 onwards.
- The indexation benefit is available on cost of acquisition and cost of improvement for assets classified as long-term while computing capital gains. The taxpayer shall have the option to consider the fair market value of the asset on 1 April 2001 as the cost of acquisition where date of acquisition is before 1 April 2001. This is effective from the tax year 2018/19.

The rules of carryforward and set off of loss for capital gains are as follows:

- Capital losses arising from the transfer of a short-term capital asset can be set off against capital gains arising from any other asset in the same tax year.
- Capital losses arising from the transfer of a long-term capital asset can be set off only against capital gains arising from the transfer of any other long-term capital asset.
- Capital losses that cannot be set off in the tax year in which they are incurred can be carried forward and set off against future capital gains at any time within a period of eight years after the year of loss.
- When depreciable assets forming part of a block of assets for tax purposes are transferred, as a result of which the value of the block becomes negative, or all the assets forming part of the block cease to exist, the difference between the transfer price and the value of the block is treated as short-term capital gain or loss.

Taxability of shares issued at a price less than fair market value of shares

Where a closely held unlisted company receives any consideration from a resident towards issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value will be deemed to be the income of the recipient-company. The 'fair market value' is computed according to the formulas per the prescribed mechanism. Further, the said provision has been amended and, accordingly, the scope has been widened. From tax year 2018/19, entities are liable to pay taxes on the following receipt that they have received without consideration or for a consideration that is less than the fair market value:

- Any sum of money.
- Any immovable property being land or building, or both.
- Any property, other than immovable property, being shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, and bullion.

Taxability of transfer of property for nil or inadequate consideration

Where a person is in receipt of the following property for nil consideration or for an inadequate consideration, then the difference between the fair value of the property and the consideration paid shall be considered as deemed income in the hands of recipient of the property:

- Any sum of money.
- Any immovable property being land or building, or both.
- Any property, other than immovable property, being shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, and bullion.

In a case where the difference between the fair value of property and consideration paid does not exceed INR 50,000, the same shall be ignored from this taxation. However, the Finance Act, 2018 has liberalised the limit of INR 50,000 in case of immovable property. It is now provided that no adjustments shall be made in a cases where the variation between stamp duty value and the sale consideration is not more than 5% of the sale consideration.

Dividend income

Dividend income received from Indian companies is not taxable in the hands of all shareholders. This applies to resident as well as non-resident shareholders. However, tax is payable at the rate of 10% on income earned by way of dividend in excess of INR 1 million by a taxpayer resident in India other than domestic companies and certain funds, trusts, and institutions. This tax is in addition to the tax payable by a company on dividend distribution.

Income received by overseas financial organisations (offshore funds) from units of specified mutual funds, or from the Unit Trust of India, that are purchased in foreign currency is taxable at 10% on the gross amount of income. Any income distributed by a mutual fund being an equity-oriented fund, the mutual fund shall be liable to pay additional income tax at 10% on the income so distributed. Dividends received from a foreign subsidiary company in which the Indian company holds 26% or more in the nominal value of the equity share capital, then the applicable tax rate would be 15% of the gross amount of the dividend.

Income received from units of specified mutual funds is not taxable in the hands of the recipient. The distributing mutual fund is liable to pay a distribution tax of 25% or 30% (plus surcharge and health and education cess at applicable rates). The above tax is not chargeable in respect of income distributed by an equity-oriented fund in respect of distribution under such scheme.

Stock dividends (bonus shares) distributed are not taxed at the time of receipt in the hands of the recipient shareholders, but capital gains provisions are applicable to the sale of these stock dividends.

Buyback of shares

An additional tax is payable on transactions involving buyback of shares by unlisted companies from its shareholders. A tax at 20% is payable by the company on the difference of consideration paid on buyback and the issue price of shares. The CBDT has prescribed the methodology for determination of amount received for issue of shares under 12 different situations, being a subject matter of tax on buyback. The buyback consideration received will be tax exempt in the hands of the receiver. No tax credit will be allowed in case of such taxes paid either to the company or to the shareholder.

Interest income

Interest income received by an Indian company is taxable at normal CIT rates. Interest income received by a foreign company is taxed at a concessional rate of withholding at 5%/20%, subject to conditions.

Royalty income

The domestic tax law defines the term ‘royalty’ to include consideration from the transfer of all or any rights (including the granting of a licence), imparting of any information, or use or right to use of any right in respect of a patent, invention, model, design, secret formula or process, trademark, or similar property. The definition also includes imparting of any information concerning technical, industrial, commercial, or scientific knowledge, experience, or skill; use or right to use any industrial, commercial, or scientific equipment; the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic, or scientific work, including films or video tapes for use in connection with television, or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution, or exhibition of cinematographic films; or rendering of any services in connection thereto.

Royalty income received by a non-resident taxpayer is taxed at 10%, 15%, or 20% (subject to treaty benefits and furnishing of prescribed documentation). Surcharge and health and education cess as applicable will be levied in addition to the basic tax rates mentioned above. However, surcharge and health and education cess would not apply on the tax rate specified in the tax treaties.

Partnership/LLP income

A partnership firm and an LLP are taxed as separate legal entities. The share of income of partners from a partnership firm or an LLP is exempt from tax. Partnerships and LLPs are taxed at 31.2% (inclusive of surcharge and health and education cess) if the income is less than INR 10 million and 34.944% (inclusive of surcharge and health and education cess) if the income exceeds INR 10 million.

The interest payment to partners on capital or current account is allowed as tax-deductible expenditure. However, the maximum interest rate allowable for tax purposes is 12% *per annum*. A working partner can be paid salary, bonus, commission, or remuneration. The maximum permissible deduction in respect of remuneration payable collectively to all working partners is based on the book profit of the firm, at slab rates for different levels of book profit.

Unrealised exchange gains/losses

Principles for classification of foreign exchange gains or losses (post amendments made by the Finance Act, 2018) are as follows:

- Unrealised foreign exchange profit/loss is considered to be of a capital nature if a foreign currency loan is taken for a capital asset or fixed asset purchased outside India.
- Any other unrealised foreign exchange profit/loss (not covered above) is considered as revenue in nature.

Foreign income

An Indian company is taxed on its worldwide income. A foreign company is taxed only on income that is received in India, or that accrues or arises, or is deemed to accrue or arise, in India. This income is subject to any favourable tax treaty provisions. According to the current tax law, payments for allowing/transferring the right to use software, customised data, or transmission of any signal by satellite, cable, optic fibre, or similar technology are taxable as royalty income deemed to accrue or arise in India, whether or not the location of such right or property is in India. The CBDT has notified the rules for granting foreign tax credit to resident taxpayers in respect of taxes paid in overseas countries. The rules lay down broad principles and conditions for computation and claim of foreign tax credit, respectively. In cases where the taxpayer has not been given credit of certain taxes paid outside India since the tax was under dispute, the taxpayer can approach the tax officer within six months from the end of the month in which the dispute was settled with prescribed documents. The tax officer has been empowered to pass an order granting consequential relief. This has been made effective from tax year 2018/19 onwards.

Double taxation of foreign income for residents is avoided through treaties that generally provide for the deduction of the lower of foreign tax or Indian tax on the doubly taxed income from tax payable in India. Similar relief is allowed unilaterally where no treaty exists, in which case a resident would be taxed under the Indian tax law but would be allowed a deduction from the Indian income tax payable of a sum being the lower of the Indian tax rate on the doubly taxed income or the rate of tax prevailing in the other country in which income is already taxed.

Deductions

Expenses that are revenue in nature are, by and large, allowed as a deduction to businesses and professionals if they are:

- incurred wholly and exclusively for the purpose of the business or profession
- not in the nature of a personal expense, and
- not in the nature of a capital expense.

Depreciation

Depreciable assets are grouped in blocks, and each block is eligible for depreciation at a prescribed rate. The CBDT has issued a notification clarifying that with effect from 1 April 2017 the block of assets that are entitled to more than 40% depreciation shall now be restricted to 40%. Hence, the depreciation available in case of different block of assets ranges from 0% to 40% as summarised below:

Block	Rate (%)
Residential building	5
Office building	10
Furniture and fittings	10
Plant and machinery	15 to 40
Computers	40
Intangible assets	25

Where the asset is used for less than 180 days in a tax year, the depreciation is restricted to 50% of the prescribed rate. If money receivable on the transfer of a depreciable asset exceeds the opening written-down value plus cost of acquisitions of assets falling within the block concerned, the excess is taxed as a short-term capital gain at the same tax rate as that applicable to business income.

Additional depreciation of 20% is allowed on the cost of new plant and machinery (other than ships or aircraft) acquired and installed to companies engaged in the business of manufacture of articles or things. This benefit is extended to power generating, transmission, or distributing business. Also, the benefit of initial depreciation to companies engaged in transmission of power is available. Power-generating or power-distributing companies have the option to either apply the reducing-balance method provided under the normal schedule or to charge depreciation on a straight-line basis. The straight-line rates are aligned with power companies' book depreciation rates.

Know-how, patents, licences, franchises, and similar intangible assets can form part of a block of depreciable assets, provided they are owned and put to use in the course of their business and are eligible for depreciation at the prescribed rate, which is 25%.

Additional depreciation of 35% (as against the current rate of 20%) has been made available on new plant and machinery acquired and installed between 1 April 2015 and 31 March 2020, in the year of installation in the states of Andhra Pradesh, Bihar, Telangana, and West Bengal. In line with the existing provisions, such incentive is not available to specified assets (e.g. office appliances, computer software).

Tax depreciation is not required to conform to book depreciation. However, an Accounting Standard mandates companies to reconcile both and provide for deferred tax assets, liabilities, expenses, and incomes.

Investment allowance

An investment allowance benefit is allowed for companies engaged in the business of manufacture of articles or things. Taxpayers who have acquired and installed new plant and machinery (other than a ship or aircraft) on or after 1 April 2015 but before 1 April 2020 in the states of Andhra Pradesh, Bihar, Telengana, and West Bengal can avail of an allowance of 15% of the actual cost of investment made in plant and machinery. Further, the acquisition of the plant and machinery can be made in any tax year.

In case installation of the new asset is in a year other than the year of acquisition, then the investment allowance shall be allowed in the year in which the new asset is actually installed. The assets have to be held for more than five years, and, if the asset is sold before this period, the investment benefit claimed will be reversed in the year of sale.

Investment in new plant and machinery will not include assets like plant or machinery used earlier in or outside India, any plant or machinery installed in any office premises or in residential accommodation (or guest house), any office appliances (including computers or computer software), vehicle, ship, or aircraft, the cost of which has been allowed as a deduction under any other provision.

Goodwill

Goodwill and commercial brand equity that are acquired in the course of amalgamation are intangible assets entitled to depreciation. The amalgamated/demerged company and the resulting company shall not be entitled to claim deduction for depreciation exceeding the amount calculated in any previous year. The deduction shall be apportioned between the amalgamating/demerging company and the amalgamated/demerged company in the ratio of the number of days for which the assets were used by them during any tax year. However, the issue of whether goodwill is eligible for tax depreciation or not is the subject of litigation, and there are divergent views of courts on this.

Start-up expenses

Certain expenses are incurred by taxpayers either before the start-up of a business or after start-up of a business, in connection with extension of the industrial undertaking, or in connection with setting-up a new unit. One-fifth of such expenditure is allowed as a deduction each year, over a period of five years.

Tax framework for start-ups in India

With a view to providing an impetus to start-ups and to facilitate their growth in the initial phase of their business, a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation development, improvement of products, processes, or services, or a scalable business model with a high potential of employment generation or wealth creation will be available.

The benefit of 100% deduction of the profits derived from such business shall be available for a period of three consecutive years out of seven years beginning from the year the start-up is incorporated.

Eligible start-up companies can carry forward losses and set off against income of the previous year only if all the shareholders holding shares in the prior year in which such loss was incurred continued to hold those shares in the year of the set off as well. Further, only the losses incurred during the period of seven years beginning from the year in which such company was incorporated may be used for set off.

'Eligible start-up' means a company or an LLP engaged in the business mentioned above and which fulfils the following conditions, namely:

- it is incorporated on or after 1 April 2016 but before 1 April 2021
- the total turnover of its business does not exceed INR 250 million in any tax year(s) prior to which the deduction was claimed, and
- it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

Reduced rate of tax for newly set-up companies

To provide relief to newly set-up Indian companies, a beneficial CIT rate of 25% (plus applicable surcharge and health and education cess) has been announced with effect from tax year 2016/17. This beneficial rate is at the option of the company and is applicable on satisfaction of the following conditions, cumulatively:

i. The company is registered and set up on or after 1 March 2016.
ii. The company is engaged in any business other than the business of manufacture or production of any article or thing and research or distribution of such article or thing manufactured or produced.
iii. The company has not claimed a benefit for establishing its unit in an SEZ, benefit of accelerated depreciation, or benefit of additional depreciation, investment allowances, expenditure on scientific research, and any deduction in respect of certain income.
iv. The company has not claimed set off of loss carried forward from any earlier years following the tax years, provided such loss is attributable to the deductions referred to in (iii) above.
v. The option of seeking the benefit of a reduced CIT rate of 25% is furnished in the prescribed manner before the due date of furnishing of income.

For companies other than Indian companies, the rate of CIT (plus applicable surcharge and education cess) shall remain unchanged.

Interest expenses

Any interest paid by a taxpayer on capital borrowed for the purposes of the taxpayer's business or profession is tax-deductible without any limit. However, if such interest is paid to certain related persons, then the interest expense will be restricted to 30% of earnings before interest, taxes, depreciation, and amortisation (EBITDA). Excess interest expenditure disallowed in that year can be carried forward for eight years and would be available for set-off. If the capital is borrowed for acquiring a capital asset, then interest liability pertaining to the period until the time the asset is put to use cannot be allowed as a tax-deductible expense and will have to be added to the cost of such asset. *See Expenses allowable on actual payment basis below*.

There are some specific guidelines for interest deduction being prescribed in ICDS.

Bad debts

The amount of any bad debt, or part thereof, that has been written off as irrecoverable in the accounts of the taxpayer for the year is allowed as a tax-deductible write-off. If any part of the sum written off is subsequently recovered, the recovered sum is taxable in the year of recovery.

Charitable contributions

Any charitable contribution made by a company to any charity is allowed as a tax-deductible expense, subject to certain conditions. The tax deductibility ranges from 50% to 100% of the charitable contribution, depending upon the nature of charity.

Expenditure incurred on corporate social responsibility (CSR) activities

Expenditure incurred by a taxpayer on CSR activities mandated under the Companies Act, 2013 is not allowed as a deduction for tax purposes under the Income Tax Act. However, if contributions are made to any charitable institutions, then deduction may be claimed from the total income, subject to conditions. *See charitable contributions above.*

Expenses allowable on actual payment basis

Certain expenses, such as, but not limited to, employees' provident fund dues (i.e. retirement benefit funds), bonus to employees, and interest payable to financial institutions and banks, are allowed as tax-deductible expenses only on actual payment. Tax disallowances are attracted if certain payments are delayed beyond their due dates under the respective laws.

Bribes, kickbacks, illegal payments

Expenditure incurred by a taxpayer that is illegal is deemed not to have been incurred for the purposes of the business or profession, and no deduction of such expenditure will be allowed.

Fines and penalties

Under the tax law, there are various procedural compliances (*viz.*, audit of books of accounts, submission of tax returns, disclosure of particulars of income, etc.) that need to be complied with by taxpayers by the respective due dates prescribed therein. Non-compliance/delayed compliances of these procedures attract interest and penal consequences. There are prosecution provisions as well for certain offences. Penalties and fines paid for infraction of, or non-compliance with, any law are not deductible as business expenditure. Prosecution proceedings are criminal proceedings, and, in such proceedings, courts presume a culpable mental state on the taxpayer's part. The burden of proving beyond all reasonable doubt (and not merely by preponderance of probability) the absence of such a state is on the taxpayer. Prosecution shall lie against companies that fail to file their return, whether or not tax is payable.

Further, a penalty of INR 10,000 on specified persons (i.e. accountants, registered valuers, or merchant valuers) for furnishing incorrect information in any report or certificate furnished by them under any provision of the Act or the Rules. The aforesaid penalty will not be imposable if there is reasonable cause for failure. Further, a new provision has been included to levy a penalty of INR 5,000 where the taxpayer has filed one's return of income after the due date but on or before the 31st day of December of the tax year and INR 10,000 where the taxpayer has filed one's return of income after the 31st day of December or has not filed one's return of income. Failure to furnish statement of financial transaction or reportable account within the prescribed time is liable to pay a penalty of INR 500 for each day of continuing default. Further, INR 1,000 shall be charged for each day of continuing default in case of failure to furnish statement of financial transaction or reportable account within the period specified in the notice issued by the revenue authority.

Taxes

All taxes (tax, duty, cess, or fees by whatever name called) relating to business (other than income tax) incurred during the tax year are usually deductible only in the year of payment.

Net operating losses

Losses can be carried forward and set off against income from subsequent year(s) for periods set out in the following table:

Types of losses	Time limit
Unabsorbed depreciation	Perpetually
Business losses (other than speculation business losses)	8 years
Speculation business losses	4 years
Capital losses	8 years

There are no provisions in India for carrying losses back to earlier years.

Payments to foreign affiliates

Indian companies can claim deduction for payments on account of royalties, and for interest and fees for technical or management service provided by foreign affiliates, as long as they are not capital in nature. Such payments are deductible in the year the requisite WHT is paid into the government treasury.

Group taxation

Group taxation is not permitted under the Indian tax law.

Transfer pricing

Transfer pricing on international transactions

The Indian transfer pricing regulations (ITPR) stipulate that income arising from 'international transactions' between 'associated enterprises' should be computed having regard to the 'arm's-length price'. Furthermore, any allowance for expenses or interest arising from any international transaction is also to be determined having regard to the arm's-length price. The expressions 'international transactions' and 'associated enterprises' have been defined in the ITPR.

The ITPR also contain the concept of 'deemed international transaction' whereby a transaction between an enterprise and a third party (whether based in India or overseas) would be subjected to transfer pricing regulations in case there exists a prior agreement in relation to such a transaction between the third party and the associated enterprise of the transacting enterprise or if the terms of such a transaction are determined in substance between the third party and the associated enterprise of the transacting enterprise.

The ITPR also define a certain class of transactions undertaken by a taxpayer with its domestic related parties and whose aggregate value exceeds INR 200 million as specified domestic transactions to which the transfer pricing provisions apply.

Initially, the ITPR prescribed five methods for computation of arm's-length price. These are broadly in line with OECD Guidelines. A sixth method, termed as the 'other method', was notified in 2012. Taxpayers are required to adopt the most appropriate method for determining the arm's-length price.

Taxpayers are also required to maintain a comprehensive set of prescribed information and documents relating to international transactions and specified domestic transactions that are undertaken between associated enterprises, on an annual basis, within the prescribed timelines (due date of filing the income tax return). Taxpayers being a constituent entity of an international group shall also keep and maintain such information and documents (essentially master file and country-by-country [CbC] report) in respect of the international group. Further, taxpayers are required to obtain an Accountant's Report from an independent accountant certifying the nature and amount of international transactions. The certificate needs to be filed along with the income tax return. The burden of proving the arm's-length character of the transaction is primarily on the taxpayer.

The taxpayer is required to comply with the above requirements on an annual basis.

The ITPR adopt an arithmetic mean of comparable prices as the arm's-length price, with a flexibility of deviation from the percentage that is notified by the Central Government as +/- 1% for wholesalers and +/- 3% for others. The CBDT has also prescribed rules for use of range for determining arm's-length price, which is discussed subsequently. Where the transfer pricing officer is of the opinion that the arm's-length price was not applied, the officer may re-compute the taxable income after giving the taxpayer an opportunity to be heard. Stringent penalties are prescribed in cases of failure to comply with the provisions of the ITPR.

Notified Jurisdictional Area (NJA)

The Indian government is empowered to declare a country/territory with which there does not exist an effective mechanism for exchange of information as an NJA.

Any transaction between a taxpayer and a person located in an NJA or a transaction entered into by a taxpayer wherein one of the parties is located in an NJA will be covered under the ITPR. However, the benefit of the +/- 3% range and the option to be covered under the Safe Harbour Rules would not be available in this case.

Safe Harbour Rules

Safe Harbour Rules were notified in 2013. These rules prescribe who the eligible taxpayers are, which are the eligible international transactions, the target operating margin, procedural aspects, timeline for audit, etc. Thereafter, these Safe Harbour Rules were also extended to certain domestic transactions.

The Safe Harbour Rules were initially applicable for a maximum of five tax years beginning with tax year 2013/14.

Thereafter, in June 2017, the CBDT made amendments to the Safe Harbour Rules reducing the target operating margins for most of the eligible international transactions. Further, the revised Safe Harbour Rules introduced receipt of low value-adding intra-group services to the list of eligible transactions subject to certain thresholds. Also, there were certain modifications made to the definitions of certain terms *vis-à-vis* in the original Safe Harbour Rules. The revised Safe Harbour Rules are applicable for a maximum of three tax years beginning with tax year 2017/18 with the taxpayers having an option to apply the original Safe Harbour Rules or the revised Safe Harbour Rules for the tax year 2017/18, whichever is more beneficial.

Where a taxpayer has opted to be covered under the Safe Harbour Rules and the transfer price declared has been accepted by the tax authorities, then such a taxpayer cannot invoke proceedings under a Mutual Agreement Procedure (MAP).

Advance pricing agreements (APAs)

An APA is an arrangement between the taxpayer and the tax authorities covering transactions, with a view to pre-empt potential transfer pricing disputes. The CBDT has notified detailed rules providing the procedures and necessary forms for application/administration of APAs.

The rules provide for constitution of an APA team, which shall consist of an income tax authority and experts from economics, statistics, law, and other necessary fields. APAs can be applied to existing, as well as proposed, transactions.

The rules have provided for both unilateral and bilateral/multilateral APAs. In cases where a bilateral APA negotiated between competent authorities is not acceptable to the taxpayer, the taxpayer may, at its option, continue with the process of entering into a unilateral APA without benefit of an MAP.

The salient features of the procedure laid down for APAs are application for APA, withdrawal of APA, defective application, procedure, compliances post-APA, cancellations of APA, and revisions and renewal of APA.

The legislation has provisions of roll-back of APAs for four years prior to the first year covered under the APA.

Rules prescribing the use of 'range' and multiple year data

The CBDT has notified the rules prescribing the scheme for the usage of the 'range' concept and multiple year financial data for determining the arm's-length price. These rules are applicable to international transactions and specified domestic transactions.

The rules envisage the applicability of the 'range' concept and multiple year data only where the arm's-length price determination is done using either the transactional net margin method, resale price method, cost plus method, or comparable uncontrolled price method. Furthermore, the rules in connection with the applicability of the 'range' concept, *inter alia*, prescribe the adequate number of external comparables and the methodology for computing the upper and lower percentile. In case the number of external comparables identified is not adequate, the 'range' concept will not apply and the concept of arithmetic mean will continue to apply.

The multiple year data can only be used if the most appropriate method selected of benchmarking purposes is either transactional net margin method, resale price method, or cost plus method. Further, multiple year data entails use of data for the year under consideration (current year) and data for up to two preceding tax years. Data for the current year is compulsorily to be considered. If the data for the current year is available and is not comparable on account of either qualitative or quantile reasons, the comparable cannot be considered.

Master file and country-by-country (CbC) reporting documentation as per BEPS

The government has introduced three-layered transfer pricing documentation requirements in line with the international standard as per the BEPS Action Plan 13. Taxpayers are required to prepare a master file, local file, and CbC report from tax year 2016/17. The CBDT has notified the final rules for maintaining and furnishing of transfer pricing documentation in the master file and CbC report.

As per the rules, the master file shall be applicable to every Indian taxpayer (called as a constituent entity or CE) part of an international group (whether inbound or outbound) having an annual consolidated turnover of over INR 5 billion in the preceding accounting year of the parent company and meeting certain other thresholds of the quantum of aggregate value of international transactions. Again, the Indian taxpayer must furnish the master file with the prescribed authority (Director General of Income Tax [Risk Assessment]). For Indian subsidiaries with parent companies resident outside India, the master file must be furnished even if it is filed by the parent entity in its home country or by a designated entity in its home country. The documentation prescribed by the rules in respect of the master file is largely in line with OECD's final BEPS Action Plan 13 report; however, there are certain additional information requirements, like the description of the functions, assets, and risks (FAR) analysis of all CEs within the group that contribute at least 10% of revenues or assets or profits of the group; detailed description of the financial arrangements of the group, including the names and address of the top ten unrelated lenders; and a list of all entities of the international group engaged in development and management of intangible property, along with their addresses.

The CbC report is applicable only for taxpayers having an annual consolidated group turnover of over INR 55 billion in the preceding accounting year of the parent company. A parent entity of an outbound international group or an alternate reporting entity of an inbound international group, resident in India, must file the CbC report with the prescribed authority. For Indian subsidiaries with parent companies resident outside India, the CbC report must ordinarily be filed by the parent entity in its home country or by an alternate reporting entity/a designated entity in its home country. The Indian tax authorities will access the CbC report through mutual exchange of information agreements with such country, failing which the Indian subsidiary will be required to furnish the report. However, if the parent entity is not obligated to file the CbC report in its home country or if there is no mutual exchange of information agreement signed between India and the parent entity's country or territory, then the Indian subsidiary will be required to furnish the report.

In case there are multiple entities of the same international group resident in India, one of the entities will have to be identified as the designated entity for filing the master file as well as for other communication in respect of the master file and the CbC report. Further, the rules have prescribed various forms for intimations to be filed with the prescribed authority and filing of the master file and CbC report with the prescribed authority at various dates. The due date for filing the master file and CbC report is the specified due date for filing the annual tax returns. In case of CbC report, every parent entity or the alternate reporting entity resident in India will have to file the report within a period of 12 months from the end of the said reporting accounting year. No specific timelines have been prescribed for filing of the CbC report by Indian subsidiaries with parent companies resident outside India.

Significant penalty provisions will apply for non-compliance and furnishing inaccurate information.

Restrictions on interest deduction

The BEPS Action Plan 4 recommends alternate approaches for countries to limit tax base erosion through interest deductions and other financial payments. Provisions have been introduced in the Income Tax Act, 1961, which seek to limit the interest deduction of Indian companies or PEs of foreign companies in India. Taxpayers engaged in banking or insurance business are specifically excluded.

The provision will apply to interest or similar expenses paid (including those paid on existing debt) to (i) overseas associated enterprises or (ii) third-party lenders for whom the underlying debt is backed by an implicit or explicit guarantee or equivalent deposit from overseas associated enterprises.

Any interest paid for the year under consideration in excess of 30% of the EBITDA of the taxpayer will be treated as excess interest. Excess interest disallowed in a year will be eligible for carry forward up to eight consecutive years, subject to the above limits. The provision will, however, not apply to interest paid or payable up to INR 10 million.

The proposed provisions that limit the interest deductions have largely adopted the 'Fixed Ratio Rule' proposed as a best practice approach under BEPS Action Plan 4, however, with some differences. It is relevant to note that the provisions do not correspondingly limit the WHT liability or taxability of the non-resident associated enterprise on the interest income. The provisions apply from tax year 2017/18 onwards.

Secondary adjustment

To align the ITPR with the OECD Guidelines and international practices, provisions have been introduced in the ITPR for a secondary adjustment. The secondary adjustment is an adjustment in the books of account of the taxpayer and its associated enterprise to reflect that the actual allocation of profits between the Indian taxpayer and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment. This is intended to remove the imbalance between the cash account and actual profit of the Indian taxpayer.

The secondary adjustment is required only where a primary adjustment to the transfer price occurs in one of the following circumstances:

- Where adjustment has been made on one's own by the taxpayer in one's income tax return.
- Adjustment made by the Assessing Officer has been accepted by the taxpayer.
- Arising due to the APA signed.
- Application of Safe Harbour Rules.
- Settlement arrived at under the MAP route.

However, an exception has been made according to which such secondary adjustments shall not be carried out by the taxpayer if the amount of the primary adjustment made in the case of a taxpayer does not exceed INR 10 million.

According to this provision, excess money arising from primary transfer pricing adjustments not repatriated into India within the prescribed time limit will be deemed as an advance made by the Indian taxpayer to its associated enterprise. Time limits have been prescribed having regard to the circumstance leading to the primary transfer pricing adjustment. The effect of the advance is given by way of an imputation of interest on such advance. The imputed *per annum* interest on such advance will be computed at the one year marginal cost of fund lending rate of the State Bank of India as on 1 April of the relevant previous year plus a spread of 325 basis points in cases where the international transaction in denominated in Indian rupees. In cases where the international transaction is denominated in foreign currency, the interest will be computed at six month London Interbank Offered Rate (LIBOR) as of 30 September of the relevant previous year plus a spread of 300 basis points. This interest will be imputed till such time as the excess money arising due to primary transfer pricing adjustments is repatriated into India.

The provisions relating to secondary transfer pricing adjustment are generally applicable for primary transfer pricing adjustments made from tax year 2016/17 onwards.

Thin capitalisation

No prescribed debt-to-equity ratios or thin capitalisation rules exist under Indian taxation law. However, interest paid to related parties at rates or on terms that are considered unreasonably high are disallowable by the tax officer.

Controlled foreign companies (CFCs)

India currently has no CFC rules, so there will be no Indian tax on foreign profits that remain unremitted from offshore subsidiaries.

Tax credits and incentives

Tax incentive provisions normally have conditions applicable for the period within which the preferred activity should be undertaken and the period for which the tax incentive is available. It may also be necessary to fulfil certain other conditions, such as 'forming' of a 'new' undertaking.

Real Estate Investment Trusts (REITs)/Infrastructure Investment Trusts (InvITs)

The Securities and Exchange Board of India (SEBI) has enacted regulations relating to two categories of investment vehicles, namely REITs and InvITs.

Pass-through status is provided to REITs in respect of income earned from renting, leasing, or letting out any real estate asset owned directly by the REITs. Thus, rental income is exempt in the hands of REITs. On distribution of rental income, REITs are not required to withhold taxes. Tax is not required to be withheld by tenants on payment of rent to the REITs.

The interest paid by special purpose vehicles (SPVs) to business trusts (BTs) is taxable at the investor level (as against the BT itself) when the BT distributes such amounts. Interest income to non-resident investors is taxable at a lower rate of 5% (plus applicable surcharge and cess), whereas residents are taxable at the applicable tax rates.

Dividends distributed by SPVs to the BTs are exempt from levy of DDT in the hands of the SPV. Such dividends are also exempt in the hands of BTs and investors if 100% of the equity shares of the SPV are held by BTs, except in case of shares mandatorily held by another entity as per law, and the dividends are distributed out of profits made after the acquisition of the SPV by BTs. Capital gains (e.g. on sale of shares of SPVs) are taxable in the hands of BTs at the applicable capital gains tax treaty rates. Any other income (including rental income) is taxable at the maximum marginal rate. Onward distributions of such income are exempt in the hands of the investors.

Transfer of units of BTs through stock exchanges are liable to STT, and gains earned by investors on such sale of units are exempt from tax if the units qualify as long-term capital assets. A lower rate of 15% (plus applicable surcharge and cess) is applicable to short-term capital assets. Taxability of capital gains arising to sponsors on exchange of shares in SPVs with units of BTs is deferred to the time of disposal of such units by the sponsor. The applicability of MAT on gains arising from the swap of shares of the SPV for units of BT is deferred to the stage when the units are transferred by the BT. No capital gains tax exemption is available on the swap of other assets with units of BTs.

Tax incentives for undertakings other than infrastructure development undertakings

If certain conditions are met, a tax holiday is permitted on the profits earned by an undertaking engaged in any of the following:

- Integrated business of handling, storage, and transportation of food grains.
- Commercial production or refining of mineral oils.
- Processing, preservation, and packaging of fruits or vegetables.
- Operating and maintaining a hospital in a rural area.

The tax holiday periods range from five to ten years, and the percentage of the rebate is 30%, 50%, or 100% in initial years and 30% in the later years. The number of years constituting ‘initial’ and ‘later’ years varies from sector to sector.

A relaxation of 100% shall be provided under certain conditions to avail of profit-linked deduction in the business of developing qualifying affordable housing projects. The conditions are as follows:

- Size of residential until will be measured as 'carpeted area' and not a 'built-up area'.
- Completion of project for claiming deduction will be increased from three years to five years from receipt of approval.
- Size restriction of 30 square metres for residential units shall apply only to metro cities (i.e. municipal limits of Chennai, Delhi, Kolkata, and Mumbai).

Tax incentives for infrastructure development undertakings

Enterprises engaged in the business of power generation, transmission, or distribution; developing or operating and maintaining a notified infrastructure facility, industrial park, or SEZ; substantially renovating and modernising the existing network of transmission or distribution lines (between specified periods); or laying and operating a cross-country natural gas distribution network are eligible for a tax exemption of 100% of profits for any ten consecutive years falling within the first 15 years of operation (first 20 years in the case of infrastructure projects, except for ports, airports, inland waterways, water supply projects, and navigational channels to the sea).

An investment-linked deduction will be available to Indian companies or their consortium engaged in the business of developing or operating and maintaining of a new infrastructure facility. The taxpayers should have entered into an agreement with the Central or State Government or local authorities in respect of such activities relating to specified infrastructure facilities.

Since now there are investment-linked deductions, the profit-linked deduction available for infrastructure facilities have a sunset clause of 31 March 2017 for commencement of the operations. Thereafter, deduction of 100% of capital expenditure incurred on setting up of the said infrastructure facility is available with effect from 1 April 2017. Investment-linked deductions in respect of specified capital expenditure shall not be allowed if incurred for the purpose of acquisition of asset for payment (individual or aggregate) exceeding INR 10,000 per day unless such payment was made:

- by an account payee cheque/draft, or
- through electronic clearing system through a bank account.

'Infrastructure facility' means roads, including toll roads, bridges, rail systems, highway projects, water supply projects, water treatment systems, irrigation projects, sanitation and sewerage systems or solid waste management systems, ports, airports, inland waterways, inland ports, or navigational channels to the sea.

Tax incentives for exports

Export profit from a new undertaking, satisfying prescribed conditions and set up in an SEZ, is eligible for tax exemption of 100% for the first five years, from the year in which manufacturing commences, followed by a partial tax exemption of 50% for the next five years. A further tax exemption of 50% of the export profit for five years is also available after that, subject to an equal amount of profit being retained and transferred to a special reserve in the books of account. The said exemption is available on commencement of eligible business between 1 April 2006 and 31 March 2021.

Tax incentives for units in the North Eastern Region of India

Measures are in place to facilitate the development of the North Eastern Region of India and of the state of Sikkim. Undertakings located in these states that (i) begin to manufacture or produce any eligible article, (ii) undertake substantial expansion, or

(iii) commence an eligible business between 1 April 2007 and 1 April 2017 are eligible for a 100% deduction of profits for ten consecutive years.

A list of eligible businesses has been provided by the Indian government. The eligible businesses include hotels (not below two-star category), adventure and leisure sports including ropeways, the provision of medical and health services in nursing homes with a minimum capacity of 25 beds, operating a vocational training institute for hotel management, catering and food crafts, entrepreneurship development, nursing and para-medical training, civil aviation related training, fashion design and industrial training, running an information technology-related training centre, manufacturing of information technology hardware, and bio-technology. Businesses other than the above-listed eligible businesses are not entitled to claim the tax holiday.

Tax incentives for certain income relating to offshore banking units and International Financial Services Centres

A scheduled bank, or any bank incorporated by or under the laws of a country outside India, that has an offshore banking unit in an SEZ or an International Financial Services Centre with a specified income that is subject to prescribed conditions is eligible for a tax exemption of 100% of the specified income for five consecutive years beginning from the year in which the permission under the Indian Banking Regulation Act, 1949 was obtained and of 50% of the specified income for five consecutive years.

To encourage the location of offshore fund managers in India, a specific regime has been laid down. In the case of an eligible investment fund, fund management activity carried out through an eligible fund manager acting on behalf of such fund will not constitute a business connection in India. An eligible investment fund will not be treated as resident in India merely because the eligible fund manager undertakes fund management activities in India. Offshore funds and fund managers are required to satisfy certain conditions to be eligible for the regime. The conditions are not applicable to funds set up by the government of a foreign state or the Central Bank of a foreign state, a sovereign fund, or such other funds as may be notified by the government of India and subject to fulfilment of conditions as may be specified. Further, the special regime shall be applied in accordance with guidelines and in such manner as the administrative board may prescribe.

However, in order to minimise economic distortions and curb erosion of the tax base, the long-term capital gains on sale of equity shares undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency will not be taxable. Further, the requirement of payment of STT at the time of transfer of long-term capital asset shall not apply. *See the description of Capital gains in the Income determination section.*

Tax incentive for hiring new workmen

With a view to encouraging generation of employment, the benefit of deduction on hiring of new workmen has been extended to all taxpayers who are subjected to tax audit, instead of the earlier provision, which was applicable only to manufacturing units. Further, to enable smaller units to claim this deduction, the benefit has been extended to units employing 50 regular workmen.

To increase employment generation incentive to taxpayers across all sectors (who are subject to tax audit), where emoluments paid to an employee are less than or equal to

INR 25,000 per month, the taxpayer will be eligible for deduction of 30% of additional wages paid to new regular workmen in a factory for a period of three years wherein the workmen are employed for not less than 240 days in a year (150 days in case of apparel, footwear, and leather industry). The benefits of this incentive would also be available in the first year of business, on emoluments paid to all employees. From the tax year 2018/19 (i.e. from 1 April 2018), the deduction shall be allowed in the succeeding tax year if an employee is employed for a period less than the minimum period (i.e. 150 days or 240 days) in the tax year and continues to remain employed for the minimum period in the succeeding tax year.

However, no deduction shall be allowed in respect of cost incurred on employees for whom the government has paid the entire contribution under the Employees' Pension Scheme, and for employees who do not participate in a recognised provident fund.

Amortisation of cost of spectrum fee for Telecom operators

Amortisation of capital expenditure incurred and actually paid by the taxpayer for acquiring the right to use spectrum for telecommunication services, in equal instalments over the period of useful life of the spectrum licence, is permitted.

Patent Box Regime

In order to encourage companies to locate high-value jobs associated with the development, manufacture, and exploitation of patents in India, the government has introduced a concessional taxation regime for income from patents. Accordingly, income by way of royalty in respect of a patent developed and registered in India earned by an eligible taxpayer shall be subject to tax at the rate of 10% (plus surcharge and cess) on a gross basis.

An eligible taxpayer means a person resident in India, who is the true and first inventor of the invention, and whose name is entered on the patent register as the patentee.

Tax incentive of capital expenditure on certain specified businesses

Deduction of capital expenditure is allowed at 100% in the year when the commercial operations begin in respect of the following specified businesses:

- Setting up and operating cold chain facilities.
- Setting up and operating warehousing facilities for storage of agriculture produce.
- Setting up and operating an inland container depot, freight station, or warehousing facility for storage of sugar, beekeeping, and honey and beeswax production.
- Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such a network.
- Building and operating a hotel of two-star or above category in India.
- Building and operating a hospital with at least 100 beds.
- Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the government.
- Developing and building specified housing projects under an affordable scheme of the central/state government.
- Investing in a new plant or newly installed capacity in an existing plant for production of fertiliser.
- Developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility.

The following characteristics and conditions may be noted:

- Any sum received or receivable in cash or in kind on transfer, etc. of the capital asset shall be considered as business income if expenditure on such an asset has been allowed as a deduction under this section.
- Any loss computed in respect of the above specified businesses shall be allowed to be offset or carried forward and offset only against the profits and gains of specified businesses.
- The specified business should:
  - not be set up by splitting up or reconstruction of a business already in existence
  - not be set up by transfer of used machinery or plant exceeding 20% of the total value of the machinery or plant used in such business, and
  - have been approved by the prescribed authority (i.e. the government).

Besides the above, capital expenditure incurred on acquisition of asset (individual or aggregate) exceeding INR 10,000 per day shall be ignored for the purposes of computing the actual cost unless such payment was made:

- by an account payee bank cheque/draft, or
- through the electronic clearing system through a bank account.

Research and development (R&D) expenditure

A weighted deduction of 150% of expenditure is available in respect of expenditure incurred on scientific research in an in-house R&D facility approved by the prescribed authority for companies engaged in specified businesses and in research associations, universities, etc., respectively. Such weighted deduction will be restricted to 100% of the expenditure from tax year 2019/20 onwards.

A payment made to an approved research association undertaking research in the social sciences or in statistical research, or to an Indian company to be used by it for scientific research, is eligible for a deduction of 100% of the payment made.

Contributions made to any National Laboratory, approved scientific research associations, universities, and the Indian Institute of Technology are eligible for a weighted deduction of 150% of the contributions made up to 31 March 2021. Thereafter, the deduction will be restricted to 100% of the contribution.

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Withholding taxes

There is an obligation on the payer (either resident or non-resident) of income to withhold tax when certain specified payments are credited and/or paid. Some of the expenses that require tax withholding are as follows.

Payments to resident companies

Nature of payment	Payment threshold for WHT (INR) (1)	WHT rate (%)
Specified type of interest	None	10 (3)
Non-specified type of interest	5,000 (2)	10

Nature of payment	Payment threshold for WHT (INR) (1)	WHT rate (%)
Professional or technical service	30,000	10
Commission and brokerage	5,000	5
Rent of plant, machinery, or equipment	180,000	2
Rent of land, building, or furniture	180,000	10
Contractual payment (except for individual/HUF)	30,000 (single payment) 100,000 (aggregate payment)	2
Contractual payment to individual/HUF	30,000 (single payment) 100,000 (aggregate payment)	1
Royalty or fees for technical services	30,000	10
Deemed dividend	2,500	10

Notes

1. Payments have different threshold limits. The payer is only required to withhold tax if the total payment within a tax year to a single person (except where specified otherwise) is above the limits specified above.
2. The threshold limit for WHT for non-specified type of interest is INR 5,000, except in the case of interest received from a bank, co-operative society, or deposit with post office, for which it is INR 10,000.
3. 2% in case the company is engaged in business of operation of call centres.

If the Permanent Account Number (PAN) of the deductee is not quoted, the rate of WHT will be the rate specified in relevant provisions of the Income Tax Act, the rates in force, or the rate of 20%, whichever is higher.

The definition of 'royalty' also includes consideration for use of, or right to use, computer software. Transfer of all or any rights in respect of any right, property, or information includes transfer of all or any right to use computer software (including granting of a licence), irrespective of the medium through which such a right is transferred and irrespective of whether any right or property is located in India. Hence, while applying WHT on such payments in the nature of royalty, one needs to consider the definition of royalty as amended by the Budget 2012 with retrospective effect from 1 June 1976.

Payment to non-resident companies

Nature of payment	WHT rate (%)
Interest on foreign currency (subject to conditions)	5
Interest on money borrowed in foreign currency under a loan agreement or by way of long-term infrastructure bonds (or rupee denominated bonds)	5
Interest on investment in long-term infrastructure bonds issued by Indian company (rupee denominated bonds or government security)	5
Non-specified type of interest	20
Royalty and technical fees	10
Long-term capital gains other than equity shares of a company or units of an equity-oriented fund/business trust on which STT is paid	20
Long-term capital gains on equity shares of a company or units of an equity-oriented fund/business trust on which STT is paid	10
Income by way of winning from horse races	30
Other income	40

Notes

- Percentage to be increased by a surcharge and health and education cess to compute the effective rate of tax withholding.

- Income from units of specified mutual funds is exempt from tax in the hands of the unit-holders.
- Dividends received from Indian companies are tax-free in the hands of the shareholder.
- Short-term capital gains on transfer of shares of a company or units of an equity-oriented fund would be taxable at 15% if they have been subjected to STT.
- There is no threshold for payment to non-resident companies up to which no tax is required to be withheld.
- If the PAN of the deductee is not quoted, the rate of WHT will be the rate specified in relevant provisions of the Act, the rates in force, or the rate of 20%, whichever is higher. The government has notified rules that do not mandate quoting of PAN, subject to certain conditions.
- The payer is obligated to report specific information in the prescribed form (whether or not such payment is chargeable to tax).

Equalisation levy

Action Plan 1 (Digital Economy) of the OECD's BEPS project discussed several options to tackle direct tax challenges in the digital environment. Taking cues from this, an equalisation levy is available, the summary of which is as follows:

- Rate of levy: 6% of the amount of consideration for specified service.
- Meaning of 'specified service': Online advertisement, any provision for digital advertising space, or any other facility or service for the purpose of online advertisement, which includes any other service as may be notified by the Central Government in this regard.
- On whom: Non-resident receiving consideration for specified services from:
  - a person resident in India and carrying on business or profession, or
  - a non-resident having a PE in India.
- Exemption from income tax: The income arising to the non-resident from the specified service and chargeable to an equalisation levy will be exempt from income tax.
- Due date for deposit: 7th day of the following month.
- Non-applicability in specified cases: Equalisation levy will not be charged in the following cases:
  - the non-resident providing specified service has a PE in India and the specified service is effectively connected with the PE
  - the aggregate consideration received or receivable in the previous year by the non-resident does not exceed INR 100,000, or
  - the payment for the specified service by the Indian resident or PE is not for conducting business or a profession in India.

Treaty rates

Some tax treaties provide for lower WHT rates from certain types of income, as follows:

	WHT (%)			
Recipient	**Dividend (1)**	**Interest**	**Royalty (12)**	**Fee for technical services (12)**
Non-treaty	10	20	10	10
Treaty: (8)				
Albania	10	10	10	10
Armenia	10	10	10	10
Australia	15	15	10 (2)/15	10 (2)/15
Austria	10	10	10	10
Bangladesh	10 (3)/15	10	10	N/A (5)
Belarus	10 (9)/15	10	15	15
Belgium	15	10 (11)/15	10	10
Bhutan	10	10	10	10

	WHT (%)			
Recipient	Dividend (1)	Interest	Royalty (12)	Fee for technical services (12)
Botswana	7.5 (9)/10	10	10	10
Brazil	15	15	25 (15)/15	15
Bulgaria	15	15	15 (7)/20	20
Canada	15 (3)/25	15	10 (2)/15	10 (2)/15
China (People's Republic of China)	10	10	10	10
Chinese Taipei (Taiwan)	12.5	10	10	10
Colombia	5	10	10	10
Croatia	5 (17)/15	10	10	10
Cyprus	10	10	10	10
Czech Republic	10	10	10	10
Denmark	15 (9)/25	10 (11)/15	20	20
Egypt	N/A (5)	N/A (5)	N/A (5)	N/A (5)
Estonia	10	10	10	10
Ethiopia	7.5	10	10	10
Fiji	5	10	10	10
Finland	10	10	10	10
France	15 (6)	0/10/15 (6)	20 (6)	10 (6)
Georgia	10	10	10	10
Germany	10	10	10	10
Greece	N/A (14)	N/A (14)	N/A (14)	N/A (5)
Hong Kong (not yet notified by government of India)	5	10	10	10
Hungary	10 (6)	10 (6)	10 (6)	10 (6)
Iceland	10	10	10	10
Indonesia	10 (9)	10	10	N/A (5)
Ireland	10	10	10	10
Israel	10	10	10	10
Italy	15 (3)/25	15	20	20
Japan	10	10	10	10
Jordan	10	10	20	20
Kazakhstan	10	10	10	10
Kenya	10	10	10	10
Korea, Republic of	15 (4)	10 (13)	10	15
Kuwait	10	10	10	10
Kyrgyz Republic	10	10	15	15
Latvia	10	10	10	10
Libya	N/A (14)	N/A (14)	N/A (14)	N/A (5)
Lithuania	5 (3)/15	10	10	10
Luxembourg	10	10	10	10
Macedonia	10	10	10	10
Malaysia	5	10	10	10
Malta	10	10	10	10
Mauritius	5 (3)/15	7.5 (14)	15	N/A (5)
Mexico	10	10	10	10
Mongolia	15	15	15	15
Montenegro	5 (9)/15	10	10	10
Morocco	10	10	10	10

	WHT (%)			
Recipient	Dividend (1)	Interest	Royalty (12)	Fee for technical services (12)
Mozambique	7.5	10	10	N/A (5)
Myanmar	5	10	10	N/A (5)
Namibia	10	10	10	10
Nepal	5 (3)/10	10	15	N/A (5)
Netherlands	15 (6)	10 (6)/15	20	10 (6)
New Zealand	15	10	10	10
Norway	10	10	10	10
Oman	10 (3)/12.5	10	15	15
Philippines	15 (3)/20	10 (13)/15	15	N/A (5)
Poland	10	10	15	15
Portugal	10 (9)/15	10	10	10
Qatar	5 (3)/10	10	10	10
Romania	10	10	10	10
Russian Federation	10	10	10	10
Saudi Arabia	5	10	10	N/A (5)
Serbia	5 (9)/15	10	10	10
Singapore	10 (9)/15	10 (11)/15	10	10
Slovenia	5 (3)/15	10	10	10
South Africa	10	10	10	10
Spain	15	15	10 (6)/20	20 (6)
Sri Lanka	7.5	10	10	10 (6)
Sudan	10	10	10	10
Sweden	10 (6)	10 (6)	10 (6)	10 (6)
Switzerland	10	10	10	10
Syria	5 (3)/10	10	10	N/A (5)
Tajikistan	5 (3)/10	10	10	N/A (5)
Tanzania	5 (3)/10	10	10	N/A (16)
Thailand	10	10	10	N/A (5)
Trinidad & Tobago	10	10	10	10
Turkey	15	10 (11)/15	15	15
Turkmenistan	10	10	10	10
Uganda	10	10	10	10
Ukraine	10 (9)/15	10	10	10
United Arab Emirates	10	5 (11)/12.5	10	N/A (5)
United Kingdom	10 (18)/15	0/10 (13)/15	10 (2)/15	10 (2)/15
United States	15 (3)/25	10 (19)/15	10 (20)/15	10 (20)/15
Uruguay	5	10	10	10
Uzbekistan	10	10	10	10
Vietnam	10	10	10	10
Zambia	5 (10)/15	10	10	10

Notes

1. The treaty tax rates on dividends are not relevant since, under the current Indian tax legislation, most dividend income from Indian companies that is subject to DDT is exempt from income tax in the hands of the recipient.
2. 10% for the use or right to use any industrial, commercial, or scientific equipment; 15% in other cases.
3. If at least 10% of capital is owned by the beneficial owner (company) of the company paying the dividend or interest.

4. If at least 20% of capital is owned by the beneficial owner (company) of the company paying dividend or interest.
5. In absence of specific provision, it may be treated as business profits or independent personal services under respective treaties, whichever is applicable.
6. The 'most favoured nation' clause is applicable. The protocol to the treaty limits the scope and rate of taxation to that specified in similar articles in treaties signed by India with an OECD-member country or another country.
7. If royalty relates to copyrights of literary, artistic, or scientific work.
8. India has signed a comprehensive tax treaty with Hong Kong Special Administrative Region (HKSAR) of China but the same is yet to be notified.
9. If at least 25% of capital is owned by the beneficial owner (company) of the company paying the dividend.
10. If at least 25% of capital is owned by the company during at least six months before date of payment.
11. If paid on a loan granted by a bank/financial institution.
12. The tax rate for royalties and fees for technical services, under the domestic tax laws, is 10%. This rate is to be increased by a surcharge at 2.5% on the income tax and education cess at 2% and secondary and higher secondary education cess at 1% on the income tax including surcharge. As a consequence, the effective tax rate is 10.558%. This rate applies for payments made under an agreement entered into on or after 1 June 2005. Accordingly, a tax resident can either use the treaty rate or domestic tax rate, whichever is more beneficial.
13. If interest is received by a financial institution.
14. Taxable in the country of source as per domestic tax rates.
15. If royalty payments arise from the use or right to use trademarks.
16. Tax treaties of certain countries do not have a separate clause specifying the WHT rate for fees for technical services and fees for included services.
17. 5% if the beneficial owner is a company holding at least 10% of share capital; 15% in other cases.
18. 15% of gross amount of dividend in case such dividend is paid out of income derived from immovable property and such income is exempt from tax; 10% in all other cases.
19. 10% if such interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company).
20. 10% if payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment and fee for included services that are ancillary and subsidiary to the enjoyment of the property for which payment is received.

List of limited agreements between India and other countries

A list of the countries with which India has entered into limited agreements for double taxation relief with respect to income of airlines/merchant shipping, is given here.

- Afghanistan
- Ethiopia
- Iran
- Lebanon
- Maldives
- Pakistan
- People's Democratic Republic of Yemen
- Yemen Arab Republic

Tax information exchange agreements (TIEAs) between India and other countries

A list of the countries with which India has entered into TIEAs for effective exchange of information relating to tax matters is given below. In addition, several of the comprehensive treaties signed by India have an information exchange clause that has the same effect as signing of a TIEA. These are not listed here.

- Argentina
- Bahamas
- Bahrain
- Belize
- Bermuda
- British Virgin Islands
- Cayman Islands
- Gibraltar
- Guernsey
- Isle of Man
- Jersey
- Principality of Liechtenstein
- Principality of Monaco
- Liberia
- Macau, China
- Maldives
- Saint Kitts and Nevis
- San Marino
- Seychelles

Tax administration

Taxable period

In India, the tax year begins on 1 April and ends on 31 March.

Tax returns

Accounts for tax purposes must be made up to 31 March. For persons having business/professional income, the income tax return is required to be filed electronically on or before 30 September of the succeeding tax year. In case the transfer pricing provisions are applicable, the due date for filing of the tax return is on or before 30 November.

In case a taxpayer desires to revise its filed return of income, it would be eligible to do so only up to 31 March of the year following the tax year or before the completion of assessment, whichever is earlier.

Further, in order to claim the tax incentives/deductions, the taxpayers have to furnish their tax returns on or before the due date specified for filing the tax returns.

Quarterly WHT returns

Quarterly statements of taxes withheld are required to be filed electronically with the tax authorities on or before 31 July, 31 October, and 31 January for the first three quarters of the tax year and on or before 31 May following the last quarter of the tax year.

Obligation to submit tax return for assets located outside India

A resident taxpayer having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India is mandatorily required to furnish a tax return.

In cases where taxpayers have assets outside India, the extant time limits of four and six years for reopening tax assessments (where income has escaped assessment) has been increased to 16 years. In cases where a person is treated as an agent of a non-resident, the time limit for issuing reassessment notice has been extended from two years to six years.

Payment of tax

Tax is payable in advance (if tax payable for the year exceeds INR 10,000) in specified instalments for every quarter on or before 15 June, 15 September, and 15 December for the first three quarters of the tax year and on or before 15 March for the last quarter of the tax year. Any balance of tax due on the basis of the return must be paid on a self-assessment basis before the return is filed. A tax return will be treated as defective if the tax liability along with interest is not paid on or before the date of submission of the tax return. Interest levied for default in payment of advance tax is computed beginning from the first day of the year following the tax year to the date of the assessment order.

Tax audit process

Audit for income tax purposes

Persons carrying on business are required to get their books of account audited for income tax purposes if the business turnover exceeds INR 10 million. For individuals opting for the presumptive taxation scheme, one shall not be required to get one's accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed INR 20 million. This will be effective from tax year 2017/18 onwards. For persons carrying on a profession, crossing the turnover threshold of INR 5 million would attract the requirement to have its books of accounts audited from 1 April 2017. The penalty for non-compliance with this audit requirement is INR 0.15 million, subject to 1% of total turnover/gross receipts.

Special audit

Tax authorities, at any stage of proceedings, having regard to nature, complexity, and volume of accounts or doubts on correctness of accounts or other reasons, may, after taking necessary approval of the Chief Commissioner, direct a taxpayer to get its accounts audited and to furnish the report.

Statute of limitations

The statute of limitations under the Act in the case of submission of returns is one year from the end of the relevant tax year, and for assessment of returns filed is 33 months (45 months in case transfer pricing provisions are applicable) from the end of the relevant tax year for which the return is filed. The statute of limitations for reassessment ranges from five years to 17 years from the end of the relevant tax year.

E-assessment

With a view to roll out e-assessment across the country so as to impart greater transparency and accountability, the Central Government has been empowered to notify a new scheme for scrutiny assessments to achieve the desired purpose. This would enable the assessment to be carried out without any personal interface between the taxpayer and the revenue authorities.

General Anti Avoidance Rule (GAAR)

GAAR provisions have been introduced in the Finance Act, 2017 and are applicable from 1 April 2017. These provisions empower the tax department to declare an 'arrangement', or any part or step thereof, entered into by a taxpayer with the main purpose of obtaining tax benefit to be an 'Impermissible Avoidance Agreement' (IAA), the consequence of which would be denial of tax benefit under the Act or under the applicable tax treaty.

For GAAR provisions, an IAA means the main purpose of which is to obtain a tax benefit, and it:

- creates rights and obligations not at arm's length
- results in abuse/misuse of provisions of this Act (directly/indirectly)
- lacks/is deemed to lack commercial substance, or
- is carried out in a manner that is not ordinarily employed for *bona fide* purposes.

The following are consequences if an arrangement is regarded as an IAA:

- Disregard/re-characterise the arrangement.
- Disregard corporate structure.
- Deny treaty benefit.
- Reassign place of residence/situs of assets or transactions.
- Reallocate income, expenses, relief etc.
- Re-characterise equity-debt, income-expense, relief, etc.

Other issues

Mergers and acquisitions

The expression 'merger' has not been defined in the Income Tax Act but has been covered as part of the definition of the term 'amalgamation'. Amalgamation is defined as a merger of one or more companies with another, or the merger of two or more companies to form a new company, in such a way that all the assets and liabilities of the amalgamating company or companies become the assets and liabilities of the amalgamated company, are held by the amalgamated company for a minimum period of five years, and shareholders holding not less than 75% in value of the shares in the amalgamating company or companies become shareholders of the amalgamated company. In case of demerger, the cost of acquisition and period of holding of the assets related to the demerged company shall be available to the resulting company.

Capital gains

No capital gains tax is levied on the transfer of capital assets by an amalgamating company to the amalgamated company, provided the amalgamated company is an Indian company. Similar is the position in case of a demerger by a demerged company to a resulting company.

In cases where shares of an Indian company are transferred by a foreign company or a demerged foreign company to another foreign company or resulting foreign company, there is no tax payable, provided it satisfies certain specified conditions. Furthermore, the shareholder of the amalgamating company or demerged company is not liable to pay capital gains tax on the exchange of shares with that of the amalgamating company or the resulting company under the scheme of amalgamation.

Conversion of a bond or debenture of a company into equity shares is specifically exempt from capital gains tax. Furthermore, conversion of preference shares to equity shares will now be exempt from capital gains tax. The cost of acquisition and period of holding of the preference shares will be considered while determining the cost of acquisition and period of holding of equity shares acquired on such conversion. This is effective from tax year 2018/19 onwards.

Carryforward of accumulated losses of amalgamating company

The losses and unabsorbed deprecation of the amalgamating company are deemed to be those of the amalgamated company in the year in which the amalgamation takes place, provided it satisfies certain specified conditions.

In the case of amalgamation of a company owning an industrial undertaking, the amalgamated company shall achieve the level of production of at least 50% of the installed capacity of the undertaking before the end of four years from the date of amalgamation and continue to maintain the minimum level of production till the end of five years from the date of amalgamation. If these conditions are violated, the benefit claimed will be taxed in the hands of the amalgamated company in the year of default.

In case of demerger of a company, the accumulated losses or unabsorbed depreciation of the demerged company directly relatable to the undertaking or the division transferred is allowed to be carried forward and offset in the hands of the resulting company.

Amalgamations and demergers normally attract stamp duty at varying rates. Such rates are derived from the laws of the state involved. High court(s), stock exchange, and other regulatory clearances are required for amalgamations or demergers.

Inter-governmental agreements (IGAs)

The Indian government has signed an IGA with the United States (US) to implement the Foreign Account Tax Compliance Act (FATCA) in India. According to the IGA, foreign financial institutions (FFIs) in India are required to report tax information about US account holders to the Indian government, which will, in turn, relay the information about Indian account holders to the US Internal Revenue Service (IRS). Furthermore, the US IRS will provide similar information about Indian citizens having any accounts or assets in the United States. This automatic exchange of information began from 30 September 2015. Subsequent to the signing of the IGA, the Indian government enacted rules relating to FATCA reporting in India.

Indonesia

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Significant developments

Indonesia has legalised Law No.9 Year 2017 to allow financial information access by the Director General of Tax (DGT) from financial institutions for tax purposes. This also marks Indonesia's readiness to implement Automatic Exchange of Financial Account Information (AEoI) in September 2018.

In keeping with Indonesia's commitment to implement Base Erosion and Profit Shifting (BEPS) Action 13, Indonesian parent entities or Indonesian subsidiaries of multinational enterprises that meets certain conditions are required to prepare and file Country-by-Country (CbC) Report to the DGT starting with the 2016 tax year.

In addition, the Parliament and government are currently organising an overall tax reform, including the revision of General Tax Provisions and Procedures (*Ketentuan Umum dan Tata Cara Perpajakan* or KUP) Law. To date, the draft bill of KUP Law has entered into the Parliament, and preliminary discussions have already begun.

Separately, the government also has a vision to establish Indonesia as a country with proven digital capacity in Southeast Asia's largest economy by 2020. Therefore, the government has highlighted the need for a road map for the development of national e-commerce and regulations related to e-commerce, including tax incentives to support the development of digital small, micro, and medium enterprises.

Noting the increase of large-scale projects in Indonesia, the government has updated tax holiday incentives to be more simple and attractive for investors. The government also plans to provide tax incentives for companies conducting research and development (R&D), as well as vocational training, activities.

Taxes on corporate income

Resident corporations are taxed based on worldwide income. A foreign company carrying out business activities through a permanent establishment (PE) in Indonesia will generally be required to assume the same tax obligations as a resident taxpayer.

Taxable business profits are calculated on the basis of normal accounting principles as modified by certain tax adjustments. Generally, a deduction is allowed for all expenditures incurred to obtain, collect, and maintain taxable business profits. A timing difference may arise if an expenditure recorded as an expense for accounting cannot be immediately claimed as a deduction for tax (*see the Deductions section*).

Resident taxpayers and Indonesian PEs of foreign companies have to settle their tax liabilities either by direct payments, third party withholdings, or a combination of both.

Indonesia

Foreign companies without a PE in Indonesia have to settle their tax liabilities for their Indonesian-sourced income through withholding of the tax by the Indonesian party paying the income.

Corporate income tax (CIT) rates

A flat CIT rate of 25% applies to net taxable income.

Public company discount

Public companies that satisfy a minimum listing requirement of 40% and certain other conditions are entitled to a tax discount of 5% off the standard rate, providing an effective tax rate of 20%.

Small company discount

Small enterprises (i.e. corporate taxpayers with an annual turnover of not more than 50 billion rupiah [IDR]) are entitled to a 50% tax discount of the standard rate, which is imposed proportionally on taxable income on the part of gross turnover up to IDR 4.8 billion. Certain enterprises with gross turnover of not more than IDR 4.8 billion are subject to final income tax at 1% of turnover.

Final income tax

Certain types of income are subject to a final income tax at a specified percentage of the gross amount of income, without regard to any attributable expenses.

Income	Tax rate (%)
Rental of land and/or building	10
Proceeds from transfers of land and building rights	2.5 (1)
Fees for construction work performance	2/3/4
Fees for construction work planning	4/6
Fees for construction work supervision	4/6
Interest on time or saving deposits and on Bank of Indonesia Certificates (SBIs), other than that payable to banks operating in Indonesia and to government-approved pension funds	20 (2)
Interest on bonds, other than that payable to banks operating in Indonesia and government-approved pension funds	15 (3)
Proceeds from sale of shares on Indonesian stock exchanges. To use this rate, founder shareholders must pay tax at 0.5% of the market price of their shares upon listing; otherwise, gains on subsequent sales are taxed under normal rules	0.1
Income from lottery prizes	25
Certain income received by individuals and corporates (except PEs) with gross turnover of not more than IDR 4.8 billion in one fiscal year	1 (4)

Notes

1. Proceeds from the transfer of real estate assets to a Real Estate Investment Fund (*Kontrak Investasi Kolektif - Dana Investasi Real Estate* or KIK-DIRE) is subject to a 0.5% tax rate.
2. Different rates apply on interest received from time deposits sourced from export proceeds *(Devisa Hasil Ekspor*).
3. If the recipient is a mutual fund registered with the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK), the tax rate is 5% until 2020 and 10% thereafter. If the recipient is a non-resident taxpayer, the tax rate is 20% or a lower rate in accordance with the relevant tax treaty.
4. Taxpayers must calculate, pay, and report the tax due to the Indonesian Tax Office (ITO) by themselves.

Resident companies, PEs, representatives of foreign companies, organisations, and appointed individuals are required to withhold the above final tax from the gross payments to resident taxpayers and PEs.

Special industries and activities

Companies engaged in upstream oil and gas and geothermal industries typically have to calculate CIT in accordance with their production sharing contracts (PSCs). Certain companies engaged in metal, mineral, and coal mining are governed by a contract of work (CoW) for the income tax calculation. Different provisions may apply to them, pertaining to CIT rates, deductible expenses, and how to calculate taxable income.

Note that such contractual-based concessions are no longer available to new mining projects since the enactment of the Mining Law in 2009. The Mining Law stipulates that general prevailing tax laws/regulations apply to mining projects; consequently, any tax facilities should be provided accordingly, except as otherwise stated in a particular mining licence.

Local income taxes

There are no provincial or local taxes on income in Indonesia. *For a list of other local taxes, see Regional taxes in the Other taxes section*.

Corporate residence

A company is treated as a resident of Indonesia for tax purposes by virtue of having its establishment or its place of management in Indonesia.

Permanent establishment (PE)

Under the Income Tax Law, a non-resident company may be treated as having a taxable presence if it runs a business or conducts activities in Indonesia, which can be in the form of:

- a place of management
- a branch of the company
- a representative office
- an office building
- a factory
- a workshop
- a warehouse
- a room for promotion and selling
- a mining and extraction of natural resources
- a mining working area for oil and natural gas
- a fishery, animal husbandry, agriculture, plantation, or forestry location
- a project of construction, installation, or assembly
- the furnishing of services in whatever form by employees or other person, insofar conducted not more than 60 days within a 12-month period
- a person or corporation acting as a dependent agent
- an agent or employee of an insurance company that is not established and domiciled in Indonesia that receives insurance premiums or insures risk in Indonesia, and
- the computers, electronic agent, or automated equipment owned, leased, or used by an electronic transactions provider to conduct business via the internet.

Where the non-resident company is resident in a country that has a tax treaty with Indonesia, the rules on a PE creation may be changed; usually there is a longer 'time test' for certain activities performed in Indonesia.

Other taxes

Value-added tax (VAT)

With a few exceptions, VAT is applicable on deliveries (sales) of goods and services within Indonesia at a rate of 10%. VAT on export of goods is zero-rated, while the import of goods is subject to VAT at a rate of 10%. Zero-rated VAT is also applicable on exported services, but subject to a Ministry of Finance (MoF) limitation. Currently, only certain exported services, including toll manufacturing services, are subject to the 0% VAT rate. Services performed within the Customs Area for customers outside of the Customs Area are considered as locally delivered and are therefore subject to the regular VAT rate of 10%. Inbound use or consumption of foreign services or intangible goods, with a few exceptions, is also subject to a self-assessed VAT at a rate of 10%.

The VAT law allows the government to change the VAT rate within the range of 5% to 15%. However, since the enactment of the VAT law in 1984, the government has never changed the VAT rate.

In general, VAT collection is based on the accrual principle, whereby VAT must be collected at the time of delivery of taxable goods or services. The term delivery, in this case, is defined as the time when risk and ownership of goods have been transferred or when income from a service delivery can be reliably estimated or measured. In the accrual system, income or receivables are acknowledged when a transaction takes place, regardless of whether the transaction has been paid for or not. The recognition of revenue or receivables is indicated by the issue of a commercial invoice, which is a source document for this recognition and a basis for recording it.

VAT filing is done on a monthly basis, with payment and filing being due no later than the last day of the month following the taxable delivery.

Luxury-goods sales tax (LST)

In addition to VAT, some goods (e.g. certain household appliances, sport equipment, motor vehicles, luxury residences) are subject to LST upon import or delivery by the manufacturer to another party at rates currently ranging from 10% to 125%.

Import duty

Import duty is payable at rates from 0% to 150% on the customs value of imported goods. Customs value is calculated on the cost, insurance, and freight (CIF) level.

Group	Good	Rate (%)
Automobiles	Passenger and commercial	5 to 50
Automobile components	Incompletely knocked down	0 to 7.5
	Part by part	0 to 10
Vessels	Ships, boats, and floating structures	0 to 5
Aircraft	Balloons, helicopters, aeroplanes, parachutes, and aircraft launching gear	0
Electronic goods	Camera, refrigerator, cellular phone, and others	0 to 15
Textile, textile products, and accessories	Bags, footwear, harnesses, apparels, clothing accessories, etc.	5 to 35
Beverages, ethyl alcohol, and alcoholic drinks	Ethyl alcohol, juice, beer, wine, spirits, and other beverages	5 to 150, or IDR 14,000/litre
Essential oils and resinoids	Odoriferous substances	5 to 150
Agricultural products	Animal and vegetable products	0 to 30

Group	Good	Rate (%)
Furniture	Bedding, mattresses, lamp and lighting fittings, and others	5 to 20
Toys	Toys, games and sport requisites, parts and accessories thereof	5 to 20
Plastic	Plastics and articles thereof	0 to 25
Rubber	Rubber and articles thereof	0 to 15
Wood	Wood and articles thereof	0 to 25
Steel	Steel and articles thereof	0 to 20
Others	Chemicals, pharmaceutical products, works of art, arms and ammunition, musical instruments, and others	0 to 40

As a commitment to liberalising trade, the Indonesian government is progressively lowering import duty rates on most products. Higher duty rates remain to protect certain industries and goods regarded as sensitive for security or social and cultural reasons.

Duty relief/exemption/deferral

The Indonesian government offers duty relief, duty exemption, and duty deferral concessions to foreign and domestic investors in order to promote the development of local and export industries. These concessions usually combine with other tax facilities, such as VAT and income tax. Such concessions include the *Badan Koordinasi Penanaman Modal* (BKPM) Masterlist, Bonded Zone, Bonded Warehouse, import duty exemption and drawback for exports, Free Trade Zone (FTZ), Association of Southeast Asian Nations (ASEAN) duty rates, Free Trade Area (FTA) agreement duty rates with several countries, Indonesia-Japan Economic Partnership Agreement (IJEPA), MITA (main partners) lanes, and Authorised Economic Operator.

Land and buildings tax

Land and buildings tax (*Pajak Bumi dan Bangunan* or PBB) is a part of regional taxes, which are governed under Regional Taxes and Retribution (*Pajak Daerah dan Retribusi Daerah* or PDRD) Law in which each regional government has to issue a regulation (*Peraturan Daerah* or PERDA) to regulate PBB in its territory.

The scope of PBB under PDRD Law covers all land and buildings except for the following industries, which are governed by separate regulations:

- Forestry.
- Plantation.
- Mineral and coal mining.
- Oil, gas, and geothermal mining.
- Other industries located in national waters outside the territory of the regional area.

Under PDRD Law, the PBB rate is maximum 0.3% and the tax due is calculated by applying the tax rate on the sale value of the tax object (*Nilai Jual Objek Pajak* or NJOP) deducted by non-taxable NJOP. The non-taxable NJOP is set at a minimum of IDR 10 million. Any changes are to be made by issuing a PERDA.

Tax on land and buildings transfer

A transfer of land and buildings will cause income tax on the deemed gain on the transfer/sale to be charged to the transferor/seller. The tax is set at 2.5% of the gross transfer value or the government-determined value, whichever is greater (*see Final income tax in the Taxes on corporate income section*).

Duty on the acquisition of land and building rights

In a land and building transfer, the acquirer is liable for duty on the acquisition of land and building rights (*Bea Pengalihan Hak atas Tanah dan Bangunan* or BPHTB) at a maximum of 5% of the greater of the transaction value or the government-determined value. Similar to PBB, BPHTB has been made a part of regional taxes.

Stamp duty

Stamp duty is nominal and payable as a fixed amount of either IDR 6,000 or IDR 3,000 on certain documents.

Payroll taxes

There are no additional payroll taxes applicable other than those for social security contributions (*see below*) and employee income tax withheld by employer on the salary payment.

Social security contributions

Employers are responsible for ascertaining that their employees are covered by the workers social security program managed by *Badan Penyelenggara Jaminan Sosial* (BPJS), which provides working accidents protection, death insurance, old age savings, health care, and pension. The program calls for premium contributions from both the employers and the employees. Employees' contributions are collected through payroll deductions. The premium contributions borne by employers are calculated as a percentage of regular salaries/wages, ranging from 0.24% to 4%.

The scheme applies to all employees, including expatriates who have been working in Indonesia for more than six months.

Regional taxes

A corporate taxpayer may be liable for a number of regional taxes and retributions. The rates range from 1.5% to 35% of a wide number of reference values determined by the relevant regional governments. The following are regional taxes, other than PBB and BPHTB, that may apply:

- Motor vehicle tax.
- Motor vehicle ownership transfer fee.
- Motor vehicle fuel tax.
- Surface water tax.
- Cigarette tax.
- Hotel tax.
- Restaurant tax.
- Entertainment tax.
- Advertisement tax.
- Road illumination tax.
- Non-metal and rock minerals tax.
- Parking tax.
- Ground water tax.
- Swallow-nest tax.

Branch income

Branch profits are subject to the ordinary CIT rate of 25%. The after-tax profits are subject to a withholding tax (WHT) (i.e. branch profits tax or BPT) at 20%, regardless of whether the profits are remitted to the home country. However, a concessional WHT rate may be applicable where a tax treaty is in force (*see the Withholding taxes section for more information*). The BPT may be exempt if the profits are entirely reinvested in Indonesia (*see the Tax credits and incentives section for more information*).

Income determination

Inventory valuation

Inventories must be measured at cost by using either the average or first in first out (FIFO) method. Once a costing method is adopted, it must be applied consistently.

Capital gains

Capital gains are generally assessable together with ordinary income and subject to tax at the standard CIT rate. However, gains from the transfer of land and buildings are not subject to regular CIT, but rather are subject to final income tax at a rate of 2.5% of the transaction value or the government-determined value, whichever is higher.

The proceeds from sales of shares listed on the Indonesian stock exchange are not subject to normal CIT. Instead, the proceeds are subject only to a final WHT of 0.1% of the gross sales consideration. An additional tax of 0.5% applies to the share value of founder shares at the time an initial public offering takes place, irrespective of whether the shares are held or sold. Shareholders may elect not to pay this tax, in which case the actual gain will be subject to normal tax at the time the shares are sold.

Dividend income

In principle, dividend income received by a resident taxpayer from a limited liability company (generally referred to as a *Perseroan Terbatas* or PT) is taxable as ordinary income for the taxpayer receiving the dividend. However, if the dividend recipient is a PT with a minimum shareholding of 25% in the company paying the dividend and the dividend is paid out of retained earnings, it is exempt from CIT.

Where the recipient is not resident in Indonesia, a WHT rate of 20% applies, subject to variation by tax treaties (*see the Withholding taxes section for more information*).

The same rules apply to stock dividends (bonus shares), including dividends paid out of share premium (*agio*).

Interest income

Interest income on time or saving deposits and on Bank of Indonesia Certificates (SBIs) received by a resident company or a PE is taxed at a final tax rate of 20%.

Royalty income

Income from royalty is subject to tax and will be taxed by a WHT mechanism. The WHT rate on royalty is 15% of the gross amount for resident taxpayers and 20% of the gross amount for non-resident taxpayers or the reduced rate set out in a tax treaty. The domestic WHT on this royalty can be used as a tax credit against the normal income tax of 25% for corporate taxpayers and/or 30% (max) for individual taxpayers.

Exchange gains and losses

Gains and losses arising from currency fluctuations are generally recognised on an accrual basis in accordance with the prevailing Indonesian Accounting Standards, which resemble International Accounting Standards in most respects.

Foreign income

Foreign branch income of an Indonesian company must be accounted for as Indonesian taxable income under the controlled foreign companies (CFCs) regulation. Profits of a CFCs are subject to deemed dividend rules in Indonesia. A CFC is a foreign entity that is at least 50% owned by an Indonesian taxpayer or at least 50% collectively owned by Indonesian taxpayers. The scope of CFC income also covers income from indirectly owned CFCs with a minimum of 50% ownership by another CFC, collective ownership by an Indonesian taxpayer's CFC, or collective ownership by a number of CFCs (including under the same or different Indonesian taxpayers).

The ownership threshold that is used to determine the CFC status is the ownership percentage at the end of the Indonesian taxpayer's fiscal year, which is based on either the percentage of paid-up capital or the percentage of paid-up capital with voting rights. The only situation in which the rules do not apply is when the CFC's shares are listed on a recognised stock exchange.

Deductions

In general, expenses incurred in the ordinary course of business (to obtain, collect, and maintain taxable income) are deductible, subject to the requirements for documentary support.

Note that expenses relating to gross income subject to final income tax are not deductible for CIT purposes.

Depreciation, amortisation, and depletion

Depreciable/amortisable assets include both tangible and intangible property or costs, including the cost of extending building use rights, rights for business use, rights for use, and goodwill, with a useful life of more than one year, except land that is owned and used in business. Depreciation and amortisation may be calculated under the straight-line method or the declining-balance method on an individual asset basis. Once a method is chosen, it should be applied consistently. In calculating depreciation, depreciable assets are divided into the following classes:

	Depreciation/amortisation rate (%)	
Class	**Straight-line method**	**Declining-balance method**
Property:		
Useful life of 4 years	25	50
Useful life of 8 years	12.5	25
Useful life of 16 years	6.25	12.5
Useful life of 20 years	5	10
Buildings:		
Permanent	5	-
Non-permanent	10	-

Special rules apply for assets used in certain business fields and/or certain areas. Tax depreciation need not conform to book depreciation.

The costs incurred for acquiring rights, with a beneficial life of more than one year, for mining, oil, and natural gas concessions; forest concessions; and other rights to exploit natural resources should be amortised by the production-unit method. Except for the right to acquire oil and natural gas concessions, the depletion rate used should not exceed 20% *per annum*.

Organisational and start-up expenses

The costs of incorporation and expansion of the capital of an enterprise are claimed in full in the year in which the expenditure is incurred or are amortised using either the declining-balance or straight-line method at the above rates.

Costs incurred before the commencement of commercial operations with a useful life of longer than one year are capitalised and amortised according to the above rates.

Interest expense

Interest incurred in the ordinary course of business is deductible as long as the related loan is used for business purposes.

Interest on loans relating to time deposits (which income is subject to a final tax) is not deductible.

Interest on loans used to buy shares where dividends to be received are not subject to income tax is also not deductible.

A debt-to-equity ratio of 4:1 is generally applicable, which means that the amount of debt allowable in order to obtain full deductibility of the financing cost is limited to four times the equity amount. Exemption applies to certain taxpayers.

Bad debts

Uncollectible debts are deductible for tax purposes, with the following conditions:

- The creditor has recognised the amount of uncollectible receivables as expenses in the commercial income statement.
- The taxpayer must submit a list of uncollectible account receivables to the Directorate General of Tax.
- A legal case to enforce collection has been brought to a District Court or government agency that handles state receivables, there is a written agreement on cancellation of receivables/debt release and discharge between the concerned creditor and debtor, it has been publicised in a general or a special publication, or the debtor has otherwise acknowledged that one's debts have been cancelled.

Charitable contributions

Donations for national disasters, education facilities, sport development, and social infrastructures, with certain conditions, may be deductible in the fiscal year when the donations are provided.

Benefits in kind

Most benefits received in kind by employees, such as free housing, are not tax-deductible to the entity providing the benefit. Free motor vehicle and telephone expenses, including depreciation, are tax-deductible but only for 50% of the total expenses incurred. Expenses for meals and transportation made available to all staff are tax-deductible. Apart from these, certain benefits in kind (e.g. housing provided in remote areas as designated by the MoF, Integrated Economic Development Zones as designated by Presidential Decree) can also be claimed as tax-deductible expenses.

Fines and penalties

Fines, penalties, and interest on underpayment of taxes are not deductible.

Taxes

Land and buildings tax and regional taxes may be deducted from taxable income. With several exceptions, input VAT is also deductible against taxable income as long as it is not claimed as a credit against output VAT.

Net operating losses

Losses may be carried forward for a maximum period of five years. Carrying back of losses is not permitted. Offsetting losses within a corporate group is not permitted.

Payments to foreign affiliates

WHT is applied as a final tax on the recipient for payments of royalties, interest, and service fees to foreign non-resident companies. Excessive and non-arm's-length payments to related parties are disallowed as deductions. The tax law denies deductions for all payments from a branch to its head office for royalties, interest, and services provided by the head office (exceptions apply for loans between bank branches and their head offices).

Group taxation

Consolidated returns are not allowed in Indonesia.

Transfer pricing

Transactions between related parties must be consistent with the arm's-length principle. If the arm's-length principle is not followed, the DGT is authorised to recalculate the taxable income or deductible costs arising from such transactions applying the arm's-length principle.

Under the General Tax Provisions and Procedures (*Ketentuan Umum dan Tata Cara Perpajakan* or KUP) Law, the government requires specific transfer pricing documentation to prove the arm's-length nature of related-party transactions.

The MoF issued a regulation, dated 30 December 2016, regarding transfer pricing documentation, which requires taxpayers under certain criteria to prepare transfer pricing documentation, namely the Master File, Local File, and Country-by-Country (CbC) Report.

Detailed transfer pricing disclosures are required in the CIT return, which include the following:

- The nature and value of transactions with related parties.
- The transfer pricing methods applied to those transactions and the rationale for selecting the methods.

- Whether the company has prepared transfer pricing documentation.

Transfer pricing disputes may be resolved through the domestic objection and appeal process, or, where the dispute involves a transaction with a related party in a country that is one of Indonesia's tax treaty partners, the parties may request double tax relief under the Mutual Agreement Procedures (MAP) article of the relevant tax treaty. There is a restriction that an MAP application cannot be lodged when the Tax Court has declared an end to the court hearing process, and an existing MAP will cease when the Tax Court announces its decision. If a party is not satisfied with the Tax Court decision, a judicial review by the Supreme Court is allowed.

The tax law authorises the DGT to enter into Advance Pricing Agreements (APAs) with taxpayers and/or another tax country's tax authority only on the future application of the arm's-length principle to transactions between related parties; consequently, taxpayers should not expect an APA to be 'rolled-back' to address any transfer pricing matters in open years in relation to the same/similar transactions. Once agreed, an APA will typically be valid for a maximum of three tax years after the tax year in which the APA is agreed or four years if the process involves cooperation with foreign tax authorities that escalate an APA application to be an MAP in order to settle any ongoing double taxation in accordance with a relevant tax treaty.

Increase in transfer pricing focused investigations

The number of tax audits with transfer pricing as the key focus area has continued to increase following the issuance of regulations relating to transfer pricing. The DGT has issued detailed guidelines that, broadly stated, typically follow Organisation for Economic Co-operation and Development (OECD) principles. Transactions under particularly close scrutiny include payments of royalties and technical or management services fees, inter-company services, royalty and financing transactions, and exports to related parties.

Where a taxpayer has no documentation available to substantiate these transactions, there is a high risk that deductions for the payments will be denied in full. In this regard, the 30-day time limit within which a taxpayer must produce any documentation requested by the ITO during an audit is being strictly enforced. Any documentation provided after the 30-day time limit is being disregarded by the ITO in its decision making process.

Transfer pricing specific audits are regularly conducted by the ITO, with the high priority targets generally identified based on:

- profit performance of the company (companies that have incurred consistent losses will be the highest priority, but there is also a risk of being selected for companies with profits below industry norms) and
- materiality of the company's related-party transactions.

The ITO has issued questionnaires to several taxpayers who are not under an audit that focus primarily on transfer pricing issues. It is possible that the information gathered by the ITO from these questionnaires will lead to follow-up investigations or audits in some cases.

The DGT has also reinforced tax audit procedures for taxpayers with related-party transactions. This regulation provides more clarity and is more relevant with the current transfer pricing issues in practice (e.g. the use of the median point as the basis of correction, mandatory use of the comparable uncontrolled price [CUP] method for interest, the use of multiple year data for comparables). Comprehensive forms required to be completed by the taxpayers during a tax audit are also provided in the regulation.

Thin capitalisation

The MoF is authorised to make a determination on an appropriate ratio of debt to equity. The general ratio of 4:1 is applicable for group companies, except for exempted taxpayers.

Controlled foreign companies (CFCs)

See Foreign income in the Income determination section for a description of the CFC regime.

Tax credits and incentives

Foreign tax credit

Tax paid or payable in foreign countries upon income from abroad received or obtained by a resident taxpayer may be credited against tax payable in Indonesia in the same fiscal year.

The amount of tax credit is the same amount as income tax paid or payable abroad, but shall not exceed tax payable calculated according to the Indonesian tax law.

Revaluation of fixed assets

Certain taxpayers may apply for fixed asset revaluation for tax purposes with approval from the DGT. The excess of the fair market value over the tax book value of the revalued assets is subject to final income tax at a rate of 10%.

Income tax concessions

Tax holiday

The MoF may provide a tax holiday of 100% of the CIT due for 5 to 20 years from the start of commercial production, depending on the investment amount. After the end of the tax holiday, the companies will receive a 50% CIT reduction for two years.

This facility is provided to new investments in pioneer industries that have a wide range of connections, provide additional value and high externalities, introduce new technologies, and have strategic value for the national economy. Currently, this facility is available for the following business sectors:

- Integrated upstream basic metal.
- Integrated oil and gas refinery.
- Integrated petrochemicals from oil, gas, or coal.
- Integrated inorganic basic chemicals.
- Integrated organic basic chemicals from agriculture, plantation, or forestry products.
- Integrated pharmaceutical raw materials.
- Semi-conductor and other main components of computers that are integrated with computer manufacturing.
- Main components of communication equipment that are integrated with smartphone manufacturing.

- Main components of health equipment that are integrated with irradiation, electro medical, or electrotherapy manufacturing.
- Main components of industrial machinery that are integrated with machinery manufacturing.
- Main components of machinery that are integrated with motor vehicles manufacturing.
- Robotics components that are integrated with the manufacturing industry.
- Main components of vessels that are integrated with vessel manufacturing.
- Main components of aircraft that are integrated with aircraft manufacturing.
- Main components of trains that are integrated with train manufacturing.
- Power plant machinery.
- Economic infrastructure.

An application must be submitted to the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or BKPM) Chairman prior to the start of commercial production. A proposal for the MoF's approval will be made by the BKPM Chairman after carrying out review on the applicant. Under the latest regulation, the proposal can be submitted to the MoF until 3 April 2023.

Inbound investment incentives

The MoF may provide the following tax concessions to PT companies following their investment in certain designated business areas or in certain designated regions:

- A reduction in net income of up to 30% of the amount invested, prorated at 5% for six years of the commercial production, provided that the assets invested are not transferred out within six years.
- Accelerated depreciation and/or amortisation deductions.
- Extension of tax losses carryforward for up to ten years.
- A reduction of the WHT rate on dividends paid to non-residents to 10% (or lower if treaty relief is available).

The applicant must meet one of the following high-level criteria to be eligible for the above tax facilities:

- High investment value or for export purposes.
- High absorption of manpower.
- High local content.

Recommendation from the BKPM Chairman must first be obtained, together with the application for investment approval, before MoF approval for the tax facilities can be sought.

Special Economic Zones (Kawasan Ekonomi Khusus or KEKs)

Taxpayers conducting business in KEKs may enjoy tax facilities. The business should cover the main activities determined for each KEK. The designation of an area as a KEK is set out in a specific government regulation.

CIT reduction facility may be granted for new taxpayers with new capital invested in the production chain of main activities in a KEK, as described below:

Investment plan (IDR, in billions)	Reduction period (in years)	CIT reduction
Less than 500	5 to 15	MoF discretion

Investment plan (IDR, in billions)	Reduction period (in years)	CIT reduction
500 up to 1,000	5 to 15	20% to 100%
More than 1,000	10 to 25	20% to 100%

Taxpayers being rejected for the CIT reduction facility and taxpayers carrying out other activities in a KEK may apply for similar inbound investment incentives under the income tax concessions.

On top of the above income tax facilities, taxpayers in a KEK are also entitled to the following tax facilities:

- Non-collection of VAT and LST on importation of certain goods.
- Non-collection of Article 22 Income Tax on importation of certain goods.
- Postponement of import duty on capital goods and equipment, and goods and materials for processing.
- Exemption of excise on importation of goods to be used to produce non-excisable goods.
- Non-collection of VAT and LST on the domestic purchases of certain goods.

Integrated Economic Development Zones (Kawasan Pengembangan Ekonomi Terpadu or KAPETs)

Companies conducting business in KAPET may enjoy tax facilities. The designation of an area as a KAPET is set out in a specific Presidential Decree.

An Entrepreneur in Bonded Zone (*Pengusaha di Kawasan Berikat* or PDKB) in a KAPET may be granted tax facilities in the form of:

- Income tax facilities similar to inbound investment incentives under the income tax concessions.
- Non-collection of VAT and LST on importation of certain goods.
- Exemption of Article 22 Income Tax on importation of certain goods.
- Postponement of import duty on capital goods and equipment, and goods and materials for processing.
- Non-collection of VAT and LST on the domestic purchases of certain goods.

Bonded Stockpiling Area

Bonded Stockpiling Area (*Tempat Penimbunan Berikat*) currently consists of:

- Bonded Zones.
- Bonded Warehouse.
- Bonded Exhibition Place.
- Duty Free Shop.
- Bonded Auction Place.
- Bonded Recycled Area.
- Bonded Logistic Centre.

We will only highlight three prominent areas in the below sections.

The tax facilities in these areas are as follows:

- Non-collection of VAT and LST on importation of certain goods.
- Non-collection of Article 22 Income Tax on importation of certain goods.

- Postponement of import duty on certain goods.
- Exemption of excise on importation of certain goods.
- Non-collection of VAT and LST on the domestic purchases of certain goods.

Bonded Zones

The Bonded Zones (*Kawasan Berikat*) facility is provided to companies producing finished goods that are mainly for export, with the domestic sales quota of 50% of the previous year export realisation value and/or sales value to other Bonded Zones/FTZs/KEKs. The import duty, VAT, LST, and Article 22 Income Tax are also exempted for importation of machinery.

Bonded Warehouse

The Bonded Warehouse (*Gudang Berikat*) facility is intended to store imported goods that can be processed with one or more activities within one year.

Bonded Logistic Centre

The Bonded Logistic Centre (*Pusat Logistik Berikat*) facility is similar to the Bonded Warehouse facility; however, it is intended to store both imported goods from outside the Customs Area and/or goods from other places within the Indonesia Customs Area that can be processed with one or more simple activities within three years.

Free Trade Zones (FTZs)

Goods entered into and goods delivered amongst companies inside an FTZ (*Kawasan Perdagangan Bebas*) may enjoy tax facility.

Taxpayers in FTZs are entitled to the following tax facilities:

- Exemption of VAT and LST on importation of certain goods.
- Non-collection of Article 22 Income Tax on importation of certain goods.
- Exemption of import duty on certain goods.
- Exemption of excise on importation of certain goods.
- Non-collection of VAT and LST on the domestic purchases of certain goods.
- Transactions of intangible goods and taxable services are exempted from VAT, except for those delivered to other Indonesia Customs Area and Bonded Stockpiling Area or Special Economic Zones companies.

Industrial Zones (Kawasan Industri or KIs)

The determination and licensing of a KI is as granted by the government. The applicable tax facilities depend on the classification of the Industrial Development Area (IDA) (*Wilayah Pengembangan Industri* or WPI) of the KI, namely:

- Advance IDA (WPI *Maju* or WPIM).
- Developing IDA (WPI *Berkembang* or WPIB).
- Potential I IDA (WPI *Potensial I* or WPIP I).
- Potential II IDA (WPI *Potensial II* or WPIP II).

Below are the available tax facilities for each type of WPI:

Tax and customs facility	WPIM*	WPIB	WPIP I	WPIP II
CIT reduction of 10% to 100% of the CIT due for 5 to 15 years from the start of commercial production	Yes	–	–	Yes

Tax and customs facility	WPIM*	WPIB	WPIP I	WPIP II
Income tax facilities similar to inbound investment incentives under the income tax concessions	Yes	Yes	Yes	–
VAT exemption on the imports/purchase of machines and equipment (excluding spare parts) that are directly used to produce VATable goods	Yes	Yes	Yes	Yes
Import duty exemption on the imports of machines or materials that are used to produce goods/services**	Yes	Yes	Yes	Yes

Notes

* WPIM may choose to apply income tax facility in the form of CIT reduction or inbound investment incentives.

** The applicable period of import duty exemption varies depending on the KI classification and the business cycle of the respective taxpayer (e.g. construction or developing stage).

Reinvestment of branch profits

PEs that reinvest their after-tax profits in Indonesia within the same year or no later than the following year are exempt from BPT on these profits. The reinvestment should be one of the following forms:

- As a founder or a participant founder in a newly established Indonesian company through capital participation.
- As a shareholder of an established Indonesian company through capital participation.
- Acquisition of a fixed asset used by the PE to conduct its business or activities in Indonesia.
- Investment in the form of an intangible asset used by the PE to conduct its business or activities in Indonesia.

Shares in a newly established company shall not be transferred until, at a minimum, two years from the date that the company commences commercial production. With regard to the investment in an established Indonesian company, acquisition of a fixed asset, or investment of an intangible asset, the investment shall not be transferred until, at a minimum, three years after the investment.

Other incentives

Income earned by venture capital companies in the form of profit sharing from their investments in Indonesia is exempt from tax, provided that the following conditions are met:

- Entities are small or medium-scale businesses in one of the sectors designated by the Indonesian government.
- Investments are not listed on the Indonesian stock exchange.

Withholding taxes

Indonesian income tax is collected mainly through a system of WHTs. Where a particular income item is subject to WHT, the payer is generally held responsible for withholding or collecting the tax. These WHTs are commonly referred to using the relevant article of the Income Tax (*Pajak Penghasilan* or PPh) Law, as follows.

Article 23/26 Income Tax (PPh 23/26)

PPh 23/26 is levied on a variety of payments to corporations and individuals, resident and non-resident, at the following rates:

	WHT (%)				
	Dividends				
Recipient	Portfolio	Substantial holdings	Interest	Royalties	Branch profits (8)
Resident corporations	15	0	15	15	N/A
Resident individuals	10	10	15	15	N/A
Non-resident corporations and individuals					
Non-treaty	20	20	20	20	0/20
Treaty:					
Algeria	15	15	0/15 (6a)	15	10
Armenia	15	10	0/10 (6a)	10	10
Australia	15	15	0/10 (6a)	10/15 (7b, 7c)	15
Austria	15	10	0/10 (6a)	10	12
Bangladesh	15	10	0/10 (6a)	10	10
Belgium	15	10	0/10 (6a)	10	10
Brunei	15	15	0/15 (6a)	15	10
Bulgaria	15	15	0/10 (6a)	10	15
Canada	15	10	0/10 (6a, 6b)	10	15
China (2)	10	10	0/10 (6a)	10	10
Croatia	10	10	0/10 (6a)	10	10
Czech Republic	15	10	0/12.5 (6a)	12.5	12.5
Denmark	20	10	0/10 (6a)	15	15
Egypt	15	15	0/15 (6a)	15	15
Finland	15	10	0/10 (6a)	10/15 (7d)	15
France	15	10	0/10/15 (6a, 6b)	10	10
Germany (1)	15	10	0/10 (6a)	10/15 (7b, 7c)	10
Hong Kong	10	5	0/10 (6a)	5	5
Hungary (3)	15	15	0/15 (6a)	15	20
India (1)	10	10	0/10 (6a)	10	15
Iran	7	7	0/10 (6a)	12	7
Italy	15	10	0/10 (6a, 6b)	10/15 (7b, 7c)	12
Japan	15	10	0/10 (6a)	10	10
Jordan (3)	10	10	0/10 (6a)	10	20
Korea (North)	10	10	0/10 (6a)	10	10
Korea (South) (2)	15	10	0/10 (6a)	15	10
Kuwait	10	10	0/5 (6a)	20	0/10
Laos	15	10	0/10 (6a)	10	10
Luxembourg (1)	15	10	0/10 (6a)	12.5	10
Malaysia (4)	10	10	0/10 (6a, 6b)	10	12.5
Mexico	10	10	0/10 (6a, 6b)	10	10
Mongolia	10	10	0/10 (6a)	10	10
Morocco	10	10	0/10 (6a)	10	10

Indonesia

	WHT (%)				
	Dividends				
Recipient	Portfolio	Substantial holdings	Interest	Royalties	Branch profits (8)
Netherlands	10/15	5	0/5/10 (6a, 6b)	10	10
New Zealand (3)	15	15	0/10 (6a)	15	20
Norway	15	15	0/10 (6a, 6b)	10/15 (7a, 7b, 7c)	15
Pakistan (1)	15	10	0/15 (6a)	15	10
Papua New Guinea (1)	15	15	0/10 (6a)	10	15
Philippines	20	15	0/10/15 (6a, 6b)	15	20
Poland	15	10	0/10 (6a)	15	10
Portugal	10	10	0/10 (6a)	10	10
Qatar	10	10	0/10 (6a)	5	10
Romania	15	12.5	0/12.5 (6a, 6b)	12.5/15 (7a, 7b, 7c, 7d)	12.5
Russia	15	15	0/15 (6a)	15	12.5
Seychelles (3)	10	10	0/10 (6a)	10	20
Singapore	15	10	0/10 (6a)	15	15
Slovakia	10	10	0/10 (6a)	10/15 (7d)	10
South Africa (3)	15	10	0/10 (6a)	10	20
Spain	15	10	0/10 (6a)	10	10
Sri Lanka	15	15	0/15 (6a)	15	20
Sudan	10	10	0/15 (6a)	10	10
Suriname	15	15	0/15 (6a)	15	15
Sweden	15	10	0/10 (6a)	10/15 (7b, 7c)	15
Switzerland (1)	15	10	0/10 (6a)	10	10
Syria	10	10	0/10 (6a)	15/20 (7d)	10
Taiwan	10	10	0/10 (6a)	10	5
Thailand	20	15	0/15 (6a)	15	20
Tunisia	12	12	0/12 (6a)	15	12
Turkey	15	10	0/10 (6a)	10	10
Ukraine	15	10	0/10 (6a, 6b)	10	10
United Arab Emirates	10	10	0/5 (6a, 6b)	5	5
United Kingdom	15	10	0/10 (6a, 6b)	10/15 (7b)	10
United States of America	15	10	0/10 (6a)	10	10
Uzbekistan	10	10	0/10 (6a)	10	10
Venezuela (1)	15	10	0/10 (6a, 6b)	20	10
Vietnam	15	15	0/15 (6a)	15	10
Zimbabwe (1, 5)	20	10	0/10 (6a)	15	10

Domestic Article 23 WHT is also payable at the rate of 2% for most types of services where the recipient of the payment is an Indonesian resident.

Notes

1. Service fees, including for technical, management, and consulting services, rendered in Indonesia are subject to WHT at rates of 5% for Switzerland; 7.5% for Germany; 10% for India, Luxembourg, Papua New Guinea, Venezuela, and Zimbabwe; and 15% for Pakistan.
2. VAT is reciprocally exempted from the income earned on the operation of ships or aircraft in international lanes.

3. The treaty is silent concerning BPT rate. The ITO interprets this to mean that the tax rate under Indonesian Tax Law (20%) should apply.
4. Labuan offshore companies (under the Labuan Offshore Business Activity Tax Act 1990) are not entitled to the tax treaty benefits.
5. A protocol amending the tax treaty has been signed, pending the ratification of the protocol and the exchange of ratification documents.
6. Interest:
   a. Exempt if paid to the government.
   b. Exempt if paid to a bank but linked to a government loan agreement or paid to specific financial institutions/banks.
7. Royalties:
   a. The use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right.
   b. The use of, or the right to use, any industrial, commercial, or scientific equipment.
   c. The supply of scientific, technical, industrial, or commercial knowledge or information.
   d. The use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematography films and films or tapes for television or radio broadcasting.
8. PEs that reinvest their after-tax profits in Indonesia within the same year or no later than the following year are exempt from BPT on these profits (*see the Tax credits and incentives section*).

The issue of beneficial ownership has come under tax office scrutiny. For treaty WHT rates to apply to passive income such as interests, dividends, and royalties, the recipient of such income must be the beneficial owner. The recipient must also provide a Certificate of Domicile (CoD) in the form required by the ITO and certified by their home country tax authority that the recipient is a tax resident of that country. The CoD in the form prepared by the other country's tax authority may only be used in limited circumstances. Further, the CoD form also requires a number of declarations to be made by the recipient that acknowledges that the use of the treaty jurisdiction was not merely for obtaining the benefit of the treaty. These declarations place onerous obligations on both the Indonesian payer and the recipient entity. Without a certified CoD, a WHT at a rate of 20% will apply. These aspects need to be considered when paying income of this nature.

Article 22 Income Tax (PPh 22)

PPh 22 is typically applicable to the following:

Event		Tax rate (%)	Tax base
1	The import of:		Import value (i.e. CIF value plus duties payable)
	a. Certain end customer goods	10	
	b. End customer goods other than (a)	7.5	
	c. Goods other than (a) and (b) using an Importer Identification Number (*Angka Pengenal Impor* or API):		
	i. Soybeans, wheat, and flour wheat	0.5	
	ii. Other than (i)	2.5	
	d. Goods other than (a) and (b) without an API	7.5	
2	The auctioned imported goods	7.5	Auction prices
3	The sale of goods to the government requiring payment from the State Treasury and Proxy of Budget User (*Kuasa Pengguna Anggaran* or KPA) (1)	1.5	Selling prices
4	The sale of goods to State-Owned Enterprises (*Badan Usaha Milik Negara* or BUMN) and some of their subsidiaries (1, 3)	1.5	Selling prices
5	The purchase of oil fuel by gas stations from Pertamina and its subsidiaries (2)	0.25	Selling prices
6	The purchase of oil fuel by gas stations from parties other than Pertamina and its subsidiaries (2)	0.3	Selling prices
7	The purchase of oil fuel by parties other than gas stations (2)	0.3	Selling prices
8	The purchase of gas fuel (2)	0.3	Selling prices

Event		Tax rate (%)	Tax base
9	The purchase of lubricants	0.3	Selling prices
10	The purchase of cement by local distributors	0.25	Selling prices
11	The purchase of paper products by local distributors	0.1	Selling prices
12	The purchase of steel products by local distributors	0.3	Selling prices
13	The purchase of automotive products by local distributors	0.45	Selling prices
14	The purchase of pharmaceutical products by local distributors	0.3	Selling prices
15	The purchase of motor vehicles from Sole Agents (*Agen Tunggal Pemegang Merek* or ATPM), Agents (*Agen Pemegang Merek* or APM), and general importers (4)	0.45	Selling prices
16	The sale of forestry, plantation, agriculture, cattle breeding, and fishery products to manufacturers or exporters (1)	0.25	Selling prices
17	The export of coal, metal, and non-metal minerals by exporters other than those engaged in a mining cooperation agreement or a contract of work with the government	1.5	Export value
18	The sale of coal, metal, and non-metal minerals by companies or individuals holding a mining license (*Izin Usaha Pertambangan* or IUP) (1)	1.5	Selling prices
19	The purchase of gold bars (5)	0.45	Selling prices
20	The purchase of very luxurious goods	5	Selling prices

Notes

1. In events (3), (4), (16), and (18), the PPh 22 collectors must withhold PPh 22 from the amount payable to a particular vendor, except payments for the purchase/use of:
   - oil fuel, gas fuel, lubricants, postal products
   - water and electricity
   - oil or gas (including upstream by products) from a contractor of a PSC, the contractor's head office, or the contractor's trading arms, and
   - geothermal or electricity from a contractor of a Joint Operation Contract.

   There is also an exemption for the purchase of goods with a value of up to IDR 2 million, IDR 10 million, and IDR 20 million for events (3), (4), and (16) respectively. In the other events, the importer or the buyer of the designated goods must pay PPh 22 in addition to the amounts payable for the goods imported or purchased.

2. The withheld PPh 22 constitutes a pre-payment of corporate/individual income tax liabilities, except for the purchase of oil and gas fuel by distributors/agents, which is categorised as final tax.
3. Exception applies on the sale of forestry, plantation, agriculture, cattle breeding, and fishery products since it is already subject to PPh 22 in event (16).
4. Exception applies on the purchase of very luxurious motor vehicles since it is already subject to PPh 22 in event (20).
5. Exemption applies on the sale to Bank Indonesia.

The tax does not apply, either automatically or with an Exemption Certificate issued by the DGT, on the following types of events:

- Import/purchase of goods not subject to income tax.
- Import of goods exempted from import duties and/or VAT, subject to 0% import duty, or where VAT is not collected.
- Goods that have been temporarily imported (i.e. goods for re-export).
- Goods for re-importing (i.e. exported and re-imported in the same quality or to be repaired/tested).
- Import of gold bars for the production of jewellery for re-export.
- Purchase of goods related to the use of government school operations subsidy (*Bantuan Operasional Sekolah* or BOS) fund.

- The purchase of grain or rice by the State Treasury, KPA, and the Bureau of Logistics (*Badan Urusan Logistik or* BULOG).
- The purchase of necessary food products by BULOG or appointed BUMN.

Taxpayers without a Tax Identification Number will be subject to a surcharge of 100% in addition to the standard tax rate.

Tax administration

Payments of tax and tax returns filing

Tax liabilities for a particular period or year must typically be paid to the State Treasury through a designated tax-payment bank (*bank persepsi*) and then accounted for at the DGT office through the filing of the relevant tax returns. The tax payments and tax return filing for a particular tax must be undertaken monthly or annually, depending upon the tax obligation in question. These payments and filing obligations can also be conducted electronically. Tax payments should generally be conducted electronically.

Corporate tax liabilities may be settled either by direct payments, third party withholdings, or a combination of both. Monthly tax instalments constitute the first part of tax payments to be made by taxpayers as a prepayment of their current year CIT liability. A monthly tax instalment is generally calculated using the most recent CIT return. The tax withheld by third parties on certain income or tax to be paid in advance on certain transactions (i.e. imports) also constitute prepayments for the current year corporate tax liability of the income recipient or the party conducting the import. If the total amounts of tax paid in advance through the year are less than the total CIT due, the company concerned has to settle the shortfall before filing its CIT return. Returns for transaction taxes, such as WHT, must be filed on a monthly basis.

A summary of these tax obligations is as follows:

Monthly tax obligations

Type of tax	Tax payment deadline	Tax return filing deadline
Article 21/26 (Payroll) WHT	The 10th day of the following month	The 20th day of the following month
Article 23/26 Income Tax	The 10th day of the following month	The 20th day of the following month
Article 25 Income Tax Instalment	The 15th day of the following month	The 20th day of the following month
Article 22 Income Tax on imports/payments to Tax Collectors	The 10th day of the following month	The 20th day of the following month
Article 4(2) Final Income Tax	The 10th day of the following month	The 20th day of the following month
VAT and LST	Prior to the tax return filing deadline	The end of the following month

Annual tax obligations

Type of tax	Tax payment deadline	Tax return filing deadline
CIT	The end of the fourth month after the book year-end before filing the tax return	The end of the fourth month after the book year-end
PBB	Six months after the receipt of a Tax Due Notification Letter from the ITO	N/A

Penalties

Late payments of the above taxes incur interest penalties at 2% per month, with a maximum of 48%. Part of a month, for example a single day, is considered a full month.

Late filing of a tax return or failure to file a tax return incurs an administrative penalty at the following amounts:

Type of tax return	IDR
VAT return	500,000
Other monthly tax returns	100,000
CIT return	1,000,000

Tax assessments

Indonesia uses a self-assessment system under which taxpayers are trusted to calculate, pay, and report their own taxes in accordance with prevailing tax laws and regulations. However, the DGT may issue tax assessment letters to a particular taxpayer if it finds that, based on a tax audit or on other information, the taxpayer has not fully paid all tax liabilities. A tax assessment letter may also be issued by the DGT to a taxpayer who ignores a warning letter to file a tax return within a specified period. Failure to maintain books in accordance with the prescribed standards is another condition that may lead the DGT to issue an official tax assessment.

Tax audit process

The tax audit of a company may cover only a particular tax or all taxes for a particular tax period (a tax month) or tax year. It may be conducted at the company's premises, at the DGT offices, or at both.

Conditions triggering a tax audit

A tax refund request will always trigger a tax audit. Due to the requirement for the DGT to decide on a refund request within 12 months, a tax audit will typically begin from a few weeks to several months from the refund request date. A corporate tax refund request will normally trigger a complete tax audit covering all taxes. A refund request of any other tax will normally trigger a tax audit covering only one particular tax. The DGT will likely broaden the tax audit scope to include other taxes.

Other events that may trigger a tax audit include the following:

- A tax return in an overpayment position (not necessarily accompanied by a refund request).
- An annual income tax return presenting/claiming a tax loss.
- The taxpayer has changed its fiscal year or bookkeeping method or performed fixed assets revaluation.
- A tax return not filed within the prescribed time or filed after the deadline stated in a warning letter, which has been selected to be audited based on a risk analysis.
- A tax return meeting certain (undisclosed) DGT criteria.

Statute of limitations

The DGT can issue an underpaid tax assessment letter within five years after the incurrence of a tax liability, the end of a tax period (month), or the end of (part of) a tax year.

Topics of focus for tax authorities

Indonesia is largely a self-assessment tax environment, and enforcement remains a priority of the tax authorities. The DGT continues its efforts in improving compliance by targeting tax audits on transfer pricing and certain industries (particularly those in the oil and gas and coal mining industry).

On the other hand, the DGT has also made some efforts to collect more information from various sources and is issuing several incentives to increase tax compliance as well as boosting national tax revenue (i.e. incentives for the payment of tax in arrears and the sunset policy that eliminates or reduces administrative sanctions in certain cases).

Other issues

Business combinations and splits

Transfers of assets in business mergers, consolidations, or business splits must generally be dealt with at market value. Gains resulting from this kind of restructuring are assessable, while losses are generally claimable as a deduction from income. However, a tax-neutral merger or consolidation, under which assets are transferred at book value, can be conducted but is subject to the approval of the DGT. To obtain this approval, the merger or consolidation plan in question must pass a business-purpose test. Tax-driven arrangements are prohibited, and tax losses from the combining companies may not be passed to the surviving company.

Subject to a similar, specific DGT approval, the same concession is also available for business splits that constitute part of an initial public offering (IPO) plan. In this case, within one year of the DGT's approval being given, the company concerned must have made an effective declaration regarding registration for an IPO with the OJK. In the event of complications beyond the company's control, the period may be extended by the DGT for up to four years.

Tax information exchange agreements (TIEAs)

Indonesia has TIEAs with the following jurisdictions:

- Bahamas (2)
- Bermuda (1)
- Guernsey
- Isle of Man
- Jersey
- San Marino (1)

Notes

1. Ratified but not yet effective, pending the exchange of ratification documents.
2. The TIEA has been signed, pending the ratification of the TIEA and the exchange of ratification documents.

Mutual Administrative Assistance in Tax Matters

Indonesia signed the Convention on Mutual Administrative Assistance in Tax Matters on 3 November 2011 and ratified it on 17 October 2014. Indonesia also signed a Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information on 4 June 2015 and is committed to apply this using the Common Reporting Standard (CRS) issued by the OECD.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS)

Indonesia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) on 7 June 2017, and it provided a list of reservations and notifications on the same date, which are still subject to ratification. In this provisional provision, Indonesia has put 33 tax treaties to be covered by the Convention.

US Foreign Account Tax Compliance Act (FATCA)

Indonesia has principally agreed to sign the InterGovernmental Agreement (IGA) 1 for FATCA compliance purposes.

Iraq

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Significant developments

There have been no significant corporate tax developments in Iraq during the past year.

Taxes on corporate income

All income derived from Iraq is subject to tax in Iraq, regardless of the residence of the recipient.

The effective corporate income tax (CIT) system presented in Iraq for juristic persons (except partnerships) is based on a statutory CIT rate of 15% at all income levels, with no progressive tax rate scale.

Moreover, the General Commission for Taxes (GCT) adopts the deemed approach by applying a certain rate on the total reported revenue. Note that the GCT applies the highest of the deemed tax on the reported revenue or the 15% (35% for oil and gas industry, *see below*) of the reported profit/taxable profit.

Foreign oil company income tax

The income realised in Iraq from contracts concluded with foreign oil companies, their branches or offices, and subcontractors working in Iraq in the oil and gas production sector and related industries is taxed at a rate of 35%.

Local income taxes

To the best of our knowledge, there are no local, state, or provincial taxes on income in Iraq.

Corporate residence

One of the key issues in determining when a company becomes taxable in Iraq is whether the foreign company is considered to be doing business 'in Iraq' or 'with Iraq'. In 2009, with Instructions No. 2/2008, and its amendment instruction #1 of 2014, the Iraqi tax administration provided a clearer distinction between business 'in Iraq' and business 'with Iraq'.

Once the determination has been made that the company is trading 'in Iraq', the company should register with the GCT. A company that is registered with the GCT will be subject to CIT and will be required to file a CIT return.

Permanent establishment (PE)

It is important to note that the current Iraq income tax law does not clearly define a PE; consequently, it is important to monitor commercial activity being performed in the country to ensure compliance with the registration requirements and tax law. The company should consult with their internal tax department and external advisers if they have signed a contract to provide any type of services inside Iraq to determine if the company should have a legal registration and begin to file CIT returns.

Other taxes

Sales tax

A sales tax of 300% is imposed on alcohol and tobacco (cigarettes), 15% on travel tickets, 15% on cars, and 20% on mobile recharge cards and internet. This is in addition to services rendered by deluxe and first class restaurants and hotels, which are subject to a 10% sales tax.

Customs duties

The customs duty rates are specified in the customs tariff and the agriculture agenda that are annexed to the Customs Duty Law.

Excise taxes

There is no tax provision in the Iraqi tax law addressing excise taxes.

Property taxes

A basic tax of 10% is assessed on the annual revenue for all real estate and is collected from the real estate owner or the long-term lessee (five years). In cases where the owner or long-term lessee cannot be located, the person occupying the real estate will be assessed. Note that the annual revenue for each real estate is discounted by 10% for expenses and maintenance before assessing the tax on that real estate.

Transfer taxes

There are no restrictions or taxes on transferring funds into or out of Iraq.

Stamp duty

Contracts are subject to stamp fees at rates that range between 0.1% and 3% of the contract value.

Payroll taxes

The payroll tax system in Iraq is similar to a pay-as-you-earn (PAYE) system, whereby the employer is obligated to withhold tax from salaries and wages paid to its employees and remit same to the tax authorities. Failure to do so will result in the employer being subject to penalties and late payment interest.

Social security contributions

With respect to contribution to the social security fund in Iraq, employers are divided into a number of categories, which is the driver for determining the contribution percentage. Employers that are categorised as prime contribute at the upper rate (25% from the employer and 5% from the employee), whereas other categories contribute at the lower rate (12% from the employer and 5% from the employee).

Determining to which category the employer relates is subject to the social security department discretion. The criteria for this determination is not crystallised in the law; however, in practice, the social security authorities make their determination based on the business sector the employer is involved in (e.g. those in the oil and gas related industries are expected to attract the upper rate).

Branch income

The tax treatment for a branch is similar to a local Iraqi corporation. In general, CIT is imposed on corporate entities and foreign branches with respect to taxable profit from all sources arising or deemed to arise in Iraq. However, certain limitations apply to head office expenses.

Income determination

A corporation has to determine its profit/loss according to its income statement for a tax period as established under the Unified Accounting System (Iraqi Generally Accepted Accounting Principles [GAAP]). However, to reach the taxable income, positive or negative adjustments have to be made to the profit/loss as determined according to GAAP.

Inventory valuation

There is no tax provision in the Iraqi tax law addressing inventory valuation.

Capital gains

Capital gains on sales of depreciable assets are taxed at the normal CIT rate. To the best of our knowledge and legal practice, gains derived from the sale of shares and bonds not in the course of a trading activity may be exempted from tax. Capital gains derived from the sale of shares and bonds in the course of a trading activity are taxable at the normal CIT rate.

Dividend income

Under the tax law, dividends paid out of profits that have been subject to tax are not taxed again in the hands of the shareholder.

Interest income

Interest income deemed to arise in Iraq is taxed at the normal CIT rate.

Rent/royalty income

Rent and royalty income deemed to arise in Iraq are taxed at the normal CIT rate.

Foreign income

There is no tax provision in the Iraqi tax law addressing foreign income. However, as per the Iraqi tax law, tax shall be imposed on the income of an Iraqi resident that arises inside or outside Iraq (i.e. worldwide), regardless of place of receipt.

Deductions

In general, all expenses incurred by the taxpayer in order to produce income during the year are deducted from income, provided that such expenses are confirmed by acceptable documents, with some exceptions.

Depreciation

The Iraqi Depreciation Committee sets the maximum depreciation rates for various types of fixed assets (please contact us for additional information regarding the specific rates). If the rates used for accounting purposes are greater than the prescribed rates, the excess is disallowed.

The depreciation method is either a straight-line method or declining-balance method.

Goodwill

Iraqi tax law does not contain a provision that covers the deductibility of goodwill.

Start-up expenses

Iraqi tax law does not contain a provision that covers the deductibility of start-up expenses. However, as per Iraqi GAAP, such cost will be capitalised and amortised once the operation is started.

Interest expenses

Iraqi tax law does not contain a provision that covers the deductibility of interest expenses.

Bad debt

Bad debt is deductible if it was included in earlier income and there is proof of the unsuccessful steps to collect it.

Charitable contributions

Charitable contributions to the Government and Socialist Sector departments and to scientific, cultural, educational, charitable, and spiritual organisations, which are legally recognised (provided that the Minister of Finance has issued a list containing the names of these organisations), are deductible.

Bribes and illegal payments

Bribes and illegal payments are not allowed or deductible.

Fines and penalties

Broadly speaking, fines and penalties are not deductible items.

Taxes

Broadly speaking, taxes are not deductible items.

Net operating losses

Under the tax law, losses of a taxpayer from some sources of income arising in Iraq, substantiated by legally accepted documents, are generally deducted from profits arising from other sources.

Losses that can be settled in this manner shall be carried forward and deducted from the income of the taxpayer over five consecutive years, provided that losses may not offset more than half of the taxable income of each of the five years and the loss is from the same source of income from which it has arisen.

Losses cannot be carried back.

Payments to foreign affiliates

Iraqi tax law does not contain a provision that covers the deductibility of payments to foreign affiliates.

Group taxation

Iraqi tax law does not contain any provisions for filing consolidated returns or for relieving losses within a group of companies.

Transfer pricing

The precise meaning of transfer pricing under the effective Iraqi tax system is rather unclear from a tax and legal perspective.

We note that while having no specific transfer pricing legislation, Iraq does have a 'third party' arm's-length provision contained within its tax legislation; whereby, if a non-resident taxpayer is engaged in business with a resident and it appears to the tax authority that due to the connection existing between the resident and the non-resident, and the substantial control of one over the other, that the business relationship is arranged in a manner that leaves no profits to the resident, or the profits left are much less than what is normally earned, the tax shall be assessed on the actual profits of the non-resident and charged to the resident as if the resident is the business agent for the non-resident.

Thin capitalisation

Iraqi tax law does not contain a provision that covers thin capitalisation.

Controlled foreign companies (CFCs)

Iraqi tax law does not contain any provisions for CFCs.

Tax credits and incentives

In accordance with the Iraqi Investment Law, approved industrial projects are given certain custom duty and tax incentives; however, oil and gas is not one of the sectors that is normally granted investment promotion exemptions incentives.

The tax incentives may include corporate tax, individual tax, and others; however, the tax incentives vary from one project to another.

The Board of Investment Promotion has the authority to add any sector or specific project to the list of sectors or projects that benefit from the investment promotion law incentives.

Foreign tax credit

Income tax paid to a foreign country on income earned in that country may be credited against tax paid to Iraq. The amount of the credit may not exceed the amount of tax assessed in Iraq.

Withholding taxes

Under the tax law, the amount due from any residing taxpayers to a non-resident, whether the payment is made in cash or credited to the account, is subject to withholding tax (WHT) at the rate of 15% if such amounts are related to interest on debentures, mortgages, loans, deposits and advances, as well as annual allowances, pension salaries, or other yearly payments. Dividends are not subject to WHT since dividends paid out of profits that have been subject to tax are not taxed again in the hands of the shareholder.

Additionally, industries/activities (non-upstream) contracted with oil and gas companies are subject to WHT on all payments at a rate of 3.3% or 7%.

Tax administration

Taxable period

The taxable year in Iraq is the calendar year.

Tax returns

The statutory time line for filing tax returns is before the first day of June of the year of assessment. If the self-assessment of tax is not accepted by the tax authorities, tax is assessed on the income of the taxpayer based on the information available to the tax authorities.

Failure to file a tax return may lead to an estimate of income and assessment of tax by the tax authorities; however, such an assessment does not relieve the taxpayer from responsibility for non-submission of the return within the statutory timeline stipulated by law.

Payment of taxes

Payment of the tax liability has to occur within 21 days from the assessment date by the tax authority. There is no requirement of quarterly payments during the taxable year.

Tax audit process

Tax inspection is mandatory in Iraq, as the tax authority will scrutinise the financial statements of the taxpayer to determine the tax liability and, accordingly, issue a tax clearance.

Statute of limitations

The statute of limitations is five years. However, the tax authority has the right to go back beyond five years in certain instances.

Topics of focus for tax authority

Obtaining a tax clearance from a tax audit/inspection is becoming increasingly important for importation and government bidding purposes, as well as for other areas that affect the continuation of operations.

Iraqi GAAP

The Iraqi tax law requires all taxpayers to maintain books and records in accordance with Iraq's local unified accounting system (Iraqi GAAP).

These books shall constitute tax books/accounts. This accounting treatment will determine when income is accrued and costs are incurred for computing taxable profits.

Ireland

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Significant developments

Stamp duty

The 2017 Finance Act provided for the stamp duty rate on transfers of non-residential property, including commercial/industrial/farming land and buildings, but also business assets, such as goodwill, debtors, and contracts, to increase from 2% to 6%. The new higher rate only applies to contracts entered into on or after 11 October 2017. To avail of the old 2% rate for transfers of commercial/industrial/farming land and buildings, contracts entered into before 11 October 2017 must have been completed before 1 January 2018.

The 2017 Finance Act introduced changes to associated companies relief. Where a transferor is liquidated, the transfer will not be treated as being in connection with an arrangement for the two companies to cease association, subject to certain conditions.

Intellectual property (IP) regime

Tax amortisation/capital allowances on capital expenditure incurred on qualifying IP on or after 11 October 2017 are available for offset against income generated from exploiting the qualifying IP assets, up to a maximum deduction of 80% of the relevant IP profits of a company in a year. In the case of a company carrying on an IP trade, the remaining 20% is taxable at the 12.5% corporation tax rate.

However, any IP amortisation that is not claimed in a year (i.e. an excess amortisation charge over the 80% qualifying profits in a year) can be carried forward for offset against the relevant trading IP profits of a company in future years.

Sugar tax

The Finance Act 2017 provided for the introduction of a tax on sugar-sweetened drinks. A tax rate of 20 cent per litre applies where the sugar content is five or more grams of sugar per 100ml and 30 cent per litre for drinks with eight or more grams of sugar per 100ml. The tax is effective from 1 April 2018.

Multilateral Instrument

The Finance Act 2017 provided the first step towards Ireland's ratification of the Multilateral Instrument. It is envisaged that Ireland will ratify the instrument in full later this year in order for the instrument to take effect from 1 January 2019.

Taxes on corporate income

Corporation tax is chargeable as follows on income and capital gains:

Ireland

Standard rate on income ('trading rate')	Higher rate on income ('passive rate')	Capital gains rate
12.5%	25%	33%

Resident companies are taxable in Ireland on their worldwide profits (including gains). Non-resident companies are subject to Irish corporation tax only on the trading profits of an Irish branch or agency and to Irish income tax (generally by way of withholding) on certain Irish-source income.

Non-trading (passive) income includes dividends from companies resident outside Ireland (with some exceptions), interest, rents, and royalties. Legislation provides that certain dividend income (e.g. income from foreign trades) is taxed at 12.5% (*see the Income determination section*). The higher rate (i.e. 25%) also applies to income from a business carried on wholly outside Ireland and to income from land dealing, mining, and petroleum extraction operations.

An additional 'profit resource rent' tax applies to certain petroleum activities. Depending on the profit yield of a site, the tax rate applicable can range from 25% to 40%.

Close companies (*see the Income determination section*) may be subject to additional corporate taxes on undistributed investment income (including Irish dividends) and on undistributed income from professional services. Examples of professional services include professions such as solicitor, accountant, doctor, and engineer.

Local income taxes

Ireland does not levy local or regional taxes on income.

Corporate residence

In an effort to further enhance Ireland's tax regime's transparency, Finance Act 2014 announced changes to Ireland's corporate tax residence rules. Broader corporate tax residence reform was introduced from 1 January 2015 to ensure that Irish incorporated companies can only be considered non-Irish resident under the terms of a double tax treaty (DTT). These provisions are effective from 1 January 2015 for newly incorporated companies. In order to give certainty to companies with existing Irish operations (i.e. incorporated prior to 1 January 2015), the changes include a transition period to the end of 2020. While current Irish companies should not need to take immediate action, in the transitional period to 31 December 2020, all groups with Irish operations need to carefully monitor the corporate tax residence position of Irish incorporated, non-resident companies that do not satisfy the sole exception contained within the Finance Act 2014 provisions. This includes, for example, considering the impact of any proposed merger and acquisition (M&A) transactions involving both change in ownership and business changes/integration measures.

For companies incorporated before 1 January 2015, a company incorporated in Ireland or that has its place of central management and control in Ireland will be regarded as resident in Ireland for the purposes of corporation tax and capital gains tax. However, the link between incorporation and residency does not apply if (i) an Irish incorporated company is considered non-Irish tax resident under the terms of a DTT ('treaty exemption') or (ii) where the incorporated company or a related company carries on a trade in Ireland and either the company is ultimately controlled by a tax resident of a European Union (EU) member state or a country with which Ireland has a DTT, or the company or related company are quoted companies ('trading exemption'). Where the conditions of the trading exemption are met, the company's location of tax residence is determined by the jurisdiction where the company has its place of central management and control. However, the trading exemption does not apply if an Irish incorporated company's place of management and control is in a jurisdiction that only applies an incorporation test for determining residency (and the company would thus not be regarded as tax-resident in any jurisdiction).

Permanent establishment (PE)

Non-resident companies are subject to Irish corporation tax only on the trading profits attributable to an Irish branch or agency, plus Irish income tax (generally by way of withholding, though this is not the case with Irish-source rental profits) on certain Irish-source income.

Subject to the terms of the relevant DTT, a non-resident company will have a PE in Ireland if:

- it has a fixed place of business in Ireland through which the business of the company is wholly or partly carried on, or
- an agent acting on behalf of the company has and habitually exercises authority to do business on behalf of the company in Ireland.

A fixed place of business includes (but is not limited to) a place of management; a branch; an office; a factory; a workshop; an installation or structure for the exploration of natural resources; a mine, oil or gas well, quarry, or other place of extraction of natural resources; or a building, construction, or installation project. A company is not, however, regarded as having an Irish PE if the activities for which the fixed place of business is maintained or which the agent carries on are only of a preparatory or auxiliary nature (also defined in the statute).

Other taxes

Value-added tax (VAT)

VAT is charged at 23% on the supply of most goods and services in the course or furtherance of business.

There are currently two main reduced rates of VAT. A 13.5% rate applies, *inter alia*, to most building services, labour intensive services, domestic fuel, and power. In addition, a reduced 9% VAT rate is applicable to certain supplies in the tourism sector. These include restaurant and catering services, hotel and holiday accommodation, and various entertainment services (e.g. admissions to cinemas, theatres, museums, sporting facilities).

Exports, most basic food items, oral medicines, books, and children's clothing and footwear are zero-rated.

Some supplies are exempt from VAT. The main exempt categories are most banking services, insurance services, medical services, passenger transport, education and training, and letting of immovable goods (although an 'option to tax' may be possible in certain circumstances).

Zero rating is preferable to exemption because most VAT costs incurred in making a zero-rated supply can be recovered, while those incurred in making an exempt supply generally cannot.

If a business is fully engaged in a VATable business (irrespective of the rate), it will be entitled to reclaim VAT incurred, subject to the normal rules of deductibility. Businesses engaged in exempt supplies will not be in a position to reclaim VAT; consequently, it will be a real cost. Any business engaged in both VATable and exempt supplies will be required to apportion the VAT incurred appropriately.

Customs duties

Goods imported into Ireland from countries outside the European Union are liable to customs duty at the appropriate rates specified in the EU's Combined Nomenclature (CN) Tariff. These rates vary from 0% to 14% for industrial goods, with much higher rates applicable to agricultural products. Imports may qualify for a partial or full reduction in rates in specific circumstances.

The three main elements ('customs duty drivers') that determine the duty liability arising on goods imported into the European Union from a non-EU country are (i) the product's commodity code (Tariff Classification), (ii) its customs valuation, and (iii) its origin. Each of these elements will need to be considered when determining the customs duty cost at import.

There are special customs procedures that allow for the import of goods into the European Union from non-EU countries with full or partial relief from customs duty or under a suspension of customs duty. Examples of these are Customs Warehousing, Inward Processing Relief, Processing under Customs Controls, and Outward Processing Relief. There are different conditions attached to each customs special procedure, and an analysis of the trade footprint of the importer of the goods will need to be considered in order to determine whether or not they may avail of one of these reliefs. These procedures are important and are in place with the intention of stimulating economic activity within the European Union.

It should be noted that no customs duties arise on goods 'imported' from other EU member states, provided they originate in the European Union or have been customs cleared in another member state of the European Union.

Excise duties

Excise duties are charged on mineral oils (including petrol and diesel), alcohol products (including spirits, beer, wine, cider, and perry), and tobacco products where they are consumed in Ireland. Reduced rates of excise duty may apply when setting up a microbrewery in Ireland (depending on production quantities).

In addition, a diesel rebate scheme applies in Ireland. It provides hauliers or coach/bus owners with an opportunity to claim a partial refund of excise duty paid on fuel used in specifically designated vehicles for the purposes of transporting goods or passengers.

Excise duties are not charged on the export or sale of excisable goods to other EU countries, but special control arrangements apply to the intra-EU movement of such goods.

In addition, Ireland applies excise duties to electricity, betting, and the first registration of vehicles in the state (the latter is known as VRT). The VRT regime for motor vehicles is based on a CO2 emissions rating system and charged on the 'open market selling price' of the vehicle. Specific reductions in VRT apply to electric and hybrid vehicles, subject to certain conditions being met. In addition, there are reliefs available for cars imported temporarily by non-residents, or imported on transfer of residence to Ireland (such VRT reliefs require prior approval from the Customs authorities).

Stamp duty

Stamp duty is a tax on instruments. It is payable on transfers of land and on other assets where legal title cannot be passed by delivery. It is chargeable on instruments of transfer executed in Ireland and on instruments, wherever executed, that relate to Irish property or relate to matters to be done in Ireland. Stamp duty on the transfer of assets between associated companies may be fully relieved from stamp duty, provided the following key conditions are met:

- The companies have a 90% relationship (that is, one company is, directly or indirectly, the beneficial owner of at least 90% of the ordinary share capital of the other and is entitled to at least 90% of the profits available for distribution and at least 90% of the assets in the case of a winding-up of the other company, or a third company has these rights, directly or indirectly, in respect of both companies).
- This relationship is maintained for a period of at least two years after the transfer of the assets (to avoid the relief being clawed back).

There is an exemption for transfers of IP, and the categories of IP qualifying for this exemption are the exact same as those for which IP capital allowances are available (*see Intellectual property [IP] regime in the Tax credits and incentives section*).

Stamp duty is payable based on the higher of the consideration paid for the transfer or the market value of the assets transferring. Rates of 1% to 2% apply for transfers of residential property, 6% for transfers of non-residential property (commercial/industrial land and buildings, but also business assets, such as goodwill, debtors, contracts, etc.), and 1% on transfers of shares.

The 2017 Finance Act introduced changes to associated companies relief (Section 79, Stamp Duties Consolidations Act, 1999). Where a transferor is liquidated, the transfer won't be treated as being in connection with an arrangement for the two companies to cease association. Furthermore, the transferor and transferee won't be regarded as ceasing to be associated for the purposes of the clawback provision. This only applies provided:

- the transferred property remains with the transferee for at least two years
- there is no change to the beneficial ownership of the transferee for at least two years
- the liquidation is for *bona fide* commercial reasons, and
- it is not part of a scheme or arrangement for the avoidance of tax.

Capital duty on share capital

Ireland does not levy capital duty on share capital of companies.

Capital taxes

Ireland does not levy tax on the net worth of companies.

Payroll taxes

The 'pay-as-you-earn' system (PAYE system) places an obligation on employers to make deductions at source of income tax, universal social charge (USC), and pay-related social insurance (PRSI) from payments made to employees and an obligation to remit such deductions to the Irish tax authorities.

Pay-related social insurance (PRSI)

Employed persons are compulsorily insured under a state-administered scheme of PRSI. Contributions are made by both the employer and the employee. The employer is responsible for making PRSI contributions up to a rate of 10.75%, and these are an allowable deduction for corporation tax purposes.

Levies on insurance policies

A levy of 3% of gross premiums received by insurers applies in respect of non-life insurance policies relating to risks located in Ireland. This levy is payable four times *per annum*, within 25 days of the end of each quarter (i.e. within 25 days from quarters ending 31 March, 30 June, 30 September, and 31 December).

A levy of 1% of gross premiums received by insurers applies in relation to certain classes of life insurance policies relating to risks located in Ireland. This levy is payable four times *per annum*, within 25 days of the end of each quarter (i.e. within 25 days from quarters ending 31 March, 30 June, 30 September, and 31 December).

An additional contribution of 2% to the Insurance Compensation Fund applies to premiums received in relation to non-life insurance policies. Similar to the 3% non-life insurance levy, the contribution applies where premiums are received in respect of risks located in Ireland. The contribution is also payable four times *per annum* in conjunction with the non-life insurance levy on premiums.

Reinsurance business is excluded from the levy.

There is also a stamp duty liability of 1 euro (EUR) on each non-life insurance policy where the risk is located in Ireland.

Certain voluntary health insurance policies are subject to fixed levies, up to EUR 350 per policy.

Environmental taxes

In Ireland, a levy of 22 cents per bag is imposed upon consumers provided with a plastic bag when purchasing goods in supermarkets and other retail outlets. Under the applicable legislation, retailers are obligated to collect 22 cents in respect of every plastic bag or bag containing plastic, regardless of size, unless specifically exempted, that is provided to customers and remit all plastic bag levies collected to Irish Revenue. As a result of the levy, most non-supermarket retailers provide paper carrier bags, and many retailers provide 'bags for life', which are made from non-plastic material and, therefore, not subject to the environmental levy.

Carbon tax

A carbon tax is levied on mineral oils (e.g. auto fuels, kerosene) that are supplied in Ireland. The rates of carbon tax on oil and gas broadly equate to EUR 20 per tonne of CO_2 emitted. Relief applies where mineral oils are supplied to an Emissions Trading Scheme (ETS) installation or for electricity generation. Pure biofuels are exempt from carbon tax. There is full relief for the biofuel component of the fuel. Where biofuel has been mixed or blended with any other mineral oil, the relief from carbon taxes shall apply to the biofuel content of the mixture or blend, regardless of the percentage.

A carbon tax is also levied on natural gas and solid fuel where supplied for combustion. Again, reliefs apply where these fuels are supplied to ETS installations or used in electricity generation, chemical reduction, or in the electrolytical or metallurgical processes.

Sugar tax

The Finance Act 2017 provided for the introduction of a tax on sugar-sweetened drinks. A tax rate of 20 cent per litre applies where the sugar content is five or more grams of sugar per 100ml and 30 cent per litre for drinks with eight or more grams of sugar per 100ml. The tax is effective from 1 April 2018.

Local taxes

Local taxes, known as 'rates', are not based on income but rather are levied on the occupiers of business property by reference to a deemed rental value of the property concerned. The level of rates levied can depend on the region in which the property is located. Rates are an allowable deduction for corporation tax purposes.

Local authorities are also empowered to levy charges on all occupiers for specific services (e.g. water supply). These charges are also deductible for corporation tax purposes.

Branch income

Irish branches of foreign companies are liable to corporation tax at the rates that apply to Irish resident companies. No tax is withheld on repatriation of branch profits to the head office.

Income determination

Irish trading profits are computed in accordance with Irish Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS), subject to any adjustment required by law. Prior-year adjustments may arise on the first-time adoption of IFRS, which may result in double counting of income or expenses or of income falling out of the charge to tax. Generally speaking, in order to avoid such an outcome, transitional adjustments exist whereby amounts of income or expenses that could be double-counted or that would fall out of the charge to tax are identified and the amounts concerned are taxed or deducted as appropriate over a five-year period.

Inventory valuation

Each item of inventory is valued for tax purposes at cost or market value, whichever is lower, and this will normally accord with the accounting treatment. The method used in arriving at cost or market value of inventory generally must be consistent and must not be in conflict with tax law. The first in first out (FIFO) method is an acceptable method of calculation for tax purposes. The base-stock method has been held to be an inappropriate method for tax purposes, as has the last in first out (LIFO) method.

Capital gains

Companies are subject to capital gains tax in respect of gains arising on the disposal of capital assets. The taxable gain is arrived at by deducting from the sales proceeds the cost incurred on acquiring the asset (as indexed to reflect inflation only up to 31 December 2002). The resulting gain is taxable at 33%. In cases of disposals of interests in offshore funds and foreign life assurance policies, indexation relief does not apply; while a tax rate of 33% applies to non-corporate shareholders in respect of funds and policies located in EU/European Economic Area (EEA)/DTT countries, and a rate of 33% or 40% applies to funds or policies located in all other jurisdictions. A reduced rate of 25% exit tax applies to Irish corporate shareholders investing in Irish funds. Special rules apply to gains (and losses) from the disposal of development land in Ireland.

Companies that are tax resident in Ireland (i.e. are managed and controlled in Ireland or incorporated in Ireland and not qualifying for exclusion from Irish residence by virtue of being resident in a DTT territory) are taxable on worldwide gains. Non-resident companies are subject to capital gains tax on capital gains arising on the disposal of Irish land, buildings, mineral rights, and exploration rights on the Irish continental shelf, together with shares in unquoted (unlisted) companies, whose value substantially (greater than 50%) is derived from these assets. Non-resident companies are also subject to capital gains tax from the realisation of assets used for the purposes of a business carried on in Ireland.

Losses arising on the disposal of capital assets may be offset against capital gains in the accounting period or carried forward for offset against future capital gains. No carryback of capital losses is permitted. There is no facility to offset capital losses against business income or to surrender capital losses within a tax group.

Irish capital gains tax legislation facilitates corporate reorganisations on a tax-free basis in situations where there is a share-for-share exchange. Assets can be transferred within certain company groups without capital gains tax applying (*see the Group taxation section for further information*).

Participation exemption from capital gains

A participation exemption is available to Irish resident companies on the disposal of a shareholding interest if:

- a minimum of 5% of the shares (including the right to profits and assets on winding up) is directly or indirectly held for a continuous 12-month period
- the shares have been held for a period of 12 months within which the date of the disposal falls or for a period of 12 months ending in the 24 months preceding the date of disposal
- the company whose shares are sold is resident in an EU member state (including Ireland) or in a country with which Ireland has a DTT at the time of the disposal (this includes tax treaties that have been signed but not yet ratified), and
- a trading condition is met at the time of the disposal whereby either: (i) the business of the company whose shares are disposed of consists wholly or mainly of the carrying on of one or more trades or (ii) taken together, the businesses of the Irish holding company and all companies in which it has a direct or indirect 5% or more ownership interest consist wholly or mainly of the carrying on of one or more trades.

If the Irish holding company is unable to meet the minimum holding requirement but is a member of a group (that is, a parent company and its 51% worldwide subsidiaries), the gain arising on the disposal should still be exempt if the holding requirement can be met by including holdings of other members of the group. Thus, the Irish company may be exempt from capital gains tax on a disposal of shares even if it does not directly hold a significant shareholding. The exemption also applies to a disposal of assets related to shares, such as options and convertible debt. However, it does not apply to a sale of either shares or related assets that derive the greater part of their value (more than 50%) from Irish real property, minerals, mining rights, and exploration and exploitation rights in a designated area. Shares deriving their value from non-Irish real property, minerals, and mining rights qualify for exemption if the other conditions are met.

Capital losses arising on the disposal of a shareholding where a gain on disposal would be exempt under the participation exemption are not deductible.

Capital gains tax entrepreneur relief

Capital gains tax entrepreneur relief allows for a reduction in the capital gains rate to 10% on the disposal of chargeable business assets from 1 January 2017, up to a lifetime limit of EUR 1 million. This allows entrepreneurs to free up more capital for reinvestment and builds on Ireland's focus to drive investment in new businesses.

Dividend income

Dividends from Irish resident companies are exempt from corporation tax. Dividends paid out of the trading profits of a company resident in an EU member state or a country with which Ireland has a DTT (or a country with which Ireland has ratified the Convention on Mutual Assistance in Tax Matters) may be taxed at the 12.5% rate, provided a claim is made. The 12.5% corporation tax rate applies to the same type of dividends received from companies resident in non-treaty countries, provided the company paying the dividend is a listed company or is part of a 75% listed group the principal class of the shares of which are substantially and regularly traded on the Irish Stock Exchange, a recognised Stock Exchange in an EU member state or a country with which Ireland has a DTT, or on such other Stock Exchange as is approved by the Minister for Finance for the purposes of this relief from double taxation.

As outlined above, the 12.5% corporation tax rate is also applicable to foreign dividends paid out of trading profits of a company resident in a country that has ratified the Convention on Mutual Assistance in Tax Matters.

Foreign dividends received by an Irish company where it holds 5% or less of the share capital and voting rights in that foreign company are exempt from corporation tax where the Irish company would otherwise be taxed on this dividend income as trading income.

Dividends from Irish resident companies are not liable to further tax, other than a surcharge on close company recipients where the dividend is not redistributed. Broadly speaking, a close company is a company that is under the control of five or fewer 'participators'. Participators can include individual shareholders, corporate shareholders, loan creditors, any person with a right to receive distributions from the company, etc. Where not less than 35% of the shares of a company (including the voting power) are listed, a company will not be regarded as a close company.

A close company surcharge of 20% is payable on certain non-trading income (e.g. rental income, certain dividend income, interest income) if it is not distributed to shareholders within 18 months of the accounting period in which the income was earned. A close company making a distribution and the close company receiving a distribution have the option, jointly, to elect to have the dividend disregarded for surcharge purposes. This can give close companies the option of moving 'trading income' up to a holding company without incurring a surcharge. Generally speaking, close companies avoid the surcharge through the payment of dividends within the prescribed period. Capital gains accruing to a non-resident company that would be close if it were resident can be attributed to Irish resident participators in certain instances.

Stock dividends

Stock dividends taken in lieu of cash are taxed on the shareholder based on an amount equivalent to the amount that would have been received if the option to take stock dividends had not been exercised. If the recipient is an Irish resident company and it receives the stock dividend from a quoted (listed) Irish company, then there will be no tax. For a quoted (listed) company paying the stock dividend, dividend withholding tax (WHT) with the appropriate exemptions and exclusions applies. Other stock dividends (bonus issues) are generally non-taxable.

Interest income

Interest income earned by Irish companies is generally taxable at the rate of tax for passive income of 25% (interest may be regarded as a trading receipt for certain financial trader companies). It is possible to offset current-year trading losses against passive interest income arising in the same year on a 'value basis'. It is not possible to offset prior-year trading losses against current-year interest income unless that interest constitutes a trading receipt of the particular company.

Royalty income

Royalty income earned by Irish companies is generally taxable at the rate of tax for passive income of 25%. However, where an Irish company is considered to be carrying on an IP trade, that company's royalty and other similar income may be subjected to Irish tax at the corporation tax trading rate of 12.5%. Similarly to passive interest income, it is possible to offset current-year trading losses against passive royalty income arising in the same year on a 'value basis'. It is not possible to offset prior-year trading losses against current-year royalty income unless that royalty constitutes a trading receipt of the particular company.

Emissions allowances

Irish legislation defines the tax treatment of emission allowances under the EU Emissions Trading Scheme. The legislation distinguishes between allowances acquired free of charge from the Environment Protection Agency (EPA) under the EU Scheme and those that are purchased.

Emission allowances acquired free of charge from the EPA may not be subjected to taxation. Allowances that are purchased may be treated as trading assets, subject to corporation tax treatment.

Foreign income

Resident companies are liable to Irish tax on worldwide income. Accordingly, in the case of an Irish resident company, foreign income and capital gains are, broadly speaking, subject to corporation tax in full. This applies to income of a foreign branch of an Irish company as well as to dividend income arising abroad.

In general, income of foreign subsidiaries of Irish companies is not taxed until remitted to Ireland, although there are special rules that seek to tax certain undistributed capital gains of non-resident close companies.

Foreign taxes borne by an Irish resident company (or Irish branch of an EEA resident company), whether imposed directly or by way of withholding, may be creditable in Ireland (*see Foreign tax credit in the Tax credits and incentives section*).

Deductions

In general, expenses incurred wholly and exclusively for the purposes of the trade are tax-deductible.

General accruals and provisions are not tax-deductible.

Capital items expensed to a company's profit and loss account are also not tax-deductible. However, depending on the nature of the capital item, they may qualify for tax depreciation (*see below*).

Depreciation

Book depreciation is not deductible for tax purposes (except in the case of certain IP assets). Instead, tax depreciation (known as capital allowances) is permitted on a straight-line basis in respect of expenditure incurred on assets that have been put into use by the company. The following rates are applicable:

Asset type	Tax depreciation rate (%)
Plant and machinery	12.5
Industrial buildings used for manufacturing	4.0
Motor vehicles	12.5
IP assets	Book depreciation or 7.0

The allowances are calculated on the cost after deduction of grants, except for plant and machinery used in the course of the manufacture of processed food for human consumption. In this case, the allowances are calculated on the gross cost. Allowances on cars are restricted to a capital cost of EUR 24,000 and may be restricted further (to 50% or zero), depending on the level of carbon emissions of the vehicle.

Accelerated capital allowances

A 100% first-year capital allowance is available in respect of expenditures incurred on certain approved energy-efficient equipment up to 31 December 2020.

Leasing

Ireland operates an eight-year tax depreciation life on most assets. A beneficial tax treatment applies to finance leases and operating leases of certain assets. For short life assets (i.e. those with a life of less than eight years), Ireland allows such lessors to follow the accounting treatment of the transaction that provides a faster write-off of the capital cost of an asset rather than relying on tax depreciation over eight years. This effectively allows the lessors to write-off their capital for tax purposes in line with the economic recovery on the asset.

Goodwill

The amortisation of goodwill is generally not allowable as a deduction. However, a tax deduction may be available for capital expenditure on the acquisition of certain goodwill (*see Intellectual property [IP] regime in the Tax credits and incentives section*).

Start-up expenses

A deduction may be allowed in respect of pre-trading expenses that are incurred for the purposes of a trade and within three years of the commencement of the trade. Such expenses may be offset against the income of that same trade.

Interest expenses

A deduction for interest is allowed only to the extent that borrowings are used for the purpose of a trade or acquisition of certain non-trading assets.

Research and development (R&D) expenses

Expenditure on scientific R&D and payments for the acquisition of know-how in general are allowable deductions, as are the costs of obtaining or extending patents and obtaining and renewing trademarks.

Bad debts

A deduction is available for bad debts written off in the accounts of a company as irrecoverable. Specific bad debt provisions may also be deductible once they satisfy Irish GAAP or IFRS accounting standards. The creation of a general bad debt provision is not a deductible expense.

Charitable contributions

Companies are entitled to a deduction, as a trading expense, for qualifying donations to approved charities, educational institutions, schools, churches, research foundations, sports bodies, and other approved organisations that satisfy certain conditions. To qualify for a tax deduction, the donation(s) to an organisation in a 12-month accounting period must amount to at least EUR 250.

Meals and entertainment

Costs incurred for third-party entertainment are not tax-deductible. Entertainment includes the provision of accommodation, food, drink, and any other form of hospitality, including the provision of gifts. Expenditure on *bona fide* staff entertainment is allowable as a deduction, provided its provision is not incidental to the provision of entertainment to third parties. Certain promotional costs are tax-deductible if they are incurred wholly and exclusively for the purposes of the trade.

Pension expenses

Contributions to certain employee pension schemes and the cost of setting up such schemes are deductible. Pension contributions are allowable as a deduction for employers in the year in which they are paid.

Fines and penalties

Fines and penalties imposed for breaking the law, civil penalties, interest, and late filing surcharges imposed by the Revenue Commissioners are generally not deductible.

Taxes

Taxes that are deductible in computing profits for corporation tax include VAT not recovered, the employer's share of PRSI contributions, and local taxes (i.e. rates levied on commercial property and local authority charges).

Net operating losses

Losses are computed for tax purposes in the same way as business profits. Trading losses can be offset against other income of any nature, either in the current or preceding accounting period (of equal length). The amount of losses required to shelter the income is dependent on the tax rate that would have been applied to the income in the absence of the loss relief. Any excess losses can be carried forward indefinitely against future trading income. Certain changes in ownership may prevent the carryforward of losses to future periods. Terminal losses that arise within 12 months of the date a company ceases to trade may be carried back three years.

Payments to foreign affiliates

Generally, deductions can be claimed for royalties, management service charges, and most interest charges paid to foreign affiliates, provided the amounts do not exceed what would be paid to unrelated entities. Depending on the circumstances, certain elections may be required. Ireland does not have any thin capitalisation rules.

Group taxation

The concept of 'fiscal unity' or consolidated group tax does not exist in Ireland. However, trading losses as computed for tax purposes may be offset on a current-period basis against taxable profits of another group company. As with loss relief in a single company, the amount of losses required to shelter the income is dependent on the tax rate that would have been applied to the income in the absence of the loss relief.

A group consists of a parent company and all of its 75% subsidiaries, with all group members being tax resident in Ireland, in another EU member state, in an EEA state with which Ireland has a DTT, or in another country with which Ireland has a DTT. It is also possible to trace through companies quoted on certain recognised stock exchanges (or 75% subsidiaries of companies so quoted). Non-Irish members may only surrender losses from activities that would, if profitable, be subject to Irish tax.

Both the claimant company and the surrendering company must be within the charge to Irish corporation tax. To form a group for corporation tax purposes, both the claimant company and the surrendering company must be resident in an EU country or an EEA country with which Ireland has a DTT ('EEA treaty country'). In addition, one company must be a 75% subsidiary of the other company, or both companies must be 75% subsidiaries of a third company. The 75% group relationship can be traced through companies resident in a 'relevant territory' being the EU, an EEA treaty country, or another country with whom Ireland has a DTT. In addition, in determining whether one company is a 75% subsidiary of another company for the purpose of the group relief provisions, the other company must either be resident in a 'relevant territory' or quoted on a recognised stock exchange.

Capital losses cannot be surrendered within a group.

Relief from capital gains tax is available on intra-group transfers of capital assets. Where a capital asset is transferred from a resident company to another resident company in a 75% group, no capital gains tax charge arises. A group, for capital gains tax purposes, consists of a principal company and its 75% subsidiary companies. A 75% subsidiary is defined by reference to the beneficial ownership of ordinary share capital, owned either directly or indirectly. A capital gains tax group can include companies resident in an EU member state or an EEA DTT country for the purpose of analysing the beneficial ownership of a company.

It also is possible for an Irish resident company and an Irish branch of an EEA company in the same group to transfer capital assets without crystallising a capital gains charge, provided the asset transferred remains within the scope of the charge to Irish capital gains tax.

Subsequent to an intra-group transfer, a charge to capital gains tax will arise when either:

- the asset is sold outside the group, in which case the tax is calculated by reference to the original cost and acquisition date of the asset when first acquired within the group, or
- a company owns an asset that was transferred by a group company and subsequently leaves the group within a ten-year period of the intra-group transfer. The gain on this intra-group transfer crystallises and becomes payable at this point.

Cash pooling and treasury activities

Ireland is a popular location for cash pooling and treasury activities, with a large number of multinationals centralising intra-group treasury activities to avail of the low corporation tax rate of 12.5%. To further enhance the attractiveness of Ireland as a treasury location, Irish tax legislation contains specific provisions to facilitate cash-pooling activities and ensure favourable tax treatment of 'short' interest for tax purposes. Under a typical cash-pool arrangement, interest payments by the Irish cash-pool leader typically would constitute 'short' interest for tax purposes because of the overnight/short-term nature of these arrangements.

Short interest is generally regarded as interest on a loan/deposit where the term is less than a year. Essentially, the Irish company will be entitled to a tax deduction for the interest payable to any group company resident outside the European Union in a non-treaty country, provided the recipient country taxes foreign interest income at a rate equal to or greater than the Irish corporation tax rate of 12.5%. If the recipient country taxes foreign interest at a rate of less than 12.5%, then relief will be given in Ireland at that effective tax rate. If the recipient country exempts foreign interest, then no interest relief will be available in Ireland. It should be noted that this will affect not only cash-pooling operations but all forms of short-term lending (i.e. less than one year). A tax deduction for interest payable to a group company resident in the European Union or in a country with which Ireland has a DTT is also available, regardless of the rate at which the foreign country subjects that interest to tax.

Transfer pricing

Transfer pricing rules have been in place in Ireland since 2011. The legislation endorses the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and adopts the arm's-length principle. The regime applies to domestic as well as international related-party arrangements.

The transfer pricing regulations only apply to related-party dealings entered into by a taxpayer engaged in a trade that is within the charge to tax under Case I or Case II of Schedule D (typically income and profits subject to tax at the 12.5% standard rate).

Therefore, income that is characterised as 'passive income' subject to tax at a rate of 25% falls outside the scope of the transfer pricing legislation. Passive income for the purposes of these rules may include interest, royalties, dividends, and rents from property where the income arising is not derived from an active trade. For example, interest income arising to a bank will clearly constitute income from an active trade. Consequently, any interest arising to a bank from a related-party arrangement will fall within the scope of the transfer pricing rules.

The rules confer a power on the Irish tax authorities to re-compute the taxable profit or loss of a taxpayer where income has been understated or where expenditure has been overstated as a result of certain non-arm's-length arrangements. The adjustment will be made to the Irish taxable profits to reflect the arrangement had it been entered into by independent parties dealing at arm's length.

The legislation also places an obligation on a taxpayer to provide documentation 'as may reasonably be required' to support the arm's-length nature of the related-party arrangements and that documentation will need to be prepared 'on a timely basis'. Guidance notes issued by the Irish tax authorities on transfer pricing documentation support the legislative basis and indicate that a company is required to have transfer pricing documentation available for inspection if requested by the Irish tax authorities. Notably, the guidance notes state that 'it is best practice that the documentation is prepared at the time the terms of the transaction are agreed'. Additionally, the guidance notes state that in order 'for a company to be in a position to make a correct and complete tax return, appropriate transfer pricing documentation should exist at the time the tax return is filed'. It is worth noting that the taxpayer can maintain documentation in the form 'of its choosing'. Additionally, where documentation exists in another territory that supports the Irish arrangement, this will also be sufficient from an Irish transfer pricing perspective, provided that the documentation is in English. The Irish tax authorities have also confirmed that they will accept documentation that has been prepared in accordance with either the OECD Transfer Pricing Guidelines or the code of conduct adopted by the EU Council under the title 'EU Transfer Pricing Documentation'.

Note that arrangements entered into between related parties prior to 1 July 2010 are 'grandfathered' and thereby excluded from the scope of the transfer pricing rules. There is also an exemption from the rules for small and medium-sized enterprises. Broadly speaking, small and medium-sized enterprises include enterprises employing less than 250 people and that have either a turnover of less than EUR 50 million or assets of less than EUR 43 million.

In 2015, a dedicated transfer pricing audit team was formed within the Large Cases Division of the Irish tax authorities and has begun to initiate specific transfer pricing audits to monitor compliance with Irish transfer pricing rules.

Advance Pricing Agreement (APA) program

Ireland has a bilateral APA program that applies to transfer pricing issues (including the attribution of profits to a PE). The program does not cover cases involving the determination of the existence of a PE.

APAs will be granted for a fixed period of time, typically between three and five years, and a roll-back provision can be invoked in certain cases.

Country-by-Country (CbC) reporting

CbC reporting is applicable for Irish-parented multinational enterprises (Irish MNEs). Irish MNEs with consolidated annualised group revenue of EUR 750 million or more are required to comply with the requirements. Irish MNEs must file a CbC report annually to include specific financial data covering income, taxes, and other key measures of economic activity for each territory in which they operate.

In certain circumstances, Irish subsidiaries of foreign headquartered MNEs may also be required to file an 'equivalent' CbC report in Ireland.

Thin capitalisation

Ireland does not have any thin capitalisation rules.

Controlled foreign companies (CFCs)

Ireland does not have CFC rules.

Tax credits and incentives

The main tax incentives in Ireland are:

- 12.5% corporation tax rate on active business income.
- A 25% credit on qualifying R&D expenditures; total effective tax deduction of 37.5%.
- Ability to exploit IP at favourable tax rates.
- Accelerated tax depreciation allowances for approved energy efficient equipment.
- Ability to carry out investment management activities for non-Irish investment funds without creating a taxable presence in Ireland for such funds.
- An effective legal, regulatory, and tax framework to allow for the efficient redomiciliation of investment funds from traditional offshore centres to Ireland.

R&D credit

A tax credit of 25% applies to the full amount of R&D expenditure incurred by a company. This credit is in addition to the normal 12.5% revenue deduction available for the R&D expenditure thereby resulting in an effective corporation tax benefit of 37.5%.

A separate R&D tax credit is available in respect of expenditure incurred on the construction or refurbishment of a qualifying R&D building. In order to qualify, 35% of the building must be used for qualifying R&D activities, and this threshold is measured over a four-year period. This is of particular assistance where R&D is carried on in a manufacturing environment. The credit available is equal to 25% of the expenditure incurred on the construction or refurbishment of a qualifying building, and the qualifying amount is restricted according to the R&D use. A full volume basis applies to the R&D tax credit for expenditure incurred on qualifying R&D buildings.

The R&D tax credit is available for offset against the current year corporation tax liability of the company in the first instance. Any excess can be carried back for offset against the prior-year corporation tax liability to generate a tax refund, and any further excess can be monetised over a three-year cycle. The amount that can be monetised is limited to the greater of the corporation tax payable by the company in the preceding ten years (subject to an adjustment dependent upon previous claims) or the payroll tax liabilities of the company for both the period in which the R&D expenditure is incurred and the prior year (subject to an adjustment dependent upon previous claims).

In addition, companies may account for the R&D tax credit through their profit and loss account or income statement in arriving at the pre-tax profit or loss. This immediately impacts the unit cost of R&D, which is the key measurement used by multinational corporations when considering the locations of R&D projects. Companies that are in receipt of an R&D tax credit have the option, in certain instances, to reward key employees through an alternative use of that credit. In effect, the company may surrender a portion of their R&D credit (that could otherwise have been used to reduce corporation tax) to 'key employees' to reduce their effective rate of tax to 23% (the average effective rate of tax for such employees would typically be in excess of 40% in the absence of such R&D tax credit). In order to qualify as a 'key employee', the individual must perform 50% or more of their employment duties on qualifying R&D activities.

The R&D regime caters for pre-trading expenditure incurred on qualifying R&D activities. Where a company incurs R&D expenditure but has not yet commenced to trade, an R&D claim in this regard must be made within 12 months from the end of the accounting period in which the company first commences to trade.

Sub-contracted R&D costs of up to the 15% of qualifying in-house R&D expenditure incurred by a company or EUR 100,000 (whichever is greater) can qualify for the R&D tax credit.

Payments to third level institutions of up to 5% of qualifying in-house R&D expenditure incurred by a company or EUR 100,000 (whichever is greater) can qualify for the R&D tax credit.

It should be noted that expenditure incurred on the acquisition of intangible assets that qualify for capital allowances under the IP regime and expenditure incurred in registering/applying for legal protection for intangible assets that are developed as a result of R&D activities do not qualify for the R&D credit.

Intellectual property (IP) regime

Legislation provides for a tax deduction for capital expenditure incurred by a company, which is carrying on a trade, on the acquisition of qualifying IP assets. The definition of IP assets is widely drafted and includes the acquisition of, or the licence to use, the following:

- Patents and registered designs.
- Trademarks and brand names.
- Know-how (broadly in line with the OECD model tax treaty definition of know-how).
- Domain names, copyrights, service marks, and publishing titles.
- Authorisation to sell medicines, a product of any design, formula, process, or invention (and rights derived from research into same).

- Applications for legal protection (e.g. applications for the grant or registration of brands, trademarks, patents, copyright, etc.).
- Expenditure on computer software acquired for commercial exploitation.
- Customer lists acquired, other than 'directly or indirectly in connection with the transfer of a business as a going concern'.
- Goodwill, to the extent that it relates directly to the assets outlined above.

Capital allowances will be available at the same rate as the depreciation/amortisation charge for financial accounting purposes. Alternatively, the company may elect to claim allowances over a period of 15 years.

A shorter write-off period of eight years has also been retained for acquired software rights under the existing capital allowances regime where the rights are not acquired for commercial exploitation (i.e. were acquired for end use by the company).

Capital allowances on capital expenditure incurred on qualifying IP on or after 11 October 2017 are available for offset against income generated from exploiting qualifying IP assets, up to a maximum deduction of 80% of the relevant IP profits. The remaining 20% is taxable at the 12.5% corporation tax rate on the basis that the company is carrying on a trade.

However, any IP amortisation that is not claimed in a year (i.e. an excess amortisation charge over the 80% qualifying profits in a year) can be carried forward for offset against the relevant trading IP profits of a company in future years.

Knowledge Development Box

The Knowledge Development Box provides a 6.25% rate of corporation tax to apply to certain profits arising from qualifying assets that are the result of qualifying R&D carried out by the company qualifying for the relief. This is the first Knowledge Development Box in the world to be compliant with the new standards of the OECD's 'modified nexus' approach.

Exemption for new start-up companies

A corporation tax holiday applies to certain start-up companies that commence to trade between 2009 and 2018. The relief applies for three years where the total amount of corporation tax payable does not exceed EUR 40,000 in each year. Marginal relief is available where corporation tax payable is between EUR 40,000 and EUR 60,000. The relief available is linked to the amount of employer's PRSI paid by a company in an accounting period as it is intended to provide relief at companies generating employment.

The exemption also allows unused relief arising in the first three years of trading (due to insufficiency of profits) to be carried forward for use in subsequent years.

Section 110 company

Ireland has a favourable tax regime for entities known as 'Section 110' companies. A Section 110 company is an Irish resident special purpose company that holds and/or manages 'qualifying assets' and satisfies a number of conditions. A Section 110 company can provide an onshore investment platform, which should be eligible to access Ireland's DTT network where the Irish company is the beneficial owner of the income flow. The Section 110 regime has been in existence almost 25 years and, with appropriate structuring, can provide for an effective corporation tax rate of close to

0%. The regime is widely used by international banks, asset managers, hedge funds, private equity firms, and investment funds in the context of securitisations, investment platforms, collateralised debt obligations (CDOs), collateralised loan obligations (CLOs), acquisition of distressed loan portfolios, big ticket leasing, and capital markets bond issuances.

Section 110 companies are permitted to invest in financial assets, commodities, and plant and machinery. The term 'financial asset' is widely defined and includes both mainstream financial assets, such as shares, loans, leases, lease portfolios, bonds, debt, and derivatives, as well as assets such as greenhouse gas emissions allowances and carbon offsets.

In addition, the inclusion of plant and machinery as 'qualifying assets' within the Section 110 regime has increased the attractiveness of Ireland as the preferred destination for aircraft financing and leasing activities.

With effect from 6 September 2016, an amendment has been made to Irish tax legislation with the effect of restricting the use of profit participating loans where they are used to finance the business of Section 110 companies related to Irish property transactions. No other category of Section 110 business is impacted by these changes.

Transactions of Section 110 companies unrelated to Irish property transactions are not affected by this amendment.

Broadly, the business of a Section 110 company that is impacted by the amendment, referred to as 'specified property business', is that part of the Section 110 company's activity that involves the holding, managing, or both the holding and managing of so-called 'specified mortgages', being any financial asset deriving its value, or the greater part of its value, from land in the state. This part of the Section 110 company's business is to be treated as a separate business from any other business the company may carry on and, with certain exceptions, no interest above an arm's-length rate will be deductible in computing the taxable profits of that part of the business. The profit so calculated for this part of the business will be taxable at the 25% rate of corporation tax.

Certain exceptions are made so that interest on profit participating loans used in a Section 110 company's specified property business will continue to be fully deductible where the interest is paid to (i) a company subject to corporation tax on the interest, (ii) certain approved funds, and (iii) a person resident in another EU or EEA country where a range of conditions are met.

Grants

Cash grants may be available for capital expenditures on machinery and equipment and industrial premises, training of employees, creation of employment, rent subsidies, R&D, manufacturing and exporting products, providing services to customers overseas, etc. The level of grant aid depends on a number of factors and is specific to each project. Rates depend on the location of the new industry.

Foreign tax credit

Foreign taxes borne by an Irish resident company (or Irish branch of an EEA resident company), whether imposed directly or by way of withholding, may be creditable in Ireland. The calculation of the credit depends on the nature of the income item, but for income sources other than dividends and some related-party interest, the credit is limited to the Irish tax referable to the particular item of income. A system of onshore pooling of excess foreign tax credits applies to dividends from 5% or greater corporate shareholdings, and excess credits in the dividend pool can be carried forward indefinitely. A similar pooling system applies to some related-party interest and also to foreign branch income.

An Irish resident company with a branch or branches outside Ireland is generally taxable in Ireland on the foreign branch profits with a credit for foreign taxes paid on those profits. A unilateral form of credit relief for foreign taxes paid by foreign branches operating in countries with which Ireland does not have a tax treaty is also available. To the extent that there were foreign taxes on branch profits that were not utilised in the relevant period (that is, where credit for foreign tax exceeds the Irish tax payable), these unused credits can be carried forward indefinitely and credited against corporation tax on foreign branch profits in future accounting periods.

A form of pooling of tax deductions in relation to foreign tax on royalties may be applicable where the royalty income is taken into account in computing the trading income of a trade carried on by the company.

An additional tax credit is available on certain dividends received by an Irish Holdco from an EU/EEA subsidiary that is subject to either the 12.5% or 25% rate of Irish tax.

The additional tax credit will provide for a credit up to the amount of Irish tax in instances where the Irish nominal rate is lower than nominal rate of tax on the underlying profits in the country where the profits are sourced.

Withholding taxes

Irish resident companies are required to withhold tax on certain types of payments as set out below (*see sub-sections below for WHT exemptions and table at end of this section for WHT rate reductions*).

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Patents, royalties**
Resident companies	0	20	20
Resident individuals	20	20	20
Non-resident companies and individuals	20	20	20

Dividend WHT

Dividend WHT applies at 20% to dividends and other distributions. However, an exemption may be available where the recipient of the dividend is either an Irish company or a non-Irish company eligible for the Parent-Subsidiary Directive (which in Ireland requires a 5% or greater shareholding).

Exemptions from dividend WHT also are available where the recipient of the distribution falls into one of the categories listed below and provided an appropriate declaration is made to the company paying the distribution in advance of the distribution. In a move to significantly ease the administrative burden in applying for exemption for dividend WHT, this declaration is now self-assessed and valid for up to six years.

- Irish tax resident companies (a declaration is not required for Irish tax resident companies that hold a 51% or greater shareholding of the company).
- Non-resident companies that are resident in a country with which Ireland has a tax treaty or in another EU member state, where the company is not controlled by Irish residents.
- Non-resident companies that ultimately are controlled by residents of a tax treaty country or another EU member state.
- Non-resident companies whose principal class of shares is traded on a recognised stock exchange in a treaty country or another EU member state or on any other stock exchange approved by the Minster for Finance (or if recipient of the dividend is a 75% subsidiary of such a listed company).
- Non-resident companies that are wholly owned by two or more companies the principal class of shares of each of which is traded on a recognised stock exchange in a treaty country or another EU member state or on any other stock exchange approved by the Minister for Finance.
- Individuals who are resident in a tax treaty country or in another EU member state.
- Certain pension funds, retirement funds, sports bodies, collective investment funds, and employee share ownership trusts.

Companies that make a dividend distribution are required, within 14 days of the end of the month in which the distribution is made, to make a return to the tax authorities containing details of the recipient of the dividend, the reason for any exemption from dividend WHT, and to pay over any tax withheld.

Interest WHT

Financial institutions operating in Ireland are obligated to withhold tax (deposit interest retention tax or DIRT) out of interest paid or credited on deposit accounts in the beneficial ownership of resident companies, unless the financial institution is authorised to pay the interest gross. The rate is 41%. There is no DIRT on interest paid to non-residents where a written declaration of non-residence is completed. Certain annual interest payments are subject to WHT at 20%. Interest payments made by companies to companies resident in other EU member states or in treaty countries are generally not subject to WHT. The EU Interest and Royalties Directive may also provide an exemption from WHT for payments between associated companies.

Royalties WHT

Royalties, other than patent royalties, are not generally subject to WHT under domestic law. Patent royalty payments and certain other annual payments are subject to WHT at 20%. Lower WHT rates may be accessed under treaties, subject to certain documentation and reporting requirements. The EU Interest and Royalties Directive may also provide an exemption from WHT for payments between associated companies. Associated companies, for the purpose of this directive, are companies where one can directly control at least 25% of the voting power of the other or at least 25% of the voting power of both companies is directly controlled by a third company. In all cases, all companies must be resident in a member state of the European Union.

WHT on capital gains

Where any of the following assets is disposed of, the person by whom or through whom the consideration is paid (i.e. the purchaser) must deduct capital gains WHT at 15% from the payment:

1. Land or minerals in Ireland or exploration rights in the Irish continental shelf.

2. Unquoted (unlisted) shares deriving their value or the greater part of their value (more than 50%) from assets described in (1).
3. Unquoted (unlisted) shares issued in exchange for shares deriving their value or the greater part of their value from assets as described in (1).
4. Goodwill of a trade carried on in Ireland.

The requirement to withhold tax does not apply where the consideration does not exceed EUR 500,000 or where the person disposing of the asset produces a certificate from the Revenue Commissioners authorising payment in full. A clearance certificate may be obtained by making application on Form CG50 to the Revenue Commissioners supported by a copy of the agreement or contract for sale. The certificate may be obtained on the grounds that the vendor is Irish resident, no capital gains tax is due in respect of the disposal, or the capital gains tax has been paid. WHT is creditable against the capital gains tax liability of the vendor, and any excess is refundable.

To avoid the requirement to withhold, clearance must be obtained before the consideration is paid. There is no exemption from the withholding procedure where the asset is held as trading stock or where the transaction is intra-group and a capital gains tax liability does not arise. Failure to obtain the certificate will lead to the purchaser being assessed to capital gains tax for an amount of 15% of the consideration.

Professional services withholding tax (PSWT)

Individual income tax at the standard rate (currently 20%) is deducted from payments for professional services by government departments, state bodies, and local authorities. Credit is granted for any PSWT withheld against the corporation tax (or income tax for an individual) liability of the accounting period in which tax is withheld.

Relevant contracts tax (RCT)

RCT is a WHT that applies in the construction, forestry, and meat-processing industries in Ireland. It applies where a 'principal contractor' engages a sub-contractor under a 'relevant contract' to carry out 'relevant operations'. Compliant taxpayers can obtain Irish Revenue clearance for zero WHT.

The RCT system applies if the 'relevant operations' are carried out in Ireland, to include Irish territorial waters and any area over which Ireland has exploration and exploitation rights. Therefore, it is irrelevant whether or not the parties to the contract are resident in Ireland, the parties are liable to tax in Ireland, the contract is executed outside Ireland, or whether payments under the contract are made outside Ireland.

It is important to note that principal contractors who are liable to RCT may not necessarily operate in the above industries. In the case of construction, in particular, relevant contracts may be entered into by a variety of entity types. For example, companies involved in electricity generation, oil and gas exploration, and telecommunications undertakings are all classed as principal contractors. Relevant operations are also broadly defined. Examples are repairs to buildings and structures; ground works; installation, alteration, and repairs to various systems in buildings (e.g. electrical, ventilation, water supply, telecommunications, burglar and fire protection systems); mining; exploration works; and also certain haulage contracts.

Where RCT applies, the principal contractor must notify the contract and all payments under the contract to Revenue on the eRCT system in advance of payment being made. Once the principal notifies Revenue that they intend on making a payment to the sub-contractor, Revenue will then revert on a real-time basis and issue a Deduction Authorisation to the principal advising of the rate of RCT to be withheld from the gross payment. The current rates of RCT are 20% and 35% and depend on the Irish tax compliance position of the sub-contractor. The 20% rate will apply to sub-contractors who are registered with Revenue and have a good tax compliance record. The 35% rate will apply where the sub-contractor is not registered for tax in Ireland or has an inadequate tax compliance record. The sub-contractor is entitled to credit for, or offset of, the RCT withheld by the principal and paid to Revenue.

If, however, the sub-contractor has applied for and received zero rate authorisation from Revenue, then 0% RCT rate applies and the sub-contractor can receive payment gross without deduction of RCT. If a principal does not notify payments to Revenue in advance of making payment to the sub-contractor, then penalties will apply. It should be noted that the cost of non-compliance with RCT procedures are severe, therefore it is important that RCT is considered before undertaking any construction related activity, in addition to meat-processing and forestry activity.

Financial Institutions Levy

The Financial Institutions Levy was introduced for a three-year period with the express purpose of enabling the financial services sector to contribute to economic recovery.

Finance Act 2016 extended the annual levy being imposed on certain financial institutions by a period of five years. The annual levy was due to expire at the end of 2016 but will now run until 2021. Prior to Finance Act 2016, the levy amounted to 35% of DIRT paid by the relevant financial institution based on the 2011 base year.

Under Finance Act 2016, the levy has been extended for a period of five years from 2017 to 2021 and is charged at a higher rate of 59% on the DIRT paid in respect of the new base years enacted under the legislation. The base year for 2017/18 is 2015, with 2017 being the base year for the levies due in 2019/20, and the base year for the tax due in 2021 being 2019.

WHT rate reductions and exemptions

Exemptions and rate reductions apply under domestic law and under tax treaties. Where an exemption from WHT is not available (*please see sections above for domestic law exemptions*), a reduced rate of WHT may apply under an applicable tax treaty. The table below sets out the reduced rates of WHT that may be available to payments from Ireland of dividends, interest, and royalties under an applicable tax treaty.

	WHT (%)		
Recipient	**Dividends (1)**	**Interest**	**Patents, royalties (3, 4)**
Non-treaty	20	20	20
Treaty (5):			
Albania	0/5/10	0/7	7
Armenia	0/5/15	0/5/10	5
Australia	0	10	10
Austria	0	0	0
Bahrain	0	0	0
Belarus	0/5/10	0/5	5
Belgium	0	15 (2)	0
Bosnia-Herzegovina	0	0	0
Botswana	0/5	0/7.5	0/7.5

	WHT (%)		
Recipient	Dividends (1)	Interest	Patents, royalties (3, 4)
Bulgaria	5/10	0/5 (2)	10 (2)
Canada	5/15	0/10	0/10
Chile	5/15	5/15	5/10
China	5/10	0/10	6/10
Croatia	5/10	0	10 (2)
Cyprus	0	0	0/5 (2)
Czech Republic	5/15	0	10 (2)
Denmark	0	0	0
Egypt	5/10	0/10	10
Estonia	5/15	0/10 (2)	5/10 (2)
Ethiopia	5	0/5	5
Finland	0	0	0
France	20	0	0
Georgia	0/5/10	0	0
Germany	5/15	0	0
Greece	5/15	5 (2)	5 (2)
Hong Kong	0	0/10	3
Hungary	5/15	0	0
Iceland	5/15	0	0/10
India	10	0/10	10
Israel	0	5/10	10
Italy	15	10 (2)	0
Japan	0	10	10
Kazakhstan	5/15	10	10
Korea, Republic of	0	0	0
Kuwait	0	0	5
Latvia	5/15	0/10 (2)	5/10 (2)
Lithuania	5/15	0/10 (2)	5/10 (2)
Luxembourg	0	0	0
Macedonia	0/5/10	0	0
Malaysia	10	0/10	8
Malta	5/15	0	5 (2)
Mexico	5/10	0/5/10	10
Moldova	5/10	0/5	5
Montenegro	0/5/10	0/10	5/10
Morocco	6/10	0/10	10
Netherlands	0/15	0	0
New Zealand	0	10	10
Norway	0/5/15	0	0
Pakistan	5/10	0/10	0
Panama	5	0/5	5
Poland	0/15	0/10 (2)	0/10 (2)
Portugal	15	0/15 (2)	0/10 (2)
Qatar	0	0	5
Romania	3	0/3 (2)	0/3 (2)
Russia	10	0	0
Saudi Arabia	0/5	0	5/8
Serbia	5/10	0/10	5/10
Singapore	0	0/5	5

Recipient	WHT (%) Dividends (1)	Interest	Patents, royalties (3, 4)
Slovak Republic	0/10	0	0/10 (2)
Slovenia	5/15	0/5 (2)	5 (2)
South Africa	5/10	0	0
Spain	0	0	5/8/10 (2)
Sweden	0	0	0
Switzerland	0	0	0
Thailand	10	0/10/15	5/10/15
Turkey	5/15	10/15	10
Ukraine	5/15	5/10	5/10
United Arab Emirates	0	0	0
United Kingdom	5/15	0	0
United States	5/15	0	0
Uzbekistan	5/10	5	5
Vietnam	5/10	0/10	5/10/15
Zambia	0	0	0

Irish tax legislation allows for favourable treatment in situations where a DTT has been signed but not yet ratified.

Notes

1. Domestic legislation may also provide an exemption from the dividend WHT, subject to providing the necessary documentary evidence of qualification. An exemption may also be available under the EU Parent-Subsidiary Directive.
2. The EU Interest and Royalties Directive may provide an exemption from WHT for payments between associated companies.
3. In general, royalties WHT applies only in the case of patent royalties.
4. Under domestic legislation, WHT will not apply if the loans or advances are for a period of less than one year or if the interest is paid in the course of a trade or business to a company resident in an EU or treaty country and that country imposes a tax that generally applies to foreign interest receivable.
5. Provided that all conditions are met, domestic tax legislation is applicable if more favourable for the taxpayer. In a number of circumstances, tax treaties may provide for particular tax rates mainly dependent on the nature of the instruments and on the profile of the recipients/payers. In such cases, the applicable WHT rate must be verified from an analysis of the relevant tax treaty.

Negotiations with Azerbaijan, Ghana, Oman, Turkmenistan, and Uruguay have concluded, and the new agreements are expected to be signed shortly.

Ireland is currently negotiating treaties with the following countries:

- Argentina.
- Jordan.
- Taiwan.
- Tunisia.

Tax administration

Taxable period

The tax accounting period normally coincides with a company's financial accounting period, except where the latter period exceeds 12 months.

Tax returns

Corporation tax returns must be submitted within nine months (and no later than the 23rd day of the ninth month) after the end of the tax accounting period in order to avoid a surcharge (maximum of EUR 63,485) or a restriction of 50% of losses claimed (maximum of EUR 158,715).

Payment of tax

Corporation tax payment dates are different for 'large' and 'small' companies. A small company is one whose corporation tax liability in the preceding period was less than EUR 200,000. Interest on late payments or underpayments is applied at approximately 8% per year.

Large companies

For large companies, the first instalment of preliminary tax totalling 45% of the expected final tax liability, or 50% of the prior period liability, is due six months from the start of the tax accounting period (but no later than the 23rd day of the month).

The second instalment of preliminary tax is due 31 days before the end of the tax accounting period (but no later than the 23rd day of the month). This payment must bring the total paid up to 90% of the estimated liability for the period.

The balance of tax is due when the corporation tax return for the period is filed (that is, within nine months of the end of the tax accounting period, but no later than the 23rd day of the month in which that period of nine months ends).

Small companies

Small companies are only required to pay one instalment of preliminary tax. This is due 31 days before the end of the tax accounting period (but no later than the 23rd day of the month).

The company can choose to pay an amount of preliminary tax equal to 100% of the corporation tax liability for its immediately preceding period or 90% of the estimated liability for the current period. As is the case for large companies, the final instalment is due when the corporation tax return is filed.

Tax audit process

A system of self-assessment and Irish Revenue audits is in operation in Ireland.

Statute of limitations

Irish Revenue may undertake an audit of a company's tax return within a period of four years from the end of the accounting period in which the return is submitted.

Topics of focus for tax authorities

In Irish Revenue's Annual Report 2015, a continued priority is to maintain the high levels of voluntary compliance in Ireland aided by an increased focus on non-compliance. The Irish authorities aim to do so by using emerging data sources to risk-assess cases and target new forms of non-compliance and aggressive avoidance.

Another of Irish Revenue's key aims is to make it easier and less costly for voluntary compliance through further use of digital channels and a range of initiatives to lessen the administrative burden for taxpayers.

Internationally, Irish Revenue have committed to further tax transparency and the exchange of information between authorities. Revenue also emphasis a continued focus on transfer pricing issues both at an EU and global level.

General Anti-Avoidance Legislation

The general anti-avoidance provisions are designed to counteract transactions that lack commercial reality and are put in place with a view to reducing or avoiding a charge to taxation.

The impact of the general anti-avoidance rule is that where a person enters into a transaction and it would be reasonable to consider that the transaction is a 'tax avoidance transaction', Irish Revenue may, at any time, deny or withdraw the tax advantage. In order to deny or withdraw that tax advantage, Irish Revenue may:

- make or amend an assessment
- allow or disallow in whole or in part any credit, deduction, or other amount that is relevant in computing tax payable
- allocate or deny in whole or in part any credit, deduction, loss, abatement, relief, allowance, exemption, income, or other amount, or
- recharacterise, for tax purposes, the nature of any payment or other amount.

The assessment made by Irish Revenue will stand unless the taxpayer successfully appeals it to the Appeals Commissioners/Courts.

Mandatory disclosure

In a move to promote transparency between taxpayers, practitioners, and tax authorities, provisions relating to the disclosure of tax schemes are applicable. These require promoters of such schemes to provide information to the tax authorities within a specified time of having made the scheme available. A transaction that comes within the new law and must therefore be reported to Revenue is not necessarily a tax avoidance transaction for the purposes of existing legislation. The rules are wide reaching and essentially cover all tax heads, including corporation tax, income tax, capital gains tax, stamp duty, VAT, customs duties, and excise duties.

Co-operative Compliance Framework (CCF)

In 2017, the Irish tax authority relaunched the CCF. The Irish authority has invited large businesses to partake in the CCF, which is seen as best practice internationally. The aim of these measures is to continue to strengthen Ireland's position as one of the top countries in the world for ease of doing business by promoting useful collaborative relationships between taxpayers and the Irish tax authority.

Other issues

Asset management

Irish tax legislation contains provisions aimed at promoting Ireland as a leading location for the management of both Undertakings for Collective Investment in Transferable Securities (UCITS) and alternative investment funds (AIFs). The UCITS Directives have brought about fundamental changes to both the management and structuring of UCITS. One of the key reforms introduced permits UCITS management companies located in one EU jurisdiction to manage UCITS domiciled in another EU jurisdiction. One of the areas of concern is whether the activities of the management company could bring a foreign UCITS within the charge to tax in the management company's home jurisdiction (e.g. by creating a branch or agency or causing the fund to be regarded as tax resident there). Irish legislation provides that an Irish management company managing a non-Irish UCITS or AIF will not be regarded as a branch or agency of the non-Irish UCITS or AIF and will not bring the profits of the foreign UCITS or AIF within the charge to Irish tax or treat the foreign UCITS or AIF as an Irish regulated fund.

Following the United States (US) and OECD review of offshore domiciles, which has resulted in increased regulation and tax obligations, many fund managers are considering possible alternative onshore jurisdictions for their investment fund products. Because of the international reputation of its asset management industry and the favourable fund tax regime, Ireland is seeing a significant trend in investment managers moving their investment platforms to Ireland from the traditional offshore jurisdictions. Company law changes also allow corporate funds to migrate to Ireland through a re-domiciliation process, whereby the fund would benefit from its continued existence, including the ability to retain the fund's performance track record post migration and avoid potential adverse tax consequences and costs that typically arise from a merger of an offshore fund with a new onshore fund. The Irish Central Bank has a coordinated authorisation process to facilitate speed to market, which, at present, is a key advantage in comparison to delays being experienced in other EU domiciles.

International funds sector

Recent Irish legislation has introduced a number of provisions designed to support and enhance the international funds sector in Ireland, as set out in further detail below:

Funds re-domiciling to Ireland

Where the Central Bank has authorised an investment fund that has re-domiciled to Ireland from certain offshore centres (*discussed above*), a declaration can be made by the fund stating that the unitholders are non-Irish resident unitholders, to ensure that no Irish tax charge arises in respect of such non-residents, thereby clarifying the tax exemption applying to payments made by Irish funds to non-resident investors. To the extent that there are any Irish resident unitholders, these need to be identified in the declaration and tax accounted for, where appropriate, on any payments made to such unitholders.

Cross-border fund mergers involving Irish funds

Mergers (both inbound and outbound) involving an Irish fund with a fund located in a member state of the European Union, European Economic Area, or an OECD country with which Ireland has entered into a DTT will not give rise to a charge to tax in respect of Irish resident investors. Effectively, the charge to tax is deferred until the ultimate disposal of the replacement units. The calculation of any future gain on such units is calculated by reference to the cost of the original units.

No charge to Irish tax should arise on the transfer of units in the formation of certain master/feeder structures.

A number of significant stamp duty exemptions are also available for collective investment vehicles.

Real Estate Investment Trusts (REITs)

The Irish REIT was introduced in 2013, with the objective of providing access to the property market for smaller investors and to facilitate capital injections into the Irish property market. The first REIT listing on the Irish Stock Exchange took place on 18 July 2013. There are currently three REITs in Ireland, with further REITs expected to be launched.

The REIT must be incorporated and resident in Ireland and listed in an EU jurisdiction.

REITs are exempt from tax on rental income and capital gains accruing on the disposal of assets if certain conditions are met, notably the requirement to distribute at least 85% of property income annually and that at least 75% of the aggregate income of the REIT must derive from carrying on property rental business.

There is no exemption from VAT, property rates, employment taxes, or stamp duty. Stamp duty, which is currently at a rate of 2% (1% for certain residential property), should apply to properties acquired. The REIT is subject to corporation tax on all other income and gains under the usual taxation rules.

There are also requirements regarding the number of investors, properties held, and the financing arrangements that may impact the tax position of the REIT.

Distributions made by the REIT out of rental income and gains are subject to 20% WHT, with exemption/reduced rates available for eligible investors. Distributions out of taxed income are treated as ordinary dividends.

The introduction of the Irish Collective Asset-management Vehicle (ICAV)

The Irish funds industry continues to work with the Irish government to explore new products that could enhance the competitiveness of Ireland's fund offering on the global stage.

In this regard, the ICAV Act 2015 was signed into law on 4 March 2015.

Previously, investment funds in Ireland structured as companies were incorporated as public limited companies ('plc') under the Irish Companies Acts. The ICAV is specifically designed for investment funds and is not subject to the legislation governing other types of companies, thereby removing the need to comply with certain requirements under the Companies Acts. The legislation also increases the range of structures open to investment managers and promoters establishing funds in Ireland.

One of the main advantages of the ICAV is the ability of this structure to 'check-the-box' (an election to be regarded as tax transparent) for US tax purposes, whereas an Irish plc cannot avail of this election. This is seen as a very positive development in the funds industry, particularly in the context of investment funds seeking to re-domicile from traditional tax haven jurisdictions to a regulated jurisdiction like Ireland.

An ICAV may be established as an umbrella structure with a number of sub-funds and share classes. Where an umbrella structure is created, each sub-fund will have segregated liability and also have the flexibility to prepare separate financial statements on a sub-fund basis. The ICAV also qualifies for the tax exemptions that apply to Irish regulated funds.

Irish Real Estate Funds (IREFs)

With the publication of Finance Act 2016 comes the introduction of a new fund category called an Irish Real Estate Fund.

Under the new legislation, a fund is an IREF where 25% or more of the market value of the assets is derived, directly or indirectly, from Irish property or one of the main purposes of the fund is to acquire Irish property.

Where a fund is categorised as an IREF, 20% WHT must be operated by the fund on distributions of income. Gains derived from the disposal of property held for at least five years are specifically excluded from the scope of the WHT, unless the fund is a personal portfolio IREF (PPIREF). No tax applies in respect of gains on redemption of units in the IREF except where those gains are derived from undistributed income, real estate disposed of within five years of acquisition, or, in the case of a PPIREF, any disposal of Irish real estate.

Broadly, PPIREFs are funds where a unit holder or a person connected with the unit holder has the ability to influence the selection of some or all of the IREF assets.

There are a number of points to emphasise:

- UCITS are specifically excluded from the new rules.
- The vast majority of Irish Qualifying Investor Alternative Investment Funds (QIAIFs) are not significantly invested in Irish property and will be unaffected by the new rules.
- There are significant categories of exempt investors who will not be subject to WHT, and these are currently listed as:
  - Irish and equivalent EU or EEA pension schemes, Personal Retirement Savings Accounts, and EU cross-border schemes holding the IREF directly or indirectly
  - other Irish regulated funds or equivalent funds authorised by a member state of the EU or the EEA
  - Irish life assurance funds and equivalent overseas life assurance funds, and
  - Section 110 companies, credit unions, and charities.

Refunds of WHT are possible where persons who are exempt from WHT hold their units through intermediary vehicles that do not, in themselves, qualify for WHT exemptions.

Where a unitholder holds less than 10% in an IREF and they are treaty entitled, they can make treaty reclaims. Distributions from an IREF to a unitholder with a 10% interest or more in the fund will be designated as income from Irish immovable property and treaty refunds should not be available.

Relief has been provided to enable a reorganisation where an IREF transfers certain assets to companies within the charge to Irish corporate tax or reorganises the IREF into a REIT.

Taxable Irish investors in real estate will continue as before to be taxed under normal rules on distributions of income and gains on redemption of Irish land.

These changes will require very careful consideration. Please get in touch with your usual PwC contact to talk through the fuller implications of the proposed changes.

Investment limited partnership

Irish tax legislation confirms the tax transparency of investment funds structured as investment limited partnerships under the Investment Limited Partnership Act 1994. Prior to Finance Act 2013, such funds were regarded as opaque under Irish tax legislation. There is also an ongoing review of the Irish limited partnership legislation with a view to providing legal and practical enhancements to the limited partnership regime to cater for the increased popularity of Ireland as a platform for private equity investment.

Islamic finance

Irish tax law facilitates most Islamic finance transactions, including *ijara* (leasing), *takaful* (insurance), *re-takaful* (reinsurance), *murabaha* and diminishing *musharaka* (credit arrangements), *mudaraba* and *wakala* (deposit arrangements), and *sukuk*. While there is no specific reference in the legislation to Islamic Finance, rather the reference is to Specified Financial Transactions, overall, the premise of the legislation in Ireland is to ensure that Islamic finance transactions are treated in the same manner as conventional financing transactions.

This legislation also facilitates the taxation (and tax impact) of UCITS management companies. The UCITS structure is one of the most commonly used structures for many different types of Islamic funds, such as retail Islamic equity funds, Shariah-compliant money market funds, Shariah-compliant exchange traded funds (ETFs), etc.

Islamic insurance

The Irish Revenue has provided guidance in respect of the Irish tax treatment of general *takaful* (non-life), *re-takaful* (reinsurance), and family (life) *takaful* arrangements. Legislative changes are not currently required to facilitate Islamic insurance in Ireland.

Choice of legal entity

Foreign investors tend to operate either through an Irish legal entity or as a branch of a foreign entity. Both are equally valid means of doing business in Ireland, and the choice will normally depend on the commercial fact pattern and individual circumstances of the investor parent company.

Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA)

In December 2012, Ireland signed an intergovernmental agreement with the United States (the US-Ireland IGA), for which enabling provisions were enacted into Irish tax legislation in Finance Act 2013.

The Financial Accounts Reporting (United States of America) Regulations 2014 ('the Regulations'), together with the provisions of Section 891E Taxes Consolidation Act 1997, give effect to FATCA in Ireland from 1 July 2014. Further guidance is provided in the Irish Guidance Notes issued by Irish Revenue. The due date for reporting accounts is 30 June. The first reporting cycle was completed in 2015 in respect of the period ending 31 December 2014, and reporting is required to be performed by Irish financial institutions annually thereafter.

The IGA changes the way in which FATCA affects Irish financial institutions. Its effect is to give Irish laws and regulations precedence in governing FATCA compliance for Irish entities, and it provides that reporting will be carried out to the Irish Revenue

Commissioners, rather than to the US Internal Revenue Service (IRS). The reporting requirements will apply to all Irish financial institutions, as defined, regardless of whether the entity has US account holders or US assets.

US-Ireland IGA

The US-Ireland IGA defined the types of Irish financial institutions that are in scope for FATCA as:

- a custodial institution
- a depository institution
- an investment entity, or
- a specified insurance company.

Specific definitions are attached to each type of entity above.

For the asset management industry, the IGA covers investment funds, their administrators and investment managers, as well as other parties involved in the running of the fund. The Irish regulations clarify that the fund is the party with primary responsibility for complying with the relevant obligations, but that certain due diligence and reporting responsibilities can be delegated to a third party, such as the fund administrator, at the fund's discretion.

The US-Ireland IGA also defines the types of institutions that are either exempt from the scope of FATCA or that can qualify as 'Deemed-Compliant Financial Institutions'. Entities qualifying under the 'Deemed Compliant' status will benefit from a reduced compliance burden under FATCA. Such entities include non-profit organisations, financial institutions with a local client base, and certain collective investment vehicles. Collective investment vehicles may qualify under the 'Deemed Compliant' status where all of the interests in the vehicle are held by or through one or more financial institutions that are not non-participating financial institutions.

IGA benefits

Under the IGA, reporting Irish financial institutions must report account holder information annually to Irish Revenue Commissioners (by 30 June each year in respect of the previous calendar year). The Irish Revenue Commissioners will then collate and exchange this information with the IRS.

Under the US-Ireland IGA, reporting Irish financial institutions are considered to be compliant with local regulations, and, as a result, those entities should not suffer 30% FATCA WHT on US-source income or gross proceeds. Similarly, reporting Irish financial institutions should generally not be obligated to operate 30% FATCA WHT on such payments made to recalcitrant account holders or investors, provided the requirements of the IGA are met.

This is a very positive feature of the US-Ireland IGA, and means that the task of developing complex WHT systems to identify and withhold on payments to certain account holders is avoided in most cases.

IGA requirements

Some of the key requirements of reporting Irish financial institutions under the US-Ireland IGA include the following:

- Register as a reporting Irish financial institution and receive a Global Intermediary Identification Number (GIIN).
- Apply due diligence procedures to identify and report certain information on US Reportable accounts (as defined) and accounts held by non-participating financial institutions.
- Update account on-boarding procedures with effect from 1 July 2014 to identify whether the account holder is considered a US person (individual accounts) and classify and document the account into different categories of account holder (entity accounts).
- Annually report certain details on US reportable accounts.

Reporting

The Guidance Notes include a useful timetable demonstrating the phased in approach to Reporting over the first three years. They also contain a link to the IRS Schema and provide details on the transmission of the report to Revenue via Revenue's Online Service (ROS). Reporting can be done in US dollars or in the functional currency of the financial account. Nil reporting is required where a financial institution has no reportable accounts.

In the case of minor errors discovered by the IRS, the IRS will contact Revenue directly, who will liaise with the financial institution to resolve the issue.

Common Reporting Standard (CRS)

The CRS framework was first released by the OECD in February 2014 as a result of significant political will demonstrated by the G20 members. To date, more than 100 jurisdictions have publically committed to implementation, many of which are early adopter countries, including Ireland. For early adopters, CRS went live on 1 January 2016.

On 21 July 2014, the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the Standard) was published, involving the use of two main elements, the Competent Authority Agreement (CAA) and the CRS. The goal of the Standard is to provide for the annual automatic exchange between governments of financial account information reported to them by local financial institutions relating to account holders who are tax resident in other participating countries.

The OECD leveraged FATCA to design the CAA and CRS, and, as such, the Standard is broadly similar to the FATCA requirements, albeit with numerous alterations. It will result in a significantly higher number of reportable persons due to the increased instances of potentially in-scope accounts and the inclusion of multiple jurisdictions to which accounts must be reported.

Requirements for financial institutions under CRS

A determination is required to be made with regard to whether an entity falls within the definition of a financial institution for CRS purposes. The definition of a financial institution is similar to FATCA, albeit wider in scope. If an entity is regarded as a financial institution and it is located in a participating jurisdiction, CRS requires it to identify account holders who are tax resident in other participating jurisdictions and report their information on an annual basis to their local tax authority, for onward exchange to the tax authority in which the account holder is resident. CRS therefore has a much larger scope than FATCA. In particular, CRS will require substantially increased reporting on a greater number of customers compared with FATCA, which focuses solely on US ‘specified persons’. Irish Revenue has adopted the ‘wider approach’ with regard to CRS, which means that Irish financial institutions need to report all account holders to Irish Revenue (apart from Irish and US account holders) who will then review this information and pass account information to tax authorities in participating jurisdictions to the extent there are reportable accounts that are resident in that participating jurisdiction.

When opening new financial accounts, financial institutions are required to obtain a CRS self-certification from account holders for all new accounts opened on or after 1 January 2016. There are two types of self-certification forms, individual and entity. If an entity self-certification form is to be completed, then, in the case of passive non-financial entities (Passive NFEs), an individual self-certification must also be completed (along with the controlling persons section) for each of the entity’s controlling persons.

Self-certifications must be reviewed for reasonableness against other information known about the account holder. As a result, the collection and validation of self-certifications must be an integral part of the anti-money laundering/know your customer (AML/KYC) process.

CRS requires separate due diligence review and timelines for pre-existing and new accounts, and for individuals and entities similar to FATCA. The first CRS reporting to the relevant tax authorities by financial institutions was in June 2017 (in respect of 2016).

In-scope financial institutions are obligated to register as a reporting entity for automatic exchange of information (AEOI) purposes for both FATCA and CRS. *Further details can be found at www.revenue.ie/en/business/aeoi/.*

Multilateral Instrument

The Finance Act 2017 provided the first step towards Ireland’s ratification of the Multilateral Instrument. It is envisaged that Ireland will ratify the instrument in full later this year in order for the instrument to take effect from 1 January 2019.

Isle of Man

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Significant developments

Tax treaties

As of 1 May 2018, the Isle of Man had entered into ten comprehensive double tax agreements (DTAs), 13 limited scope DTAs, and 39 tax information exchange agreements (TIEAs) based on the Organisation for Economic Co-operation and Development (OECD) models. The Isle of Man also has a DTA with the United Kingdom (UK) that predates the OECD model.

Payments to participators relating to sales of goodwill or unquoted shares

With effect from 20 February 2018, the repayment by a company of a participator loan (essentially a shareholder loan) will be treated as a distribution of profits if the loan was created by the sale to the company by the participator of goodwill or unquoted shares in the period from 6 April 2011 to 20 February 2018. The profit distribution will be taxed on an Isle of Man resident participator to the extent of the company's undistributed profits.

If a participator creates a loan from the sale of goodwill or unquoted shares on or after 20 February 2018, the value of the sale is immediately treated as a dividend paid to the participator up to the value of undistributed profits in the year of sale. Future loan repayments are treated as exhausting the reserves first, and are taxable on the participator accordingly.

Taxes on corporate income

Companies resident in the Isle of Man are taxed on their worldwide income and are required to file an annual income tax return reporting worldwide taxable profits calculated in line with local legislation and practice.

A non-resident company incorporated outside the Isle of Man but having a place of business or a permanent establishment (PE) on the Isle of Man will be taxed on the profit attributable to the Isle of Man establishment.

There are three rates of corporate income tax (CIT).

The 10% rate applies to income from:

- a banking business carried on in the Isle of Man on the basis of a deposit taking licence issued by the Isle of Man Financial Supervision Commission, and

- retail activities (i.e. the sale of goods to consumers through retail premises) carried on in the Isle of Man, but only if that income exceeds 500,000 Isle of Man pounds (IMP) in the year.

The 20% rate applies to income derived from real estate situated in the Isle of Man.

The 0% rate applies to all other income.

Where an election is made, certain companies subject to Manx income tax at the standard 0% rate can elect to pay tax at the 10% rate.

The general rules for the calculation of taxable income are the same whether a company is liable to tax at 0%, 10%, 20%, or a combination of these rates. Both resident and non-resident companies are taxed on their income at the same rates.

Unilateral relief from double taxation in respect of foreign-source income is given by way of tax credit.

Local income taxes

There are no profit based taxes levied by local government in the Isle of Man. However, commercial business rates are payable. Premises are assessed and given a 'rateable value' that forms the basis of the annual rates charge levied.

Corporate residence

A company incorporated in the Isle of Man is automatically resident for tax purposes and must therefore file an annual income tax return, whether it pays tax at 0%, 10%, 20%, or a combination of these rates.

A company that is incorporated elsewhere will be considered resident in the Isle of Man if it is 'managed and controlled' in the Isle of Man, and will be taxed on its worldwide income accordingly. 'Managed and controlled' is generally interpreted as being the place where the board of directors meets, although this is not always conclusive.

In cases where a company is resident in a country with which the Isle of Man has a tax treaty, then a tie-breaker may operate to determine residence.

Note that a company that is incorporated in the Isle of Man will not be resident if it can prove to the satisfaction of the Assessor that:

- its business is centrally managed and controlled in another country
- it is resident for tax purposes under the other country's law
- either it is resident for tax purposes in the other country under a DTA in which a tie-breaker clause applies or the highest rate at which any company may be charged to tax on any part of its profits in that other country is 20% or higher, and
- there is a *bona fide* commercial reason for its residence status in the other country, which is not motivated by a desire to reduce Isle of Man tax.

Permanent establishment (PE)

A place of business includes a PE, such as a branch office or shop, factory, workshop, or mine. The definition of a PE is not set out in statute, and, in cases where the company is resident in a country with which the Isle of Man has a DTA, the terms of the agreement will determine the company's residence.

Other taxes

Value-added tax (VAT)

VAT is a transaction-based tax applied on the domestic supply of most goods and services and is currently charged at a standard rate of 20%. VAT is designed to be a tax borne by the final consumer, and there is a mechanism for businesses to recover VAT incurred in a supply chain, subject to meeting certain conditions.

For VAT purposes, the Isle of Man forms a single territory with the United Kingdom, and the VAT rules are broadly identical. This means that VAT is charged on supplies between Isle of Man and UK businesses as if they were domestic supplies. The Isle of Man has its own tax authority for VAT and other indirect taxes, which works in conjunction with the UK tax authorities.

Some supplies are charged at 0%, including food, books and publications, and public transport, and there is also a 5% rate applied to domestic property repairs, amongst other things. Finally, some supplies are exempt from VAT, including insurance and financial services, betting and gaming, education, and healthcare.

Customs and excise duties

In addition to VAT, the Isle of Man forms a common jurisdiction for customs and excise duties with the United Kingdom, and, again, the rules are broadly identical. Customs duties are levied on most goods imported from outside the European Union (EU) into the Isle of Man, and there are various rates of duty that apply. Excise duties apply to such things as alcohol, tobacco, and fuels, and there are various rates of duty that apply. There is also a levy on commercial passenger flights known as Air Passenger Duty.

Property taxes

There are no property-related taxes for companies other than (i) income tax payable at a rate of 20% on their profits from the rental or development of land or property situated in the Isle of Man and (ii) business rates *as detailed under Local income taxes in the Taxes on corporate income section*.

Transfer taxes

There are no capital transfer taxes in the Isle of Man.

Stamp taxes

There is no stamp duty payable in the Isle of Man.

Betting duty

There are no other transaction taxes in the Isle of Man other than betting duty on gaming transactions, which is levied at differing rates of up to 15%, depending on the nature of the gaming transaction and whether it is online or land-based.

Payroll taxes

Employers in the Isle of Man are responsible for deducting tax from an employee's remuneration under the Income Tax Instalment Payments (ITIP) scheme. An employer is any person, which includes any individual, company, partnership, or public body, that engages or hires the services of someone and, in return, pays a wage or fixed payment.

The scheme covers everyone who receives remuneration and includes employees, office holders (e.g. directors), and pensioners. Any remuneration is subject to ITIP, and tax should be deducted in accordance with the individual's tax code.

For the purposes of ITIP, 'remuneration' means any payment of salary, wages, fees, commission, pensions, or annuities and some termination payments.

National Insurance contributions

In addition to deducting 'National Insurance' contributions from their employees' earnings, employers in the Isle of Man are required to make a 'secondary' National Insurance contribution in respect of each of their employees, depending on the individual's circumstances.

The standard rate of secondary contribution is 12.8% on earnings over IMP 118 per week, but reduced rates apply in certain circumstances where the employee is a member of a pension scheme.

Branch income

The income of branches is taxed in the same way as other corporate income in the Isle of Man. Foreign companies with branches in the Isle of Man will be taxed at the appropriate rate on the profits attributable to the Isle of Man branch.

Income determination

The general rules for the calculation of taxable income are the same whether a company is liable to tax at 0%, 10%, 20%, or a combination of these rates.

Inventory valuation

Inventories are generally stated at the lower of cost or market value. Any method of valuation that accords with sound commercial principles is acceptable for tax purposes, provided it is adopted consistently at the beginning and end of the accounting period and does not conflict with tax law. In practice, inventories are normally valued for tax purposes at the lower of cost or net realisable value. A first in first out (FIFO) basis of determining cost where items cannot be identified is acceptable, but not the base stock method or the last in first out (LIFO) method.

In general, the book and tax methods of inventory valuation must conform.

Capital gains

There is no capital gains tax in the Isle of Man.

Dividend income

Dividends are taxed at the standard rate of 0%. Dividends received from Isle of Man companies do not suffer withholding tax (WHT).

Banking income

Licensed banks are taxed at 10% on income from deposit taking, any related activities, and interest earned from the investment of regulatory reserves only.

Income earned on capital and reserves in excess of the regulatory capital, group funded lending, fiduciary deposits, assurance, insurance, custody, trust, and corporate services is not classified as banking business and is taxed at the 0% rate.

General expenses are allocated against 0% and 10% income streams on a *pro rata* basis.

The 20% rate applies to income earned by banks from real estate situated in the Isle of Man.

Royalty income

Royalties are taxed at the standard rate of 0%.

Rental income

Companies with profits arising on rental income in respect of land or property situated in the Isle of Man are charged to income tax at a rate of 20%. This rate applies whether or not the company is resident in the Isle of Man.

Foreign income

Resident corporations are liable to tax on their worldwide income (albeit the relevant rate of tax is often 0%).

Deductions

Relief is given in calculating the taxable profit of a company if the expense is incurred in the normal course of the business and is incurred wholly and exclusively for business purposes. However, certain expenses that are deducted in the computation of profits are not allowable for tax purposes. These include depreciation, unpaid but accrued pension and bonus payments, certain lease payments, and customer entertainment costs.

Depreciation

Depreciation charged in accounts in not allowable for tax purposes. Instead, relief for depreciation is given using 'capital allowances' based on a reducing-balance method. Plant and machinery, tourist premises, industrial buildings, commercial buildings within a designated area, fish processing buildings, and agricultural buildings and works have an initial allowance of 100%. There are restrictions on allowances for expensive motorcars.

Isle of Man government grants are not taken into account in determining the amount of expenditure on which allowances may be given.

Tax depreciation is not required to conform to book depreciation.

Upon disposal, allowances will be reclaimed on the sale proceeds, restricted to cost.

Goodwill

No relief is given against trading profits for the purchase of goodwill.

Start-up expenses

Start-up expenses incurred in the three years prior to the commencement of trading, which would have been deductible as a trading expense if incurred after the commencement of trading, are treated as a loss arising in the year trading commenced, and relief for these losses can be claimed, subject to the normal loss-relief rules.

Interest expenses

Interest paid to lenders subject to Isle of Man tax is allowable in full. Interest paid to lenders not subject to Isle of Man taxation is allowable if it is incurred in the normal course of the business and is wholly and exclusively for business purposes. Only interest charged at a reasonable commercial rate will be allowed as a deduction.

Bad debt

Relief against trading profits is only available in respect of specific bad debts. General provisions are not allowable.

Charitable contributions

Broadly, trading companies are able to claim a deduction for donations made to charities, subject to a maximum of IMP 15,000 or 1% of their taxable income, whichever is greater.

Fines and penalties

No relief is available for any payments made in respect of fines or penalties, whether related to income tax compliance or otherwise.

Taxes

Business rates, *as detailed under Local income taxes in the Taxes on corporate income section,* are deductible when calculating net taxable profit.

Net operating losses

Losses can be carried forward indefinitely against future profits from the same trade.

Trading losses incurred may be carried back against preceding year profits. There are additional rules that apply in the opening years of trade. Terminal losses in the last year of trade can be carried back against profits for the previous three years.

Payments to foreign affiliates

There is no formal transfer pricing regime in the Isle of Man, and payments made to foreign affiliates, such as royalties, management charges, and service fees, are deductible under normal principles. If, however, the Assessor of Income Tax is of the opinion that the main purpose, or one of the main purposes, of any transaction is the avoidance or reduction of tax liability, assessments may be made to counteract that avoidance or reduction.

For details of WHTs, please see the Withholding taxes section.

Group taxation

Trading losses and excess capital allowances may be surrendered (subject to certain restrictions) between 75% affiliates resident in the Isle of Man. Similar concessions are available to members of a consortium, but only a fraction of the loss or excess may be set-off, that fraction being equal to the members' share in the consortium in the relevant year of assessment.

Transfer pricing

There is no formal transfer pricing regime in the Isle of Man. If, however, the Assessor of Income Tax is of the opinion that the main purpose, or one of the main purposes, of any transaction is the avoidance or reduction of tax liability, assessments may be made to counteract that avoidance or reduction of tax liability.

Country-by-Country Reporting (CbCR)

The Isle of Man has implemented legislation to enact CbCR. CbCR is one of four minimum standards under the OECD Base Erosion and Profit Shifting (BEPS) project that aims to improve transparency between multinational businesses and tax authorities, and to help identify aggressive tax avoidance. The Isle of Man CbCR Regulations set out matters including the definition of certain terms, filing and notification obligations, and the format for CbCR.

Under CbCR, multinational enterprise groups (MNE groups) with consolidated group revenue of 750 million euros (EUR) or more are required to report specified data on their international operations to their tax authority annually. That tax authority will in turn automatically exchange CbCR information to jurisdictions in which the MNE group operates and has an appropriate international agreement to exchange such information. In the Isle of Man, the first reporting fiscal year is that beginning on or after 1 January 2017. A reporting entity may voluntarily submit a CbCR report to the Assessor for fiscal years beginning on or after 1 January 2016.

Thin capitalisation

There is no specific thin capitalisation rule in the Isle of Man.

Controlled foreign companies (CFCs)

There is no CFC regime in the Isle of Man.

Tax credits and incentives

Land Development Tax Holiday

The Isle of Man 2016 budget introduced a Land Development Tax Holiday, which means, where certain conditions are met, a company can apply for exemption from income tax for up to five years on 'relevant' profits. These include:

- Profits on new commercial developments or improvements to existing commercial developments.
- Rental income received on a new commercial development or improvement to an existing commercial development.

However, both of the above must provide 'additional productive employment' in the Island.

Residential property is excluded as is any business that is beneficially owned by a tax-capped individual. The tax holiday applies to income that commenced after 16 February 2016. It begins on the first date income is earned from the development and will continue for a period of up to five years.

Foreign tax credit

Foreign tax paid in respect of profits that are subject to tax at a rate above 0% in the Isle of Man will be offset against the liability arising in accordance with any relevant tax treaty in place.

Withholding taxes

WHT should be deducted from certain payments made to non-residents by Isle of Man resident companies as follows:

- Rent from Manx land and property: 20% if paid to either a company or to an individual.
- Dividends: WHT is not required.
- Loan interest and royalties: WHT is generally not required, but there are certain exceptions that may apply.
- Other: The Assessor of Income Tax in the Isle of Man has the power to require WHT, at a rate determined by the Assessor (typically 20%), on payments of taxable income made to a non-resident (e.g. payments made to non-resident sub-contractors).

Tax administration

Taxable period

An accounting period for tax filing purposes can be no more than 12 months.

Tax returns

All companies are required to submit income tax returns on an accounting-period basis, whether they are liable to tax at 0%, 10%, 20%, or a combination of these rates. The tax return is due for submission one year and one day following the end of an accounting period. Where the financial statements cover more than 12 months, two (or more) returns may be required.

Companies are required to file their income tax returns online.

Fixed rate penalties apply if returns are filed late. The Assessor of Income Tax also has the powers to raise a default assessment where a tax return has not been filed.

Payment of tax

Payment of tax is due within one year and one day of an accounting period end. Interest is charged on tax paid late.

Tax audit process

There is no formal regular tax audit process in the Isle of Man. The Assessor of Income Tax can make an enquiry into a return within the time limits set out below.

Statute of limitations

Generally, the Assessor of Income Tax may make an enquiry into a tax return no later than 12 months from the date that the tax return is delivered to the Assessor.

If, however, the Assessor discovers that income tax has not been assessed that should have been assessed, the Assessor is able to make an assessment of that tax within a period of four years from the end of the relevant accounting period.

The Assessor also has powers to require the production of documents.

Topics of focus for tax authorities

The Isle of Man government is focussed on delivering openness and transparency across all areas of Isle of Man taxation. The government and the tax authorities work closely with international bodies such as the EU Code of Conduct group and the EU's Economic and Financial Affairs Council to ensure that the Island is fully compliant with international standards in areas such as tax transparency and exchange of information. The Island is already recognised on the OECD White List as being in the top tier of countries for transparency and information exchange.

The Isle of Man is focussed on reducing the avoidance of income tax and national insurance contributions of individuals using personal service companies and introduced legislation, which entered into effect on 6 April 2014, to tackle this issue.

There is also more focus on the taxation of dividends paid to shareholders, particularly in relation to whether a payment is a *bona fide* dividend or disguised remuneration.

Other issues

Tax treaties

As of 1 May 2018, the Isle of Man had entered into ten comprehensive DTAs, 13 limited scope DTAs, and 39 TIEAs based on the OECD models. The Isle of Man also has a DTA with the United Kingdom that predates the OECD model.

Information has been exchanged with the United States with effect from 30 June 2015 under an agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA).

The UK and Isle of Man governments have been exchanging additional information with effect from 30 June 2016 under an agreement extending the automatic disclosure of tax information. The agreement is modelled on the requirements of FATCA.

The Isle of Man has also committed to adopt the Common Reporting Standard (CRS), the new global standard for tax information agreements.

Choice of business entity

There are several different entities through which businesses may operate in the Isle of Man. These include companies, limited liability companies, partnerships, limited partnerships, and protected cell companies.

Israel

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Significant developments

The corporate tax rate has been reduced from 24% in 2017 to 23% in 2018.

Taxes on corporate income

Israel-incorporated companies and foreign companies that have a branch presence in Israel are both subject to Israeli corporate tax. An Israeli-resident entity is subject to Israeli corporate tax on worldwide income while a non-resident entity is subject to Israeli corporate tax only on income accrued or derived in Israel. Income sourcing rules determine when income is to be considered from an Israeli source.

The corporate tax rate is 23% in 2018 (24% in 2017).

Business operations qualifying under the Encouragement of Capital Investments Law are entitled to reduced rates of tax depending upon their location and other conditions (*see the Tax credits and incentives section*).

Closely held personal service companies

A tax provision effectively lifts the corporate tax veil of a personal service company that meets the tax law definition of a 'minority company' that provides services to another company (the 'other company'). A 'minority company' is generally defined as a company that is directly or indirectly held or controlled by no more than five individuals (taking into account certain relatives). This provision is generally intended for situations when an individual in the minority company ('individual') is providing officer or management type services to the other company. In such a case, the income shall not be taxed to the minority company but, rather, shall be taxed to the individual as employment income, business income, or other income, depending upon the circumstances. The employment income classification shall apply if 70% or more of the total income or taxable income of the minority company in the tax year is sourced from the services performed by the individual or the individual's relatives during a period of at least 30 months during a four-year period or if the individual's services performed for the other company are of the type that is performed in an employer-employee relationship.

Local income taxes

Israel does not impose district or local taxes on corporate income.

Corporate residence

The following are considered to be resident in Israel:

- A company incorporated in Israel.
- A company whose business is managed and controlled from Israel.

In the absence of a definition of the term 'management and control' either in Israeli legislation or a direct discussion of this term by the Israeli courts, it may be difficult to determine whether a company that is incorporated outside of Israel shall be viewed as managed and controlled from Israel. This is a complex subject that needs to be addressed on a case-by-case basis. When an entity is both an Israeli tax resident and a resident of a foreign jurisdiction that is party to an income tax treaty with Israel, most treaties provide a tiebreaker test in the determination of an entity's tax residency.

Permanent establishment (PE)

Foreign resident entities might be exempt from corporate tax to the extent that its activities do not constitute a PE under the tax treaty applicable between Israel and the foreign resident's country of residency.

Whether a non-resident has a taxable presence under Israeli domestic tax law is far less clear than the definition of PE under a relevant tax treaty. There is no detailed legislation or Israeli court decisions that directly address this issue. In general, where there is no tax treaty protection, a non-resident is subject to tax on income accrued or derived in Israel, which is a taxation threshold lower than the PE criterion.

Other taxes

Value-added tax (VAT)

The current rate of VAT is 17%.

Exports of goods and certain services and various other transactions are zero-rated, and certain transactions are exempt. Banks and other financial institutions pay VAT-equivalent taxes at the rate of 17% based on their total payroll and on profits. Not-for-profit organisations pay VAT-equivalent tax (wage tax) at the rate of 7.5% of their total payroll.

Customs duties

Customs duty is imposed on certain products imported into Israel. The rates of duty depend upon their classification according to the Harmonised Customs Tariff and the country of origin. Israel has concluded free-trade agreements with the United States (US), Canada, Mexico, the European Union (EU), and the European Free Trade Association (EFTA).

Excise taxes

Israel imposes excise taxes on a variety of goods (e.g. gasoline and diesel fuel used for transportation, tobacco, alcohol). The excise taxes are levied item-by-item, and the rates vary.

Municipal tax

Municipal tax is levied annually on buildings by local municipalities based on the size, location, and purpose of the property.

Property taxes

Property taxes are generally imposed on the occupier of commercial and residential real property. Unoccupied property is generally taxed on the property's owner. The tax is imposed at the municipality level.

Real estate capital gains

Capital gains on real estate are subject to the Land Appreciation Tax Law. The law relates to any real estate in Israel, including houses, buildings, and anything permanently fixed to land; real estate rights; and leases for 25 years or more. Tax calculations closely follow the calculation of corporate tax on capital gains (*see Capital gains in the Income determination section*).

The tax rate on the real gain is the applicable corporate tax rate (23% in 2018 and 24% in 2017).

A special tax rate may apply with respect to real estate acquired prior to 1960.

Transfer tax

The purchaser of real estate is generally subject to acquisition tax at rates up to a maximum of 10% (the highest rate applies when the purchase price exceeds approximately 17 million Israeli shekels [ILS]).

Stamp taxes

There are no stamp taxes imposed in Israel.

Payroll taxes

There are no payroll taxes other than employer's national insurance contributions (*see below*).

Employer's national insurance contributions

Employers are obligated to pay national insurance contributions based on a percentage of each employee's income on a monthly basis. Employers are responsible for withholding employees' contributions from wages and remitting these together with the employer's own contributions. The employer's contribution rates (current as of January 2018) for Israeli-resident employees are 3.45%, up to monthly income of ILS 5,944, and 7.5% on the difference between ILS 5,944 and the maximum monthly income of ILS 43,370.

For non-resident employees, the employer rates are significantly lower and are 0.49%, up to monthly income of ILS 5,944, and 2.55% on the difference between ILS 5,944 and the maximum monthly income of ILS 43,370. The minimal national insurance payments for non-resident employees do not provide any retirement benefit for the non-resident but generally provides a certain element of work accident coverage.

When an irregular salary payment in excess of one quarter of the usual salary is made, special provisions apply to the computation of social charges by which the application of this payment is equally attributed to the current month and to the past 11 months.

Israel has social security totalisation agreements with 14 countries that may allow for an exemption from Israeli national insurance throughout the employment period of the employee in Israel.

Branch income

A branch is liable for tax at the standard corporate rate on Israel-source income. No tax is withheld on transfers of profits to the foreign head office unless the branch is an AE (*see the Tax credits and incentives section*).

Income determination

In general, the annual results (i.e. the excess of income over expenses or *vice versa*) of an Israeli company or branch, as detailed in the taxpayer's financial statements, form the basis for computing the taxable income of the business.

The base amount is then adjusted pursuant to the provisions of the tax law to arrive at 'taxable income'.

Inventory valuation

Inventories are generally valued at the lower of cost or market value (i.e. net realisable value). Conformity is required between book and tax reporting of inventory. The first in first out (FIFO) or weighted-average basis of valuation is acceptable; the last in first out (LIFO) method is not accepted.

Capital gains

Capital gains tax is generally payable on capital gains by residents of Israel on the sale of assets (irrespective of the location of the assets) and by non-residents on the sale of the following:

- Assets located in Israel.
- Assets located abroad that are essentially a direct or indirect right to an asset or to inventory, or that are an indirect right to a real estate right or to an asset in a real estate association, located in Israel. Taxation applies only in respect of that part of the consideration that stems from the above property located in Israel.
- Assets that are a share or the right to a share in an Israeli entity.
- Assets that are a right in a foreign resident entity that is essentially a direct or indirect right to property located in Israel. Taxation applies only with respect to that part of the consideration that stems from the property located in Israel.

The cashless transfer of rights and assets arising from certain mergers, spin-offs, and asset transfers may be exempt from tax upon meeting various requirements.

Determination of the capital gain

Corporate tax on capital gains is imposed on the disposal of fixed and intangible assets where the disposal price is in excess of the depreciated cost.

Computation of real gain and inflationary components

For tax purposes, the capital gain is generally calculated in local currency, and there are provisions for segregating the taxable gain into its real and inflationary components.

The inflationary amount is the original cost of the asset, less depreciation (where applicable), multiplied by the percentage increase in the Israeli consumer price index (CPI) from the date of acquisition of the asset to the date of its sale. The inflationary amount component is exempt to the extent it accrued after 1 January 1994 and is generally subject to tax at the rate of 10% if it accrued before that date.

The real gain component, if any, is taxed at the rates set out further below.

A non-resident that invests in capital assets with foreign currency may elect to calculate the inflationary amount in that foreign currency. Under this option, in the event of a sale of shares in an Israeli company, the inflationary amount attributable to exchange differences on the investment is always exempt from Israeli tax.

Sale of assets (including publicly and non-publicly traded shares)

The real gain is generally subject to tax at the corporate tax rate applicable in the year of the gain (23% in 2018 and 24% in 2017). Special exemptions may apply for non-residents (*see further below*).

Special rule for retained profits upon sale of shares

Special provisions apply to part of the real gain that is attributed to the seller's share of retained profits in the case of a sale of (i) non-traded shares that were acquired prior to 1 January 2003 or (ii) publicly traded shares where the seller was a 10% or more shareholder.

In the case of a disposal by corporations of (i) non-traded shares and (ii) traded shares when the seller generally directly or indirectly holds at least 10% of the sold Israeli company during the 12-month period preceding the sale, special provisions apply to such part of the real gain that is attributed to the seller's share of retained profits. The share of retained profits is the amount of gain equal to the proportional part of the retained profits of the company that the seller of the shares would have rights to by virtue of those shares. Detailed rules apply in determining this profit component.

Generally, the seller's proportionate part of the company's retained profits is taxed as if this amount had been received as dividends immediately before the sale (i.e. at a tax rate of 0% in the case of an Israeli-resident corporate shareholder or at a tax rate of 30% when the seller is a non-Israeli resident corporate shareholder that generally holds 10% or more in the rights of the Israeli company [it is unclear if this 30% rate may be reduced by an applicable tax treaty]). The part of the retained profits that is attributed to the period ending on 31 December 2002 is subject to tax at the rate of 10%.

Special exemptions for non-residents

Publicly traded Israeli shares

Non-residents corporations not having a PE in Israel are exempt from tax on capital gains from the sale of shares of an Israeli company traded on the Israeli stock exchange or on a foreign stock exchange. Certain exceptions apply.

Where the shares were purchased by the non-resident prior to being publicly traded, *subject to the availability of exemptions detailed below*, capital gains tax might apply for the portion of the gain that was generated up to the day of the share's public listing but not to exceed the capital gain actually arising upon the sale of the share and provided that the value on the day of public listing was more than their value on the date of purchase and that the proceeds upon sale exceeded the value on the date of purchase.

Non-publicly traded shares

For purchases after 1 January 2009, an exemption exists under domestic law for non-residents, regardless of their percentage holding in an Israeli company, from gains derived from the sale of securities not traded on a stock exchange, provided the following conditions are met:

- The investment is not in a company in which, on the date of its purchase and in the two preceding years, the main value of the assets held by the company, directly or indirectly, were sourced from an interest in (i) real estate or in a real estate association (as defined in the Income Tax Ordinance [ITO]); (ii) the use in real estate or any asset attached to land; (iii) exploitation of natural resources in Israel; or (iv) produce from land in Israel.
- The capital gains were not derived by the seller's PE in Israel.
- The shares were not purchased from a relative (as defined in the ITO) or by means of a tax-free reorganisation.

A non-resident company shall not be eligible for this exemption if Israeli residents are controlling shareholders or benefit or are entitled to 25% or more of the income or profits of the non-resident company, either directly or indirectly.

For shares purchased between 1 July 2005 and 1 January 2009, more restrictive conditions apply in order to be eligible for the exemption. Detailed rules apply.

Treaty exemption

Non-residents may qualify for a tax treaty capital gain exemption, depending upon the particular circumstances and the provisions of the applicable tax treaty (e.g. in some tax treaties, no capital gains exemption is allowed where the holding in the sold Israeli company exceeds a certain percentage).

When assets are attributable to an Israeli PE or are real estate rights (including rights in a real estate association), a treaty exemption will generally not be available.

The Israel Tax Authority (ITA) is very sensitive to treaty shopping, and it will be necessary to demonstrate to the ITA that the foreign holding entity has business substance in its country of residence and that the structuring of the holding through that entity was not implemented for tax treaty benefit purposes.

Capital losses

Capital losses may offset all capital gains (including gains from Israeli or foreign securities) and gains from the sale of property (whether Israeli or foreign source).

Where the capital loss is from a non-Israeli asset (including when carried forward into future years), the loss must first be offset against foreign-source capital gains.

Capital losses derived from the sale of securities may also be offset against interest and dividend income generated from the sold security and also against interest and dividend income received from other securities (where the income was not subject to tax of more than 25%).

Capital losses from the sale of shares are generally reduced by any dividends received by the selling corporation during the 24 months preceding the sale, unless tax on the dividends of at least 15% was paid.

Capital losses can generally be carried forward indefinitely and set-off only against capital gains.

Exit tax

When an Israeli tax resident, including a company, ceases to be an Israeli resident for tax purposes, its assets are deemed to have been sold one day before it ceased being an Israeli resident. Although exit tax is primarily applicable to individuals, this might also apply to corporations incorporated outside of Israel whose management and control is transferred from Israel to another jurisdiction at a particular time.

Any gain attributable to the deemed sale of assets may be paid on the day the residency ceased or it may be postponed until the date the assets are actually realised. When the tax event is deferred to the sale date of the assets, the amount of the Israeli capital gain portion is determined by taking the real capital gain at the time of realisation, multiplied by the period of ownership from the day on which it acquired the asset until the day it ceased being an Israeli resident, divided by the entire period from the day of the asset's acquisition until the day of realisation. The Minister of Finance is authorised to prescribe provisions for the implementation of the exit tax, including provisions for the prevention of double taxation and the submission of tax reports, but no provisions have yet been issued.

Dividend income

Received by an Israeli-resident company

Dividends received by an Israeli-resident company from another Israeli-resident company that originate from income accrued or derived in Israel are exempt from corporate tax, except for dividends paid from income of an AE (*see the Tax credits and incentives section*). This affords the opportunity to transfer after tax profits within an Israeli group of companies for further investment.

Dividends received by an Israeli-resident company from a non-resident company, as well as dividends received from an Israeli company that arise from foreign-source income of the distributing company, are generally taxable for the receiving company at the rate of 23%. Under certain circumstances, the receiving company may elect to be taxed on such dividends at the corporate tax rate, in which case it will also be entitled to a foreign tax credit with respect to corporate taxes paid by the company distributing the dividend (i.e. an 'underlying' tax credit).

Received by a non-resident shareholder

Dividends received by a non-resident shareholder from an Israeli company are generally subject to tax at the rate of 25% (30% if paid to a 10% or more shareholder), subject to a reduced rate of tax under an applicable tax treaty.

Several of Israel's tax treaties have very beneficial withholding tax (WHT) rates for dividends being paid from Israel. The ITA is very sensitive to treaty shopping, and it will be necessary to demonstrate to the ITA that the foreign holding entity has business substance in its country of residence that will support its residency for treaty purposes and that the structuring of the holding through that entity was not implemented for tax treaty benefit purposes. Furthermore, many of the treaties contain a beneficial ownership clause as a condition to enjoying the treaty WHT rates.

Interest income

Received by an Israeli-resident company

Interest income received by an Israeli-resident company is subject to the regular corporate tax rate (23% in 2018 and 24% in 2017).

Received by a non-resident

Interest income received by a non-resident company is generally subject to tax at the rate of 23% or subject to a reduced rate of tax under an applicable tax treaty.

Interest received by a non-resident from deposits of foreign currency with an Israeli bank is exempt from tax, subject to certain conditions.

Rent/royalties income

Rent and royalty income, less allowable deductions for tax purposes, is subject to tax at the regular corporate tax rate (23% in 2018 and 24% in 2017).

Partnership income

From an Israeli tax perspective, a partnership is, in principle, a fiscally transparent vehicle. Accordingly, Israeli tax law does not tax partnerships as such; however, generally, each partner is taxed in respect of its share of the partnership income, with the taxable income allocated to a corporate partner taxed at the regular corporate tax rate. Consequently, the actual distribution of partnership income to a partner is a non-taxable event.

Foreign income

An Israeli-resident company is liable for tax on its worldwide income. Double taxation is avoided by way of a foreign tax credit mechanism that also applies unilaterally in the absence of an applicable double taxation treaty (DTT) (*see the Tax credits and incentives section*).

Under the controlled foreign company (CFC) regime in Israeli tax law, an Israeli company or individual may be taxed on a proportion of the undistributed profits of certain Israeli-controlled, non-resident companies in which the Israeli shareholder has a controlling interest (10% or more of any of the CFC's 'means of control'). *See Controlled foreign companies (CFCs) in the Group taxation section for more information*.

Deductions

Costs incurred by a branch or a company are deductible as a business expense for tax purposes where they are incurred 'wholly and exclusively in the production of income'. The amount of the deduction may be limited or disallowed further to other ITO provisions and income tax regulations.

Depreciation

The ITO and tax regulations prescribe standard annual rates of tax depreciation for assets serving in the production of taxable income. Depreciation is generally on a straight-line basis for industrial and other enterprises based on the specific asset types as set out in the tax regulations.

Accelerated rates of depreciation may be available in regard to certain activities (such as industrial) where there is unusual wear and tear due to additional shifts of equipment use. Detailed rules apply.

Depreciation is not permitted on land.

Goodwill

In general, under Israeli tax regulations, goodwill purchased may be amortisable by the purchaser over a ten-year period (10% annually).

Organisational and start-up expenses

Organisational and start-up expenses are generally not immediately deductible but, rather, are to be capitalised for tax purposes.

Interest expenses

Interest expenses incurred in the production of taxable income are generally deductible. Since there are no thin capitalisation rules in Israel, there are no specific debt-to-equity ratio requirements and there is no limit to the amount of debt that may be used in establishing a branch or local company operation in Israel. Interest and linkage payments arising from late tax payments are generally not deductible for tax purposes. Interest charges between related parties must be set based on transfer pricing principles. Detailed rules apply.

Bad debt

Provisions for bad debts are deductible in the year in which it is evident that the debt has become irrecoverable. Detailed rules apply for making this determination.

Charitable contributions

Charitable contributions do not constitute a regular business expense. However, a tax credit may be available (*see Tax credit for donations in the Tax credits and incentives section*).

Research and development (R&D) costs

Special tax relief is provided under the ITO for R&D costs incurred (*see the Tax credits and incentives section*).

Pension expense

Pension fund contributions made to recognised funds are generally deductible for the employer, provided, *inter alia*, the contributions do not exceed a prescribed level and are effected on a regular basis.

Directors' fees

Payments for commercially justifiable director fees should generally be deductible.

Accrued expenses

Payments are generally deductible on an accrual basis for commercially justifiable expenses representing arm's-length consideration. However, when payments made to foreign residents attract WHT, the deduction will generally be allowed, provided the payment is effected within the tax year. Alternatively, such payments may be deductible in a tax year if the applicable WHT is deducted within three months after the tax year-end and remitted to the tax authorities within seven days of the deduction, together with index linkage differences and interest accrued since the year-end.

However, accrued expenses for severance pay, vacation pay, recreation pay, holiday allowances, and sick pay are not deductible, even if there is an obligation to make these payments. They are only deductible in the year in which they are actually paid to the beneficiary or to a recognised fund.

Contingent liabilities

Based on Israeli court decisions, contingent liabilities may be deductible for tax purposes upon satisfying the following criterion: (i) according to accepted accounting principles, the taxpayer must include in its balance sheet a suitable provision for the potential liability; otherwise, its income will be considered to have been incorrectly reported; (ii) the circumstances of the case and the technical means according to accepted accounting practice must be provided, enabling a determination of the amount of the liability; and (iii) there is a high probability that the potential debt with respect to which the provision was made will become an absolute debt.

Excess (disallowed) expenses

Israeli tax law disallows the partial deduction of certain employee-related expenses incurred by a company doing business in Israel. These include so-called 'excess expenses'. Examples of these are (i) payments for business, travel, and meals that exceed allowable deductions; (ii) expenses incurred in respect of a benefit granted by an employer to its employees but that cannot be attributed to a particular employee; and (iii) certain vehicle maintenance expenses (all expenses relating to a company-owned vehicle that was also designated for use of an employee are generally tax deductible as the employee is taxed in this regard upon an imputed amount).

A company is obligated to pay a monthly advance on excess expenses in the amount of 45% of the excess expense. The amount paid as an advance in respect of excess expenses is deemed a payment on account of the regular tax advances and payments that the company must pay for corporate tax and is offset against them, but it is not refundable (i.e. when a taxpayer's tax liability in a given year is lower than the excess expense advances paid, the unutilised amount shall be carried forward to future tax years). Detailed rules apply.

Fines and penalties

Payment of fines and penalties are generally not deductible.

Taxes

Municipality taxes incurred in the production of taxable income are generally deductible.

Net operating losses

Business losses can be offset against income from any source in the same year. Loss carrybacks are not allowed. Losses may be carried forward and set-off without time limit against income from any trade or business or capital gains arising in the business, but not against income from any other source.

Payments to foreign affiliates

Payments of interest, royalties, and management fees to foreign affiliates are deductible if based on normal commercial terms and practices and evidenced by an inter-company agreement and transfer pricing documentation. Where such payments attract WHT, the deduction will only be allowed where such tax has been withheld and paid in accordance with certain requirements. All cross-border payments to foreign affiliates for goods and services have to comply with arm's-length pricing standards (*see Transfer pricing in the Group taxation section*).

Group taxation

As a general rule, a parent company and its subsidiaries may not submit consolidated tax returns. Only groups of industrial companies in the same line of business, as well as parent companies that control industrial companies in the same line of business and have at least 80% of their assets invested in industrial companies, are eligible to file consolidated tax returns.

Transfer pricing

The ITO and its accompanying regulations contain elaborate transfer pricing provisions, including the arm's-length principle, that apply to any international transaction in which there is a special relationship between the parties to the transaction and for which a price was settled on for property, a right, a service, or credit. In general, the regulations are based upon internationally recognised transfer pricing principles (i.e. US tax regulations or Organisation for Economic Co-operation and Development [OECD] rules). These regulations generally require the taxpayer to support the pricing of international transactions with a transfer pricing study, inter-company agreements, and other documentation. In accordance to Israeli High Court Rulings, the terms of transaction conducted between related parties should be set in written contracts.

Since transfer pricing is a subject that receives considerable attention from the ITA in its examination of related inter-company transactions, transfer pricing principles and documentation requirements should be carefully adhered to.

A taxpayer is required to include in its annual corporate tax return a special form entitled 'Declaration of International Transactions' providing details for every cross-border transaction conducted with related parties. The taxpayer must sign the form, which includes a declaration that the transactions with related parties abroad were in accordance with the arm's-length principle, as defined in the Israeli transfer pricing regulations promulgated under the ITO. As a result of this form and declaration, the importance of appropriate transfer pricing documentation has increased.

Thin capitalisation

Israel has no statutory or regulatory provisions or other rules concerning thin capitalisation for tax purposes as exist in certain other jurisdictions. Since there are no thin capitalisation rules and Israel has no specific debt-to-equity ratio requirements, a company may be financed with minimum capital, and there is no limit to the amount of debt that may be used. Transfer pricing principles shall generally apply with regards to interest charges.

Controlled foreign companies (CFCs)

Under the CFC regime in Israeli tax law, an Israeli company or individual may be taxed on a proportion of certain undistributed profits of certain Israeli-controlled, non-resident companies in which the Israeli shareholder has a controlling interest (10% or more of any of the CFC's 'means of control'). A CFC is a company to which a number of cumulative conditions apply, including that most of its income or profits in the tax year were derived from passive sources (e.g. capital gains, interest, rental, dividend, royalties) and such passive income has been subject to an effective tax rate that does not exceed 15%.

Tax credits and incentives

Foreign tax credit

Double taxation is avoided by way of a foreign tax credit mechanism that also applies unilaterally in the absence of an applicable DTT. The foreign tax credit is limited to the Israeli corporate tax payable with respect to the same income. Foreign-sourced income is divided into 'baskets' (i.e. categories) on the basis of the income source (e.g. dividends, business income), and a particular credit limitation applies to each basket. Excess uncredited foreign income can be carried forward for the subsequent five tax years.

Preferred Enterprise (PFE) regime

PFE status, which provides for cash and tax benefits, may be granted under the Law of Encouragement of Capital Investments ('the Law') to enterprises that meet relevant criteria. In general, the Law provides that projects are considered 'preferred' if the enterprise will contribute to the development of the productive capacity of the economy, absorption of immigrants, creation of employment opportunities, or improvement in the balance of payments.

Eligible income (qualifying PFE income)

In order to qualify as a PFE, a company must generate 'industrial income', which is defined in Section 51 of the Law as income that was produced or arose in the course of the enterprise's ordinary activity from one or more of the below types of income:

i. Income from the sale of products manufactured in that factory.
ii. Income from the sales of products that are semiconductors produced in another factory, which is not owned by a relative of the owner of the factory, according to know-how developed by the factory.
iii. Income from granting permission to use know-how or computer software developed by the enterprise, as well as income from royalties received for the said use that the Director of the Department of Industrial Research and Development approved is connected to the productive activities of the enterprise in Israel.
iv. Income from services connected to sales as stated in (i) and (ii) above, and also from services connected to the right to use know-how or computer software or to the royalties stated in (iii).
v. Income from industrial R&D for a foreign resident, provided there has been given an approval from the Director of the Department of Industrial Research and Development.

Marketing and economic qualifying factors

In order to qualify for grants or tax benefits under the Law, the Law requires that the enterprise meets one of the following conditions each year:

- Its main activity is bio-technology or nano-technology (an approval in this regard should be received from the Director of the Department of Industrial Research and Development prior to approval of the PFE).
- Its revenue during the tax year from sales in a specific country or separate customs duties territory does not exceed 75% from its total revenue for that tax year.
- 25% or more of its revenue during the tax year is derived from sales in a specific country or in a separate customs duty territory that has a population of at least 12 million.

Corporate tax rates

The PFE corporate tax rate is 7.5% for operations in 'development area A' and 16% for operations outside development area A.

R&D centres will not be entitled to any reduced corporate tax rate if the direct or indirect controlling shareholders or the direct or indirect beneficiaries (entitled to 25% or more of the income or profits of the R&D centre) are Israeli residents.

Dividend WHT rate

The WHT rate applicable to dividends from PFE profits is 20%, which may be reduced under certain tax treaties.

Special Preferred Enterprise (SPFE) regime

Key eligibility conditions

The SPFE regime is intended for very large companies with material investments in productive assets, R&D, or in providing new employment opportunities. A company must demonstrate that it will greatly contribute to the Israeli economy to qualify for the SPFE regime.

To qualify, an Israeli company must meet certain conditions, such as having SPFE annual revenue greater than or equal to ILS 1 billion and being part of a group of companies that generates annual revenues greater than or equal to ILS 10 billion in the same industrial sector in which the Israeli company operates.

Corporate tax rates

The SPFE corporate tax rate is 5% for operations in development area A and 8% for operations outside of development area A for ten years. After ten years, the PFE tax rates shall apply unless the company has a new investment program that requalifies the company again for SPFE status.

Dividend WHT rate

The WHT rate applicable to dividends from SPFE profits continues to be 20%, which may be reduced under certain tax treaties. A 5% WHT rate applies to dividends paid to a foreign parent company from SPFE profits. This reduced rate is effective until 31 December 2019.

Preferred Technology Enterprise (PTE) regime

Key eligibility conditions

To be eligible for the PTE regime, a company must engage in the technology sector and qualify as a PFE. Further, the company must be part of a group of companies with aggregate annual revenues less than ILS 10 billion and meet one of the following two tests:

- The company's average R&D expenses in the three years prior to the current tax year must be greater than or equal to 7% of its total revenues or exceed ILS 75 million per year. The company also must satisfy one of the following conditions:
  - At least 20% of company's employees are R&D staff or the company has at least 200 R&D employees.
  - A venture capital fund has invested at least ILS 8 million in the company.
  - During the three years prior to the current tax year, the company grew its revenue each year by an average of 25% in relation to the preceding tax year and the revenue was at least ILS 10 million in each year.
  - During the three years prior to the current tax year, the company increased its number of employees each year by an average of 25% in relation to the preceding tax year and the company had at least 50 employees in each tax year.
- The company obtained an approval from the National Authority for Technological Innovation (formerly known as the Office of the Chief Scientist).

Clarifications may be required for interpretation of the above conditions.

Corporate tax rates

Under the PTE regime, reduced corporate tax rates of 7.5% for operations in development area A or 12% for operations outside of development area A shall apply. These corporate tax rates shall apply only with respect to the portion of intellectual property (IP) developed in Israel, based on forthcoming rules.

Capital gain on sale of IP

Companies that sell IP to a related foreign company will qualify for a reduced 12% capital gains tax rate, provided that the company acquired the IP from a foreign company after 1 January 2017 for at least ILS 200 million, subject to the approval of the National Authority for Technological Innovation.

Dividend WHT rate

A reduced 4% WHT rate may apply to dividends paid to a foreign parent company holding at least 90% of the shares of the distributing company.

For other dividend distributions, the WHT rate shall be 20%, which may be reduced under certain tax treaties.

Special Preferred Technology Enterprise (SPTE) regime

Key eligibility conditions

To be eligible for the SPTE regime, a company must meet the eligibility conditions of a PTE above and be part of a group of companies with aggregate annual revenues of at least ILS 10 billion.

Corporate tax rates

Under the SPTE regime, a reduced corporate tax rate of 6% shall apply for a period of at least ten years, subject to detailed qualifying rules. The reduced tax rate shall apply only with respect to the portion of IP developed in Israel, under forthcoming rules.

Capital gain on sale of IP

Companies that sell IP to a related foreign company will qualify for a reduced 6% capital gains tax rate, provided that the company developed or acquired the IP from a foreign company after 1 January 2017, subject to the approval of the National Authority for Technological Innovation.

Dividend WHT rate

The dividend WHT rates are the same as under the PTE regime, *discussed above*.

Approved Enterprise (AE) and Benefitted Enterprise (BE) regimes (for companies established prior to 2011)

The AE and BE regimes were tax incentive programs granted to operations qualifying under the Law prior to the Law's amendments in 2005 and 2011. As some companies may still be operating under these prior regimes, we set out below certain key tax highlights.

Reduced tax rates

In addition to financial incentives for the establishment or expansion of an AE/BE, various tax incentives apply when a new AE/BE or expansion thereof is operational.

The reduced tax rates generally apply for a seven-year benefit period (or a ten-year period in certain cases of local companies established in development area A or in the case of a foreign investor company, *see below*), commencing with the year in which the AE/BE first generated taxable income.

Generally, this seven or ten-year period of benefits is limited to 12 years from the year of implementation. For AE plans governed prior to the 2005 amendment to the Law, the period of benefits cannot extend beyond 12 years from the year the enterprise commenced its operations or beyond 14 years from the year in which approval of status as an AE was granted, whichever is earlier.

Locally owned companies

Income derived by a company from an AE/BE during the maximum seven-year period of benefits is generally subject to corporate tax at a rate of 25%.

A WHT rate of 15% (subject to a possible reduction under a tax treaty) applies to dividends paid from profits of an AE/BE earned during the benefits period if distributed either during the benefits period or during the subsequent 12 years.

Foreign investors' companies (FICs)

A company that qualifies as an FIC is entitled to enhanced tax benefits on AE/BE income. In general, an FIC is a company having more than 25% of its share capital (in terms of rights to shares, profits, voting, and the appointment of directors) and its combined share capital and investor loan capital owned by foreign residents. To qualify for FIC status, a foreign investor must make an investment in the company of at least ILS 5 million.

An FIC benefits from reduced corporate tax on the profits of an AE/BE for a period of ten years (instead of seven years) commencing with the first year in which taxable income is generated. The total period of benefits is restricted as discussed above. The reduced corporate tax rate depends on the level of foreign ownership as shown below:

Percentage of foreign ownership	Corporate tax rate (%)
Over 25% but less than 49%	25
49% or more but less than 74%	20
74% or more but less than 90%	15
90% or more	10

Dividends paid by an FIC out of the profits of its AE/BE are subject to tax in the hands of the recipient at the rate of 15% (subject to a reduced tax rate under an applicable tax treaty), without limitation as to their distribution date, provided the dividends are distributed out of AE/BE profits derived during the benefits period.

Alternative system of tax benefits (tax holiday)

Companies with new or expanding AEs/BEs were entitled to elect to forego all government cash grants and receive, instead, a total exemption (i.e. tax holiday) from corporate tax on undistributed profits of the AE/BE for ten years in development area A, for six years in development area B, and for two years in development area C. The area of incentive is the area in which the company's facilities are located.

The tax holiday provides an Israeli tax exemption so long as the AE/BE profits generated in the exemption period are retained within the company. Should a subsequent distribution of such profits occur, corporate tax and dividend WHT is imposed on the income distributed, at the rates which would have been applicable if the tax holiday had not been elected (i.e. 25% or at a lower rate if the company is an FIC with a foreign ownership percentage of 49% or more during those years).

Under certain anti-avoidance provisions applicable to tax holidays, amounts directly or indirectly paid or credited by an AE to a relative, a major shareholder, or to a related entity controlled by either a relative or a major shareholder may be treated as a deemed taxable distribution of profits by the AE.

Ireland track and strategic investment track

For companies having an AE/BE in development area A that seeks to distribute dividends while maintaining a low company and dividend tax burden, there was an 'Ireland track' under which the aggregate Israeli corporate and dividend WHT for a foreign resident shareholder is 15% and for an Israeli resident shareholder is 24.8%. This track is in contrast to the standard alternative benefit track discussed above, which provides a tax holiday, provided that profits remain undistributed.

Furthermore, a 'strategic investment track' allowed for an exemption during the benefit period from corporate tax and dividend WHT for a company having (depending on its location within area A of the country) very significant investment and revenue levels. This means that during the benefits period, a company eligible for benefits from income accrued under this track will have no tax liability whatsoever for its productive activity arising from such investment and for the distribution of profits. Detailed rules apply to these tracks.

Research and development (R&D) incentives

Deduction of R&D costs

Under special relief provided under the ITO, which was enacted for the purpose of encouraging taxpayers to invest in R&D activities, R&D costs can generally be deductible for tax purposes even when they represent capital costs.

The ITO provision generally distinguishes between two types of investors in R&D projects:

- The R&D project is conducted or sponsored by the owner of an enterprise in the fields of industry, agriculture, transportation, and energy, and it is intended to develop this enterprise.
- The R&D costs are borne by a taxpayer that is not the owner of an enterprise in the above mentioned fields or the taxpayer participates in R&D costs of another developer in consideration for a reasonable return, when such R&D projects also enjoy government grants.

In regard to the first group of taxpayers, the R&D expenses shall be deducted in the tax year incurred when such expense has been approved as an R&D expense by the relevant government department (the approval in regard to industrial related projects is generally granted by the National Authority for Technological Innovation [previously called the Office of the Chief Scientist]). When such approval is not obtained, the expense shall be deducted over three tax years.

The R&D expenses incurred by the second group of taxpayers shall generally be deducted over two tax years. The deductible expenses allowed to a participant in R&D costs of another developer generally may not exceed 40% of the taxable income of the investor in the year in which the expenses had been incurred.

Amortisation of acquisition amount

A special law that encourages investment in Israeli high-tech industry provides different tracks that allow for amortisation of the acquisition amount further to detailed rules (the Angel's Law).

The Angel's Law currently contains three tracks.

Under Track One, for acquisitions between 1 January 2011 and 31 December 2019, an Israeli tax resident company that acquires a controlling interest in a private Israeli company that meets certain R&D activity levels shall be entitled to amortise its acquisition amount (i.e. consideration paid for shares less the purchased company's positive equity capital if any) from its taxable income equally over five years beginning with the tax year following the acquisition. Entitlement to this deduction is subject to the fulfilment of detailed qualifying conditions, which include, *inter alia,* that both companies have AE/BE/PFE plans in the year of acquisition, meet certain R&D investment levels, employ a certain prescribed percentage of employees having academic degrees in certain qualifying fields, and for the first three years of the amortisation period the R&D expenses of the acquired company are incurred for its own company or that of the purchasing company and at least 75% of such expenses are incurred in Israel. Detailed rules apply.

Track Two applies to single investors that invest in seed companies, and applies to investments between 1 January 2011 and 31 December 2019.

Track Three applies to single investors that invest in early stage companies, and applies to investments between 1 January 2016 and 31 December 2019.

Under Tracks Two and Three, individual investors who invest in high-tech Israeli companies (which meet the definition of 'qualifying investment') will be entitled to deduct their investments, over three years up to ILS 5 million in each company, as an expense against their total taxable income. This allows early recognition of the investment as a current expense (instead of recognising it on the date of realisation of the shares of the investee company). The most significant advantage inherent in the Angel's Law is the investor's ability to offset its investment against income at higher tax rates, such as employment income. The qualifying conditions differ for Tracks Two and Three. Detailed rules apply.

Tax credit for donations

A tax credit is granted in respect of donations to approved state and charitable institutions aggregating at least ILS 180 (for 2018) in a tax year. The donor is allowed a tax credit equal to the amount of the contribution times the corporate tax rate applicable during the year, provided the amount eligible for the credit does not exceed the lower of the following: (i) 30% of the corporation's taxable income in that year or (ii) ILS 9,211,000 (in 2018). The above figures are adjusted each year according to the CPI. Excess unused tax credits may be carried forward for three years, subject to detailed rules.

Incentive to promote foreign investment in Israeli corporate bonds

In order to promote foreign investment in the Israeli corporate bonds market, there is an exemption from tax with respect to interest income received by foreign investors on their commercial investments in Israeli corporate bonds traded on the Tel Aviv stock exchange (TASE). The exemption is not granted to a foreign investor that has a PE in Israel or is related to, or holds 10% more of the means of control in, the investee company. In addition, in order for the exemption to apply to a foreign investor that has 'special relations' with the investee company, regularly sells products to or provides services to the investee company, or is employed by the investee company, the investor must prove that the interest rate on the corporate bond was determined in good faith.

Withholding taxes

Under Israeli domestic tax law, WHT on payments of Israeli-source income is generally deducted at the corporate tax rate from all income remittances abroad, unless a tax certificate is obtained from the ITA authorising withholding-exempt remittances or a reduced rate of tax pursuant to an applicable tax treaty.

Set out below is a listing of WHT rates for dividends, interest, and royalties under domestic tax law and pursuant to tax treaties in force. Detailed rules apply under certain tax treaties for eligibility to the treaty-reduced rates (e.g. beneficial ownership, having no PE in Israel). The applicable tax treaty should be consulted to determine the relevant WHT rate and to examine detailed conditions that may apply for the specific circumstance.

Recipient	WHT (%) Dividends	Interest *	Royalties
Resident corporations	0/23 (1)	23	30
Resident individuals	25/30 (1, 2)	25 (32)	30
Non-resident corporations:			
Non-treaty	25/30 (2)	23	23
Treaty:			
Austria	0/10 (49)	5	0
Azerbaijan	15	10	5/10 (79)
Belarus	10	5/10 (33)	5/10 (50)
Belgium	15	15	0/10 (51)
Brazil	10/15 (3)	15	10/15 (52)
Bulgaria	10/12.5 (4)	5/10 (34)	12.5 (53)
Canada	5/15 (54)	5/10 (54)	0/10 (54)
China, People's Republic of	10	7/10 (35)	10 (55)
Croatia	5/10/15 (5)	5/10 (36)	5
Czech Republic	5/15 (6)	10	5
Denmark	0/10 (73)	5 (74)	0
Estonia	0/5 (7)	5	0
Ethiopia	5/10/15 (8)	5/10 (37)	5
Finland	5/10/15 (9)	10	10
France	5/10/15 (10)	5/10 (38)	0/10 (56)
Georgia	0/5 (71)	0/5 (72)	0
Germany	5/10 (57)	0/5 (57)	0 (57)
Greece	25 (11)	10	10
Hungary	5/15 (12)	0	0
India	10	10	10
Ireland, Republic of	10	5/10 (39)	10
Italy	10/15 (13)	10	0/10 (58)
Jamaica	15/22.5 (14)	15	10
Japan	5/15 (15)	10	10
Korea, Republic of	5/10/15 (16)	7.5/10 (40)	2/5 (59)
Latvia	5/10/15 (17)	5/10 (41)	5
Lithuania	5/10/15 (17)	10	5/10 (60)
Luxembourg	5/10/15 (18)	5/10 (41)	5
Macedonia - not yet ratified (78)	5/15 (78)	10	5
Malta	0/15 (75)	5	0
Mexico	5/10 (19)	10	10
Moldova	5/10 (20)	5	5
Netherlands	5/10/15 (21)	10/15 (42)	5/10 (61)
Norway	25	25	10
Panama	5/15/20 (76)	15 (77)	15
Philippines	10/15 (22)	10	15
Poland	5/10 (23)	5	5/10 (62)
Portugal	5/10/15 (24)	10	10
Romania	15	5/10 (43)	10
Russia	10	10	10
Singapore	5/10 (25)	7	5
Slovakia	5/10 (26)	2/5/10 (44)	5
Slovenia	5/10/15 (27)	5	5
South Africa	25	25	0 (63)

Israel

Recipient	WHT (%) Dividends	Interest *	Royalties
Spain	10	5/10 (45)	5/7 (64)
Sweden	0	25	0 (65)
Switzerland	5/10/15 (28)	5/10 (37)	5
Taiwan (Republic of China)	10	7/10 (46)	10
Thailand	10/15 (29)	10/15 (47)	5/15 (66)
Turkey	10	10	10
Ukraine	5/10/15 (30)	5/10 (37)	10
United Kingdom	15	15	0 (67)
United States	12.5/15/25 (31)	10/17.5 (48)	10/15 (68)
Uzbekistan	10	10	5/10 (69)
Vietnam	10	10	5/7.5/15 (70)

Notes

* Some Israeli tax treaties provide for an exemption from WHT on interest involving governmental and quasi-governmental parties. Such exemptions are not separately indicated in the table above.

1. Dividends between Israeli resident companies are generally exempt from Israeli tax. Dividends paid from a foreign resident company received via an Israeli payer (e.g. bank) are subject to WHT at the rate of 24% when paid to an Israeli resident company and at the rate of 25% when paid to an individual.
2. 30% rate applies in the case of a 'substantial shareholder', which is, in general, a shareholder that holds 10% or more of the rights of the company (detailed rules apply).
3. 10% where beneficial owner directly holds at least 25% of the capital of the company paying the dividends.
4. At a rate that is 50% of the rate that would have been imposed but for this provision but not to exceed 12.5% and not less than 7.5%. A 10% rate applies where paid from profits generated by an enterprise entitled to special tax rates under the Encouragement of Investment Law.
5. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli corporate tax; 15% rate applies in all other cases.
6. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 15% of the capital of the company paying the dividends; 15% rate in all other cases.
7. 0% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 5% rate in all other cases.
8. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli corporate tax; 15% rate in all other cases.
9. If the beneficial owner is a company (other than a partnership) that directly controls at least 10% of the voting power in the company paying the dividends, the rate is 5%, but increased to 10% if the dividends are paid out of profits which, by virtue of provisions in Israeli law for the Encouragement of Investment in Israel, are subject to a tax rate lower than the standard rate levied on the profits of a company resident in Israel; 15% rate in all other cases.
10. 5% if the beneficial owner is a company that directly or indirectly holds at least 10% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that directly or indirectly holds at least 10% of the capital of the company paying the dividends and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli corporate tax; 15% rate in all other cases.
11. At the domestic Israeli tax rate.
12. 5% if the recipient directly holds at least 10% of the capital of the company paying the dividends.
13. 10% if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
14. 15% if the beneficial owner is a company (other than a partnership) that directly or indirectly holds at least 10% of the voting power of the company paying the dividends.
15. 5% if the beneficial owner is a company that owns at least 25% of the voting shares of the company paying the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place.
16. 5% if the beneficial owner is a company that directly or indirectly holds at least 10% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that holds 10% of the capital of the company paying the dividends and the dividends are paid out of profits that are

subject to tax at a rate that is lower than the normal rate of the corporation tax; 15% rate in all other cases.

17. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends where the dividends are paid out of profits that by virtue of provisions in the Israeli Law of Encouragement of Investments in Israel are exempt from tax or subject to tax at a rate that is lower than the normal rate of Israeli corporate tax; 15% rate in all other cases.
18. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli corporate tax; 15% rate in all other cases.
19. 5% if the beneficial owner is a company that directly or indirectly holds at least 10% of the capital of the company paying the dividends.
20. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
21. With respect to dividends paid to a company that directly holds at least 25% of the capital of the company paying the dividends: (i) 10% where the dividends are paid out of profits that, by virtue of provisions in Israeli law for the encouragement of investment in Israel, are exempted from tax or subject to tax at a rate that is lower than the standard rate levied on the profits of a company resident in Israel; (ii) 5% where paid out of regularly taxed profits. A 15% rate applies in all other cases.
22. 10% if the beneficial owner is a company (excluding partnership) that directly holds at least 10% of the capital of the paying company.
23. 5% if the recipient directly holds at least 15% of the capital of the company paying dividends.
24. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli corporate tax; 15% rate in all other cases.
25. 5% if the beneficial owner directly holds at least 10% of the capital of the company paying the dividends.
26. 5% if the recipient directly or indirectly holds at least 10% of the capital of the company paying the dividends.
27. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 10% of the gross amount of the dividends if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends and the dividends are paid out of profits that, by virtue of law of the state in which the payer is a resident, are exempt from corporate tax or subject to corporate tax at a rate that is lower than the normal rate in that state; 15% of the gross amount of the dividends in all other cases.
28. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 10% rate if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli corporate tax; 15% rate in all other cases.
29. 10% if the recipient holds at least 25% of the capital of the company paying the dividends.
30. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 10% if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israeli corporate tax; 15% in all other cases.
31. 12.5% but only if (i) during the part of the paying corporation's taxable year that precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and (ii) not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50% or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received). A 15% rate applies for payments from income derived during any period for which the paying corporation is entitled to the reduced tax rate applicable to an AE under Israel's Encouragement of Capital Investments Law (1959). A 25% rate applies in all other cases.
32. WHT is generally at a rate of 15% if the loan/interest is not linked to any index. Interest paid on a bond to a shareholder who holds less than 10% of the rights of the company is generally taxed at a rate of 35%. A WHT rate of 47% applies in the case of a substantial shareholder (in general, a shareholder that holds 10% or more of rights of the company). An additional tax at a rate of 3% applies on an individual's income if their income from all sources in a tax year exceeds ILS 640,000 (in 2017). Detailed rules apply.
33. 5% for interest in connection with the sale on credit of any industrial, commercial, or scientific equipment or on any loan of whatever kind granted by a bank.
34. 5% for interest in the case of a bank or other financial institution.

35. 7% for interest received by any bank or financial institution.
36. 5% for interest paid on a loan granted by a bank.
37. 5% for interest paid on any loan of whatever kind granted by a bank.
38. 5% where in connection with the sale on credit of any industrial, commercial, or scientific equipment, or sale on credit of any merchandise by one enterprise to another enterprise, or on any loan of whatever kind granted by a bank loans made by banks; 10% in all other cases. An election can be made to be taxed on the net amount of the interest as if such interest were business profits.
39. 5% for interest paid in connection with the sale on credit of any industrial, commercial, or scientific equipment, sale on credit of any merchandise by one enterprise to another enterprise, or on any loan of whatever kind granted by a bank.
40. 7.5% for interest if received by any bank or financial institution.
41. 5% where paid on any loan of whatever kind granted by a bank.
42. 10% where paid to a bank or a financial institution.
43. 5% where paid in connection with the sale on credit of any industrial, commercial, or scientific equipment, or sale on credit of any merchandise by one enterprise to another enterprise, or on any loan of whatever kind granted by a bank.
44. 2% applies to government debt or government-assisted debt; 5% rate applies when paid to a financial institution; 10% rate applies in all other cases.
45. 5% in connection with the sale on credit of any industrial, commercial, or scientific equipment, or in connection with the sale on credit of any merchandise by one enterprise to another enterprise, or on any loan granted by a financial institution.
46. 7% for interest paid on any loan of whatever kind granted by a bank.
47. 10% for interest received by any financial institution (including an insurance company).
48. 10% for interest derived from a loan of whatever kind granted by a bank, savings institution, or insurance company or the like. 17.5% rate for other interest. An election may be made to be taxed on interest income as if that income were industrial and commercial profits.
49. 0% if the beneficial owner is a company (other than a partnership) that holds at least 10% of the capital of the company paying the dividends.
50. 5% for copyright royalties for literary, artistic, or scientific work (excluding cinematograph films) or for the use of, or the right to use, industrial, commercial, or scientific equipment or road-transport vehicles.
51. 0% for copyright royalties for literary, dramatic, musical, artistic, or scientific work (excluding in respect of films for cinema or television).
52. 15% for trademark royalties.
53. The rate is 50% of the rate that would have been imposed but for the treaty provision but not to exceed 12.5% and not to be less than 7.5%.
54. A new tax convention between Canada and the State of Israel is effective as of 1 January 2017 (in force since 21 December 2016). The new tax convention replaces the convention signed on 21 July 1975. Under the new tax convention, the following rates apply:

    - Dividends: The rate is 5% of the gross amount of dividends if the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; in all other cases, the rate is 15% of the gross amount of the dividends.
    - Interest: The rate is 5% of the gross amount of interest if the beneficial owner of the interest is a financial institution and is dealing at arm's length with the payer; in all other cases, the rate is 10% of the gross amount of the interest.
    - Royalties: The rate is 10% of the gross amount of the royalties; 0% for copyright royalties for and other like payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work (excluding royalties in respect of motion picture films and royalties in respect of works on film, videotape, or other means of reproduction for use in connection with television broadcasting); and 0% for royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial, or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement).

55. For industrial, commercial, and scientific equipment royalties, the 10% rate applies to the adjusted amount of the royalties (70% of the gross amount of the royalties).
56. 0% for copyright royalties for literary, artistic or scientific work (excluding cinematograph films).
57. A new tax treaty between Israel and Germany is effective as of 1 January 2017 (in force since 9 May 2016). The new tax treaty replaces the treaty signed on 9 July 1962. Under the new tax treaty, the following rates apply:

    - Dividends will be taxable at a maximum rate of 5% if the beneficial owner is a company that directly holds at least 10% of the capital of the payer company; a 10% rate will apply in all other cases.
    - Interest will be taxable at a maximum rate of 5% and will be exempt in certain circumstances.
    - Royalties will be taxable only in the beneficial owner's state of residence.

58. 0% for copyright royalties for literary, artistic, or scientific work (excluding cinematograph films or tapes for television or broadcasting).
59. 2% for industrial, commercial, and scientific equipment royalties.
60. 5% for industrial, commercial, and scientific equipment royalties.
61. 10% for royalties for cinematograph films and films or video-tapes for radio or television broadcasting.

62. 5% for industrial, commercial, or scientific equipment royalties.
63. For royalties in respect of cinematograph or television films, the WHT rate shall not exceed tax at the rate applicable to companies on 15% of the gross amount of the royalty.
64. 5% for royalties for copyrights of literary, dramatic, musical, artistic work, or for the use of, or the right to use, industrial, commercial, or scientific equipment.
65. The definition of royalties does not include any royalty or other amount paid in respect of (i) the operation of a mine or quarry or of any other extraction of natural resources or (ii) in respect of cinematograph including television films.
66. 5% for royalties for literary, artistic, or scientific work, excluding cinematograph films or films or tapes used for radio, or television broadcasting.
67. For royalties in respect of cinematograph or television films, tax may be imposed in Israel, but not to exceed tax at the rate applicable to companies on 15% of the gross amount of the royalty.
68. 10% for copyright or film royalties.
69. 5% of the gross amount of the royalties where such royalties consist of payments of any kind received as a consideration for the use or the right to use any copyright of literary, artistic, or scientific work (excluding cinematograph films).
70. 5% for royalties for any patent, design or model, plan, secret formula, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience; 7.5% for technical fees; 15% for all other royalties.
71. 0% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends or where paid to certain qualifying pension funds.
72. 0% if to a pension fund or if paid on publicly traded corporate bonds or in respect of a loan, debt-claim, or credit guaranteed or insured by an institution for insurance or financing of international trade transactions that is wholly owned by Israel.
73. 0% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends where such holding is being possessed for an uninterrupted period of no less than one year and the dividends are declared within that period; or if the beneficial owner is the other contracting state or a central bank of that other state, or any other national agency or any other agency (including a financial institution) owned or controlled by the government of that other state; or where paid to certain qualifying pension funds. 10% in all other cases.
74. A resident of a contracting state may elect, in lieu of the tax that would be imposed, to make an election to be taxed on the interest income as if that income were business profits.
75. 0% if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends; 15% in all other cases.
76. 5% if the beneficial owner is a pension fund; 20% if the distributing company is a real estate investment company and the beneficial owner owns less than 10% of the capital of the company paying the dividends; 15% for all other dividends.
77. 0% if to a pension fund or if paid on publicly traded corporate bonds or if the company paying the funds or the beneficial owner is one of the contracting states or one of their central banks, political subdivisions, or local authorities.
78. An Income Tax Convention and Final Protocol between Israel and Macedonia was signed on 9 December 2015, and is still pending. Once ratified, the following WHT rates in relation to dividends shall apply: 5% of the gross amount of the dividends if the beneficial owner of the dividends is a company (other than a partnership or a real estate investment company) that directly holds at least 25% of the capital of the company paying the dividends; and 15% of the gross amount of the dividends in all other cases.
79. 5% paid for any patent, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information (know-how) concerning industrial, commercial, or scientific experience.

Tax administration

Taxable period

The tax year is generally the calendar year. Certain entities may apply to have their tax year-end on different dates, specifically mutual funds, government companies, quoted companies, and subsidiaries of foreign publicly listed companies.

Tax returns

The Israeli system is based on a combined form of assessment and self-assessment.

The statutory filing date is five months following the end of the tax year, which for a calendar year taxpayer would be 31 May. It is possible, however, to secure extensions of the filing date.

Payment of tax

Generally, 12 monthly advance payments are levied at a fixed ratio of the company's turnover. Alternatively, a company may be required to make ten monthly payments beginning in the second month of its tax year, each payment being a fixed percentage of the previous year's tax assessment.

Penalties

Penalties are imposed on overdue advance payments and on delays in the submission of tax returns. For any tax due for a certain year that has not been paid by the end of that tax year, the taxpayer shall be charged interest at a rate of 4% and linkage differentials for the period from the end of the tax year until the date of payment. If the balance due is paid by the end of the first month following the end of the tax year, the taxpayer should receive a full exemption from any interest and linkage differentials.

When the ITA determines that a taxpayer has a tax deficiency exceeding 50% of the total tax due and the taxpayer has not proven to the satisfaction of the ITA that it was not negligent in its tax reports filed (or where there was a failure to file reports), a penalty equal to 15% of the tax deficiency shall be imposed.

A penalty equal to 30% of the tax deficiency may be imposed when an additional tax liability exceeding ILS 500,000 is issued by the ITA further to a tax assessment and the tax deficiency is more than 50% of the total tax due (additional conditions apply).

Tax audit process

A tax return, once filed, constitutes a self-assessment that remains open to review by the ITA generally for four years from the end of the tax year in which the tax return is filed. If no return is filed and a tax officer believes a taxpayer owes tax, the tax officer may issue a 'best judgement' assessment without time limit.

An assessment issued by an Assessing Officer may be challenged by the taxpayer in writing within 30 days stating in the objection the reasons why the assessment is not correct. A different Assessing Officer will then review the facts of the case. If following the filing of the objection the taxpayer reaches an agreement with the Assessing Officer, the tax assessment shall be amended and a notice of tax served on the taxpayer. If no agreement is reached, the Assessing Officer may determine the tax by issuing a Written Order, which may confirm, increase, or reduce the original tax assessment. If following the conclusion of the statute of limitation period or within one year after the appeal was submitted, whichever is later, no agreement is reached and no Written Order was issued, then the taxpayer's objection shall be deemed to have been accepted.

An appeal of a Written Order may be made by the taxpayer directly to the Israeli district courts. There is no special tax court system in Israel. A decision of the district court may be appealed to the Supreme Court as a court of civil appeals.

Detailed rules apply to the procedural appeal process.

Topics of focus for tax authorities

Some key tax issues that the ITA has focused on recently include:

- Transfer pricing.
- Treaty shopping to reduce WHT and capital gains tax.

- WHT on payments to overseas service providers and for payments in regard to software.

Other issues

Choice of business entities

Investments and business operations in Israel may be structured in a variety of ways. The following are the common types of business entities in Israel: (i) Israeli public or private company; (ii) foreign company in Israel (i.e. a branch); (iii) Israeli general or limited partnership; (iv) foreign general or limited partnership; (v) other entities such as cooperative societies; and (vi) other arrangements (e.g. contractual joint ventures).

Mergers and acquisitions

Israeli tax law allows for non-taxable reorganisations in situations in which the ownership and business enterprise of the original parties is continued after the reorganisation takes place, allowing for the deferral of the tax liability until the shares or assets transferred in such reorganisations are actually sold. Different qualifying requirements and conditions apply (e.g. obtaining a ruling from the ITA in certain cases), depending upon the tax residency of the parties and the type of transfer.

US Foreign Account Tax Compliance Act (FATCA) in Israel

A Model Reciprocal Intergovernmental Agreement (IGA) was signed by Israel and the United States on 30 June 2014 and was ratified on 12 July 2016. The IGA took effect on 4 August 2017, once the Ministry of Finance published the relevant tax code regulations.

The IGA provides clarity around the implementation of FATCA for the financial institutions and investment entities resident in Israel.

The ITA released FATCA Guidance in May 2017.

Common Reporting Standard (CRS) in Israel

Israel has committed to CRS implementation and to undertaking the first exchange of information in 2018. The FATCA law that was passed by the Knesset (Israeli Parliament) on 12 July 2016 also serves as the primary legislation for purposes of the CRS.

The secondary legislation (relevant tax code regulations) has been discussed in the Knesset but has not yet been approved.

Italy

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Significant developments

The major recent changes in the Italian tax rules that occurred in the last 12 months are the following:

- Introduction of the so-called 'web tax' as of 2019.
- New 2018 tax deadlines.
- Extension of super and hyper tax depreciation.
- Changes to allowance for corporate equity (ACE).
- Tax credit for advertising campaigns and for training expenses.
- Value-added tax (VAT) changes.

Please note that Italy tax updates are generally expected to occur between November and December in connection with the finance bill and approval of related laws.

Introduction of the so-called 'web tax' as of 2019

The 2018 finance bill introduced the so-called 'web tax' on digital services applicable as of 1 January 2019. Under this new Law, corporations will apply a tax at the rate of 3% on the value of digital services, net of VAT.

New 2018 deadlines

Some tax deadlines are changed. In detail:

- VAT return is filed by 30 April.
- The communication of data of invoices issued and received regarding the second quarter of fiscal year (FY) 2018 is extended to 30 September 2018.
- For calendar year 2017, returns for corporate income tax (*imposta sul reddito delle società* or IRES), regional production tax (*imposta regionale sulle attività produttive* or IRAP), and withholding tax (WHT) are due by 31 October 2018.

Corporations having their tax period different from the calendar year are still filing the IRES returns within ninth months following the financial year-end.

Extension of super and hyper tax depreciation

For new investments in tangible and intangible assets, the additional IRES depreciation has been extended to those carried out in 2018. In particular:

- As for the so-called 'super depreciation', the purchase cost of a tangible asset is now increased by 30%, bringing its taxable basis to 130%.
- As for the so-called 'hyper depreciation', the purchase cost of hi-tech, cloud, ultra-broad band, industrial robotics, digital manufacturing, IT security, etc. investment is still increased by 150%, bringing the IRES base of the asset to 250%.

Specific supporting documentation is required to benefit from these provisions.

Changes to allowance for corporate equity (ACE)

The rate applicable to ACE deduction for FY 2018 and onwards is 1.5% (previously, for FY 2017, the rate was 1.6%).

Tax credit for advertising campaigns and for training expenses

A tax credit is granted for investments in advertising means, such as daily press, magazines, local television, or radio. The tax credit is defined on the increased investment in advertising compared to the previous fiscal year.

Costs of employees involved in training activities to acquire knowledge in the technologies related to the so-called 'Industry 4.0' plan are eligible for a tax credit of 40%.

VAT changes

Relevant changes have been introduced on different matters, such as electronic invoicing obligations, broader application of the split payment, reduction of timeline to deduct input VAT, and postponement of the VAT rates increase.

Taxes on corporate income

Applicable rates

Italian corporate entities are subject to a corporate income tax, known as *imposta sul reddito sulle società* or IRES, and to a regional production tax, known as *imposta regionale sulle attività produttive* or IRAP.

The standard rates are as follows:

- 24% for IRES.
- 3.9% for IRAP.

Up to FY 2016, the IRES rate was 27.5%. Specific rules apply for bank and financial entities.

Different IRAP rates are applicable for certain entities (i.e. banks and financial entities, insurance corporations, entities with a determined governmental exclusive right to provide services).

Regions have the power to slightly increase or decrease IRAP rates.

General rules

IRES

The IRES taxable base is determined according to the worldwide taxation principle, which states that, regardless of the location/jurisdiction where the income is produced, to the extent that the income is legally attributable to an Italian resident entity, the income is taxed in Italy. IRES is charged on the total net income reported in the financial statements of the company as adjusted for specific tax rules. Non-resident companies are taxed only on Italian-source income.

IRAP

There are different methods of computation for the IRAP taxable base, depending on the nature of the business carried out by the taxpayer. Provisions for liabilities and risks, as well as extraordinary items, cannot be taken into account when determining the IRAP taxable base.

For sales and manufacturing companies, the IRAP taxable base is broadly represented by the company's gross margin in its financial statements. In addition to the non-deductible items mentioned above, interest income and expense and provisions for bad debts are excluded for the purposes of the IRAP taxable base.

For banks, the IRAP taxable base is broadly defined as follows:

- Intermediation margin reduced by 50% of dividends.
- 90% of amortisation costs relating to fixed tangible and intangible assets.
- 90% of other administrative expenses.
- Net value of adjustments and reassessments for bad debts.

Special rules apply to financial institutions, other than banks.

IRAP is levied on a regional basis, and regions are allowed to increase or decrease the standard IRAP rate up to 0.92%. Companies with facilities in different regions must allocate their overall taxable base to the different regions on the basis of the employment costs of personnel located at the various sites. Facilities become relevant to the calculation of IRAP if they have been established for more than three months. Italian companies with permanent establishments (PEs) abroad, as well as shipping companies qualifying for the tonnage tax regime (*see Tonnage tax below*), are not subject to IRAP on the income earned through these PEs.

The deduction of labour costs for IRAP purposes depends on the type of hiring contract. In particular:

- Full deduction for costs related to employees hired with an open-ended contract.
- Deduction limited to contributions for compulsory insurance against accidents (i.e. *Istituto Nazionale Infortuni sul Lavoro* or INAIL) for temporary employees.

Moreover, for the companies that have no employees, a tax credit equal to 10% of IRAP is recognised to be used to offset other tax liabilities.

Substitutive tax on reorganisations (mergers, de-mergers, contributions in kind)

Corporate restructurings, such as mergers, de-mergers, and contributions in kind, are, in principle, tax neutral even if, for financial accounting purposes, the transaction results in the recognition of higher values of the assets or of goodwill. Companies may elect to obtain partial or full recognition for tax purposes of the step-up in the financial accounting values of assets or of the goodwill arising from the corporate restructurings, provided they pay a substitutive tax.

The substitutive tax is calculated on the step-up in tax basis and is based on progressive rates of 12% to 16%. The first 5 million euros (EUR) is taxed at 12%, the tranche above EUR 5 million but less than EUR 10 million is taxed at 14%, and the amount in excess of EUR 10 million is taxed at 16%. The substitutive tax may also be paid in three annual instalments of 30% in the year of election, 40% in year two, and 30% in year three plus interest at the rate of 2.5% per year on the deferred amounts. The substitutive tax is not deductible for the purposes of IRES or IRAP.

In addition, stepped-up values of goodwill and trademarks acquired from the reorganisation transactions carried out since 1 January 2016 may be depreciated for tax purposes over five tax years (previous to 2016, up to ten years) instead of the normally allowed 18 years by paying a substitutive tax of 16%. The higher tax depreciation arising from this election is effective from the tax period subsequent to the one in which the substitutive tax is paid. For example, if a merger transaction occurred in year one and the substitutive tax was paid in year two, the increased tax depreciation would begin in year three.

Tonnage tax

Italian tax resident shipping companies, as well as non-resident shipping companies operating in Italy through a PE, can qualify for and then elect to be subject to the Italian tonnage tax regime. The regime basically allows for the determination of presumptive income based on the net tonnage of the qualifying ships apportioned to the effective shipping days (tonnage income). The tonnage income is subject to IRES only.

To qualify for the tonnage tax, ships must: (i) have a net tonnage of more than 100 net tons (NT); (ii) be used for goods transportation, passenger transportation, salvage, towing, and other services; and (iii) operate in international shipping as defined by the rules disciplining Italian International Registry. Ships chartered out on a bare boat charter are excluded. Chartered ships with crew are included in the tonnage tax regime if their global net tonnage is less than 50% of the total net tonnage.

Tonnage income is calculated on the basis of the ship's net tonnage. The daily income is determined according to the following rate system:

Ship's net tonnage (NT)	Daily income in EUR per NT
0 to 1,000	0.0090
1,001 to 10,000	0.0070
10,001 to 25,000	0.0040
above 25,001	0.0020

No deductions are allowed from tonnage tax income.

Income and expenses from the following activities are all deemed to be covered by the tonnage income determined as previously discussed:

- Transport of goods.
- Transport of passengers.
- Salvage and towing.
- Other services that need to be performed on the high seas.
- Charges related to the above-mentioned activities (e.g. administrative and commercial expenses, insurances fees).
- Other operations performed in close connection with the transportation operations (e.g. loading and unloading).
- Other minor activities.

Capital gains or losses arising from the transfer of ships that have been acquired by a company while under the tonnage tax regime are also deemed to be included in tonnage tax income. Conversely, for capital gains arising from the transfer of a ship acquired prior to election for the tonnage tax regime, the difference between the sale price and the net tax cost as of the last tax period prior to the election for the tonnage tax regime is subject to the ordinary tax regime. Tax losses, in this latter case, are tax deductible.

An election for the tonnage tax regime should be made for all of a company's or group's qualifying vessels. So called 'cherry picking' is not allowed. Election for the tonnage tax regime is on a voluntary basis, but, once elected, it remains in effect for ten years. The election is silently renewed at the end of the ten-year period.

Corporate residence

Companies having their legal or administrative headquarters or their principal business activity within the Italian territory are considered to be resident companies and are taxable in Italy on their worldwide income.

A foreign company holding one or more Italian subsidiaries is deemed to be resident in Italy for tax purposes if at least one of the following conditions exists:

- The foreign company is, either directly or indirectly, held by Italian tax resident persons.
- The board of directors of the foreign company is made up mainly of Italian resident individuals.

Non-resident companies are subject to IRES and IRAP only on their Italian-source income. Specifically, Italian non-resident companies having a PE in Italy are subject to IRES and IRAP with respect to the taxable income generated from the PE in Italy.

Permanent establishment (PE)

The domestic definition of PE is substantially aligned with the Organisation for Economic Co-operation and Development (OECD) model.

Corporate residence of a trust

Trusts are considered as persons subject to corporate taxation.

Residence is defined on the basis of the location of the place of management and of the main object of the trust. In the first instance, trusts that operate through an appropriate structure are deemed to be tax resident in Italy if the said structure is located in Italy. In the absence of any such structure, trusts managed by a trustee will be deemed as tax resident in Italy if the trustee is tax resident in Italy. In addition, trusts that have the largest part of their assets located in Italy are deemed a tax resident in Italy.

Note that there are anti-avoidance rules for Italian non-resident trusts, setting out the specific conditions on which these trusts can become Italian tax resident.

Other taxes

Value-added tax (VAT)

Italian VAT (*Imposta sul Valore Aggiunto*) applies to the supply of goods and services carried out in Italy by entrepreneurs, professionals, or artists and on importations carried out by anyone. Intra-Community acquisitions are also subject to VAT under certain situations.

The Italian standard VAT rate is 22%. Reduced rates are provided for specifically listed supplies of goods and services, such as:

- 4% for listed food, drinks, and agricultural products, and e-books/e-periodicals that meet certain requirements.
- 5% for certain health services, for the sale of food herbs, and for certain transport services on seas, lakes, and rivers.
- 10% for electric power supplies for listed uses and listed drugs.

Intra-Community supplies and exports are exempt from VAT under certain conditions.

Specific supplies of goods and services expressly listed in the law are exempt from VAT (e.g. hospital and medical care, education, insurance services, specific financial services, supply, leasing of particular immovable property). Other specifically listed transactions are also out of the VAT application scope (e.g. transfer of money, transfer of going concern).

Input VAT on purchases of goods and services related to business activity generally is allowed for recovery. Special limitations apply in relation to specific items (e.g. cars, entertainment expenses) and to companies carrying out both taxable transactions and transactions exempt from VAT with no right to deduct.

The filing deadline for the annual VAT return is 30 April of the following year.

2019 new VAT fulfilments

Starting from 1 January 2019, taxable persons resident or established in Italy will be required to submit to the Italian tax authorities the data related to the supply of goods and services provided/received to/from parties not VAT established or VAT registered in Italy.

From the same date, the communication of the invoices issued and received (so-called '*Spesometro*') will be repealed.

2019 new electronic invoicing obligations

Starting from 1 January 2019, a mandatory electronic invoicing obligation will be in place for the supplies of goods or services carried out between persons that are resident, established, or VAT-registered in Italy.

Electronic invoices should be:

- converted into .XML format, in accordance with technical specifications referred to format currently used to send electronic invoices towards the public administration
- signed with a qualified or digital signature, and
- sent to the counterpart through the SDI (*Sistema di Interscambio*).

Electronic invoicing is also mandatory for business-to-consumer (B2C) transactions, in which case the supplier has the obligation to issue an invoice, with certain different specifications.

For the transmission of electronic invoices, the taxpayers, upon agreements between the parties, can rely on qualified intermediaries. However, the supplier will still be responsible for the issuance of the invoice in front of the tax authorities.

The electronic invoicing obligation will be brought forward to the invoices issued from 1 July 2018 for the services rendered by subcontractors, in the supply chain of companies, as part of a contract for works or services entered into with a public administration and in the case of or the supply of gasoline or diesel oil intended for use as motor fuel (the so-called 'fuel card' in paper format will be repealed).

Reduction of timeline in order to deduct input VAT

A reduction of the time frame for the exercise of the right to deduct VAT has been introduced from 2017.

The right to deduct input VAT may be exercised at the latest with the VAT return related to the year in which the right arises and under the conditions existing at the time of such a right has arisen.

The tax authorities have provided important guidance regarding the above. *Inter alia*, the time from which the deadline for VAT deduction begins to run is set when the following conditions jointly happen:

- the tax point occurred, and
- a valid invoice is received by the taxpayer.

In practice, a taxpayer that purchased and paid for a service in December 2017 and receives the invoice (dated December 2017) in January 2018 can exercise the right of deduction only from the VAT settlement related to January 2018 and by 30 April 2019 (i.e. deadline for submission of the relevant VAT return). However, VAT deduction must be exercised under the conditions existing at the time of the tax point (i.e. 2017).

Conversely, in case the invoice is received in December 2017, it will be possible to register it by 30 April 2018, but it will be necessary to use a special sectional of the VAT purchase ledger related to 2017; as such, the purchase will be included in the annual VAT return of the same fiscal year.

Previously, the right to deduct could be exercised, at the latest, with the VAT return related to the second year following the one in which the right to deduct had arisen.

European VAT group

From 1 January 2019, the European VAT group rules will be applicable, provided the option for it is elected by 30 September 2018.

In the main, according to the above-mentioned rules, in the case of election of the VAT group:

- transactions between taxable persons participating in the VAT group are considered as not relevant for VAT purposes (apart from certain exemptions), and

- the VAT group operates as a single VATable person towards those not participating in the group itself.

There are certain conditions to be met in order to be entitled for the election.

Certain implementing decrees establishing the operating rules have yet to be published.

The current VAT group settlement regime, which consists of settlement of VAT debits and credits among taxable persons meeting certain requirements in terms of chain of controls, will remain in place.

Postponement of the increase in the VAT rates

The above-mentioned rates are increased failing the achievement of the budget targets. In particular:

The 10% VAT rate will be increased:

- by 1.5% points from 1 January 2019 (i.e. from 10% to 11.5%), and
- by an additional 1.5% points from 1 January 2020 (i.e. from 11.5% to 13%).

The 22% VAT rate will be increased:

- by 2.2% points from 1 January 2019 (i.e. from 22% to 24.2%)
- by an additional 0.7% points (i.e. 24.9%) with effect from 1 January 2020, and
- by an additional 0.1% points (i.e. 25%) with effect from 1 January 2021.

Reporting obligations

VATable persons have to submit to the tax authorities, on a quarterly basis, the communications of:

- periodic VAT balances, and
- a detailed list of the data of the invoices issued and received.

The communications of periodic VAT balances require one to submit electronically to the tax authorities, on a quarterly basis, the summary of VAT balances accounting data (also in case the entity results in a credit position). The deadlines for each quarter are 31 May, 16 September, 30 November, and the last day of February of the following year (in case the deadline is Saturday/Sunday/bank holiday, it is postponed to the first working day that follows).

The communications of the data of the invoices issued and received require one to submit electronically to the tax authorities, on a quarterly basis, the data of all the invoices issued during the relevant quarter and of all the invoices received and registered in the VAT ledgers, including customs bills of import, as well as the related credit notes (for FY 2018, by option, the communications of data of invoices issued and received for Q1 and Q2 are due by 30 September and Q3 and Q4 are due by the end of February of the following year).

Service supply rules

Generic services supplied by a taxable person to another taxable person (business-to-business or B2B) are in the scope of the Italian VAT if the services are supplied to Italian taxable persons or to PEs of an Italian non-resident entity.

The specific rules are as follows:

- For services related to immovable property, reference must be made to the place in which the immovable property is located.
- For the transportation of passengers, the place in which the transportation takes place must be identified, including the proportion of the distance covered.
- For catering and restaurant services, the place in which the activity will be physically carried out must be identified.
- For short-term hiring, leasing, and similar means of obtaining transport services, the place in which the vehicle is used must be identified (use and enjoyment rule has been implemented on these services).

The general rule for services supplied by a taxable person to a non-taxable person (B2C) identifies the place of taxation with the country of residence of the supplier.

Several rules, in addition to the B2B general rules, exist for the following:

- Brokerage services.
- Goods transport services.
- Services related to movable goods and ancillary activities related to transports.
- Long-term hiring/leasing of means of transport services.
- Electronic services supplied by extra-European Union (EU) suppliers.
- Telecommunications and television/radio broadcast services.

In addition, special rules are provided for certain services rendered to final customers established outside the European Union.

In relation to the VAT treatment of cultural, artistic, sporting, scientific, educational, recreational, and similar services, VAT is due in the country where the activities were physically carried out for B2C activities and VAT is due in the country of the recipient for B2B activities other than admission. For B2B services in respect of admission, the place of supply is where the events take place.

Time of supply for certain services

Time of supply is the time of completion in case of:

- supply of services falling under the general rule (i.e. generic supply of services) rendered by EU and non-EU taxable persons to taxable persons established in Italy, and
- supply of services falling under the general rule rendered by taxable persons established in Italy to EU and non-EU taxable persons.

In case of periodic or continuous supply of services, the time of supply is the date of maturity of the consideration.

Moreover, the above supplies of services, if performed/received by taxable persons established in Italy continuously over a period longer than one year and if no payments are carried out, even partially, in the same period, shall be considered carried out at the end of each calendar year up to completion of the same supplies.

Reverse-charge mechanism

According to the reverse-charge mechanism, the obligations related to supply of goods and provision of services carried out in Italy by non-resident taxable persons towards taxable persons established in Italy are fulfilled by the latter. The recipient of goods and/or services has to integrate the invoice received by the EU supplier or has to issue a self-invoice in case of a non-EU supplier and record it in the VAT sales register and VAT purchase register within a defined timeline.

Reverse-charge mechanism also applies to certain domestic supplies between Italian taxable persons (e.g. cleaning, demolition, equipment installation, and completion services related to the buildings).

VAT credit offset with other taxes

To offset a VAT credit against other taxes for an amount higher than EUR 5,000, it is necessary to wait until the 16th day of the month following the filing of the yearly VAT return on which the credit is shown.

Furthermore, in order to avoid abuse, taxpayers intending to offset a VAT credit for an amount higher than EUR 5,000 are required to ask their tax advisors or auditors to affix their signature to the VAT return, which is known as the 'conformity mark' (i.e. *visto di conformità*).

Registration tax

Specific deeds and contracts must be filed with the local registration tax office either upon signature or if specific circumstances occur, and the relevant tax must be paid.

Depending on the nature of the contract and on the assets that are the object of the contract, as well as on the form of the contract, registration tax is levied as a fixed amount or as a percentage of the value of the goods and/or rights that are the object of the contract. As a general rule, no proportional registration tax is due in the case of transactions subject to VAT.

VAT and registration tax on lease of immovable properties

Leases of residential and commercial buildings, or portions thereof, generally are exempt from VAT with no right to deduction and subject to the registration tax at a 2% or 1% rate.

Different VAT rates, VAT treatment, and registration tax treatment apply depending on the type of buildings the lease refers to (e.g. residential, commercial buildings) and the supplier (e.g. individual, constructions companies, taxable persons other than construction companies).

Specific rules apply in case of financial leases of residential and commercial buildings from a registration tax perspective.

Customs duties

At the moment of the importation of goods into the EU territory, customs duties are applied. The amount of customs duties to pay depends on the value and nature of the goods imported. In particular, for each kind of good, the Common Customs Tariff provides a tax rate to be applied to the value or number of the goods imported.

The correct classification of the goods is one of the most important issues to consider when an economic operator introduces goods in Italy. A wrong classification can give rise to the application of higher customs duties, and the operator could face a tax burden not due, or to the application of lower customs duties, and this situation could lead to a tax assessment by the Italian Customs Authority.

The value of the goods is represented by the transaction value, hence, the price actually paid or payable for the goods when sold for exportation to the customs territory of the EU, provided that:

- there are no restrictions as to the disposal or use of the goods by the buyer
- the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued
- part of the profits of any subsequent resale, disposal, or use of the goods by the buyer will not be accrued, directly or indirectly, to the seller, and
- the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes.

In determining whether the transaction value is acceptable, the fact that the buyer and the seller are related is not, in itself, sufficient for considering the transaction value as not acceptable. Where necessary, the circumstances surrounding the sale are examined, and the transaction value is accepted if the relationship did not influence the price.

The price actually paid or payable is the total transaction amount paid for the imported goods and includes all payments made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller.

In determining the customs value, the following items shall be added to the price, to the extent that they are incurred by the buyer and are not included in the price (list not exhaustive):

- Commissions and brokerage.
- Royalties and licence fees related to the goods under assessment.
- The cost of transport and insurance of the imported goods.

At the same time, provided that they are shown separately from the price actually paid or payable, the following items shall not be included in the customs value (list not exhaustive):

- Charges for the transport of goods after their arrival at the place of introduction into the customs territory of the European Union.
- Charges for construction, erection, assembly, maintenance, or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery, or equipment.
- Buying commissions.

A reduced or zero rate of duty at importation can be applied when the goods imported have a preferential origin. The preferential origin depends on the existence of commercial agreements between the European Union and other non-EU states or by facilities provided by the European Union to non-EU states unilaterally.

The application of a reduced or zero rate of duty can even depend on the existence of preferential tariff treatment or on the existence of a particular exemption provided by law for some kind of goods.

Any person may appoint a representative in one's dealings with the Customs Authority to perform the activities and formalities laid down by customs rules. Such representation may be direct, in which case the representative shall act in the name and on behalf of another person, or indirect, in which case the representatives shall act in one's own name but on behalf of another person.

For direct representation, a forwarding agent, holder of a particular licence, must be appointed.

The representative must be established within the European Union.

Excise duties

The following goods are subject to excise duties:

- Energetic products (e.g. petrol, gas oil, natural gas, coal).
- Alcohol and alcoholic drinks (e.g. wine, beer, ethylic alcohol).
- Processed tobaccos (e.g. cigars, cigarettes, tobacco).
- Electric power.

The subjection of a product to excise duties has to be verified on the basis of its customs combined nomenclature code.

The tax liability, depending on the products, arises:

- at the moment of importation or production (and the excise duties must be paid at the moment in which they are released for consumption in Italy)
- when the excisable goods are used for heating or as fuel, and
- when the excisable goods are released for consumption or used for own use.

As a general rule (with exception of natural gas and coal, coke, and lignite), with reference to excise goods released for consumption during a month, the payment of the relative excise duties has to be made by the 16th day of the following month.

With reference to excise goods imported, customs rules are applied as far as the procedure and terms of payment are concerned.

The production, processing, and holding of 'excise goods', except from natural gas, coal, coke, lignite, and electric power, are subject to a suspensive regime performed through a fiscal warehouse.

In order to manage a fiscal warehouse, it is necessary to acquire a licence issued by the Italian Customs Authority, and there are specific obligations for the owner of a fiscal warehouse (e.g. provide for a particular guarantee, keep a particular accounting system for the goods stored, be subject to controls performed by Italian Customs Authority, where requested).

The Italian legislation provides for many exemptions with regards to the use of 'excise goods'.

Furthermore, under certain circumstances, a tax refund is granted to the operator who released for consumption if, afterwards, the products are not consumed in Italy.

Stamp duty taxes

Stamp duty taxes (*Imposta di Bollo*) apply on a certain list of deeds or documents provided for by the relevant law provision (e.g. checks, bills of exchange, statements of account, certificates, books of account, deeds of transfer of quotas, and, in some cases, invoices).

According to the kind of deed, stamp duty tax is due at the moment of the deeds' origin or in case of use (e.g. if the deed is filed to the Italian Registration Office). Moreover, it can be a fixed amount or as an amount proportional to the value of the deed or document.

Stamp duty tax can be paid:

- ordinarily, through a physical stamp attached on the document, or
- virtually, through electronic means (in this case, a specific authorisation from the Italian tax authorities and a specific process procedure are needed).

Stamp duty tax is usually alternative to VAT; however, in case of considerations partially subject to VAT and partially not subject to VAT, the invoice is subject to stamp duty tax if the total amount of the considerations not subject to VAT exceeds EUR 77.47. Moreover, some transactions are stamp duty tax exempted (e.g. inter-Community supply of goods). For transactions that are exempted from VAT (with restriction on VAT credit) and for transactions out of scope of VAT, exceeding EUR 77.47, an amount of EUR 2 is due as stamp duty tax for each issued invoice.

Unified municipal tax (Imposta Unica Comunale or IUC)

The IUC is composed of the following different taxes:

- *Imposta Municipale Unica* (IMU): Real estate tax levied on the ownership of immovable properties (buildings, rural land, farmlands), except for immovable properties owned as primary private properties. The standard tax rate is 0.76%. Depending on the municipality and status of the taxpayer, the tax rate can be increased or decreased. The taxable base is generally determined on the basis of the so called 'cadastral value' (i.e. capitalisation of the deemed standard income that is expected to be derived from the real estate).
- *Tributo per i Servizi Indivisibili* (TASI): A service tax due by real estate owners and by tenants, except for immovable properties aimed as private properties (different from immovable properties falling under the cadastral category A/1, A/8, and A/9). The amount due by the tenant can range according to the Regulation stated by the municipality.
- *Tassa sui rifiuti* (TARI): A waste tax levied on the owner or the user of immovable properties.

Financial Transaction Tax (FTT)

Italian FTT applies to (i) cash equities, (ii) derivatives, and (iii) high-frequency trading transactions.

Cash equities FTT applies to the purchase of shares and other equity instruments issued by Italian companies, as well as securities (wherever issued) tracking those Italian shares (e.g. ADRs). The taxable base is the net daily balance of transactions on the same financial instruments by the same person on the same settlement date. The rate is 0.2% on OTC trades or 0.1% on trades executed in a regulated market (or multilateral trading facility).

Derivatives FTT applies to any derivative contract or securitised derivative, whose underlying value is directly or indirectly tied to Italian shares. The taxable base is the notional amount of the derivative (no netting applies), and it is subject to a special tax scale, on both the purchase and the sale legs; the amount is reduced to 1/5 for transactions executed on regulated markets and multilateral trading facilities.

High-frequency trading FTT applies to transactions on shares (wherever issued) and share-based derivatives (wherever the underlying share is issued) in the Italian financial markets; trades amended or cancelled within half a second are subject to a 0.02% rate, to the extent they exceed 60% of overall trades.

Web tax

As of FY 2019, corporations will apply a tax at the rate of 3% on the value of digital services, net of VAT.

The web tax will be applicable only in case the number of 'digital services' will exceed 3,000 units per year (digital services includes services rendered by means of internet or an electronic network, characterised by a high level of automatisation, with minimal human intervention and that could not be provided without the support of information technology).

The buyer (WHT agent) will settle the tax with a specific form (so-called F24 form) by the 16th day of the month following the payment of the digital service.

The web tax will also be due in case the digital service will be rendered by non-Italian resident entities, even without a PE in Italy.

The web tax will be not creditable against other Italian taxes.

A Regulation is expected to be issued to define related terms and conditions.

Social security contributions

The Italian employer, in order to pay social security contributions for employees, must register with the Italian Social Security Administration (*Instituto Nazionale Previdenza Sociale* or INPS).

The total social security rate is around 40% of the employee's gross compensation (the rate depends on the work-activity performed by the company, the number of employees of the company, and the employee's position), and is shared as follows:

- Employer's charge is around 30%.
- Employee's charge is around 10%.

Branch income

The tax regime for PEs is the same as for corporate Italian entities (e.g. joint-stock companies). Accordingly, a PE is subject to IRES as well as IRAP. Both taxes are determined on the basis of a specific statutory account prepared according to the accounting principles applying to resident enterprises with similar business activity carried out by the PE.

Transfer pricing principles apply to 'transactions' between the head office and its Italian PE. A PE is considered a functionally separate entity, independent from its headquarters, and a PE's profits and 'free capital' are attributed to it on the basis of OECD principles.

Income determination

IRES income determination

Specific rules have been released for entities adopting Italian Generally Accepted Accounting Principles (GAAP) rather than International Financial Reporting Standards (IFRS) for Italian statutory financial reporting purposes. These provisions are aimed to align the taxable basis determination rules with the statutory financial reporting (so-called principle of derivation of the corporate income taxable basis from the statutory financial statements).

Therefore, the taxable basis is influenced by the qualification criteria, time-based recognition, and classification in the financial statements provided by the related accounting standards.

The already issued provisions for International Accounting Standards (IAS)/IFRS entities also apply to Italian GAAP adopters, if compatible.

There are also measures aimed to coordinating different items of the tax code in the light of new evaluation and representation criteria introduced by the accounting reform.

IRAP income determination

For IRAP purposes, relevant income and expense are those reported in the statutory financial statements. Positive and negative items resulting from transfer of business concern are out of the scope of the taxable basis.

Inventory valuation

Italian tax law allows the application of all the most commonly used inventory valuation methods: last in first out (LIFO), first in first out (FIFO), average cost. For IRES only, the reference prices used to calculate the written down value of the inventory items cannot be lower than their market prices during the final month of the tax period.

Companies operating in the oil and gas sector are required to adopt either average cost or FIFO for tax purposes.

Capital gains

Capital gains are taxable in the tax period in which they are realised, as follows:

- Fixed assets: The gain realised on the sale of fixed assets is taxable for both IRES and IRAP purposes. Additionally, for IRES purposes, tax on capital gains can be spread

over a maximum of five years. This treatment is allowed if the company owned the fixed assets for not less than three years.
- Financial investments: A specific participation exemption regime (PEX) is applicable. Under this regime, capital gains realised by Italian companies on sales of shareholdings are 95% exempt from IRES.

PEX applies if all of the following conditions are met:

- The shareholding was held uninterruptedly for at least 12 months prior to the sale.
- The investment was classified under financial fixed assets in the financial statements relating to the first tax period of uninterrupted ownership.
- The subsidiary is actually carrying on a commercial activity (e.g. investments in companies mainly performing management of their own real estate are not entitled to PEX benefits).
- The majority of the subsidiary's income is not generated in a tax haven country or one with a privileged tax regime.

The third and fourth conditions must be met both at the time of the sale of the investment and in the three preceding years. If these conditions are not met, the capital gain realised by the company is ordinarily taxed. Capital losses arising from the sale or write-down of shareholdings meeting PEX conditions are basically not tax deductible. Likewise, the capital losses realised on sales of non-PEX investments are tax deductible. Specific exemptions are provided for those entities adopting IFRS for Italian statutory accounts reporting purposes.

Specific anti-dividend washing rules provide that where capital losses arise from the disposal of shareholdings that are not eligible for PEX, such losses are deductible only for the part exceeding the tax exempt amount of dividends (*see Dividend income discussion below*) received from the shares in question in the 36 months prior to the disposal.

Capital gains on financial investments generally are excluded from the IRAP taxable base.

Dividend income

Dividends received by Italian resident companies from Italian companies or from companies resident in countries other than tax havens (i.e. not included in the 'black list') are excluded from the IRES taxable base for 95% of their amount. Conversely, no exemption applies to dividends paid by entities that are resident in tax haven jurisdictions (unless those dividends derive from profits that were already taxed under the Italian controlled foreign company [CFC] rules). There are specific rules for entities adopting IFRS for Italian statutory financial reporting purposes. For such entities, dividends from investments in shares and other financial instruments held for trading are fully taxable.

Dividends generally are excluded from the IRAP taxable base.

Interest income

Interest income is generally part of the taxable base.

Waiver of credits

A specific regime is applicable regarding the waiver of credits (e.g. financial and/or commercial) towards the company by its shareholder. In particular, the part that exceeds the tax value of the credit is considered taxable income. Furthermore, the shareholder is required to provide a statement to the company pointing out the tax value of the credit. Without such statement, the company will have to tax the full amount of the waiver of the credit.

Foreign income

An Italian resident corporation is taxable on all income whether produced in Italy or abroad. Profits earned by subsidiaries that are resident or located in countries or territories other than tax havens are taxed only on distribution of the relevant profits. Double taxation is, in principle, avoided by means of foreign tax credits.

An optional branch exemption regime is available, which allows Italian companies to exempt from Italian taxation branch income and losses arising outside Italy, instead of the normal regime, which provides for taxation of worldwide income with foreign tax credit relief. This option affects all foreign PEs of the Italian company and is irrevocable. It must be exercised at the time the branch is incorporated and takes effect from that fiscal year.

Shell companies

Resident companies and PEs of non-resident companies can be qualified as non-operating entities if, alternatively, one of the following conditions is met:

- The entity is in a tax loss position for five consecutive tax periods.
- The average revenues recorded in the current fiscal year and in the prior four years are lower than the amount resulting by applying certain 'deemed return' percentages to the average balance sheet value of specific assets in the current fiscal year and the four previous years.

  The main assets to be taken into consideration are shares and shareholdings, financial receivables, owned or leased real estate, and owned or leased tangible and intangible assets. The value of any assets acquired or sold during the fiscal year must be adjusted according to the ownership period.

These conditions must be checked every year. Therefore, it is possible for an entity to be 'non-operative' in one year and operative in the following year.

The shell company is assessed as having a minimum taxable income for both IRES and IRAP purposes.

For IRES purposes, the taxable income of a non-operative entity is determined as the sum of such values emerging from the application of specific percentages to the book values of the above-mentioned assets.

The current IRES standard rate for entities qualified as shell companies is 34.5% (24% plus surtax of 10.5%).

Tax losses generated in a tax period when the company was deemed to be non-operating cannot be carried forward.

For IRAP purposes, non-deductible items have to be added back to the deemed minimum IRES income as outlined above.

These rules are not applicable in the first year of a company's incorporation. Exemptions from these rules can be achieved:

- by means of an advance ruling from the Italian tax authorities aimed at assessing the specific circumstances that caused the company not to earn the minimum amount of income or
- by specific objective situations provided for by Italian law (e.g. company directly or indirectly held by listed companies).

Shell companies are also subject to limitations in their ability to recover VAT credits.

Deductions

The principles outlined in the section on Income determination also apply for deductible costs.

Depreciation and amortisation

All fixed assets that are used in the business of the company, except land, are depreciable for tax purposes (for both IRES and IRAP).

For IRES, the maximum depreciation rates for fixed tangible assets are set forth in a Ministerial Decree. Such depreciation rates are different depending on the type of asset and on the economic sector in which the company operates. In the event that financial accounting depreciation exceeds the amounts allowed for tax purposes, temporary differences arise. Tax depreciation of fixed tangible assets is allowed from the tax period in which the asset is first used. In the first tax depreciation period, the depreciation rate cannot exceed one-half of the normal rates.

An additional IRES depreciation is granted for new investments in fixed tangible assets carried out in FY 2018. In particular, the relating cost is increased by 30%, bringing the taxable basis of the asset to 130%. The eligible assets are those having a tax amortisation rate higher than 6.5%. Previously, from 15 October 2016 to 31 December 2017, the cost for new investments was notionally increased by 40%.

For new investments carried out in FY 2018 in hi-tech, cloud, ultra-broad band, industrial robotics, digital manufacturing, IT security, etc., a notional increase of the purchase cost of 150% has been confirmed for tax depreciation, bringing the IRES basis of the assets to 250%. Previously, the period to take advantage of this benefit was from 15 October 2016 to 31 December 2017.

The above benefit applies to eligible investments also made by 30 June 2019, provided that, by 31 December 2018, the following conditions are met:

- the purchase order has been accepted by the seller, and
- at least 20% of the purchase cost has been paid.

The recapture of the benefits applies in case the asset is sold and failing specific conditions.

A notional increase of 40% of the purchase cost of intangible assets (e.g. software, systems, platforms and applications connected to hi-tech investments, etc.) is also possible. The benefit applies to software, IT systems and integration systems, platforms and applications, etc.

As for leasing contracts, the benefit is addressed only to the lessee and not to the lessor. Capital goods acquired with operational lease contracts or rental contracts are excluded from the benefit.

Land is not a depreciable asset. Amortisation of goodwill derived from an asset deal and amortisation of trademarks are deductible for an amount not exceeding 1/18 of the cost in any year.

Patents, know-how, and other intellectual property (IP) may be amortised over a two-year period.

Concession rights may be depreciated with reference to the utilisation period as determined either by law or in the relevant agreement.

For IRAP purposes only, depreciation and amortisation (other than as related to goodwill and trademarks) are deductible in accordance with the amounts reported in the financial statements, regardless of the limits outlined above.

Finance leasing

Leasing expenses booked in the profit and loss statement pursuant to Italian GAAP are fully deductible from the IRES taxable base if the relevant agreement has a minimum duration period. In particular, if the agreement was executed as of 1 January 2014, the duration required is the following:

- For fixed tangible assets, at least half of the depreciation period as set forth in the above Ministerial Decree.
- For real estate, at least 12 years.

Longer minimum duration periods are provided for financial leasing agreements executed before 1 January 2014.

Interest expense

Generally, interest expense is fully tax deductible up to the amount of interest income. Thereafter, excess interest expense is deductible at up to 30% of the gross operating margin (interest deduction capacity) as reported in the financial statements. Gross operating margin is defined as the difference between operating revenues and expenses excluding depreciation of tangible and intangible assets and charges for leased assets as stated in the profit and loss account for the year.

Net interest expense in excess of the yearly limitation is carried forward indefinitely. Hence, net interest expense not deducted in previous years can be deducted in any future fiscal year as long as total interest in that year does not exceed 30% of gross operating margin. If net interest expense is lower than the annual limit (i.e. 30% of gross operating margin), this difference can be carried over to increase the company's interest deduction capacity in future years.

The dividends received from foreign subsidiaries are excluded in the computation of the earnings before interest, tax, depreciation, and amortisation (EBITDA) used to determine the interest expense deductibility limit (prior to FY 2017, these dividends were included).

Where an election is made for the domestic tax consolidation regime (*as discussed in the Group taxation section*), the net interest expense limitation applies to the consolidated tax group. As a consequence, if a company participating in a tax group has an excess interest deduction capacity, this excess may be used against the interest deduction deficit in another company belonging to the same tax consolidation group. Under specific conditions, non-resident subsidiaries can also be 'virtually' included in the tax consolidation for the sole purpose of transferring their excess capacity over 30% of gross operating margin in order to increase the overall interest deduction capacity of the Italian group.

The above-mentioned rules are not applicable for financial institutions, such as banks and insurance companies, where the deductibility of interest expense (for both IRES and IRAP purposes) is limited to a fixed amount of 96% of the interest expense shown in the income statement of these entities. Starting from FY 2017, holdings and banks are allowed to fully deduct interests.

The tax authorities have provided some general guidelines regarding leveraged buyout (LBO) operations. The latter shall be considered legitimate, and interests arising from related acquisition financing shall be considered, in principle, deductible within the ordinary limits (30% of EBITDA, transfer pricing rules, etc.).

Allowance for Corporate Equity (ACE)

The ACE is a deduction that corresponds to the net increase in the equity employed in the entity, multiplied by a rate yearly determined by the Ministry of Finance. This rate is equal to 1.5% for FY 2018 and onwards (1.6% for FY 2017).

The relevant increase is determined by the equity contributions and by the retained earnings (except profits allocated to a non-disposable reserve) less the following items:

- Reductions of the net equity with assignment to shareholders, including, in particular, dividend distribution.
- Investments in controlled companies.
- Certain intra-group business acquisitions.

If the allowance for a year is higher than the net IRES taxable base, the difference will be carried forward to the next periods.

To calculate the equity increase, the reference equity is disclosed in the financial statements for the fiscal year current as at 31 December 2010, net of the profits for the same year.

Bad debts

Yearly provision for bad debts not guaranteed by third parties and relating to sales of goods and services is tax deductible at up to 0.5% of the receivables gross value. Deduction shall no longer be permitted when the total amount of the bad debts reserve exceeds 5% of the above-mentioned gross value of the receivables as of the end of the fiscal year.

Regardless of the above, losses on bad debts shall be deductible if supported by precise and objective elements or, in any case, if the debtor is subject to bankruptcy proceedings, including foreign ones.

A loss on a bad debt can be deducted for IRES purposes when the following conditions jointly apply:

- The term for payment has elapsed by six months.
- The receivable has a determined threshold. In particular, the item is up to EUR 2,500 for small companies and up to EUR 5,000 for big corporations (with turnover over EUR 100 million).

The loss is tax deductible, regardless of the amount, when the collection right is prescribed.

Further changes are intended to make certain the identification for the year attributable to the deductibility of the loss. Specifically, the deduction of the loss is allowed in the period charged to the balance sheet, even if that offsetting is performed in a tax year following the year in which there are the precise and objective elements, or the debtor is considered subject to bankruptcy proceedings.

Moreover, losses are tax deductible in case of derecognition of bad debts applied in compliance with accounting standards (both Italian GAAP and IFRS), always provided the inherence test is met.

Charitable contributions

Deduction of charitable contributions is allowed. The amounts allowed for deductions depend on the specific features of the recipient entity, and specific limitations are set by the law.

Entertainment expenses

For IRES purposes, expenses for gifts and entertainment that meet the requirements (both qualitative and quantitative) contained in the specific Ministerial Decree are fully deductible in the tax period in which they are incurred. Entertainment expenses that do not meet these requirements cannot be deducted.

Expenses related to gifts with a value of EUR 50 or less are entirely deductible.

Travel expenses

For IRES purposes, the deduction for travel expenses incurred within the municipality is limited to 75% of the amount incurred. However, the VAT related to such costs is fully recoverable.

Car costs

The IRES deductibility of expenses related to cars used by companies is as follows:

- 20% for cars that are not assigned to employees or are granted to employees solely for business use.
- 70% for cars granted to employees for both business and private purposes.

Car costs may be entirely deducted if (i) automobiles are absolutely necessary for the company's business or (ii) automobiles are an essential element in the company's activity (i.e. vehicles owned by a car rental company).

Telephone expenses

For IRES purposes, up to 80% of the total expenses related to both mobile and landline telephones are deductible.

Fines and penalties

Fines and penalties are generally not considered inherent costs and are, consequently, not deductible for tax purposes.

Taxes

The following IRAP items are deductible in determining the IRES taxable base:

- 10% of IRAP paid during the year.
- An amount determined on the IRAP paid on the cost of employees, net of the relevant deductions.

IMU is deductible for IRES purposes at up to 20% of the amount paid in the fiscal year, whereas no deduction is allowed for IRAP purposes.

Purchases from suppliers resident in tax haven jurisdictions

Expenses incurred for goods and services bought from entities resident in 'tax haven' jurisdictions are fully tax deductible.

Net operating losses

Tax losses can be carried forward for IRES purposes and used to offset income in the following tax periods without any time limitation.

Tax losses can only be offset with taxable income for an amount not exceeding 80% of the taxable income. Thus, corporations are required to pay IRES on at least 20% of taxable income.

Note that losses arising in the first three years of activity can be offset with 100% of taxable income.

For IRAP purposes, tax losses may not be carried forward.

Specific (tax anti-avoidance) rules limit the carryforward of tax losses in the event of:

- change of control and
- an effective change of the main activity (performed by the company carrying forward the losses).

The aforementioned changes must occur together in order for the limitations to be applicable. The change of the main activity is relevant for these purposes if it takes place in the tax period in which the change of control occurs or in the two subsequent or preceding periods.

Specific anti-abuse provisions are also applicable to net operating losses in cases of merger or de-merger.

In Italy, tax losses may not be carried back.

Payments to foreign affiliates

Transactions with foreign affiliated companies should be at 'fair market value' and, generally, as defined by OECD Guidelines. *See Transfer pricing in the Group taxation section for more information*.

Group taxation

Domestic tax consolidation

Companies belonging to the same group can elect domestic tax consolidation. This regime allows the determination of a single IRES taxable base comprised of the taxable income and losses of each of the participating entities. The tax consolidation does not operate for IRAP purposes.

Where an overall tax loss position arises, this can be carried forward and used against future consolidated taxable income. Conversely, tax losses arising in fiscal years preceding the domestic tax consolidation election can be carried forward and used only by the company to which these losses belong.

The taxable basis determined by each company participating in the tax consolidation arrangement is included in its entirety. No apportionment is made in relation to the percentage of control.

In order to validly elect the Italian domestic tax consolidation regime, the following conditions must be met:

- The consolidating entity must be an Italian tax resident company, and it must hold, directly or indirectly, more than the 50% of the share capital of the consolidated entities (so called 'legal control').
- This control must be in place from the beginning of the tax period for which the tax consolidation is applied for.
- All of the companies participating in the group must have the same year-end.

The consolidation arrangement operates on an elective basis. Taxpayers may select whether to be included or not, and it is not necessary for all the Italian group/sub-group companies to jointly elect for the tax consolidation.

Once the election is made, it cannot be revoked for three fiscal years.

The election is also allowed to Italian 'sister' companies or PEs in Italy of foreign companies resident in EU/European Economic Area (EEA) countries with which Italy has entered into an agreement that ensures an effective exchange of information. The Italian entity should be designated to exercise the option, acting as consolidating entity.

The election is silently renewed at the end of the three-year period.

Worldwide tax consolidation group

A worldwide tax consolidation group is available, allowing the consolidation of foreign subsidiaries.

In addition to the requirements set out for the domestic tax group system, the following conditions apply:

- The ultimate parent company must be either owned by individuals who are tax residents of Italy or listed on the Italian Stock Exchange.
- The option must be exercised for all foreign companies (under the 'all in, all out' principle).

Income for each company is apportioned in the tax consolidation based on the actual percentage of control exercised by the ultimate parent company that is an Italian tax resident.

A number of additional requirements need to be fulfilled in order for a worldwide tax consolidation to be operative, including a mandatory audit of the financial statements of all the foreign subsidiaries.

Once the election is made, it cannot be rescinded for five fiscal years. The option is silently renewed at the end of the related period.

Transfer pricing

Income derived from operations with non-resident corporations that directly or indirectly control the Italian entity, are controlled by the Italian entity, or are controlled by the same corporation controlling the Italian entity have to be valued on the basis of the arm's-length nature of the goods transferred, services rendered, and services and good received if an increase in taxable income is derived there from. Possible reductions in taxable income as a result of the arm's-length principle are allowed:

- on the basis of mutual agreement procedures or the EU Arbitration Convention
- on the conclusion of tax audits performed under international cooperation procedures, where the results are agreed by the tax authorities involved, or
- through a specific application filed by an Italian taxpayer where a final adjustment has been made in a country that has a double tax treaty (DTT) in place with Italy that allows an acceptable level of information exchange. Currently, a specific regulation is awaited, setting out the way in which this procedure will operate.

Statutory rules on transfer pricing are set out in the Italian Income Tax Code (TUIR), which has been recently amended, making specific reference to the arm's-length principle. Before this amendment, the Italian Transfer Pricing Law used the concept of 'normal value' (*valore normale*) as the basis for pricing inter-company transactions. This concept was similar to the OECD arm's-length principle, although not precisely the same and potentially open to various interpretations. The new definition formally endorses the OECD standard by providing that inter-company transactions are determined based on the 'conditions and prices that would have been agreed in comparable circumstances between independent parties acting at arm's length'.

Penalty protection regime with transfer pricing documentation support

Transfer pricing rules provide for a penalty protection regime in case of transfer pricing audit, provided that the taxpayer has prepared proper documentation detailing the compliance of inter-company transaction to the arm's-length principle.

The Regulation applies to transactions incurred between Italian entities and non-resident entities belonging to the same group (transfer pricing rule are not applicable to domestic transactions). No specific methods have been introduced to test the arm's-length nature of transactions; reference is made to the OECD Guidelines. An exception exists for corporations involved in on-line advertising and related ancillary activities that are required not to use cost-based indicators for transfer pricing purposes, unless an advance pricing agreement (APA) has been defined with the tax authorities on this.

On the base of the transfer pricing Regulation, taxpayers can obtain penalty protection if they provide the Italian tax authorities with:

- Documentation to support the inter-company transactions drawn up in the specific format detailed in a Regulation issued by the Italian tax authorities and drawn up in Italian. The tax authority confirmed that information in annexes (inter-company contracts and transactions diagram) can be in English.
- Notification that documentation has been prepared and available by checking the specific box in the annual corporate income tax return.

The information required is based on the EU Code of Conduct for Transfer Pricing documentation.

Based on the group structure, a Master File and/or Country File have to be prepared.

Italian-based groups and Italian sub-groups owning non-Italian subsidiaries must produce both a Master File and a Country File. Italian subsidiaries of multinational groups need to produce a Country File only.

The sub-group provisions are onerous, especially so where they relate to branches. Where a foreign entity has an Italian branch but the company itself is also a holding company, a Master File is required for the foreign entity's subgroup, even if there is no holding directly attributed to the branch.

Sub-holding companies based in Italy with at least one non-Italian subsidiary, which need to produce a Master File, may instead produce the Master File for the entire group in English. If it does not contain all the information in the Italian Regulation, they will need to supplement it.

Documentation must be signed by the legal representative of the company and provided to the authority upon request within ten days. Also, an electronic copy must be provided upon request.

Transfer pricing documentation must be prepared each year and on a company-by-company basis. Small and medium companies (defined as those with an annual turnover of less than EUR 50 million) can update the economic analysis only every three years, provided that no significant change in the business occurred. Otherwise, it is necessary to update the economic analysis each year. All the other sections of the report have to be updated each year, even for small and medium companies.

Relief from penalties is granted on the additional IRAP applicable to transfer pricing adjustments to taxpayers who have prepared transfer pricing documentation in line with Italian Regulation.

International ruling procedures are available, to agree transfer pricing methodology with the tax authorities.

The agreement executed between the tax authorities and the taxpayer is binding for the fiscal year during which the agreement is executed and for the following four fiscal years and can then subsequently be renewed. From 2015, rollback provisions are available, making it possible to extend the agreement to cover the period between filing the application and signature of the agreement or as agreed by the competent authorities for bilateral or multilateral APAs.

Country-by-country (CbC) reporting

CbC reporting has been introduced in Italy for multinational enterprise (MNE) groups with consolidated group revenues of at least EUR 750 million. With this report, any MNE group shall disclose annually and for each tax jurisdiction in which it conducts business the information set out therein.

The template of the CbC report includes:

- aggregate tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates (Table 1)
- a listing of all the relevant entities for which financial information is reported, including their jurisdiction of tax residence and incorporation (if different) and their main business activity (Table 2), and
- additional information that may be useful to understand the mandatory information provided in the CbC report (Table 3).

The group entity responsible for the submission of the CbC report is the ultimate parent entity. However, where some conditions are met, the report shall be submitted by the entities resident in Italy for tax purposes.

Penalties are levied in case of missed or untrue communication (penalties can range from EUR 10,000 to EUR 50,000).

The CbC report shall be filed within 12 months of the last day of the reporting fiscal year of the MNE group. Moreover, the deadline for the notification of the CbC status to the Italian tax authorities is within the deadline for the submission of the income tax return.

Thin capitalisation

Italy no longer has thin capitalisation rules *per se*. Instead, net interest expense is deductible only up to an amount equal to 30% of gross operating margin (*see Interest expense in the Deductions section for more information*).

Controlled foreign companies (CFCs)

An Italian company that controls, either directly or indirectly, a foreign enterprise, company, or other entity is required to consolidate the taxable income arising in proportion to the percentage of shareholding held, irrespective of whether the profits have been distributed or not.

Income from CFCs is taxed separately from the other taxable income of the business at the standard IRES rate (i.e. other tax losses cannot be used to offset CFC income). Foreign taxes paid by the CFCs are recoverable by way of a corresponding tax credit.

Dividends received by an Italian shareholder from a CFC are excluded from taxable income up to the amount of the taxable income attributed under the above CFC provisions. The excess of any dividends over income already included through the CFC regime is fully taxable in the hands of the shareholder.

Exemption from CFC rules can be achieved by means of an advance ruling from the Italian tax authorities.

The CFC rules are also applied to controlled companies that are located in a jurisdiction in which:

- The nominal tax rate is less than 50% of the nominal tax rate in Italy.
- They are subject to special tax regimes.

Tax credits and incentives

Different incentives have been established to attract new industry to southern Italy and certain depressed mountain areas in central and northern Italy.

The possibility of taking advantage of these rules, however, depends on the taxpayer fulfilling specific conditions and on the actual availability of financial resources by the Italian state. These financial resources generally are set in the annual financial bill.

Tax credit on training expenses for Industry 4.0 plan

A tax credit is granted that is equal to 40% of the expenses relating to costs of employees for the period in which they are employed in training activities and is recognised up to a maximum annual amount of EUR 300,000 for each taxpayer.

The tax credit can be offset in the F24 form starting from the following tax year in which the costs are incurred (therefore, for the expenses incurred in 2018, the credit may be used from 2019).

In order to be eligible for the tax credit, the costs must be certified by the statutory auditor or a professional listed in the register of statutory auditors, even for those companies without audited financial statements.

This certification must be attached to the financial statements.

A regulation will be enacted providing guidelines for the application of the tax credit.

Advertising campaign tax credit

This is a tax credit in favour of taxpayers who increase their investments in advertising means, such as daily press, magazines, local television, or radio.

The tax credit is calculated on the incremental investment in advertisements compared to the previous fiscal year; for example, between 24 June 2017 and 31 December 2017, compared to the same period of 2016.

The incremental investment has to be greater than or equal to 1%. The tax credit amounts to 75% of incremental investments and up to 90% for small, medium, and innovative start-ups.

As of FY 2018, the eligible investments include on-line press, daily press, and magazines.

A regulation is still to be issued providing guidelines for the application of the tax credit.

Patent box regime

Italian resident companies and PEs of non-resident entities that carry out research and development (R&D) activity, either directly or by outsourcing it to universities or other research institutes or equivalent institutes, may elect to apply the Italian patent box regime. The regime exempts a portion of the income derived from the exploitation, either directly or by licensing, of 'qualifying intangible assets'.

The general exemption is 50%.

The regime can be applicable to PEs only if the non-resident entity resides in a country with which Italy has concluded a tax treaty and that allows adequate exchange of information.

The election is effective for five years and cannot be revoked during that period. Qualifying intangible assets include patents; know-how, such as industrial, commercial, or scientific information, formulas, and processes that are eligible for legal protection; and trademarks.

Taxpayers must request a specific ruling from the Italian tax authorities to benefit from the regime when the qualifying intangible is either used directly by the company or licensed to a related party.

Foreign tax credit

Where foreign-source income definitively is taxed abroad, a tax credit can be claimed for use against a company's IRES liability. The amount of the tax credit that can be claimed is the lower of the foreign tax incurred and the proportion of the IRES liability related to the foreign-source income. For partially exempt income (e.g. dividends), the foreign tax credit is reduced in proportion to the amount of the income taxable in Italy.

If an Italian company receives foreign income from more than one country, this limitation is applied separately to each country.

Foreign taxes borne by the foreign PE of an Italian resident company are allowed to be offset against the overall consolidated tax liability (IRES).

Any excess of foreign tax credit over the maximum amount allowed for recovery in the same tax period can be carried back or carried forward for eight years and recovered if specific conditions are met (e.g. same source country of the income, occurring because of an excess of the IRES liability related to the foreign-source income).

Withholding taxes

A 26% base standard WHT rate applies on the yields on loans and securities (bonds, shares, etc.) paid by Italian resident entities to both Italian and non-Italian resident investors.

The standard WHT rate, however, may be reduced under the applicable DTTs, EU Directives, or other special domestic tax regimes (such WHT exemptions and reductions are only granted to the beneficial owner of the income).

Interest on government bonds is subject to a 12.5% domestic WHT.

WHT chart

Domestic corporations paying certain types of income are required to withhold as shown on the following chart. The numbers in parentheses refer to the notes below.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations	0	0/26 (1)	0
Resident individuals	26 (2)	26	20 (3)
EU resident corporations	0/1.2 (4, 5)	0 (4)/DTT rates	0 (4)/DTT rates
Swiss resident corporations	0 (6)/DTT rates	0 (6)/DTT rates	0 (6)/DTT rates
Non-resident corporations and individuals:			
Non-treaty countries	26 (7)	26	30 (3)
Treaty countries (8):			
Albania	10	0/5	5
Algeria	15	0/15	5/15
Argentina	15	0/20	10/18
Armenia	5/10	0/10	7
Australia	15	0/10	10
Austria	15	0/10	0/10
Azerbaijan	10	0/10	5/10
Bangladesh	10/15	0/10/15	10
Barbados	5/15	0/5	5
Belarus	5/15	0/8	6
Belgium	15	0/15	5
Bosnia and Herzegovina (Yugoslavia Ex)	10	10	10
Brazil	15	0/15	15/25
Bulgaria	10	0	5
Canada	5/15	0/10	0/5/10
Chile	5/10	4/5/10/15	2/5/10
China, People's Republic of	10	0/10	10
Congo, Republic of	8/15	0	10
Croatia	15	0/10	5
Cyprus	15	10	0
Czech Republic	15	0	0/5
Denmark	0/15	0/10	0/5
Ecuador	15	0/10	5
Egypt	N/A	0/25	15
Estonia	5/15	0/10	0/5/10
Ethiopia	10	0/10	20
Finland	10/15	0/15	0/5
France	5/15	0/10	0/5
Georgia	5/10	0	0
Germany	10/15	0/10	0/5
Ghana	5/15	10	10

Italy

Recipient	WHT (%)		
	Dividends	Interest	Royalties
Greece	15	0/10	0/5
Hong Kong	10	0/12.5	15
Hungary	10	0	0
Iceland	5/15	0	5
India	15/25	0/15	20
Indonesia	10/15	0/10	10/15
Ireland	15	10	0
Israel	10/15	10	0/10
Ivory Coast	15/18	15	10
Japan	10/15	10	10
Jordan	10	0/10	10
Kazakhstan	5/15	0/10	10
Kyrgyzstan	15	0	0
Kuwait	0/5	0	10
Latvia	5/15	0/10	5/10
Lebanon	5/15	0	0
Lithuania	5/15	0/10	5/10
Luxembourg	15	0/10	10
Macedonia	5/15	0/10	0
Malaysia	10	0/15	0/15
Malta	15	0/10	0/10
Mauritius	5/15	N/A	15
Mexico	15	0/10/15	0/15
Moldova	5/15	5	5
Mongolia	5/15	0/10	5
Montenegro (Yugoslavia Ex)	10	10	10
Morocco	10/15	0/10	5/10
Mozambique	15	0/10	10
Netherlands	5/10/15	0/10	5
New Zealand	15	0/10	10
Norway	15	0/15	5
Oman	5/10	0/5	10
Pakistan	15/25	0/30	30
Panama	5/10	5/10	10
Philippines	15	0/10/15	25
Poland	10	0/10	10
Portugal	15	0/15	12
Qatar	5/15	0/5	5
Romania	0/5	0/5	5
Russia	5/10	10	0
San Marino	0/5/15	0/13	0/10
Saudi Arabia	5/10	0/5	10
Senegal	15	0/15	15
Serbia (Yugoslavia Ex)	10	10	10
Singapore	10	0/12.5	15/20
Slovak Republic	15	0	0/5
Slovenia	5/15	0/10	5
South Africa	5/15	0/10	6
South Korea	10/15	0/10	10

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Spain	15	0/12	4/8
Sri Lanka	15	0/10	10/15
Sweden	10/15	0/15	5
Switzerland	15	12.5	5
Syria	5/10	0/10	18
Taiwan	10	10	10
Tajikistan	15	0	0
Tanzania	10	15	15
Thailand	15/20	0/10	5/15
Trinidad and Tobago	10/20	10	0/5
Tunisia	15	0/12	5/12/16
Turkey	15	15	10
Turkmenistan	15	0	0
Uganda	15	0/15	10
Ukraine	5/15	0/10	7
United Arab Emirates	5/15	0	10
United Kingdom	5/15	0/10	8
United States	5/15	0/10	0/5/8
Uzbekistan	10	0/5	5
Venezuela	10	0/10	7/10
Vietnam	5/10/15	0/10	7.5/10
Zambia	5/15	0/10	10

Notes

1. The actual applicable rate depends on the nature of the recipient. Applicable rates are as follows: 0% applies on loan agreements and ordinary notes when the recipient is a corporation; 26% rate in all other cases.
2. For resident individuals, generally a 26% WHT applies, but there is a grandfathering regime for dividends received by 'qualified' shareholders (i.e. holding more than 20% of voting rights or 25% of the share capital, 2% or 5% in case of listed companies). The rate applicable to 'non-qualified shareholders' is always 26%. Non-residents are always subject to a 26% WHT, irrespective of whether or not they are 'qualified'.
3. The domestic rate applies on 75% of the gross amount of the royalty paid; however, treaty ceilings apply on the gross amount of the royalty paid.
4. Pursuant to the EU Directives and provided that the requirements set forth therein are met, payments of dividends, interest, and royalties made by an Italian company to an EU resident group company can be WHT exempt. Specifically for the dividends, the minimum shareholding requirement (to benefit from this exemption) is currently equal to 10%; for interest and royalties, it is 25% of voting rights; a one-year minimum holding period applies for both.
5. Should the full WHT exemption not apply, 1.2% applies on dividends paid to EU and EEA tax resident corporations.
6. Pursuant to the Swiss EU tax agreement and provided that the requirements contained therein are met, payments of dividends, interest, and royalties made by an Italian company to a Swiss tax resident group company can be WHT exempt.
7. Non-resident persons have the right to obtain reimbursement for up to 11/26 of the withholding effected, upon proof of the actual taxation of the dividends in the foreign country where the recipient is a resident.
8. Provided that all conditions are met, domestic tax legislation is applicable if more favourable for the taxpayer. In a number of circumstances, tax treaties may provide for particular tax rates mainly dependent on the nature of the instruments and on the profile of the recipients/payers. In such cases, the applicable WHT rate must be verified from an analysis of the relevant tax treaty.

Tax administration

Taxable period

The ordinary taxable period is equal to 12 months. Conformity with the calendar year is not requested. In particular cases, the duration of the taxable period can be different from 12 months (e.g. newly established companies may be allowed to have taxable periods of up to 18 months; companies that are involved in extraordinary transactions [merger, de-mergers, etc.], as well as companies that are liquidated, may have taxable periods shorter than 12 months).

Tax returns

IRES and IRAP returns must be filed by the end of the ninth month following the tax year-end.

Please note that, following a formal postponement, the filing of FY 2017 IRES and IRAP returns is shifted to 31 October 2018 (for corporations with calendar year only).

The ordinary filing deadline for the WHT agent return is 31 October of the following year.

Payment of taxes

For IRES and IRAP purposes, the tax law provides for both advance payments and settlement payments. As a general rule, the advance payments are equal to the net tax liability for the previous tax period and are due during the tax period to which they refer. The advance payments due are equal to 100%.

Advance payments are split into two instalments:

- 40% by the end of the sixth month following the tax year-end.
- 60% by the end of the 11th month following the tax year-end.

Settlement payments are due by the end of the sixth month following the tax year-end to which they refer (previously by the 16th day of the sixth month following the tax year-end).

Tax payments should be performed through a specific form to be electronically filed to the tax authorities (i.e. F24 form).

Offsetting of taxes

Payables and receivables (not claimed for refund) resulting from a return regarding different taxes are allowed for off-setting within a yearly limit of EUR 700,000.

Furthermore, in order to offset tax credits exceeding EUR 5,000, a so-called 'conformity mark' affixed by a qualified professional on the related return is required. In addition, there is an obligation to channel the filing of the F24 form through the tax authorities system (so-called '*Entratel*') in case of offsetting tax liabilities with other tax credits.

No offsetting is allowed in case of unpaid taxes resulting from an official payment notice and exceeding EUR 1,500.

Administrative penalties

Failure to file a tax return results in a penalty ranging from 120% to 240% of the taxes due. Minimum penalties (ranging from EUR 250 to EUR 1,000) are applicable if no tax liability emerged in the return.

A tax return showing either a taxable income lower than the one assessed or a tax credit higher than those owed to the taxpayer (i.e. an untrue tax return) results in a penalty ranging from 90% to 180% of the higher taxes ultimately due.

Omitted and/or late payments of taxes, of whichever kind and nature, result in a penalty equal to 30% of the unpaid/late paid tax. However, in cases where the delay is within 15 days, the penalty is equal to 1% per day; if the delay is between 15 and 90 days, the penalty is equal to 15%.

Special rules apply where similar violations are repeated over various years.

Self-disclosure of tax law breaches are allowed on payment of the higher taxes and of reduced administrative penalties. The reduced penalties are always computed on the floor of the applicable range of penalties. The starting of an audit does not prevent the possibility to amend tax returns or to carry out late tax payments.

The actual reduction of penalties depends on the time elapsed between the occurrence of the breach and the self-disclosure itself (i.e. different interim thresholds apply). The penalty is reduced from 1/30 (lower floor), if the correction is done within 14 days (for an omitted/lower tax payment only), up to 1/5 (upper floor) if the correction is carried out during a tax authorities audit or after the issue of a tax audit report (*i.e. processo verbale di constatazione*).

In any case, the possibility to apply the self-disclosure is prevented after the issuance of final notice of tax assessment (*i.e. avviso di accertamento*) or tax redetermination (*i.e. avviso di irregolarità*).

Statistical based assessment procedure (so-called 'Studi di settore')

The Italian Tax law provides for special tax control procedures for those enterprises whose total turnover does not exceed EUR 7.5 million. The controls, so-called *'Studi di Settore'*, are based on standardised economic models of the different business fields and are aimed at assessing whether or not a specific subject's taxable income is in line with its own standard model (on statistical basis).

A higher possibility of undergoing tax audit should be considered for entities not meeting the expected profitability and/or turnover resulting from these automated controls.

Starting from FY 2018, this type of assessment is going to be repealed and replaced by a system of indexes to identify and reward reliable taxpayers. Operating instructions will be provided by the tax authorities.

Tax ruling

The tax ruling is an instance where the taxpayer directed a behaviour for tax purposes to the tax authority before implementing it; its scope is to seek clarification on the interpretation of a rule objectively uncertain, related to state taxes, to be applied to concrete and personal cases.

The procedure can also be started by non-resident taxpayers, by WHT agents, and by persons in charge of fulfilling the tax payments.

The tax authorities must admit to the procedure within 30 days from the receipt of the instance; however, tacit acceptance from the tax authorities applies. The procedure that involves a contradictory procedure between the tax authorities and the taxpayer ends within 180 days from the receipt of the instance.

The content of the instance could be on the transfer pricing, the application of rules to attribute profits and losses to a PE, the tax treatment of dividend, interest, royalties, or other incomes, etc.

In particular, a 'ruling on new investments' has been introduced for those enterprises that intend to make new investments in Italy for a value above EUR 30 million, disclosing tax treatment of the investment and all related extraordinary transactions. The tax authorities will be bound not to issue any deed inconsistent with the answers given.

The tax authorities' answer must be notified within 120 days. The deadline can be extended for an additional 90 days if the tax authorities asks for new additional information.

Tax audit process

For larger companies having a yearly turnover exceeding specific thresholds (that are in the process of being progressively decreased to EUR 100 million), administrative checks on tax returns may be carried out within the year following that in which the tax return has been filed.

Tax audit can take place at the taxpayer's premises as well as in the tax authorities' offices. The statute of limitations provides that tax auditors can stay at a taxpayer's premises for not longer than 60 working days (30 days ordinary term plus 30 days of extension). At the end of this period, the audit must come to an end. Tax auditors must take note of the observations and requests made by the taxpayer. At the end of their audit, the tax auditors must draw up a tax audit report whereby the outcome of the audit activity must be detailed and the findings (if any) must be illustrated and motivated. A copy of the report has to be filed with the tax office.

The tax office receiving the tax audit report examines the findings reported by the tax auditors and starts the assessment procedure, which may lead to the issuing of a tax assessment notice bearing the request for payment of higher taxes and/or penalties.

Tax controversy and dispute resolutions

Should the taxpayer accept all of the challenges raised by the tax authorities, it may take advantage of the application of reduced penalties. The reduced penalties may range from 1/6 to 1/3 of the minimum applicable penalties, depending on the status of the controversy.

In case the taxpayer decides not to accept the challenges by the tax authorities, a settlement procedure can be initiated. The favourable outcome of the settlement procedure brings forth (in addition to the agreed-upon reduction of challenged taxes) the reduction of penalties: ordinarily down to 1/3 of the minimum applicable penalties.

In case no settlement is either achieved or requested for, the taxpayer may start a tax dispute before the Court. The judicial proceedings are structured in three tiers:

- Provincial Tax Commission, in first instance.
- Regional Tax Commission, in second instance.
- Supreme Court of Cassation.

Statute of limitations

From the fiscal year in progress as at 31 December 2016, the Italian tax authorities are entitled to make an assessment in relation to corporate taxes (IRES and IRAP), VAT, and WHT returns up to:

- the end of the fifth calendar year following the year in which the tax return was filed (previously up to the end of the fourth calendar year), or
- the end of the seventh calendar year following the year in which the tax return would have been filed, for an omitted return (previously up to the end of the fifth calendar year).

Previous rules were applicable until FY 2015.

The possibility to file an integrative tax return in favour of taxpayers within the deadlines of tax assessment has been introduced (e.g. FY 2017 tax return is amendable in favour of the taxpayer until FY 2023).

Topics of focus for tax authorities

Extraordinary transactions (such as mergers, de-mergers, etc.) continue to be a topic of focus for tax authorities due to the potential applicability of tax anti-abuse rules.

As a response to recent cases of carousel-frauds on VAT, cross-border transactions are being more heavily scrutinised.

Over the last few years, we experienced an increasing focus by the tax authorities on transfer pricing and PE-related issues.

The beneficial ownership condition is very carefully scrutinised in case of payments where a nil or reduced WHT is applied based on EU Directive or applicable DTT, in particular when the ultimate owner of the group is non-EU.

Cooperative compliance programme

A regime aimed at setting a cooperative compliance programme for Large Business Taxpayers is available.

The regime falls within similar frameworks adopted by other foreign tax administrations, consistent with OECD recommendations.

The regime of cooperative performance represents for taxpayers the opportunity to start a new relationship with the tax authorities based on forms of communication and strengthened cooperation.

Taxpayers who have a turnover of EUR 10 billion are able to join the regime and required to adopt a Tax Control Framework.

The subjects involved in the regime will have benefits in terms of constant and continuous dialogue with the tax authority, reduction of penalties, and elimination of guarantees required for refund.

Other issues

Adoption of IFRS and taxation

Italian tax law provides for two basic principles and some specific rules for taxation of a company adopting IAS/IFRS in the statutory financial statements:

- Derivation principle ('*Principio della Derivazione*'): The taxable base of companies is determined starting from the net income arising from the profit and loss, increased or decreased by items directly booked to equity pursuant to the application of IAS/IFRS. To such income, the general tax adjustments set forth by the Corporate Income Tax Law apply. In this respect, as exception to the general tax criteria, the accrual principle, and the qualification and classification criteria stated by the IFRS are relevant for the calculation of the taxable base.
- Neutrality principle ('*Principio della Neutralità*'): Such principle aims to neutralise the effects deriving from the movement to IAS/IFRS (First Time Adoption or FTA). Conversely, such principle does not grant an equal treatment for companies adopting IAS/IFRS or not (in fact, specific rules are applicable only to IAS/IFRS adopters, e.g. taxation of dividend on held-for-trading securities, derivatives).

The following specific rules applicable to IAS adopters must be considered:

- Adjustments or recognitions of transactions made in equity and/or in the 'other comprehensive income (OCI)' are relevant for tax purposes, to the extent that such items are in compliance with general tax principles.
- For equity instruments, the legal classification is prevailing over the accounting one (debt vs. equity classification).
- Under certain conditions, unrealised profits and losses recognised in the profit and loss become taxable and deductible (e.g. fair value on securities other than shareholdings and on derivatives transactions).
- The tax treatment of transactions between IFRS adopters and non-IFRS adopters is based on the accounting principle adopted by each company (e.g. financial leasing transaction).
- Depreciation and amortisation are permitted within the rates provided by the tax rules and limited to the amount booked in the profit and loss statement. In this respect, the abolition of the imperative systematic depreciation of the goodwill and its substitution by the goodwill's review for impairment does not affect the tax deduction of the goodwill amortisation that should be made solely for tax purposes.
- Negative components booked in the income statement as expenses for personnel settled with equity instrument under IFRS 2 are, in principle, deductible for IRES purposes (stock options).
- In order to identify financial instruments with hedging purposes, IFRS adopters are allowed to give relevance to the classification made in the financial statement. In particular, financial instruments designated in the financial statement as hedging instruments in compliance with IFRS principles are considered also as hedging

instruments for fiscal purposes (hedging accounting approach including the fair value option [FVO]).

- Given the possibility, under the IAS 39 accounting principle, to reclassify financial securities in a different portfolio from that of the initial booking, the value at which the security is booked in the new portfolio is tax relevant.

Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS)

The FATCA aims to detect and discourage offshore tax evasion by United States (US) citizens or residents for tax purposes in the United States who hold financial assets through foreign financial institutions (FFIs), generally banks, custodial institutions, certain investment entities, and life insurance companies.

In order to simplify the obligations imposed on FFIs, the US Treasury and various foreign governments have entered into intergovernmental agreements (IGAs).

Italy and the United States signed an IGA (Model 1) in order to implement FATCA. The IGA was ratified by the Italian Parliament in 2015.

For countries that have signed a Model 1 IGA, the United States has granted a number of important simplifications, such as the possibility for FFIs to use information collected for anti-money laundering (AML) purposes and for FATCA customer identification and the suspension of most of the penalties (e.g. account closure) for those account holders who refuse to provide the information required for their correct identification (i.e. recalcitrant).

FATCA obligates Italian financial institutions to identify (starting from 1 July 2014) and classify account holders in order to report certain financial information (e.g. name, address, taxpayer identification number [TIN], account balance) related to US persons to the Italian Revenue Agency (i.e. *Agenzia delle Entrate*). The Italian tax authority will then exchange such information with the US Internal Revenue Service (IRS) by the end of September of each year.

The IGA ratification Law also includes provisions regarding on-boarding and due diligence requirements for CRS purposes. Starting from 1 January 2016, Italian financial institutions are required to identify and report non-resident (non-US) account holders, as provided by the CRS developed by the OECD.

Ivory Coast (Côte d'Ivoire)

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Significant developments

The FY18 Financial Law has enforced base erosion and profit shifting (BEPS) provisions with regard to country-by-country (CbC) reporting obligations for large multinational companies with operations in Ivory Coast (Côte d'Ivoire), and major changes have been enforced with regard to deduction of interest on related-party loans.

Taxes on corporate income

Taxable corporate income in Côte d'Ivoire is based on worldwide income for resident companies (*for exceptions, see Foreign income in the Income determination section*).

Tax on industrial and commercial profits in Côte d'Ivoire is levied at 25%, subject to a minimum tax. The rate is 30% for companies in the telecommunication, information technology, and communication sectors.

Non-resident entities are subject to withholding tax (WHT) at 20%, subject to existing double tax treaties (DTTs), on their Côte d'Ivoire source income when they do not have a permanent establishment (PE). Non-residents with a PE are taxed in the same way as a resident.

Minimum tax

The minimum tax is based on total turnover and is calculated at the rate of 0.5%, with a minimum tax of 3 million *Communauté financière d'Afrique* (Financial Community of Africa or CFA) francs (XOF) and a maximum tax of XOF 35 million.

Local income taxes

The income tax is levied at the national level. There is no local income tax.

Corporate residence

In Côte d'Ivoire, companies are considered resident in tax jurisdictions where they have a registered fixed establishment (e.g. subsidiaries, branches, representative offices).

Permanent establishment (PE)

A non-resident is considered as having a PE in Côte d'Ivoire when its activities involve a comprehensive commercial cycle in Côte d'Ivoire or when it operates through a dependent agent in Côte d'Ivoire.

According to DTTs, a non-resident is considered as having a PE in Côte d'Ivoire when it has a registered establishment, including a subsidiary, a branch, a representative office, a mine or an oil well, a building site, a manufacture plant, or a trading establishment. Sometimes, a time threshold of six months is considered.

Other taxes

Value-added tax (VAT)

VAT is a non-cumulative tax levied on the sale of goods and services at the rate of 18%. Subject to certain restrictions, VAT is recoverable.

The rate is reduced to 9% for milk, pasta products that contain 100% durum wheat semolina, and equipment designed for the production of solar energy.

Customs duties

Customs duties rates range from 0% to 35%, depending on the classification of the imported goods according to the customs tariff.

Upon import, goods are also subject to the statistical duty (1%), to community levy (0.5%), and to VAT (18%).

Special taxes, depending on the nature of the imported goods, may apply, such as excise duties.

Statistical duty

The statistical duty is levied together with the customs duties during the customs clearance procedures of imported goods.

The rate of the statistical duty is 1% on the cost, insurance, and freight (CIF) value of the imported goods.

Community levy

The community levy is due together with the customs duties during the customs clearance procedures of imported goods.

The rate of the Economic Community of West African States (ECOWAS) community levy is 0.5% on the CIF value of the imported goods.

Products imported from outside the West African Economic and Monetary Union (WAEMU) remain subject to the community levy at 0.8% for five years from January 2015.

The community levy does not apply to goods imported from member countries of the WAEMU, which includes Côte d'Ivoire, Senegal, Burkina Faso, Mali, Benin, Togo, Niger, and Bissau Guinea.

African Union import duty

A duty called the African Union import tax applies on imports of items outside the African Union at the rate of 0.2%.

Excise duties

Excise duties apply on cigarette imports, alcoholic or non-alcoholic beverages, and oil products.

Real estate tax

A real estate tax is imposed at the following rates:

- 1.5% for undeveloped lands.
- 4% on land revenue.
- 11% on developed land or 15% when the built property is used by the company itself. The rate is reduced to 4% for unoccupied buildings.

Transfer taxes

In the case of the transfer of property through a direct sale, taxes are assessed at the following rates:

- 10% for lease transfers.
- 4% for sales of real estates.
- 10% for sales of businesses.

For mortgages, the rate is 5% for the financial lessor at the acquisition of the good and 1% for acquisition of the immovable property by the lessee from the exercise of the option.

Stamp duty

A direct tax is paid for any document subject to a registration procedure, for an acknowledgement of a cash payment, and for bills of exchange.

Payroll taxes

Taxes are levied at the rates of 2.8% for local employees and 12% for expatriate employees on the total taxable remuneration, including salaries, benefits, and benefits in kind.

Social security contributions

Employers must contribute to the social security system (CNPS) at the following rates:

Contribution	Contribution rate (%)	Monthly ceiling (XOF)
Family allowance	5.75	70,000
Work injury	2.0 to 5.0	70,000
Retirement pension	7.7	1,647,315*

* Note that even though the retirement contribution ceiling (XOF 1,647,315) is calculated on the basis of 45 times the minimum wage, this amount has not been updated since the minimum wage increased from XOF 36,607 to XOF 60,000.

Special tax for equipment

A special tax is paid by all taxpayers for the purpose of the equipment of the government. The tax is calculated on 0.1% of total turnover and is paid monthly. This tax is scheduled to end on 31 December 2019.

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Business franchise tax

The business franchise tax includes a turnover tax and a proportional tax. The turnover tax is calculated on turnover at the rate of 0.5%, with a minimum tax of XOF 300,000 and a maximum tax of XOF 3 million. The proportional tax rate is 18.5% and is based on the rental value of the professional office location (based on general office rents).

Tax on banking operations

A cumulative tax of 10% is levied on bank services rendered. Tax on banking operations charged by banks to companies is fully deductible from output VAT.

Registration taxes

Registration of capital contributions is taxed, whether the capital contribution or increase in capital is made in cash or in kind. The rate is 0.3% for contributions exceeding XOF 10 million to XOF 5 billion and 0.1% for contributions over XOF 5 billion, with a minimum tax of XOF 18,000. Increases in capital by incorporation of reserves are taxed at 6%.

In the event of a capital increase through a merger, the increase in the share capital of the acquiring company is taxed at half of the rates above.

The transfer of shares held in a company located in Côte d'Ivoire is liable to a 1% registration duty on the sale price or market value of the shares when the transfer does not trigger the disappearance of the company or the creation a new legal entity.

Tax on insurance premiums

Insurance premiums are subject to tax as follows:

Policy type	Tax rate (%)
Marine policies	7.0
Life policies	Exempted when contract's duration is more than three years
Fire policies	25.0
Health policies	8.0
Export credit insurance	0.1
Other (e.g. personal liability, transportation)	14.5

Premiums paid under commercial shipping insurance policies for maritime risks are exempt. The tax may be paid by the insurance company, its agent, or the subscriber in cases where the subscriber had to pay the premium to a foreign insurance company.

Tax on telecommunication companies

A specific tax of 5% is applicable on the turnover of mobile telecommunication, information technology, and communication companies.

Companies renting passive infrastructures and telecom towers to telecom companies are not within the scope of this tax.

Companies operating in the telecommunication, information technology, and communication sector must also invest 20% of the amount of dividends transferred abroad in bonds of the public Treasury or any borrowing instrument issued by the government of Côte d'Ivoire.

Tax on telecommunication services

A special tax of 3% is applicable on telecommunication services provided to the public. The tax is invoiced and collected by companies operating mobile or land telecommunication and internet services in Côte d'Ivoire.

Surtax on rent

A special tax of 20% is applicable to the amount of rent on accommodation or professional premises that exceeds the two-month guarantee and one-month upfront payment at the beginning of the lease.

Branch income

The tax rate for branch income is the same as that for corporate income. After-tax branch earnings are subject to a 15% tax (*Impôt sur le revenu des valeurs mobilières* or IRVM) calculated on 50% of the taxable profit. This is analogous to the WHT on dividends.

Income determination

Inventory valuation

Inventory is generally stated at the lower of cost or market value. Last in first out (LIFO) and first in first out (FIFO) methods are permitted. Book and tax conformity is required.

Capital gains

Capital gains are normally taxed at full corporate rates. However, the tax on capital gains, exclusive of recaptured depreciation, can be deferred if the gain is reinvested within three years.

Dividend income

Dividends are brought into taxable income at 50% of the net amount earned by the company (after 15% WHT).

The exemption is increased to 95% for dividends received from a subsidiary if a parent company domiciled in Côte d'Ivoire owns 10% of the subsidiary.

Stock dividends

Stock dividends are unusual, but in the event they are declared, they are not taxable to the recipient.

Interest income

Interest from loans is brought into taxable income at 50% of the net amount earned by the company (after 18% WHT).

Royalty income

Royalty income received by a local taxpayer is included in its annual revenue and subject to corporate income tax (CIT).

Royalty income paid by a local taxpayer to a non-resident is subject to a 20% WHT, subject to the existence of a DTT between Côte d'Ivoire and the country of the effective recipient of the royalties.

Most DTTs will provide a reduced rate of 10% or 5% for WHT on royalties.

Royalties are defined by tax treaties.

In the absence of a DTT, the 20% WHT applies to all services payments to non-residents, including royalties.

Foreign income

Resident corporations are taxed on their worldwide income, except for profits derived from business conducted through a PE outside Côte d'Ivoire. Since income derived from business conducted outside Côte d'Ivoire is not taxable, no tax credit is allowed.

Interest and dividends from foreign sources are entitled to certain deductions to alleviate instances of double taxation. Subject to provisions of tax treaties, no deductions or tax credits are allowed for revenue from royalties and services.

Deductions

Depreciation and depletion

Depreciation is generally computed on a straight-line basis over the useful life of the asset (e.g. 20 years for buildings, 3 years for automobiles). Accelerated depreciation is sometimes permitted for machinery. The following depreciation rates are generally accepted for tax purposes:

Assets	Depreciation rate (%)
Buildings	5
Machinery, equipment (rate depending on equipment)	8/10/20
Office furniture	10
Office equipment	20
Vehicles	33.3
Computing equipment	20 to 50

A time coefficient is applied to the rate of depreciation to obtain the declining balance. Depreciation rates may be amended, but only after agreement with the tax authorities.

New plants and equipment may be depreciated at twice the normal rate in the first year of use, provided they are depreciated over at least six years. Under certain circumstances, buildings used for staff housing may be depreciated at 40% of cost in the first year. Annual depreciation must be booked to preserve tax deductibility. The whole or any part of the annual charge can then be deferred in annual accounts for fiscal years showing a tax loss. Recaptured depreciation is taxed at full rates. Tax and book conformity is obligatory.

Depletion allowances, as such, do not exist, but tax incentives are available for exploration to replace depleted natural reserves.

Goodwill

Goodwill (capital gain) deriving from the transfer of assets is included in taxable profit. The gain may be exempt from the income tax basis if the taxpayer commits to reinvest the purchase price of the transferred assets plus the goodwill in the three following years.

If the reinvestment is not completed in the three years, the gain will be subject to income taxation.

Start-up expenses

Start-up expenses (e.g. legal fees, registration duties on share capital subscription, the costs of any registration procedure, advertisement expenses) have to be amortised over a period from two to five years.

Interest expenses

Interest paid to shareholders may be deducted. The deduction is limited to the interest on a loan where the amount of the loan does not exceed the company's share capital (except for local holding companies).

The maximum interest rate allowed is related to the *Banque Central des Etats de l'Afrique de l'Ouest* (BCEAO) rate plus two points.

The reimbursement of the loan must take place in the five years following the loan.

Total interest must not exceed 30% of the company's pre-tax book income before interest, depreciation, and reserve.

The company's share capital must be paid out entirely.

Bad debt

Provisions for bad debts are deductible, provided that a minimum set of collection procedures have been engaged.

Bad debts are deductible for income tax purposes unless the debt results from abnormal business decisions.

Charitable contributions

Charitable contributions to recognised sport and health associations are deductible.

Charitable contributions to individuals or non-recognised beneficiaries are not tax deductible.

Fines and penalties

Fines borne by corporations are not tax deductible.

Taxes

Regular taxes paid by corporations are deductible for income tax purposes.

Third party taxes (such as WHT on non-resident service providers) borne by corporations are not tax deductible.

Other significant items

In respect to legal reserves, 10% of net profit must be transferred to a reserve for legal fees until the reserve equals 5% of the paid-up share capital.

To be tax deductible, provisions must relate to existing liability or loss. General reserves are not deductible.

Net operating losses

Losses may be carried forward for five years.

Losses derived from depreciation can be carried forward indefinitely.

Losses cannot be carried back.

Payments to foreign affiliates

Reasonable royalties, interest, and management and service fees paid to foreign parent companies are tax deductible. However, the deductions should not exceed 5% of the turnover and 20% of the overhead. Otherwise, the portion exceeding the ceiling is not tax deductible. The onus is on the taxpayer to prove that expenses are justified and reflect real transactions.

Where payments are made to a beneficiary located in a non-cooperative country or a tax haven country, deduction of sums paid is capped at 50% of their amounts. Non-cooperative and tax haven countries are those recorded on the Organisation for Economic Co-operation and Development (OECD) black list. The excessive portion is added back to the CIT basis.

Deduction of expenses from group transactions is subject to the filing of transfer pricing documentation.

CbC reporting is applicable when the group consolidated turnover threshold is met (i.e. XOF 491.97 billion).

Group taxation

Group taxation is not permitted in Côte d'Ivoire.

Transfer pricing

Profits directly or indirectly transferred to related non-resident companies are disallowed from the income tax basis.

The tax administration may inquire on transfer pricing when local subsidiaries having most of their transactions with non-resident group companies record losses.

A transfer pricing report on group transactions must be filed together with annual financial statements.

Country-by-country (CbC) reporting

A CbC report must be filed when group consolidated turnover of XOF 491.97 billion is met.

Thin capitalisation

The deduction of the interest of loans granted on top of the share capital by related parties is subject to restrictions (*see Interest expenses in the Deductions section*).

When, because of losses, the equity of the company is less than 50% of the share capital, the company must be recapitalised in the two following years, unless the company is dissolved.

Controlled foreign companies (CFCs)

There are no CFC rules in Côte d'Ivoire.

Tax credits and incentives

Foreign tax credit

Since income derived from business conducted outside Côte d'Ivoire is not taxable, no tax credit is allowed.

Investment zones

The aim of the Investment Code is to:

- help create companies in other regions than the economic capital city (Abidjan)
- help the employment of nationals
- help companies doing business in a sustainable manner
- develop the regions of the country, and
- favour the existence of local small and medium-sized enterprises (SME).

The Investment Code regimes involve the creation of three zones (A, B, and C), depending on the location of the company:

- Zone A covers Abidjan District.
- Zone B covers any town in Côte d'Ivoire with more than 60,000 inhabitants.
- Zone C covers any town in Côte d'Ivoire with less than 60,000 inhabitants.

The duration for the granted tax benefit is:

- 5 years for Zone A.
- 8 years for Zone B.
- 15 years for Zone C.

The Investment Code includes two specific tax incentive regimes: the Investment Declaration Regime and the Investment Approval Regime. Both regimes apply to all economic activities, excluding finance and banking, non-industrial buildings builders, and commerce activities. However, investment related to the creation or the development of important shopping centres could qualify for the exemptions if certain conditions are met.

The Investment Declaration Regime has no minimum investment threshold, but has special requirements related to the activities of the company.

For the Investment Approval Regime, the minimum investment cost is XOF 200 million (VAT and working capital exclusive).

The benefit from the Investment Code is granted by the Centre for the Promotion of Investments (named CEPICI), after an application is filed by the requestor.

During the investment period, the beneficiary enjoys the following:

- Reduction of 50% of the customs duties on the equipment and materials included on the filed list together with the first spare parts when the investment is less than XOF 1 billion.
- Reduction of 40% of the customs duties on the equipment and materials included on the filed list together with the first spare parts when the investment is more than XOF 1 billion.
- Exemption from VAT on purchase of equipment, materials, and first spare parts.

After the completion of the investment, the beneficiary enjoys the following exemptions during a period that depends on the zone the company is located in:

- Exemption from CIT.
- Exemption from business franchise tax.
- Exemption from real estate tax (only for Zone C in the Investment Declaration Regime).
- Exemption from registration taxes on share increases (only for Zone C in the Investment Declaration Regime).
- Reduction of the payroll taxes due on employee's wages. The reduction is 80% for Zone B and 90% for Zone C in the Investment Declaration Regime and 50% for Zone A, 80% for Zone B, and 90% for Zone C in the Investment Approval Regime.

These incentives may not be combined with sector-specific investment programs, such as those for mining and hydrocarbons.

Capital investment incentives

With prior approval of the tax authorities and varying with geographical location, 35% to 40% of the total investment in fixed assets related to commercial, industrial, or agricultural activity may be deducted from taxable income. The deduction is limited to 50% of taxable profits. The balance of deduction of the first year may be carried forward over the three following years.

Export incentives

No VAT is levied on export sales.

Export incentives for the mining industry

During the exploration phase, investments may be exempt from payroll tax; VAT on goods and services; additional tax (on the sale of goods) on imports and purchases; all import taxes and duties, including VAT on materials, machines, and equipment used in research activities; registration duties applicable to in-kind or cash share-capital contributions; real estate tax; CIT; and minimum tax.

In the exploration phase, mining subcontractors can benefit from the same import VAT and customs exemptions granted to mining title holders.

During the production phase, mining activities may have a five-year exemption from CIT and relief from all import duties, including VAT on recovered investments required for exploitation, special equipment tax, business franchise tax, etc. In addition, they may be granted temporary admission of machines and equipment that facilitate research and exploitation. Mining subcontractors are exempt from customs duties, including VAT on importing of liquid or gas fuels, lubricants, and chemical or organic products intended for the treatment of minerals, for the whole duration of the mine.

A tax on profit is levied as soon as investment funds are recovered. Mining enterprises may not combine these incentives with those of the Investment Code.

Export incentives for petroleum service contractors

A special and optional tax treatment applies to petroleum service contractors that meet established criteria. CIT, distribution (i.e. dividend) tax, payroll tax, income tax on salaries, and the tax on insurance premiums are calculated on the turnover of the contractor. The total taxes represent 5.786% of turnover. Standard rates apply for business franchise tax and social security contributions for local personnel. The exemption from customs duties and VAT for oil companies is extended to petroleum service contractors.

Withholding taxes

WHTs are levied as follows:

- *Impôt sur le revenu des valeurs mobilières* (IRVM): 15% on dividends and directors' fees.
- *Impôt sur le revenue des créances* (IRC): 18% on interest payments, reduced to 13.5% (individuals) and 16.5% (businesses) on bank deposit interest. The revenue realised by individuals on Treasury Bonds is subject to 10% tax on terms of up to 12 months and to 5% tax when ranging from three years to five years. Foreign banks are subject to 18% tax on loan interest or 9% on equipment loans with minimum three-year terms.
- *Impôt sur les benefices non commerciaux* (BNC): 25% of 80% of revenues on royalties, licence fees, and management and service fees paid by Ivorian companies to foreign companies (effective rate: 20% of net amount paid). *See Treaty rates below for reduced rates on royalties and management fees*.
- Interest on certificates of deposit (*bons de caisse*): 25%.

WHT on public contracts for services

Any payment made by government bodies or public institutions to non-resident persons or companies for a contract for goods or services is subject to a 20% WHT, subject to DTTs (*see Impôt sur les benefices non commerciaux above*).

Resident persons or companies are not subject to this WHT, except for individual service (or goods) providers registered under the standard tax regime for small companies (*see below*).

WHT on small-size businesses

A 5% WHT is applicable on the remunerations paid to individual service providers registered under the standard tax regime for small companies.

A 10% WHT is applicable on payments made by government bodies or public institutions for a contract for services (or goods).

WHT on writers’ revenue

A 7.5% WHT applies to occasional revenue paid to individuals or companies as royalties on books, scientific studies, and artistic productions.

Treaty rates

The Ivorian DTT Network:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	15	18	20
Treaty:			
Belgium	15	16	10
Canada	15	15	10
France	15	15	10
Germany	15	15	10
Italy	15	15	10
Morocco	10	10	10
Norway	15	16	10
Portugal	10	10	5
Switzerland	15	15	10
United Kingdom (1)	15	15	10
WAEMU (2)	10	15	15

Notes

1. Management fees (‘*honoraires de gestion*’) attract the 10% WHT in the United Kingdom (UK) DTT.
2. The West African Economic and Monetary Union (WAEMU) states are: Benin, Burkina Faso, Côte d’Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

Tax administration

Taxable period

Companies are required by law to have a 31 December fiscal year-end.

Tax returns

The deadline for filing is 30 June for companies subject to audit requirements and 30 May for other entities.

Taxpayers with a turnover between XOF 5 million and XOF 50 million are taxed under the ’synthetic’ tax regime and are required to produce electronic and paper financial statements.

The simplified real taxation scheme (*Réel simplifié d’imposition*) applies to taxpayers with turnover ranging from XOF 50 million to XOF 150 million. Under the simplified real taxation scheme, annual financial statements have a lighter presentation.

The ‘real’ taxation scheme applies to taxpayers with a turnover above XOF 150 million. Companies under the real taxation scheme are allowed to submit tax returns electronically and perform tax payments via wire transfer.

Financial statements are filed annually, according to local generally accepted accounting principles (GAAP).

Payment of tax

Payment of CIT is made in three instalments in April, June, and September following the end of the fiscal year, depending on the sector of activity and taxpayer’s office, as follows:

- Medium and large-size companies tax office:
    - 10 April, 10 June, and 10 September for industrial, oil and gas, and mining companies.
    - 15 April, 15 June, and 15 September for commercial companies.
    - 20 April, 20 June, and 20 September for service providers.
- Companies with other tax offices:
    - 15 April, 15 June, and 15 September.

Tax audit process

Many types of tax audits are available to the tax administration, which may request any accounting-related document for the purpose of tax audit.

The most common is the general tax audit of the taxpayer’s situation, which covers the statute of limitation period. It is carried out with a notice at least five days before the beginning of the audit. The audit is carried out on the premises of the taxpayer for a maximum of six months (with a possibility to extend for a period of three additional months), and a primary tax assessment is issued.

The taxpayer then has 30 days to agree or challenge the assessment, and the definitive assessment is issued within a maximum of three months following the primary tax assessment notification date.

The definitive tax assessment has to be issued within a maximum of two months for taxpayers with annual turnover up to XOF 500 million.

The tax administration is entitled to release tax assessments electronically.

Further challenge of the definitive assessment is possible before the head of the tax administration and the court.

Statute of limitations

The statute of limitations covers the current year and the three prior years.

Topics of focus for tax authorities

The tax administration generally focuses on compliance with the CIT filing deadline and on the payment of the instalments.

For consistency of the tax returns, the tax administration focuses on the filing of the additional records (Annual Financial Statements, Etat 301: Annual Salary Statement, Etat 302: Annual Fees Statement), records of the provisions, tax losses, and amortisations carried forward.

During tax audits, the focus is on transactions with non-resident related parties.

Jamaica

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Significant developments

New income tax treaties

In January 2018, Jamaica signed an income tax treaty in Kingston with Italy. This is the first tax treaty between the two countries. This follows the ratification by Mexico of its income tax treaty with Jamaica in December 2017. Both treaties are now in force.

These two treaties brings to 14 the number of bilateral double taxation treaties (DTTs) that have been entered into by Jamaica to date in addition to the multilateral Caribbean Community (CARICOM) tax treaty, which covers a further ten Caribbean jurisdictions within the CARICOM Community.

Organisation for Economic Co-operation and Development (OECD) Multilateral Tax Convention

In January 2018, Jamaica signed the OECD Base Erosion and Profit Shifting (BEPS) Multilateral Convention. Upon signature, Tax Administration Jamaica (TAJ) also filed Jamaica's list of notifications and reservations in relation to the Multilateral Instrument (MLI). The next step will be for Jamaica to ratify this multilateral treaty and lodge instruments of ratification with the OECD. This is expected to take place later this year.

The OECD has been spearheading the implementation of an inclusive framework by over 100 OECD and non-OECD jurisdictions to tackle BEPS tax avoidance strategies.

Tax provisions for share buy-backs

The Companies Act provides various mechanisms whereby a company may either redeem or purchase its own shares subject to meeting the various conditions and requirements stipulated. Notwithstanding this, there were no complementary provisions in Jamaican tax law, and this adversely impacted the capacity of companies to implement such transactions without triggering onerous tax liabilities.

Recognising the merits of facilitating companies in undertaking share redemptions and buy-backs, the government recently amended the relevant tax laws to accommodate the redemption or purchase by a company of its own shares that are listed on a recognised stock exchange without triggering adverse tax consequences.

Introduction of Special Economic Zone (SEZ) regulations

The Special Economic Zones Act, 2016 provides for the development, regulation, construction, supervision, management, and control of SEZs in Jamaica. The Regulations to support the SEZ regime were passed in 2017.

Taxes on corporate income

A resident corporation is taxable on its worldwide income. Non-resident companies are subject to tax on Jamaican-sourced income. Tax is imposed on certain sources of income, such as interest, dividends, royalties, and fees, by way of withholding at a rate of 33⅓% for non-resident corporations. Lower rates of withholding are possible, provided that the recipient is resident in a country that has concluded a DTT with Jamaica.

The current rates of corporate income tax (CIT) are as follows:

Classification	Definition	CIT rate (%)
Regulated company	A company that is regulated by the Bank of Jamaica (other than building societies), the Financial Services Commission (other than life assurance companies), the Office of Utilities Regulation, or the ministry with responsibility for finance.	33⅓
Building society	An entity similar to a savings and loan association.	30
Life assurance companies		25
Unregulated company	A company (that is not a regulated company) registered and operating within Jamaica.	25

The income of certain organisations is specifically exempt from income tax. These include pension and superannuation funds and charitable organisations that are approved by the Commissioner General, TAJ.

Local income taxes

Income tax is imposed at the national level. Income tax is not separately imposed at the local level.

Corporate residence

A corporation, wherever incorporated, is resident in Jamaica if the central management and control of its business is exercised in Jamaica. Normally, this is the case if meetings of directors and shareholders are held in Jamaica and major policy decisions of the corporation are made in Jamaica.

Permanent establishment (PE)

The definition of a PE in domestic law is similar in a number of respects to those contained in DTTs and is defined as a fixed place of business through which the business of a business organisation is carried on. Where a DTT applies, then the treaty definition of a PE will prevail.

Other taxes

General consumption tax (GCT)

GCT is a value-added tax (VAT) imposed on the supply of goods or services within Jamaica (above a minimum turnover threshold) and on the import of goods or services to Jamaica. The standard rate is currently 16.5%. Higher or lower rates of GCT are applicable to certain goods and services; for example, the provision of telephone services (including phone cards) and handsets is subject to GCT at the rate of 25%, while the tax is imposed on hotels and other businesses in the tourism sector at an effective rate of approximately 10%. Operators within the tourism industry who were granted approval under legacy tourism incentives and who have not elected to move to the current regime cannot benefit from the 10% tourism GCT rate.

Subject to certain exceptions, an additional 5% advance GCT is levied on the commercial importation of goods by a GCT-registered taxpayer.

Where services are imported from a supplier who is not resident in Jamaica, the recipient of those services is deemed to be liable to account for GCT on the services. The recipient may be able to claim a credit for GCT incurred on imported services in certain circumstances; in particular, there are specific conditions where such services are received from overseas connected parties.

The list of items exempt from GCT includes a range of basic food items, prescription drugs, certain medical supplies, as well as certain construction, transportation, and financial and insurance services. Zero-rated goods and services include certain agricultural and fisheries inputs, exported goods and services, and purchases by diplomatic and international organisations and foreign governments.

A GCT group accounting mechanism is available, whereby two or more affiliated entities may be approved by the Commissioner General, TAJ to be treated as a single taxpayer for GCT purposes.

Customs duties and related imposts

Customs duty is levied on the customs value of goods imported, which is determined in accordance with the World Trade Organization (WTO) rules on customs valuation.

The rates are specified by a prescribed Customs Tariff, having regard (where appropriate) to the Common External Tariff agreed between CARICOM member states.

In addition to normal customs duties, an environmental protection levy (EPL) and a standards compliance fee (SCF) are imposed at the rate of 0.5% and 0.3%, respectively, of the customs value of goods imported. The EPL is also imposed on 75% of the sales value of locally manufactured goods with an input tax credit available for any EPL paid in respect of imported productive inputs. Customs administration fees (CAF) are charged based on the service(s) provided by Jamaica Customs. Other import levies apply in certain instances, such as additional stamp duty (ASD) on certain goods.

Special consumption tax (SCT)

SCT is imposed at various rates on the importation or local manufacture of 'prescribed goods' (i.e. certain petroleum products, ethanol, alcoholic drinks, tobacco, and motor vehicles).

Property tax

All land in Jamaica is valued for property tax purposes on the 'site value' or 'unimproved value' (as reflected on the 2013 Property Valuation Roll). Property tax is levied by reference to various value bands at a scale of rates ranging from 0.50% to 0.90%.

Transfer tax

A transfer tax of 5% is applicable on the consideration payable (or market value in certain instances) on the transfer of land, buildings, securities, and shares (provided that a refund is available where the transfer tax charged exceeds 37.5% of the capital gain made). Transactions on the Jamaica Stock Exchange (JSE) are exempt from transfer tax, as are the transfer of registered corporate bonds, whether or not the company is listed on the JSE.

Stamp duty

Stamp duty is imposed on a wide variety of legal instruments. The rate of stamp duty depends on the legal instrument involved. Stamp duty is imposed, for example, on the conveyance on sale of real estate and certain other assets at 4%, while transfers of shares in Jamaican companies attract a rate of 1%. Transfers of shares on the JSE are exempt from stamp duty, as are the transfer of registered corporate bonds, whether or not the company is listed on the JSE. Stamp duty is also imposed at an ad valorem rate on the creation or increase of a mortgage.

Payroll taxes

Payroll taxes are imposed at the national level on emoluments paid by employers to their employees, including (subject to certain conditions) expatriates who undertake work in Jamaica. The taxes comprise Pay-As-You-Earn (PAYE) Income Tax, Education Tax, and contributions to the National Housing Trust (NHT), the National Insurance Scheme (NIS), and the Human Employment and Resource Training (HEART) Trust.

Employers are obligated to deduct and remit payroll taxes within 14 days after the end of the month in which the emoluments are paid. Employers and employees contribute at the following rates:

Payroll tax	Basis	Employee rate (%)	Employer rate (%)
PAYE Income Tax	Taxable emoluments up to 6 million Jamaican dollars (JMD) *per annum* less the annual tax-free threshold	25.00	N/A
	Taxable emoluments in excess of JMD 6 million *per annum*	30.00	N/A
Education Tax	Taxable emoluments	2.25	3.50
NHT contributions	Gross emoluments	2.00	3.00
NIS contributions	Gross emoluments up to a maximum of JMD 1.5 million *per annum*	2.50	2.50
HEART contributions	Gross emoluments	N/A	3.00

Minimum business tax (MBT)

An MBT of JMD 60,000 *per annum* is levied on all corporate bodies incorporated or registered under the Companies Act, the Building Societies Act, the Friendly Societies Act, or the Industrial & Provident Societies Act, as well as on individuals carrying on a trade, profession, or business whose chargeable income (less emoluments and an amount equivalent to the annual tax-free threshold) exceeds JMD 3 million *per annum*.

The MBT is payable in two tranches and is creditable against the taxpayer's income tax liability for the year of assessment.

In the case of an individual taxpayer, any MBT paid in excess of income tax liability for the year of assessment may be refunded or carried forward. Companies, however, are not entitled to a refund or carryforward of excess MBT.

Asset tax

An *ad valorem* asset tax at the rate of 0.25% is imposed on the 'taxable value' of the assets of deposit-taking institutions regulated by the Bank of Jamaica, as well as securities dealers, life assurance companies, and property and casualty insurance companies regulated by the Financial Services Commission. The taxable value of assets is broadly determined as the value of assets on the balance sheet with adjustments for certain items specific to each type of institution.

For other entities, asset tax is imposed at a fixed rate ranging from JMD 5,000 to JMD 200,000, depending on the aggregate value of the entity's assets, and is payable on or before 15 March annually.

Contractors levy

Payments to contractors (including sub-contractors) in respect of construction, haulage, and tillage operations are liable to a withholding of a contractors levy of 2% of the gross amount paid. This must be remitted to TAJ within 14 days of the end of the month in which the payment is made. The levy paid is allowable as a credit against the income tax liability of the contractor in the year of assessment in which the levy is deducted. To the extent that there is any excess, it is not refundable.

Guest accommodation room tax (GART)

GART is levied at a specific rate on hotels and other tourist accommodation facilities based on room occupancy. GART is tiered depending on the number of rooms at the hotel or other tourism accommodation facility.

Telephone call tax

Tax is imposed on telephone calls, including inbound calls terminating on fixed or mobile networks.

Branch income

Branch income is taxed at the same rate as that of local corporations and on a similar basis. The transfer of profits to its overseas head office is subject to a withholding tax (WHT) of 33⅓% or at a lower treaty rate, where applicable.

A branch operation, irrespective of the nature of its business activities, is subject to Jamaican income tax on income derived by the branch from the island and elsewhere. In computing the income for tax purposes, expenses incurred wholly and exclusively for the purpose of the branch's trade are deductible, including a reasonable proportion of head office expenses.

Transactions between the branch, its head office, and affiliates should be at arm's-length values.

Income determination

Inventory valuation

Inventories are valued at the lower of cost or market value. The Commissioner General, TAJ has made no pronouncement, but last in first out (LIFO) is not generally permitted.

Any method of valuation that accords with standard accounting practice is acceptable for tax purposes, provided it is consistently applied at the beginning and end of the accounting period and it is not in contravention of the Income Tax Act.

Capital gains

There is no tax on capital gains. There is, however, a transfer tax on the market value of certain assets transferred and stamp duty payable on the transfer/disposal of shares or real property. *See the Other taxes section for more information*.

Dividend income

Ordinary dividends paid by Jamaican tax resident companies to Jamaican tax resident shareholders are liable to tax at the rate of 15%. The tax is to be deducted on payment by the distributing company and represents the final tax on such dividends. The Income Tax Act provides relief from taxation for dividends received by Jamaican tax resident corporate shareholders where they hold at least 25% of the voting rights of the distributing company (referred to as 'group relief').

Additionally, the dividend income on which tax is payable may not be offset by tax losses, and expenses incurred to earn the dividend are not deductible in arriving at chargeable income, with the exception of expenses incurred in respect of specified dividend income. Specified dividend income refers to the dividend income of companies that are subject to tax and are regulated by the Bank of Jamaica or the Financial Services Commission and whose dominant trade or business is comprised of making investments in loans, securities, and other financial assets. However, this exception does not apply to dividends enjoying group relief.

Preference dividends that qualify as tax deductible expenses of the paying company (*see below*) continue to be liable to tax at a rate of 25%/30% where the recipient is an individual and at the applicable CIT rate where paid to a company. Dividends paid to non-resident shareholders are subject to income tax thereon at the default rate of 33⅓% in the case of a company and 25% in the case of an individual (subject to any treaty protection or incentive relief available).

Subject to certain conditions being met, a company may claim an income tax deduction in respect of preference dividends paid during the year of assessment. However, to the extent that these preference dividends do not qualify for this income tax deduction, they will be treated on a similar basis as ordinary dividends.

Stock dividends

Stocks issued by way of the capitalisation of retained earnings (referred to as 'bonus issues') do not create a taxable distribution in the hands of the shareholders.

Interest income

Interest income is included in chargeable income and is subject to tax when received. Where interest is paid by a prescribed person, tax is deducted at source at the rate of 25% (*see the Withholding taxes section for more information*). The interest payable on certain securities issued by the government of Jamaica (primarily to non-residents) has been designated as being exempt from tax.

Royalty income

Royalty income is included in chargeable income.

Foreign income

Resident corporations are taxable in Jamaica on their worldwide gains or profits. This includes the income of a foreign branch of a Jamaican company, as well as dividends arising abroad. Non-resident corporations are generally taxable on Jamaican-sourced income.

Tax deferral is not permitted in Jamaica.

Deductions

Expenses are deductible to the extent that they were incurred wholly and exclusively to earn the income and are claimed in the year in which they were incurred.

Depreciation

Tax depreciation (referred to in Jamaica as 'capital allowances') is generally computed at prescribed rates annually on a straight-line basis. In the year of expenditure, initial allowances are also available at rates ranging from 20% to 25% on certain buildings and plant/machinery. Capital allowances are also available for capital expenditure on a wide list of intellectual property (IP) rights as well as pure or applied science and research and development (R&D) costs.

Generally, capital gains on depreciable property are not taxed. However, a recharge limited to the extent of the capital allowances allowed (or balancing charge) is taxable. Tax depreciation may not conform to book depreciation.

Goodwill

The amortisation or write-off of goodwill is not an allowable deduction.

Start-up expenses

The costs of incorporation and other expenses incurred in connection with establishing a business are not deductible against income.

Interest expenses

A deduction is available for interest that is paid on capital employed in acquiring income. Additionally, where interest is paid to a non-resident, tax must be withheld where required and remitted to the tax authorities in order to secure a deduction.

Bad debts

A deduction is available in respect of specific debts that become bad during the year of assessment.

Charitable contributions

Approved donations (not exceeding 5% of taxable income) to registered charitable organisations and certain educational institutions are deductible.

Foreign exchange gains/losses

Foreign exchange gains and losses arising from trading are included in or deducted from chargeable income when realised. Foreign exchange gains and losses arising on capital assets are not taxable or allowable for tax purposes; however, where they pertain to fixed assets, on realisation, they may become part of the underlying acquisition cost and tax depreciation computed thereon.

Fines and penalties

Fines, penalties, and interest arising from tax arrears are not deductible.

Taxes

Taxes on income are not deductible. Additionally, GCT, contractors' levy, transfer tax and stamp duty incurred on capital assets, input tax credits for GCT purposes, MBT, as well as the asset tax, are generally disregarded for income tax purposes. Other taxes, such as property tax, payroll taxes, and other business taxes, are deductible, to the extent that they were incurred to earn the income.

Net operating losses

Subject to certain exceptions for newly established and micro businesses, any claim for deduction of tax losses incurred in a prior year will be capped at 50% of the taxpayer's chargeable income (before deduction of tax losses carried forward) of the year in which the claim is being made. Tax losses are not available for carryback. Certain anti-avoidance provisions restrict the 'purchase' of accumulated tax losses.

Payments to foreign affiliates

Royalties, management and other service fees, rentals, and interest charges paid to foreign affiliates are deductible to the extent that these payments are made at arm's-length rates. WHT should be paid in respect of such services, normally at 33⅓% where payment is to a company and 25% in the case of individuals, unless a lower rate is provided for under a DTT. Furthermore, interest paid to non-residents is not deductible until the WHT is remitted.

Group taxation

Group taxation is generally not permitted in Jamaica, with the exception of a mechanism to permit group filing of returns for GCT purposes.

Transfer pricing

Jamaica has implemented a transfer pricing regime consistent with the OECD's guidelines on transfer pricing for multinationals in an effort to protect its tax base and address issues of tax avoidance, particularly in relation to cross-border transactions. Detailed transfer pricing rules seek to ensure that taxpayers compute their taxable income using a deemed arms-length consideration (determined in accordance with prescribed methodologies) for all transactions between connected parties (where different to the actual consideration involved).

All taxpayers who engage in such transactions are required to disclose information pertaining to the identity of connected persons, particulars, and pricing arrangements of such transactions primarily through the annual income tax return and to retain this documentation in support of the income tax return. Business entities with gross annual revenues of JMD 500 million or more are required to comply with extensive OECD standard transfer pricing documentation requirements.

The rules also empower the tax authorities to deem an unconnected person located in a low-tax jurisdiction to be a connected person under certain circumstances.

Thin capitalisation

There are no provisions for thin capitalisation in the tax laws of Jamaica. It has been proposed, however, that such provisions should be introduced in the future.

Controlled foreign companies (CFCs)

There is no CFC regime in Jamaica.

Tax credits and incentives

Jamaica grants relief from taxation to persons who have been approved under the following incentive legislation:

- The Special Economic Zones (SEZ) Act.
- The Urban Renewal (Tax Relief) Act.
- The Income Tax Act (Junior Stock Market Companies).
- The Income Tax Relief (Large-Scale Projects & Pioneer Industries) Act.
- The Bauxite and Alumina Industries (Encouragement) Act.
- The Charitable Organizations (Tax Harmonization) (Miscellaneous Provisions) Act.

Special Economic Zones (SEZ)

The Special Economic Zones (SEZ) Act was passed in January 2016 and repealed the Jamaica Export Free Zones Act. It has established a regime to support the designation, promotion, development, operation, and management of SEZs.

A person may be declared to be a 'developer' or 'occupant' under the SEZ Act. Tax incentives that are available to a developer or occupant under the SEZ Act include relief from asset tax and a reduced rate of income tax, property tax, transfer tax, GCT, and customs duty. However, these incentives are not available to developers or occupants who are eligible for relief under a number of other enactments.

A number of industries/business activities are specifically prohibited in the SEZ, including (but not limited to) mining or quarrying for natural resources, services pertaining to tourism, telecommunications, public utilities, financial services, construction, real estate, and property management.

The Urban Renewal (Tax Relief) Act

The Urban Renewal (Tax Relief) Act provides tax incentives to persons approved under the Act in connection with undertaking programmes of development in areas designated as special development areas, with a view to improving or restoring them. The tax incentive provides certain tax benefits, including relief from income tax on rental income and interest earned by an investor in an Urban Renewal Bond. There is also exemption from stamp duty and transfer tax on the transfers of property.

A tax credit based on expenditure incurred on capital improvement works in a designated special development area is also available. In addition, lessees of the improved properties, who satisfy certain criteria, are able to claim a tax deduction of double the rental paid.

The Income Tax Act (Junior Stock Market Companies)

Subject to certain conditions being met, a company listed on the Junior Market of the JSE is eligible for full exemption from income tax on their profits in the first five years from the date of admission to the Junior Market, with a 50% exemption from income tax on their profits in next following five years.

Employment tax credit (ETC)

The ETC is comprised of a non-refundable tax credit that is available to employers in computing their income tax liability. A number of taxpayers are ineligible to claim this tax credit.

The ETC is computed by reference to payroll taxes (excluding PAYE income tax) filed and remitted by their due date by the employer, subject to an overall cap. With a headline income tax rate of 25%, the ETC therefore provides tax-compliant employers with an opportunity to reduce the effective income tax rate on their trading profits to as low as 17.5%.

Where a company makes a distribution (dividends and certain other benefits to shareholders), the credit is clawed back by TAJ to the extent of 10% of the distribution, less the tax payable by the recipient of the distribution (i.e. the ETC clawback only applies where tax imposed on the recipient of the distribution is less than 10%). The credit clawed back must be repaid to TAJ within 14 days of the end of the month in which the distribution is made.

Incentives for large-scale projects/pioneer industries

The Income Tax Relief (Large-Scale Projects & Pioneer Industries) Act is designed to encourage innovation and high-value investments. It provides a mechanism through which additional income tax incentives can be offered in circumstances where the Minister of Finance designates (subject to affirmative resolution in Parliament) a project as an approved large-scale project or an economic activity as an approved pioneer industry.

Participants in either a designated large-scale project or a pioneer industry may subsequently be approved by Ministerial Order, which will stipulate the extent of relief granted. The income tax relieved under all orders issued pursuant to this mechanism in any year will be capped at 0.25% of the country’s gross domestic product (GDP) for the previous financial year.

Productive inputs relief (PIR)

There is relief from customs duty and additional stamp duty on the importation of certain ‘productive inputs’ that are directly used in the ‘production of primary products’ or the ‘manufacture of goods’. In addition to the manufacturing and agricultural sectors, relief is also granted on certain products imported for use in the tourism, creative arts, and healthcare industries.

The relief is subject to the proviso that imported items are not available in adequate supplies from a local manufacturer or from a manufacturer within the CARICOM Common Market area or are not otherwise prohibited from benefitting from this relief.

Bauxite and Alumina Industries (Encouragement) Act

A person engaged in winning bauxite and producing alumina in Jamaica may be approved as a recognised bauxite producer or a recognised alumina producer (or both) and obtain the following tax reliefs:

- Relief from customs duty, additional stamp duty, and GCT in respect of the importation of plant, machinery, trucks and other vehicles, and other specified material and equipment that are necessary for the winning, treatment, and transportation in Jamaica and shipping of bauxite and alumina.
- Relief from customs duty or other similar impost on the importation of certain petroleum fuels and oils (excluding petrol) during the concession period.

Tax incentives for charitable organisations

The Charities Act provides a mechanism for registered charitable organisations to obtain exemption from income tax, customs duty, GCT, property tax, stamp duty, and transfer tax.

Non-resident deposits

Non-residents who place deposits with Jamaican banks can earn interest free of Jamaican tax in certain circumstances. The deposits may be designated in foreign currency or Jamaican dollars.

Employee Share Ownership Plan (ESOP)

Certain tax benefits accrue to employees and employers in respect of contributions to an approved ESOP as well as the allocation of shares from such plans.

Foreign tax credit

The avoidance of double taxation is achieved by means of foreign tax credits available under most tax treaties or by means of exemption in the case of the CARICOM treaty. Under the provisions of the Income Tax Act, a foreign tax credit is also available to companies in Jamaica that have paid or are liable to Commonwealth Income Tax. Where recourse cannot be had through either of these methods, by convention, in practice, partial relief by way of expense deduction is granted against income for the foreign tax.

Withholding taxes

WHT is required to be deducted from chargeable payments made to non-residents and remitted to TAJ (along with the applicable return) within 14 days of the end of the month in which the payment is made in order to avoid the imposition of interest and penalties.

Subject to securing approval from TAJ (where appropriate), the following rates of WHT apply to the categories of payments highlighted (this is not an exhaustive list):

	WHT (%) (4)				
	Dividends				
Recipient	Portfolio	Substantial holdings (5)	Interest	Royalties	Management fees
Resident corporations	15 (1)	0 (1)	25 (3)	0	0

	WHT (%) (4)				
	Dividends				
Recipient	Portfolio	Substantial holdings (5)	Interest	Royalties	Management fees
Resident individuals	15 (2)	15 (2)	25 (3)	0	0
Non-treaty:					
Non-resident corporations	33⅓	33⅓	33⅓	33⅓	33⅓
Non-resident individuals	25	25	25	25	25
Treaty:					
Canada	15	22.5	15	10	12.5
CARICOM countries (6)	0	0	15	15	15
China, People's Republic of	5	5	7.5	10	0 (4)/33⅓
Denmark	15	10	12.5	10	10
France	15	10	10	10	10
Germany	15	22.5	12.5 (7)	10	10
Israel	22.5	15	15	10	33⅓
Mexico (8)	10	5	10	10	10
Norway	15	15	12.5	10	10
Spain	10	5	10	10	0 (9)/10
Sweden	22.5	10	12.5	10	10
Switzerland	15	10	10 (7)	10	0 (9)/10
United Kingdom	15	22.5	12.5	10	12.5
United States	15	10	12.5	10	0 (4)/33⅓

Notes

1. Substantial holdings refer to resident companies that hold 25% or more of the voting rights of the paying Jamaican resident company.
2. Tax is withheld at the rate of 15% where a dividend is paid by a company resident in Jamaica to a resident individual shareholder, regardless of shareholding.
3. Tax is deducted from interest paid to Jamaican residents if payment is made by a prescribed person.
4. Provided the income is not effectively connected with a PE in Jamaica.
5. Applies only to companies owning a substantial holding (percentage ownership as prescribed by the treaty).
6. Rates apply only to residents of member states that have ratified the tax treaty.
7. Rate reduced further if received by a bank recognised as a banking institution under the laws of that state.
8. Comes into effect for WHT from 1 January 2019.
9. Provided the services are rendered outside of Jamaica or if in Jamaica (within a prescribed period).

WHT is also imposed at the rate of 15% on insurance premiums paid by Jamaican residents to non-residents (subject to certain exceptions and protection under a tax treaty). WHT of 3% is imposed on payments in respect of 'specified services' purchased locally (above a *de minimis* amount of JMD 50,000 per invoice).

WHT withheld should be available for offset against the payee's income tax liability on the filing of returns.

Tax administration

Jamaica has established the following departments to handle tax administration:

- Tax Administration Jamaica (TAJ) operates as a revenue authority (reporting to the Ministry of Finance) whose functions include compliance and tax collection, administrative and legal support, audit and assessment of income tax, general consumption tax, stamp duty, and transfer tax. The Commissioner General, TAJ has responsibility for the direction, supervision, and administration of TAJ and is supported in undertaking this role by several Deputy Commissioner Generals.
- The Revenue Appeals Division of the Ministry of Finance processes appeals to decisions made by TAJ.
- The Jamaica Customs Agency has the powers of an executive agency and has responsibility for administering taxes at the ports of entry as well as trade facilitation.

There is also a Financial Investigations Division in the Ministry of Finance, which investigates customs breaches and fraudulent acts in respect of tax legislation.

Taxable period

A corporation is subject to tax on its income for a calendar year. However, where the Commissioner General, TAJ is satisfied that a corporation normally prepares financial statements to a date other than 31 December, the company may be permitted to use the profits of its own financial year rather than the calendar year as the basis of assessment. The basis period should not exceed 12 months; however, a company wishing to file its income tax return for a period exceeding this period must obtain the approval of TAJ.

Tax returns

Income tax returns are due for filing by 15 March in the year following the year of assessment and are based on a system of self-assessment of the tax payable.

Payment of tax

Tax is payable in quarterly instalments on the 15th day of March, June, September, and December of each tax year. Quarterly instalments are based on an estimate of the year's liability or the actual tax payable for the previous year. The balance of income tax payable for a taxation year, after deduction of the instalments of estimated tax, is due on 15 March of the following year. Interest is charged on unpaid tax at a rate of 16.62% *per annum* while the amount remains unpaid. A penalty of up to 50% may also be imposed if TAJ issues an assessment.

TAJ has implemented an electronic tax system that taxpayers are required to use to file various tax returns and remit taxes online.

Tax assessments and audits

The Commissioner General, TAJ is empowered to conduct audits on selected tax returns or to assess a taxpayer for additional tax at any time prior to the expiration of the statute of limitation, which is six years, except in certain cases. Tax audits can be carried out whether or not notices of assessment have been issued. Tax assessments may be raised where the Commissioner General, TAJ is of the opinion that a taxpayer has been assessed for less tax than the taxpayer ought to have been charged, or where the taxpayer failed to file a tax return.

Topics of focus for tax authorities

The Jamaican revenue authorities have indicated that their focus is centred around improving tax collections, enhancing voluntary compliance, increasing audit coverage, and improving the ease with which taxpayers conduct business.

In recent times, TAJ has conducted comprehensive audits that cover multiple tax types. However, it continues to focus its compliance strategies on large taxpayers and has strengthened the resources of the Large Taxpayer Office to facilitate this.

TAJ has also turned its attention to administering the transfer pricing regime implemented in 2015.

Other issues

Intergovernmental agreements (IGAs)

The government of Jamaica has entered into an agreement (Model 1) with the government of the Unites States (US) to improve international tax compliance and to implement the US Foreign Account Tax Compliance Act (FATCA). The agreement seeks to provide an effective mechanism for the automatic exchange of information for tax purposes and addresses the burden of domestic reporting and the legal impediments that Jamaican financial institutions may face in complying with FATCA.

The Income Tax Act has been amended to incorporate the measures that are required by FATCA.

OECD Multilateral Tax Convention

In January 2018, Jamaica signed the OECD BEPS Multilateral Convention. Upon signature, TAJ also filed Jamaica's list of notifications and reservations in relation to the Multilateral Instrument (MLI). The next step will be for Jamaica to ratify this multilateral treaty and lodge instruments of ratification with the OECD. This is expected to take place by the third quarter of 2018.

The OECD has been spearheading the implementation of an inclusive framework by over 100 OECD and non-OECD jurisdictions to tackle BEPS tax avoidance strategies.

Japan

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Significant developments

2018 Tax Reform

On 28 March 2018, the 2018 Tax Reform Act was approved by the Diet, and, on 31 March 2018, the 2018 Tax Reform Act, the Enforcement Orders, and Regulations were promulgated, which are effective for corporate tax years ending on or after 1 April 2018, in principle. The 2018 Tax Reform Act provides for tax measures to help improve corporate productivity by 'Internet of Things' (IoT) investment and increase salary income to revitalise the economy.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (MLI)

On 18 May 2018, the MLI was approved by the Diet. Although Japan has not yet deposited the ratification instruments to the Organisation for Economic Co-operation and Development (OECD), it is expected that Japan will deposit them by the end of September 2018 to enable the MLI (for Japan) to enter into force on 1 January 2018.

Consumption tax

Due to a tax amendment, the consumption tax increase that was originally scheduled to rise to 10% on 1 April 2017 was delayed to 1 October 2019; however, concessions have been introduced with lower rates for selected goods to lessen the burden for the lower income tax brackets. To cope with the multiple consumption tax rates, an invoicing method will be introduced, although not until 1 April 2023, with transitional measures in place for the three-year and six months interim.

Taxes on corporate income

A domestic corporation in Japan is taxed on its worldwide income, including foreign branch income, while 95% of dividends received by a company from a foreign company in which it has held at least 25% (or could be lower under relevant tax treaties) of the outstanding shares for a continuous period of six months or more can be excluded from the company's taxable income. *See the description of Dividend income in the Income determination section for more information*.

A foreign corporation is taxed only on its Japan-source income.

Corporation tax

The corporation tax rates are provided in the table below (effective from fiscal years beginning on or after 1 April 2016 and 1 April 2018).

	Corporation tax rate (%)	
Company size and income	**1 April 2016**	**1 April 2018**
Paid-in capital of over 100 million Japanese yen (JPY)	23.4	23.2
Paid-in capital of JPY 100 million or less, except for a company wholly owned by a company that has paid-in capital of JPY 500 million or more:		
First JPY 8 million *per annum*	15.0	15.0
Over JPY 8 million *per annum*	23.4	23.2

National local corporate tax

As of 1 April 2018, corporate taxpayers are obligated to file and pay the national local corporate tax at a fixed rate of 10.3% of their corporate tax liabilities. Previously, the national local corporate tax rate was 4.4%.

Standard enterprise tax (and local corporate special tax)

Enterprise tax is imposed on a corporation's income allocated to each prefecture. This allocation is generally made on the basis of the number of employees and number of offices in each location. The local corporate special tax, which is a rate multiplied by the income portion of enterprise tax, will be abolished from tax years beginning on or after 1 October 2019 and replaced by enterprise tax (including a size-based tax regime).

The standard rates of enterprise tax, including local corporate special tax, are shown below.

Taxable base	Enterprise tax (%)	Local corporate special tax
First JPY 4 million *per annum*	3.4	43.2% of the current enterprise tax
Next JPY 4 million *per annum*	5.1	
Over JPY 8 million *per annum*	6.7	

If the paid-in capital of a corporation is JPY 10 million or more and the corporation has places of business in more than two prefectures, the graduated rates above are not applicable.

For utilities and insurance companies, the standard tax rate is shown as follows:

Taxable base	Enterprise tax (%)	Local corporate special tax
Net revenue (net utility charges or net insurance premiums)	0.9	43.2% of the current enterprise tax

Size-based enterprise tax (and local corporate special tax)

Instead of the above general enterprise tax, a 'size-based' enterprise tax (*Gaikei Hyojun Kazei*) is applied to a company whose paid-in capital is more than JPY 100 million as of the year-end.

Factors such as the size of a corporation's personnel costs and its capital (the amount of paid-in capital) will determine the additional amount of tax payable. The existing profit-based enterprise tax will also continue to apply at the tax rates indicated below. Therefore, a loss company in Japan may be required to pay tax based on value-added activities and the corporation's paid-in capital.

The applicable standard rates are as follows:

	Size-based enterprise tax (%)	
Taxable base	**2015 Tax Reform**	**2016 Tax Reform and further amendments per the amendment bill**
Fiscal year beginning	1 April 2015	1 October 2019
Value added base	0.72	1.2
Capital base	0.3	0.5
Income base *		
First JPY 4 million	3.1 (1.6)	1.9 (0.3)
Next JPY 4 million	4.6 (2.3)	2.7 (0.5)
Over JPY 8 million	6.0 (3.1)	3.6 (0.7)
Local corporate special tax (the rate is multiplied by the income base of size-based enterprise tax), which is collected as national tax by filing corporate tax returns	93.5	414.2 **

* The rate shown for the income base is the total income-based tax including (i) the portion collected as part of the national tax return and (ii) the portion included as part of the enterprise tax return. The portion in parentheses of the income base column shows the amount collected as an enterprise local tax (the difference is collected as a national tax). The above rate changes for income base may not affect taxpayers who have elected consolidated taxation since consolidation is not applicable for local tax purposes.

** The local corporate special tax will be abolished from 1 October 2019 and replaced with an increase to the enterprise tax rate.

Inhabitant's tax

Inhabitant's tax is imposed on a corporation's income allocated to each prefecture and city (municipal borough). The allocation is generally made on the basis of the number of employees, in the same way as enterprise tax.

The standard tax rate is 3.2% as prefectural tax and 9.7% as municipal tax. However, the tax rate is increased to 4.2% for prefectural tax and 12.1% for municipal tax, depending upon the determination of each local government. From fiscal years beginning on or after 1 October 2019, the rate is increased as follows:

	Current		Expected from 1 October 2019	
Inhabitant's tax	**Standard rate (%)**	**Maximum rate (%)**	**Standard rate (%)**	**Maximum rate (%)**
Prefectural tax portion	3.2	4.2	1.0	2.0
Municipal tax rate	9.7	12.1	6.0	8.4
Local corporate tax rate	4.4		10.3	

In addition to the above, inhabitant's tax is imposed on a *per capita* basis, in the range from JPY 70,000 (in cases where the amount of paid-in capital is JPY 10 million or less and the number of employees in each prefecture and city is 50 or less) to JPY 3.8

million (in cases where the amount of paid-in capital is over JPY 5 billion and the number of employees in each prefecture and city is over 50). The inhabitant's tax amount is determined by the local government by the factors of paid-in capital and the number of employees.

Effective tax rate

The total corporate income tax burden (i.e. effective tax rate) varies depending upon the size of a company's paid-in capital. Since enterprise tax is deductible, the effective tax rate is less than the total of the statutory rates of corporation tax, inhabitant's tax, and enterprise tax.

The following is the summary of the effective applicable tax rates in the case of small and medium enterprises (SMEs) and large corporations operating in Tokyo (taking no thought of an additional-value-based tax and capital-based tax out of the enterprise tax above):

	Effective corporation tax rate (%)	
Tax year	**SMEs**	**Large corporations**
Beginning on or after 1 April 2016	34.81	30.86
Beginning on or after 1 April 2018	34.60	30.62

Corporate residence

Domestic and foreign corporation

A company that has its head office in Japan is a domestic corporation. The nationality of its shareholders or place of central management is not relevant.

A corporation other than a domestic corporation is regarded as a foreign corporation.

Permanent establishment (PE)

Under domestic tax law, the scope of Japan-source income in respect of which a foreign corporation is taxable depends upon the type of taxable presence that it has in Japan. Pursuant to the amendments of Article 5 of the OECD Model Tax Treaty (OECD MTC) in November 2017 and the signing of the MLI on 7 June 2017 by the Japanese government, articles related to the PE were revised by the 2018 Tax Reform. The articles of the Corporate Tax Law (CTL) and CTL Enforcement Ordinance (CTLEO) were revised to agree with the updated Article 5 of the OECD MTC. The revised definition of PE will apply to the tax years beginning on or after 1 January 2019. After the amendment, the types of taxable presence that a foreign corporation may have in Japan include the following:

- Branch, factory, other fixed places in which business is conducted in Japan, mine, quarry, building for rent, etc., but exclude a specified place used only for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise and any other activity of a preparatory or auxiliary character (Direct PE).
- Construction, installation, assembly project, or supervisory services related thereto for a period of greater than one year, but exclude a specified place used only for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise and any other activity of a preparatory or auxiliary character (Construction PE).

- A person other than an agent of an independent status (i.e. Agent PE) acting in a contracting state on behalf of an enterprise and has, and habitually exercises, in a contracting state, an authority to conclude contracts, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:
  - in the name of the enterprise
  - for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
  - for the provision of services by that enterprise.

  In the above case, the enterprise shall be deemed to have a PE in that state in respect of any activities that person undertakes for the enterprise, unless the activities of such person are limited to preparatory or auxiliary character.

  If a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent.

As a matter of law, the articles of Japan's tax treaties have precedence over domestic tax law. By the amendments of the definition of PE under the domestic law, there may be some difference in the scope of PE from that of the existing tax treaties. Under the circumstances, the articles of the relevant tax treaties will override the above articles. Once a PE has been established for a foreign corporation under domestic law, all Japan-source income is taxable to the PE to the extent it is 'attributable to' the PE.

Other taxes

Consumption tax

Consumption tax (value-added tax or VAT) is levied when a business enterprise transfers goods, provides services, or imports goods into Japan. The applicable rate is 8%. As of 1 October 2019, the rate will increase to 10%. Exports and certain services to non-residents are taxed at a zero rate. Specified transactions, such as sales or lease of land, sales of securities, and provision of public services, are not subject to taxation.

Consumption tax paid by the business enterprise attributable to taxable revenue shall be creditable/refundable by filing the consumption tax return to the extent that such transaction is recorded in the accounting book and relevant invoices are kept.

In response to the increase in consumption tax rate to 10% from 1 October 2019, lower consumption tax rates on certain goods will be introduced. Also, in response to the multiple tax rates, an invoice system will be introduced from 1 April 2023. In the three-year and six months transitional period to the introduction of an invoice system, several measures will be implemented.

The lower consumption tax rate of 8% will still apply to food (excluding when purchased in restaurants) along with newspaper subscriptions where there is at least an issue twice per week. Until the invoice system is introduced, the credit for consumption taxes paid will follow the current method for tracking, where the lower tax rate on applicable items should be indicated in the invoice. With the increased administration cost of tracking the different rates, the simplified method of determining consumption taxes paid will be allowed.

After the new invoice system is introduced, qualified invoices issued by the registered businesses should be maintained for claiming credits of consumption taxes paid. Businesses (other than exempt entities) will need to file an application with their tax office to become qualified for issuing qualified invoices indicating details such as the business registration number, the applicable tax rate, etc.

Note that consumption tax is also imposed on the cross-border provision of digital services (e.g. e-books, music, and advertising) by foreign service providers. In this respect, a reverse-charge mechanism is applicable for business-to-business (B2B) transactions, and foreign service providers may need to register for consumption tax purposes with regard to business-to-consumer (B2C) transactions.

Also, Japanese sponsors are subject to a reverse-change system for sports or music/art attractions in Japan provided by foreign entertainment providers.

Customs duty

A customs duty is levied on imported goods based on the custom tariff table.

Excise taxes

Excise taxes were abolished by introduction of consumption tax.

Fixed assets tax

The annual fixed assets tax is levied by the local tax authorities on real property and depreciable fixed assets used for business purposes. Real property is taxed at 1.7% (standard rate including city planning tax) of the value appraised by the local tax authorities. The depreciable fixed assets tax is assessed at 1.4% of cost after statutory depreciation.

Stamp duty

A stamp duty is levied on certain documents prepared in Japan. The tax amount is generally determined based on the amount stated in the document.

Registration and licence tax

Registration and licence tax is levied where certain property is registered, at a rate from 0.1% to 2% of the taxable basis or at a fixed amount. The taxable basis depends upon the property being registered (e.g. the amount of paid-in capital registered by a company or the value of real estate as assessed by local tax authorities).

Payroll taxes

In general, the employer has an obligation to withhold payroll taxes monthly, and for annual year-end adjustment.

Labour and social insurance paid by employer

There are four types of insurance systems in Japan that enterprises employing workers that meet certain conditions must enrol in. Workers' accident compensation insurance is borne entirely by the employer. Employment insurance, health insurance/nursing care insurance, and employees' pension insurance is born by both the employer and employee.

The employer is generally liable to pay a share of the following contributions on salary or bonus, including fringe benefits, to be paid in Japan. The employer's share consists of the following contributions:

Contribution	Standard premiums on monthly salary	Standard premiums on bonus
Health insurance for the Metropolis of Tokyo (each prefecture has its own health insurance rate, and rates are slightly higher for individuals between the ages of 40 and 65)	5.735% (on a maximum of JPY 1,390,000 of wages per month)	5.735% (on an annual cap of JPY 5.73 million of irregular annual total payments)
Welfare pension, plus child allowance (1)	9.15% (on a maximum of JPY 620,000 of wages per month)	9.15% (on a maximum of JPY 1.5 million of irregular payments per month)
Employment insurance	0.90%	0.90%
Total (2)	14.921%	14.921%

Notes

1. The rate of 9.15% for welfare pension will be applied from September 2017. Premiums on child allowance will be imposed separately at 0.29%.
2. In addition, workers' accident compensation insurance will be imposed. The rate varies depending on the type of business.

Family corporation tax

If an individual shareholder together with family members own, either directly or indirectly, more than 50% of the total issued shares or voting rights of a Japanese corporation, the corporation is treated as a family corporation (with the exception of corporations with paid-in capital of JPY 100 million or less) and is subject to the family corporation tax in addition to corporation tax.

A family corporation is liable for an additional tax at the rates shown below on its undistributed current earnings in excess of specified limits.

Taxable undistributed current earnings	Family corporation tax rate (%)
First JPY 30 million *per annum*	10
Next JPY 70 million *per annum*	15
Over JPY 100 million *per annum*	20

Business premises tax

Business premises tax is levied and designated by each city in Japan, such as Tokyo, Osaka, Nagoya, Fukuoka, and other cities with a population of more than 300,000. A company that uses business premises in excess of 1,000 square metres and/or has more than 100 employees in a designated city is responsible to pay this tax based on the usage of the business (JPY 600 per square metre) and gross payroll (0.25% of gross payroll).

Branch income

Branch profits are taxed in the same manner as corporate profits. However, the family corporation tax does not apply to a branch of a foreign corporation. In addition, no withholding tax (WHT) is imposed on the repatriation of branch profits to the home office.

Income determination

The taxable income of a corporation is the aggregate income from all sources. There is no specific requirement to differentiate between the types of income. In principle, accounting for tax purposes follows Generally Accepted Accounting Principles (GAAP) in Japan, and income of a corporation is determined on an accrual basis.

Inventory valuation

Inventory cost should be determined by applying one of the following methods accepted for corporate tax purposes: actual individual cost, first in first out (FIFO), weighted average, moving average, most recent retail, selling price reduction, and lower of cost or market.

Capital gains

Capital gains and losses are classified as ordinary income and losses, respectively.

Under certain circumstances (e.g. qualified reinvestment, exchange property), taxes generally levied on capital gains may be deferred (i.e. provided rollover relief) as long as certain requirements are met. A special relief is available in the case of expropriation of real property by either the national or local government.

The recognition of capital gains or losses from the transfer of certain assets between group companies are to be deferred until the asset is transferred to another group company or a non-group company.

Dividend income

The threshold ownership percentage for corporate dividend exclusion is illustrated in the following table.

The holding period of six months or more until the fiscal year-end for which the dividend will be paid is required to apply the dividend income exclusion for the ownership of more than 1/3 to 100%. The dividend income exclusion for an 'other domestic corporation' and 'portfolio investment' is allowed by reference to the ownership percentage as of the fiscal year-end for which the dividend will be paid.

Type of investment	Ownership %	Exclusion %
Wholly owned domestic subsidiary	100%	100%
Affiliated domestic corporation	More than 1/3	100% less allocable interest (1)
Other domestic corporation	More than 5% but less than 1/3	50%
Portfolio investment	Less than 5%	20% (2)
Exchange trust fund (ETF)		20% (treated as a portfolio investment)
Other investment trusts		0%

Notes

1. Under certain simplified calculations to determine allocable interest, the 'base period' is the fiscal years beginning between 1 April 2015 and 31 March 2017.
2. For dividends from portfolio investments received by insurance companies, the exclusion percentage will be 40%.

95% of dividends received by a company from a foreign company in which it has held at least 25% of the outstanding shares for a continuous period of six months or more, ending on the date on which the dividend is declared, can be excluded from the company's taxable income.

If the foreign company is resident in a country with which Japan has concluded a tax treaty for the avoidance of double taxation, and such treaty provides for the allowance of an indirect foreign tax credit for taxes paid by the foreign company on the profits out of which the dividend is paid where the company holds a certain percentage of the foreign company's outstanding shares (e.g. 10% based on the tax treaty between the United States [US] and Japan), that percentage will apply for the purpose of determining the availability of the above exemption to the extent that it is lower than 25%.

The BEPS Action Plan 2 proposed that measures be taken to neutralise the tax effects of so-called 'hybrid mismatch' arrangements where, because of differences in the treatment of certain payments between jurisdictions, an item of income is not taxed in either the payer or the payee country because the payment is deductible in the payer country but not taxable in the recipient country. Thus, the recommendation in the BEPS Action Plan is to modify local tax law in order for the recipient country to tax the receipt.

Before the 2015 amendment, any dividends received by a Japanese corporation from a foreign affiliate was 95% exempt from taxation in Japan regardless of the tax treatment in the payer country. This position was clarified in question and answer (Q&A) guidance issued by the National Tax Agency. Based upon the recommendation of the BEPS Action Plan 2, the 2015 Tax Reform Act excludes such types of dividends from the dividend exclusion regime. As a result, any dividends paid to Japanese corporate taxpayers under so-called 'mandatorily redeemable preferred shares' (MRPS) issued by Australian affiliates or by Brazilian affiliates where the dividends are paid in a manner similar to interest and deductible for Brazilian tax purposes will no longer be excluded from taxation in Japan.

To the extent any portion of the dividend is deductible for foreign tax purposes, the general principle is that all of the dividend should be taxable in Japan. However, if a portion of the dividend is not tax deductible in the foreign jurisdiction, dividend exclusion will be allowed only if the taxpayer discloses all of the appropriate information regarding the portion of the dividend that is not deductible in the foreign jurisdiction and backup details for the calculation in a timely filed tax return and maintains the relevant documents for inspection by the tax authorities.

Any foreign tax imposed on the taxable dividend in Japan will be eligible for foreign tax credit relief.

The new rules apply for any dividends received by a Japanese corporate taxpayer whose fiscal year began on or after 1 April 2016. However, if the Japanese corporate taxpayer owned the stock of the foreign affiliate as of 1 April 2016, dividends received for years beginning between 1 April 2016 and 31 March 2018 are subject to the old rules (i.e. still eligible for exclusion).

The WHT for dividends is applicable at a rate of 15% national tax and 5% local tax or 20% (national tax) depending on the type of stock from which the dividends were received, and a tax credit may also be available for such WHT. The WHT (national tax) is subject to the income surtax of 2.1%, which is levied for the income earned for the period from 1 January 2013 through 31 December 2037.

Interest income

Interest received is included in taxable income. If interest is subject to the foreign WHT, a foreign tax credit may be available for such WHT. The WHT for interest is applicable at a rate of 15% national tax and 5% local tax for interest paid to a non-resident. As with dividend income, the WHT (national tax) is subject to the income surtax of 2.1%, which is levied for the income earned for the period from 1 January 2013 through 31 December 2037. Note that under the 2013 Tax Reform, only national tax will be withheld at source for interest income received on or after 1 January 2016 by a corporate recipient.

Royalty income

Royalty received is included in taxable income. If royalty is subject to the foreign WHT, a foreign tax credit may be available for such WHT. The WHT is applicable at a rate of 20% national tax for royalty paid to a non-resident.

Foreign income

A Japanese corporation is subject to Japanese corporate income taxes on its worldwide income. However, to avoid double taxation of foreign-source income, Japanese corporations are allowed to claim a tax credit against corporation and inhabitant's taxes for foreign income taxes paid directly. *See Foreign tax credit in the Tax credits and incentives section for more information*.

Undistributed profits of a foreign subsidiary (i.e. controlled foreign company [CFC]) to which an applicable tax rate is 30% (in case of a shell company) or 20% are included in the Japanese parent company's taxable income under certain conditions. *See Anti-tax haven (CFC) rules in the Group taxation section for more information*.

Deductions

Depreciation and amortisation

Depreciation is deductible in the calculation of taxable income for corporation tax purposes. Depreciable assets include tangible property (e.g. buildings, attachments to buildings, structures, machinery and equipment). Certain intangible assets are also eligible for amortisation (e.g. goodwill, patents, trademarks).

With regard to depreciation methods, a taxpayer may adopt one of the allowable methods for each of the type of depreciable property, except for buildings and structures and attachments to buildings. For selected structural improvements acquired on or after 1 April 2016, only the straight-line method will be permitted (i.e. the declining-balance accelerated depreciation method will no longer be allowed). Tangible property is generally depreciated using either the straight-line method or the declining-balance method. Intangible property is generally amortised under the straight-line method.

Useful lives for assets are set forth on the table in detail. For reference, the following is the brief table of useful lives for typical assets.

Types of assets	Useful lives (years)
Concrete buildings	21 to 50 (depending on uses)
Metal building	12 to 38 (depending on uses)
Electrical facilities and lighting	15
Heating and air conditioning	15
Motor vehicles	3 to 6 (depending on uses)
Personal computers	4
Digital telephone equipment	6
Machinery and equipment	3 to 22 (depending on uses)
Patents	8
Software	3 or 5 (depending on uses)

Start-up expenses

Start-up expenses, such as corporation organisation costs and opening costs (i.e. costs to begin business after the corporation is established), are treated as deferred assets and allowed to be amortised on a voluntary basis.

Interest expenses

Interest expenses on borrowing are deductible in the calculation of taxable income in principle. However, the interest payment to related parties in the corporate group may be disallowed to be deducted to some extent in certain cases. *See 'Thin capitalisation' and 'Interest expense deduction limitation' in the Group taxation section*.

Reserves

Reserves recorded in the books of accounts, except for reserves for doubtful receivables and return of goods not sold, are not deductible for corporate tax purposes.

Reserve for doubtful receivables

A reserve for doubtful receivables is available to SMEs, banks, insurance companies, and other similar financial corporations.

The deductibility of a reserve for doubtful receivables is limited by the following two components: (i) an estimate of irrecoverable amounts from a debtor and (ii) a calculation of the limit in the aggregate based on either the actual historical bad debt percentage or statutory percentage (reduced for large corporations), excluding the irrecoverable amount of receivable in (i) above.

Reserve for return of goods not sold

A deductible reserve for return of goods not sold is available to corporations such as publishers, wholesalers of books, and others, provided that the corporation sells the merchandise under an unconditional repurchase agreement.

Charitable contributions

Except for certain designated donations, the tax deduction for charitable contributions is limited to certain amounts, as follows:

Donation	Deduction limit
General donation	((0.25% of capital plus capital surplus) + (2.5% of income)) x 1/4

Donation	Deduction limit
Donation made to designated public purpose companies	((0.375% of capital plus capital surplus) + (6.25% of income)) x 1/2

Donations subject to this limitation include economic benefits considered to be given as a subsidy. Donations to foreign affiliates are not fully deductible.

In cases where a donation occurs between group companies (as defined), there will be no tax implications for either the donor or donee (i.e. no deduction for the donor and no taxation for the donee).

Directors' remuneration

The remuneration paid to directors is deductible only in the following four cases:

- Fixed monthly payments.
- Fixed payments (either cash amount or the number of shares or stock options) in accordance with an advance notice to the tax office.
- Performance bonuses, either in the form of cash, stocks, or stock options, paid in proportion to the company's earnings to directors who engage in the operation of the company's business, to the extent that certain requirements are met.
- Retirement compensation (where the amount is calculated by the service period but not on a performance basis).

If the amount of remuneration is deemed unreasonable by the tax authority, only the reasonable amount is deductible for tax purposes.

Entertainment expenses

In principle, entertainment expenses are not deductible for tax purposes. However, an SME, defined as a company with paid-in capital of JPY 100 million or less (except for a company wholly owned by a company that has paid-in capital of JPY 500 million or more after the group taxation regime is effective) may take a tax deduction up to the smaller of the actual disbursement for the entertainment expense or JPY 8 million. With regard to expenses for eating and drinking, a company may deduct such expenses as far as the expense does not exceed JPY 5,000 per person (excluding expenditures for internal purposes) for tax purposes.

Corporations are able to deduct 50% of the entertainment expenses for food and drink (excluding entertainment for internal purposes).

The above treatment is applicable to the fiscal years beginning before 31 March 2018.

Fines and penalties

Fines and penalties are not deductible.

Taxes

Enterprise tax and business premises tax are deductible in the calculation of the taxable income for corporation tax purposes on a cash basis. However, corporation tax and inhabitant's tax are not deductible. Fixed assets tax and other taxes are deductible, when assessed. Foreign income taxes also may be deductible if the Japanese corporation does not elect to claim a foreign tax credit.

Net operating losses

For corporation tax and enterprise tax purposes (indirectly for inhabitant's tax purposes), a tax loss can be carried forward to offset future income in the case that a taxpayer files a 'blue form' tax return (*see Tax returns in the Tax administration section*) or if the tax loss is incurred as a result of certain disaster events.

Based on the 2016 Tax Reform Act, changes in the limitation for the net operating loss deduction will be implemented over three years. Thereafter, the limitation will be reduced to 50%, although the limitation carryover period will be extended from the current nine years to ten years for losses incurred on or after years beginning on or after 1 April 2018. SMEs are not subject to the loss deduction limitation.

	Fiscal year 2015 (1)	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018
Limitation ratio for large corporations	65%	60%	55%	50% (2)
Carryover period for loss utilisation as well as assessment by tax authorities and request for downward adjustment by taxpayer (assuming loss period financial documentation is maintained)	9 years	9 years	9 years	10 years (2)

Notes

1. For fiscal years beginning on or after 1 April 2015 and before 1 April 2016 in which the taxpayer claims a net operating loss deduction.
2. Applicable to tax losses incurred in fiscal years beginning on or after 1 April 2018.

Certain newly established corporations and companies coming out of a rehabilitation process will not be subject to the loss limitation rules for a certain period.

Type of corporation applicable	Years in which full deduction is allowable	Years where regular limitation applies even if full deduction otherwise allowable
Newly established corporations (1) and corporations coming out of the rehabilitation process (2)	Seven years from establishment of the corporation or seven years from the decision of the court to exit the rehabilitation process.	For years ending on or after (i) a company is listed on a stock exchange, or (ii) the company is deemed to be rehabilitated.

Notes

1. SMEs, 100% subsidiary of larger corporations, or 100% parent corporation after share transfer are excluded.
2. SMEs are excluded.

Where there is a change in ownership of a corporation followed by certain events, such as the cessation of business or a significant change in its business within a five-year period following a business acquisition, the utilisation of its tax loss is restricted.

Carryback of tax losses is generally available for one year for national corporation tax purposes. This carryback rule was suspended until the fiscal year ending 31 March 2018 (except in specified circumstances, e.g. year of liquidation).

No carryback of losses is allowed for enterprise tax and inhabitant's tax.

Payments to foreign affiliates

In order to support a deduction in Japan for expenses incurred by a foreign affiliate and charged to a Japanese corporation, in general, it should be demonstrated that the service arrangement between the foreign affiliate and the Japanese corporation satisfies arm's-length criteria for purposes of Japan's transfer pricing laws and regulations.

Generally, fees that are paid by a Japanese subsidiary to a foreign affiliate should be deductible for Japanese tax purposes if the following conditions are met:

- The services should have the same character as services that take place between non-related companies or such services are essential to Japan's activities.
- There is a written service agreement.
- The services were requested by the Japanese corporation.
- The rendering of services is documented with evidence (e.g. requests for services from the Japanese subsidiary, regular invoices sent by the foreign affiliate).
- The service charges are reasonable.

Group taxation

Consolidated tax regime

Under the consolidated tax regime, a consolidated group can report and pay national corporate income tax on a consolidated basis. A consolidated group may be formed by a Japanese parent company and its 100% owned (directly or indirectly) Japanese subsidiaries. The taxpayer may file an application to elect a consolidated group filing for tax purposes, but the election must include all of the parent's eligible subsidiaries. Once the election is made, the consolidated filing, in principle, cannot be revoked unless there is a specific event, such as an ownership change, that causes the qualifying conditions of a consolidated filing to fail or an application to discontinue the consolidated group has been approved by the Commissioner of the National Tax Agency (NTA).

The taxable income of the consolidated group is computed on a consolidated basis by aggregating the taxable income or losses of each member of the consolidated group followed by the consolidation adjustments. Profits from intra-group transactions, except for transfer of certain assets as defined, should be included in the aggregate taxable income. Gains or losses from the intra-group transfer of certain assets are deferred.

Pre-consolidation tax losses of a subsidiary can be carried forward into a consolidated tax group if certain conditions are met, but may only be offset against taxable income of the subsidiary for the calculation of consolidation income.

The consolidated national corporate income tax liability is determined by applying the corporate income tax rate to the consolidated taxable income and adjusted for consolidated tax credits. The total tax liabilities are allocated back to each member company. The parent company files the consolidated return and pays the national corporate income tax for the group; however, each member company remains jointly and severally liable for the consolidated group's total national corporate income tax liability.

Local corporate income taxes levied on member companies are paid on a separate company basis, but the amount of local tax payable may be affected because of the consolidated filing.

Group taxation regime

A group taxation regime is applicable to domestic companies that are wholly owned by a domestic company, foreign company, or individual ('group companies'). Unlike the consolidated tax regime, the group taxation regime automatically applies to group companies.

The key points of this regime are summarised as follows:

- The recognition of capital gains or losses from the transfer of certain assets (including the transfer of assets as a result of a non-qualified or taxable merger) between group companies is deferred until the asset is transferred to another group company or a non-group company. The scope of assets is the same as that under the tax consolidation system (i.e. fixed assets, land, securities, monetary receivables, and deferred expenses [excluding securities for trading purposes and assets with a book value of less than JPY 10 million]).
- Where a donation occurs between group companies, there are no tax implications for either the donor or donee (i.e. no deduction for the donor and no taxation for the donee). Note that this treatment is not applied to a group company owned by an individual. This is consistent with the treatment of a donation between members of a consolidated tax group.
- A dividend received from a group company can be fully excluded from taxable income without any reduction for allocable interest expense. This is consistent with the treatment of dividends between members of a consolidated tax group.

A group company that would otherwise qualify as an SME on a stand-alone basis is not eligible for SME benefits (e.g. reduced corporate tax rate, preferable allowable ratios for deductible portion of bad debt provisions, partial deductibility of entertainment expenses, carryback of tax losses) if the SME is owned by a parent company or two or more parent companies of the group that has paid-in capital of JPY 500 million or more.

Where a corporation that is a member of a 100% group is in the process of liquidation and is expected to be dissolved, any loss from the impairment or devaluation of the shares of the liquidating corporation cannot be recognised by the parent company as a tax deductible expense.

Transfer pricing

If a corporation that is subject to corporation tax sells property to or buys property from a foreign-related person, or provides services or conducts other transactions with a foreign-related person, and consideration is received or paid by the corporation, the transaction is required to be carried out at an arm's-length price for corporation tax purposes.

A foreign-related person is a foreign corporation that maintains certain special relationships with the subject corporation, such as parent-subsidiary, brother-sister, or substantial control relationship.

The arm's-length price for the sale or purchase of inventory may be determined using one of the following methods:

- Comparable uncontrolled price method.
- Resale price method.
- Cost plus method.
- Berry Ratio method.
- Other method (i.e. profit split method and transactional net margin method [TNMM]).

The 'most appropriate method' should be applied in order to calculate the arm's-length price.

An advanced pricing agreement (APA) system is available to confirm the arm's-length pricing system proposed by a taxpayer. In general, corporations entering into an APA are advised to file a request for mutual agreement procedures (MAP) in order to obtain the agreement of the competent authorities of each country.

In October 2015, the OECD released the final BEPS reporting package with Action 13 relating to transfer pricing and related documentation. Taking into consideration the compliance costs for taxpayers along with increased transparency, the 2016 Japan Tax Reform Act requires the following documentation in order to adhere with the BEPS project:

Document	Required information	Submission deadline	Applicability
Country-by-Country (CbC) Report	Country revenue, pre-tax income, taxes payable, etc.	Must be e-filed within one year of the last fiscal day of the ultimate parent	Applicable for fiscal year of the ultimate parent entity beginning on or after 1 April 2016
Master File	Group company structure, business outline, financial conditions, etc.	Must be e-filed within one year of the last fiscal day of the ultimate parent	Applicable for fiscal year of the ultimate parent entity beginning on or after 1 April 2016
Local File	Transfer pricing documentation	By due date of tax return, to retain for seven years	Applicable for corporate tax in fiscal years beginning on or after 1 April 2017

Thin capitalisation

Interest paid on debt to controlling foreign shareholders is disallowed to the extent the average balance of debt on which that interest is paid is more than three times the equity of controlling foreign shareholders.

Interest expense deduction limitation

The deductible portion of a corporation's net interest expense to a related party is restricted to 50% of the adjusted income. The net interest is calculated as interest expense to related parties less corresponding interest income. The adjusted income is defined as taxable income, adding back interest expense, depreciation expense, and exempted dividend income but excluding extraordinary income or loss.

Anti-tax haven (controlled foreign company or CFC) rules

Undistributed profits of a foreign subsidiary (i.e. CFC, which is defined as a foreign related corporation by [i] equity ownership test [owned more than 50% by Japanese corporations or residents] or [ii] de facto control test) to which an applicable tax rate is 30% (in case of a shell company) or 20% are included in the Japanese parent company's taxable income under certain conditions.

In the 2017 Tax Reform, major changes were made considering the BEPS recommendations to shift to a more of an income-based approach (although elements of the entity approach remain). After the amendments, income earned by a CFC is 'aggregated' (i.e. included within Japanese taxable income) in three different ways:

- Entity-based aggregation where all of the income of a CFC is taxable to a Japanese shareholder if (i) the main business of the foreign-controlled subsidiary is not 'active' (as defined) and (ii) the foreign tax rate is lower than a 20% 'trigger' rate.
- Entity-based aggregation where all of the income of a CFC is taxable to a Japanese shareholder if (i) the CFC fails certain 'substance' and 'administration and control' tests and is thereby treated as a 'paper company' or 'cash box company', and (ii) the foreign tax rate is lower than a 30% 'trigger' rate.
- Income-based aggregation where, even if the above entity-based aggregation rules do not create income inclusion on an entity basis, the relevant income of a CFC is taxable to a Japanese shareholder if (i) income of the CFC includes certain 'passive' categories of income and (ii) the foreign tax rate is lower than a 20% 'trigger' rate.

A Japanese corporation owning a 10% or more direct or indirect interest in a CFC is required to include its pro-rata share of the taxable retained earnings of the CFC in its gross income under certain circumstances.

A dividend paid by a CFC is not deductible when calculating its undistributed income.

The new rules apply for fiscal years of foreign subsidiaries starting on or after 1 April 2018.

Tax credits and incentives

Foreign tax credit

A Japanese corporation is subject to Japanese corporate income taxes on its worldwide income. However, to avoid double taxation of foreign-source income, Japanese corporations are allowed to claim a tax credit against corporation and inhabitant's taxes for foreign income taxes paid directly.

Creditable foreign taxes are defined as taxes that (i) are incurred directly by the taxpayer; (ii) are levied by foreign governments and local authorities in accordance with local tax laws; (iii) are levied on corporate income; and (iv) have the same characteristics as Japanese income tax, corporation tax, and local income-based taxes. A tax for which a refund can be claimed optionally by the taxpayer after the tax payment, or a tax whose payment grace period can be decided by the taxpayer, is not regarded as a foreign tax.

In order to prevent the credit from reducing corporation tax on Japan-source income, certain limitations are set on the amount of foreign taxes that can actually be credited. The ceiling is currently 35% for the foreign taxes paid.

A foreign tax credit is not applicable for enterprise tax purposes, although foreign branch income attributable to a business executed outside Japan is exempt from enterprise tax.

Generally speaking, the foreign tax credit system does not apply to the extent the dividend income from the foreign subsidiary is subject to the dividend exemption system.

Foreign corporations with a PE in Japan should note that when a foreign corporation's PE in Japan is subject to taxation in Japan as well as in jurisdictions other than its country of residence, double taxation may arise. To alleviate an unfair tax burden, a foreign tax credit regime is also applicable to PEs in Japan similar to that which applies to Japanese corporations. However, foreign tax (including WHT) paid in the enterprise's country of residency would not, in principle, be creditable under consequential changes to the foreign tax credit regime.

Tax credit for research and development (R&D) cost

Pursuant to the 2015 Tax Reform, the R&D tax credit system was amended whereby the credit limit was increased and the 'Open Innovation' type R&D credit was expanded. The 2017 Tax Reform was built on these changes as follows:

- The credit rates will increase in line with an increase of R&D expenditures.
- R&D expenditures to develop certain kinds of new service-type businesses will be brought within the scope of the R&D tax credit in order to support the development of new business opportunities from the 'Internet of Things' (IoT), 'Big Data', artificial intelligence (AI), etc.
- Conditions for claiming the 'Open Innovation' type of R&D credit will be relaxed.

The amendments apply for tax years beginning on or after 1 April 2017.

Salary increase tax credits

Under the 2018 Tax Act, the salary increase tax credits are amended for large corporations so that only those corporations increasing domestic investment would be eligible for the credits. The salary increase tax credits will be available for corporations filing 'blue form' tax returns that meet the conditions described below. The revised salary increase tax credit rules will be applicable for fiscal years beginning on or after 1 April 2018 until 31 March 2021.

		Before the amendments	After the amendments
Conditions	1	(Increased salary payment / Salary payment to employees in base year) ≥ 5%	Abolished
	2	Salary payment in the current fiscal year ≥ Salary payment in the preceding fiscal year	Salary payment in the current fiscal year ≥ Salary payment in the preceding fiscal year
	3	(Average salary payment in the current fiscal year – Average salary payment in the preceding fiscal year) / Average salary payment in the preceding fiscal year ≥ 2%	(Average salary payment in the current fiscal year – Average salary payment in the preceding fiscal year) / Average salary payment in the preceding fiscal year ≥ 3%
	4	N/A	Domestic capital expenditure ≥ 90% x Total depreciation
Tax credit		10% of the increased salary payment + 2% of the salary payment made in the preceding year	15% of increased salary payment (20% if training costs have increased by 20% or more)
Limitation on tax credit		Up to 10% of the corporate tax liability	Up to 20% of the corporate tax liability

Internet of Things (IoT) investment tax incentive

A tax incentive (either accelerated depreciation or tax credit) for costs related to the development of certain data gathering and analytic information systems under the Special Measures Act for the Improvement of Productivity (Productivity Act) is available to companies that file blue form tax returns and have obtained approval of an 'innovative data utilization plan'. Companies will be eligible for either accelerated depreciation (30%) or tax credit (3% or 5%) if they have acquired software as well as machinery or equipment worth JPY 50 million or more pursuant to the approved plan. The IoT investment tax incentive will be applicable from the effective date of the Productivity Act (6 June 2018) until 31 March 2021.

The amount of tax credit available will be higher for companies that satisfy a 'salary increase condition' (i.e. the average salary for employees of the company is increased for the year by more than 3%).

Special tax treatment for investment in certain equipment

SMEs filing 'blue form' tax returns may elect, under certain conditions, to claim accelerated depreciation of 100% of the base acquisition cost or a special tax credit equivalent to 10% of the base acquisition cost on designated equipment to the extent that it is acquired between 1 April 2014 and 31 March 2019. The maximum tax credit is limited to 20% of the taxpayers' corporate tax liability.

The 'Incentive for New Investment into Production Facilities' is applicable to any industry that invests in new production facilities (30% special depreciation or 3% tax credit on acquisition cost, up to 20% of corporate tax liability, etc., and subject to certain conditions). In addition, an investment incentive applies to SMEs that invest in equipment and furnishings pursuant to certain facility remodelling (30% special depreciation or 7% tax credit on acquisition cost, up to 20% of corporate tax liability [one-year carryforward of any excess], and subject to certain conditions). The SME tax incentive is granted to an SME engaged in the distribution, retailing, service, and/or agriculture business. This incentive is effective for tax years beginning on or after 1 April 2013 through 31 March 2019.

Incentive for venture capital investment

To assist venture capital investment, certain procedures to accredit venture capital partnerships were legislated in the Industrial Competitiveness Enhancement Law. Investment tax incentives were also introduced to allow corporate investors the ability to take a loss from a venture capital investment on an accelerated basis compared to current rules. A qualified investor is allowed to deduct a tax reserve for the investment loss at up to 50% of the book value of the investment. This incentive is effective for investors into a qualified partnership designated on or before 31 March 2019.

Incentives for the revitalisation of local 'hubs'

A taxpayer is eligible for certain tax incentives if it relates to or expands certain kinds of operations in local areas (generally other than Tokyo, Osaka, or Nagoya). Details as to the kinds of operations eligible will be included in a future Revised Regional Revitalization Law.

Any qualifying investments have the following depreciation incentives with respect to investments in buildings:

Depreciation incentives	Investment pursuant to an approved relocation plan	Investment pursuant to expanding an existing operation
Type of depreciation (if plan is approved prior to 31 March 2020 and asset is acquired within two years of approval).	Additional first year depreciation of 25% of the acquisition cost (depreciation is accelerated).	Additional first year depreciation of 15% of the acquisition cost (depreciation is accelerated).

Alternatively, a taxpayer may choose to take a tax credit rather than accelerated depreciation, as follows:

Tax credits	Investment pursuant to an approved relocation plan	Investment pursuant to expanding an existing operation
Tax credits (if plan is approved prior to 31 March 2020 and asset is acquired within two years of approval)	Acquisition costs x 7%	Acquisition costs x 4%

Minimum investment is JPY 20 million for large corporations and JPY 10 million for SMEs.

Alternate to the investment incentive above, an employment-related tax credit is allowed for increased employment in a local hub if hired within two years of the plan approval. The credit shall be JPY 500,000 times the number of increased employees at a maximum (if certain conditions are not met, the credit becomes JPY 200,000 per employee).

In either tax incentive, the amount of the above tax credits can only offset up to 20% of a corporation's tax liability.

Local government contributions

As part of the Regional Revitalization Act, 'blue form' corporate tax filers who make donations to approved regional donation plans up until 31 March 2020 will be able to claim a tax credit against corporate, enterprise, and inhabitant's taxes in addition to taking a deduction from the corporate tax. This is known as the corporate hometown tax, or *furusato nozei* system.

National strategic zones

For a 'blue form' filing corporation with an approved plan for qualified investment in a National Strategic Special Area up until 31 March 2020, a deduction of 20% of income is available for five years from the date of establishment.

Withholding taxes

Tax treaty network

As of 1 June 2018, Japan has entered into 70 tax treaties with 123 countries and/or regions. Companies making certain payments are required to withhold income taxes using the following rates.

	WHT (%)			
	Dividends			
Recipient	Portfolio (3)	Substantial holdings (1)	Interest	Royalties (2)
Japanese corporations	20	20	0/20 (4)	0
Resident individuals	20	20	0/20 (4)	0
Foreign corporations, non-resident individuals:				
Non-treaty (5)	15/20 (3)	20 (3)	0/15/20 (4)	20
Treaty (6):				
Australia	10	0/5	10	5
Austria	20	10	10	10
Bahamas (7)	-	-	-	-
Bangladesh	15	10	10	10
Belgium (25)	15	10	10	10
	10	0	0/10 (27)	0
Bermuda (7)	-	-	-	-
Brazil	12.5	12.5	12.5	12.5/15/25 (8)
British Virgin Islands (7)	-	-	-	-
Brunei	10	5	10	10
Bulgaria	15	10	10	10
Canada	15	5	10	10
Cayman Islands (7)	-	-	-	-
China, People's Republic of	10	10	10	10
Czechoslovakia (former) (9)	15	10	10	0/10 (9)
Denmark (25)	15	10	10	10
	5/15 (28)	0	0	0
Egypt	15	15	15/20 (10)	15/20 (10)
Estonia (25)	10	0	0/10 (29)	0
Finland	15	10	10	10
France	10	0/5 (30)	10	0
Germany	5/15 (31)	0 (31)	0	0
Guernsey (7)	-	-	-	-
Hong Kong	10	5	10	5
Hungary	10	10	10	0/10 (11)
Iceland (25)	5/15 (32)	0 (32)	0	0
India	10	10	10	10 (12)
Indonesia	15	10	10	10
Ireland, Republic of	15	10	10	10
Israel	15	5	10	10
Italy	15	10	10	10
Jersey (7)	-	-	-	-
Kazakhstan	15	5	10	5 (13)
Korea, Republic of	15	5	10	10
Kuwait	10	5	10	10
Latvia (26)	0	0	0	0
Liechtenstein (7)	-	-	-	-
Lithuania (25)	0	0	0	0
Luxembourg	15	5	10	10
Macao (7)	-	-	-	-
Malaysia	15	5	10	10

Japan

Recipient	WHT (%) Dividends Portfolio (3)	Substantial holdings (1)	Interest	Royalties (2)
Man, Isle of (7)	-	-	-	-
Mexico	15	0/5 (14)	10/15 (14)	10
Netherlands	10	0/5 (15)	0/10 (15)	0
New Zealand	15	0	10	5
Norway	15	5	10	10
Oman	10	5	0/10 (33)	10
Pakistan	10	5/7.5 (16)	10	10
Panama (7)	-	-	-	-
Philippines	15	10	10	10/15 (17)
Poland	10	10	10	0/10 (11)
Portuguese Republic	10	5	0/5/10 (34)	5
Qatar	10	5	0/10 (35)	5
Romania	10	10	10	10/15 (18)
Samoa (7)	-	-	-	-
Saudi Arabia	10	5	0/10 (36)	5/10 (19)
Singapore	15	5	0/10 (36)	10
Slovenia (26)	5	5	0/5 (37)	5
South Africa	15	5	10	10
Spain	15	10	10	10
Sri Lanka	20	20	0/15/20 (20)	0/10 (20)
Sweden	10	0 (21)	0	0
Switzerland	10	0/5	0/10 (35)	0
Taiwan	10	10	0/10 (38)	10
Thailand	15 (3)	15/20 (22)	10/25 (22)	15
Turkey	15	10	10/15 (23)	10
USSR (former) (24, 25)	15	15	10	0/10 (24)
	10/15 (39)	5 (39)	0	0
United Arab Emirates	10	5	10	10
United Kingdom	10	0	0	0
United States	10 (40)	0/5 (40)	0/10 (41)	0
Vietnam	10	10	10	10
Zambia	0	0	10	10

Notes

1. The tax treaty rates apply only to corporate shareholders. The applicable treaty should be checked for conditions required to claim the reduced rate. Note that WHT may be subject to the income surtax of 2.1%, which is levied for the income earned for the period from 1 January 2013 through 31 December 2037.
2. The applicable treaty should be reviewed because certain tax treaties exclude film royalties and/or gain from copyright transfer from taxable income. Note that WHT may be subject to the income surtax of 2.1%, which is levied for the income earned for the period from 1 January 2013 through 31 December 2037.
3. 15% for publicly traded shares (for non-resident individual, only applicable to minority interest [less than 3% ownership]) and investment trusts. Note that WHT may be subject to the income surtax of 2.1%, which is levied for the income earned for the period from 1 January 2013 through 31 December 2037.
4. Interest on bank deposits and/or certain designated financial instruments is subject to a 15% national WHT and 5% local inhabitants WHT (20% combined). Taxation of such interest is fully realised by tax withholding, so resident individuals are not required to aggregate such interest income with other income. Interest on loans made by resident individuals is not subject to WHT; instead, it is taxed in the

aggregate with other income. Such WHT is subject to the income surtax of 2.1%, which is levied for the income earned for the period from 1 January 2013 through 31 December 2037.

5. Dividends, interest, and royalties earned by non-resident individuals and/or foreign corporations are subject to a 20% national WHT under Japanese domestic tax laws in principle. An exceptional rate of 15% is applied to interest on bank deposits and certain designated financial instruments. Interest on loans, however, is taxed at a 20% rate. A special exemption from WHT applies to certain long-term corporate bonds issued to non-residents in foreign countries. Note that WHT may be subject to the income surtax of 2.1%, which is levied for the income earned for the period from 1 January 2013 through 31 December 2037.
6. Tax treaties with many countries provide reduced tax rates, as indicated. Some treaties, however, provide higher tax rates (e.g. Brazil, Thailand) or do not provide rates (e.g. Egypt, New Zealand). In these instances, rates specified under Japanese domestic tax laws apply. Each treaty should be consulted to see if a reduced rate for dividends (in the case of substantial holdings) is applicable.
7. The tax treaty was concluded mainly for the purpose of information exchange.
8. The tax treaty with Brazil provides a 25% tax rate for certain royalties (trademark). However, the WHT rate cannot exceed 20.42% (including the income surtax of 2.1%) on any royalties to be received by a non-resident taxpayer of Japan under Japanese income tax law. Film royalties are taxed at 15%. Any other royalties are taxed at 12.5%.
9. The treaty with the former Czechoslovakia is applied to the Czech Republic and the Slovak Republic. It stipulates that cultural royalties are tax exempt.
10. In the tax treaty, no rate on interest is specified, therefore Japanese domestic rate is applied. Film royalties are taxed at 20%, and other royalties are taxed at 15%.
11. Cultural royalties are tax exempt.
12. The rate of 10% for royalties includes consideration for technical services.
13. The rate for royalties is reduced from 10% to 5% by Protocol.
14. Dividends received from subsidiaries, by parent companies that have met certain conditions, are exempt from WHT. Interest received by government and other specific entities is exempt. Interest received by banks, financial institutions, or paid as a consequence of sale on credit of any equipment is subject to 10% WHT. Any other interest is taxed at 15%.
15. Dividends received from subsidiaries for which the parent company has 50% or more shareholding are tax exempt. Interest received by government and other specific entities, or paid as a consequence of sale on credit of any equipment, merchandise, or service, is tax exempt.
16. A 5% rate is applied to a company that has 50% or more shares with direct voting rights, and a rate of 7.5% is applied to a company that has 25% or more shares with direct voting rights.
17. Film royalties are taxed at 15%. Any other royalties are taxed at 10%.
18. Cultural royalties are taxed at 10%.
19. Royalties paid for the use of certain equipment are taxed at 5%.
20. Interest paid to financial institutions is tax exempt, as well as film and copyright royalties. Patent royalties are subject to a 10% rate.
21. If certain conditions for beneficial owners are met, dividends are taxable only in the contracting state of which the beneficial owner is a resident.
22. Dividends paid by a corporation that is engaged in industrial undertakings are taxed at 15%. Interest paid to financial institutions is taxed at 10%.
23. Interest paid to financial institutions is taxed at 10%.
24. The treaty with the former USSR is applied to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. It stipulates that cultural royalties are tax exempt.
25. The new treaty was signed but has not yet become effective.
26. The treaty will apply with respect to taxes levied on the basis of a taxable year for taxes for any taxable years beginning on or after 1 January 2018 and with respect to taxes not levied on the basis of a taxable year for taxes levied on or after 1 January 2018.
27. Exempted when paid and beneficially owned by enterprises, etc; 10% for others.
28. Exempted when paid by a company of Japan, holding at least 10% of voting power for six months, or beneficially owned by pension funds; 15% for others.
29. Exempted when received by governments, etc.; 10% for others.
30. Exempted when paid by a company of Japan, holding at least 15% (direct or indirect) or 25% (direct) shares for six months; 5% for holding at least 10% (direct or indirect) shares for six months.
31. Exempted when holding at least 25% for 18 months; 5% when holding at least 10% for six months; 15% for others.
32. Exempted when holding at least 25% of voting shares for six months or beneficially owned by pension funds; 5% when holding at least 10% of voting shares for six months; 15% for others.
33. Exempted when received by governments, etc.; 10% for others.
34. Exempted when received by governments, etc.; 5% when received by banks; 10% for others.
35. Exempted when received by governments, financial institutions, etc.; 10% for others.
36. Exempted when received by governments or central bank, 10% for others.
37. Exempted when received by governments, etc.; 5% for others.
38. Exempted when received by governments, etc., 10% for others.
39. Exempted when received by beneficially owned by pension funds; 5% when holding at least 15% of voting power for 365 days; 15% when shares deriving at least 50% of their value from immovable property; 10% for others.
40. Exempted when holding more than 50% of voting shares for 12 months or beneficially owned by pension funds; 5% when holding at least 10% of voting shares; 10% for others.

41. Exempted when received by governments or financial institutions; 10% for others.

Tax administration

Taxable period

The tax year is the corporation's annual accounting period specified in its articles of incorporation. A Japan branch of a foreign corporation must use the same accounting period that is adopted by the corporation in its home country.

Tax returns

Corporate income tax returns (i.e. the national corporation tax return, enterprise tax return, and local inhabitants' tax return) are self-assessment tax returns.

If a corporation meets certain conditions, such as keeping certain accounting books, and makes an application for it in advance, it is allowed to file a 'blue form' tax return. A 'blue form' filing corporation may benefit from loss carryforward and other benefits.

A corporation (including a branch) is required to file the final tax return within two months after the end of its annual accounting period. If a corporation cannot file the final return because of specific reasons, the due date of the final return may be extended by up to four months (a corporation should be a company subject to the statutory financial audit as required in the corporate law) with the tax authority's approval.

Payment of tax

Income taxes payable on the final corporate income tax return should be paid on or before the filing due date of the final tax returns (usually two months after the end of the corporation's accounting period). If an extension of time for filing is granted, the taxes may be paid on or before the extended due date with interest accrued at a rate of 1.8% (for the year 2018) *per annum* for the period from the day following the original due date (i.e. two months after the end of an accounting period) to the date of the actual payment.

Provisional tax payments are required for a corporation that has a fiscal period longer than six months. Provisional taxes generally are computed as one-half of the tax liabilities for the previous year, but they may be reduced by the filing of interim tax returns that reflect semi-annual results of the operations. The provisional tax payment is required to be made within two months after the end of the sixth month of the corporation's accounting period.

Penalties

If the tax return is filed late, a late filing penalty is imposed at 15% to 20% of the tax balance due. In the case that a corporation voluntarily files the tax return after the due date, this penalty may be reduced to 5%. The rate is increased to 15% (for non-filing) and 10% (for amendment filing) once the tax audit notice is received.

An under-payment penalty is imposed at 10% to 15% of additional tax due. In the case that a corporation amends a tax return and tax liabilities voluntarily after the due date, this penalty may not be levied.

In addition, interest for the late payment of tax is levied at 2.6% *per annum* for the first two months and increases to 8.9% *per annum* thereafter (for the year 2018).

Consolidated taxation

The parent company will file the consolidated tax return and pay national corporate income tax for the group. The consolidated tax return and payment due dates are the same as previously discussed; however, the due date of the final return may be extended for two months.

For local corporate income taxes, each member of the consolidated group must separately file the returns and pay the taxes.

Tax audit process

Generally speaking, corporate tax audit is performed in cycles of three to five years' duration. However, this period may be shortened in the case that some significant tax matters were pointed out in the prior audit and so on. If taxpayers request a downward correction, a tax audit will be performed to make sure of it.

With regard to tax audit procedures, tax laws have not clarified them thus far. Prior to conducting a tax audit, in principle, tax agents are required to notify taxpayers, and, upon completion of tax audits, tax agents are required to provide to taxpayers a brief written summary of their findings, etc.

Once an audit is complete, the basic principle is that a second audit is not allowed. However, if newly acquired information is obtained by the tax authorities that lead them to conclude that the reported taxable income should have been different, then the tax authorities can conduct another audit of the taxpayer. This limitation on the ability of the tax authorities to conduct a second audit only applies if the first audit was conducted on-site. If a 'desk audit' is only conducted, where the tax authorities do not conduct the audit on-site, no limitation applies.

Statute of limitations

The statute of limitations to request a downward correction of prior year tax liabilities is five years (six years for transfer pricing) from when the original tax return was filed.

The statute of limitations with regard to upward corrections by the tax authorities is also five years (six years for transfer pricing).

Topics of focus for tax authorities

Tax authorities are often focusing on cross-border, inter-company transactions (i.e. transfer pricing or donation issues), PE, and significant group restructuring, among other issues. Any developments in discussion on the G20/OECD BEPS project will also be of great interest for Japanese authorities.

Other issues

Requirement for banks to collect and remit information regarding bank accounts owned by non-residents

A tax reporting system is applicable under which individuals are required to report information to the relevant branch of the financial institution, which will, in turn, submit such information to the tax authorities in Japan.

The person who contracts with the financial institution for a deposit to a bank account in Japan on or after 1 January 2017 is required to report the relevant information to the bank, including (i) name, (ii) address, (iii) date of birth, and (iv) resident country. If the resident country is outside Japan, the individual is required to report the taxpayer identification number in the taxpayer's resident country. The financial institution is required to report the individual information collected as well as details regarding the account (balances, transactions, etc.) as of 31 December by the following 30 April.

Corporate tax measures for reorganisations

Corporate spin-offs

Corporate demerger

Before the 2017 Tax Reform, a corporate demerger by a corporation with many shareholders where the shares in the new company are given to the shareholders does not qualify as a tax qualified demerger. These rules are relaxed under the 2017 Tax Reform Act whereby a spin-off of a specific business by a corporation without a controlling shareholder becomes tax qualified under certain conditions.

Distribution in kind

Before the 2017 Tax Reform, a distribution in kind by a corporation with many shareholders is not tax qualified. Under the 2017 Tax Reform Act, a spin-off conducted as a distribution in kind of shares in a 100% subsidiary becomes tax qualified under certain conditions.

Minority shareholder squeeze-outs

Under the 2017 Tax Reform Act, creating a 100% subsidiary through a squeeze out process using shares with compulsory acquisition rights, share consolidation, and a request to sell back shares, is considered a type of corporate reorganisation. As part of bringing such squeeze outs within the corporate reorganisation framework, special measures will be introduced, including mark-to-market rules and the special rules on consolidated taxation.

In a merger or share-for-share transfer, if the merging corporation or the 100% parent corporation owns 2/3 or more of the merged corporation or the 100% subsidiary, consideration other than shares can be provided to minority shareholders without disqualifying the corporate reorganisation.

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Significant developments

With effect from 1 January 2018, the definition of a financial services company has been extended, and large corporate retailers have been brought into scope of the standard 20% income tax rate. *For more details, please refer to the Taxes on corporate income section.*

Taxes on corporate income

Resident companies are generally taxed on their worldwide income. A permanent establishment (PE), e.g. a branch of a company, is taxed on profits attributable to the PE. Non-resident companies are taxable on Jersey real estate income.

Companies pay income tax at a rate of 0%, 10%, or 20% on taxable income. The general rate applicable is 0%; the 10% and 20% rates apply to certain companies/ income streams as explained in this section. The tax rate applies to the company as a whole, the only exception being Jersey-source real property income, which is taxed at 20% regardless of the classification of the real property holding company.

Certain Collective Investment Funds and Securitisation Vehicles can elect to be exempt from tax on income, other than income from Jersey land or property, for an annual fee of 500 British pounds sterling (GBP).

The 20% tax rate applies to Jersey-based utility companies, such as telephone, gas, and electricity companies. Additionally, income from Jersey real estate, including rental income, property development profits, and income from exploiting Jersey land (e.g. quarrying activities) is subject to tax at 20%. Companies involved in oil importation and supply are also taxed at 20%.

The 10% rate applies to financial services companies. A company is defined as a financial services company if:

- it is registered under the 1998 financial services law to carry out investment business, trust company business, or fund services business as an administrator or custodian in relation to an unclassified or an unregulated fund
- it is registered under the 1991 banking business law, or
- it holds a permit under the collective investment funds law of 1988 as an administrator or custodian.

As of 1 January 2018, the definition of a financial services company is extended to include:

- Companies registered under the Financial Services (Jersey) Law 1998 to carry out general insurance mediation business.
- Companies registered with the Jersey Financial Services Commission as a registrar.
- Companies holding permits under the Insurance Business (Jersey) Law 1996.
- 'Finance companies', i.e. companies trading in the provision of credit/finance to customers. Finance companies excludes inter-group finance companies.

Large corporate retailers have been brought into scope of the standard 20% income tax rate with effect from 1 January 2018. A 'large corporate retailer' is a company that meets the following tests:

- 60% of its trading turnover is from retail sales to customers in Jersey, and
- retail sales to customers in Jersey are equal to or greater than GBP 2 million *per annum*.

'Retail sales' will not include wholesale supplies or the provision of services.

Where the taxable profits of a 'large corporate retailer' are less than GBP 500,000 *per annum*, the company is subject to tax at 0% on all of its profits.

Where the taxable profits of a 'large corporate retailer' are GBP 750,000 or more *per annum*, the company is subject to tax at 20% on all of its profits.

Where the taxable profits of a 'large corporate retailer' are more than GBP 500,000 but less than GBP 750,000 *per annum*, a tapering provision will apply. The effect of the tapering provision for 'large corporate retailers' with taxable profits of between GBP 500,000 and GBP 750,000 *per annum* is to reduce the effective rate of tax on a sliding scale from 0% up to 20%.

The 0% rate applies to all entities that are not exempt, financial services entities, large corporate retailers, or utility companies, including fund managers who do not hold any of the permits mentioned above.

Local income taxes

There are no parish or local government taxes on income.

Corporate residence

A company is regarded as tax resident in Jersey if it is incorporated in Jersey or if it has its place of central management and control in Jersey. However, a Jersey incorporated company that is managed and controlled elsewhere will not be regarded as a Jersey resident, provided certain conditions are satisfied.

Permanent establishment (PE)

Under domestic legislation, a PE, in relation to a company, includes a branch of the company, a factory, shop, workshop, quarry, or a building site, and a place of management of the company; however, the fact that the directors of a company regularly meet in Jersey shall not, of itself, make their meeting place a PE.

For a definition of PE contained in Jersey's double tax agreements (DTAs), the relevant clause and agreement should be reviewed. In general, it may include a branch, management, or other fixed place of business, but not an agency, unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts or has a stock of merchandise from which the agent regularly fills orders.

Other taxes

Goods and services tax (GST)

The standard rate of GST is 5%.

Companies with taxable supplies of more than GBP 300,000 *per annum* are required to register for GST.

International service entity (ISE) status

To address the difficulty of irrecoverable input tax in the financial services sector, and to mitigate the administrative cost of GST for exporters in general, Jersey has introduced the concept of an ISE. Where an entity qualifies for this status:

- it will not be required to register for GST
- services to it will be zero-rated (i.e. treated as an export) where the supply exceeds GBP 1,000, and
- input tax on purchases of less than GBP 1,000 may be reclaimed.

ISE status is automatically available to a wide variety of service providers and administered entities based in Jersey, upon application and payment of the relevant fee, including licensed banks, licensed trust service providers, licensed fund administrators, fund managers, and managed managers.

Other entities not automatically eligible under one of the categories above, including companies, partnerships, trusts, unrecognised funds, and special purpose vehicles, may still obtain ISE status if they fulfil certain criteria.

The ISE may, at the election of the company, be included on a list maintained by the Comptroller of Taxes. The list will refer either to the entity itself or (e.g. for administered entities) a class of entities as submitted by the administrator.

Customs duties

A common customs tariff is applicable on all goods imported from outside the European Union (EU). The amount is dependent on what the goods are and where they are imported from.

Excise taxes

An excise duty tax is payable on imported items, such as alcohol, tobacco, and fuel, at varying rates.

Property taxes

There are no property taxes in Jersey apart from income tax on Jersey-source property income, stamp duty on Jersey real estate, and rates levied by each parish.

Stamp duty

Stamp duty is payable on the purchase or transfer of Jersey real estate, with rates ranging from 0% to 8%. Mortgages secured by a charge over Jersey real estate are subject to stamp duty at rates of up to 0.5% of the amount borrowed. No stamp duty is payable on the transfer of shares.

Land transaction tax

A land transaction tax applies when shares in companies are transferred and the ownership of which confers a right of occupation of residential real estate in Jersey. The amount of land transaction tax payable is equal to the stamp duty that would have been suffered if the real estate were held directly.

Payroll taxes

Employers are required to deduct tax from salaries paid to employees and remit this to the tax authority to settle the employees' tax liability. Under the Income Tax Instalment System (ITIS), the tax authority issues each employee with an effective rate notice to pass to their employer indicating the deduction rate. If no such notice is provided, the default rate of deduction applied is 20%.

Social security contributions

Employers are responsible for paying employer social security contributions at a rate of 6.5% on each employee's gross earnings, up to the monthly standard earnings limit of GBP 4,290 for 2018 (annual limit GBP 51,480). Employer social security contributions of 2% apply to employees' earnings above the standard earnings limit, up to an upper earnings limit (GBP 14,188 monthly/GBP 170,256 annually).

A long-term care fund has been set up to help those who need long-term care.

Income taxpayers pay into this fund with a long-term care contribution. Those not liable for income tax do not have to pay the contribution.

The maximum long-term care contribution rate was 1% in 2017 and is 1% in 2018 of total income (taking into account allowances and reliefs), but it's likely that one's rate will be less than the maximum.

Long-term care contributions are capped at 1% of the upper earnings limit for 2018 (GBP 1,702.56).

Branch income

Branch income is taxed at the rate applicable to the company. No further tax is withheld on the transfer of profits abroad.

Income determination

Inventory valuation

Inventory is valued at the lower of historical cost or net realisable value. The last in first out (LIFO) method is not permitted. Generally, there are no material differences between accounts prepared on a normal accounting basis and those prepared on a tax basis.

Capital gains

Capital gains are not subject to tax in Jersey.

Dividend income

Any dividends received will be dealt with under the Income Tax Law, as amended.

Under the current rules, a financial services company receiving a dividend from which tax has been deducted by another Jersey company is entitled to a tax credit. The calculation of the tax credit available to a financial services company under these circumstances has been amended so as to limit the credit to the lower of the tax deducted from the dividend or the gross dividend at the rate of 10%.

Where a Jersey company is in receipt of a dividend that is paid out of capital profits from a non-resident company, it will be exempt from tax.

Stock dividends

Stock dividends are not taxed as income.

Interest income

Interest income forms part of taxable income and is taxed at the rate applicable to the company.

Royalty income

Royalty income forms part of taxable income and is taxed at the rate applicable to the company.

Rental income

Income from Jersey real estate, including rental income, property development profits, and income from exploiting Jersey land (e.g. quarrying activities), is subject to tax at 20%.

Foreign income

Income tax is levied on foreign branch income when earned and on foreign dividends, interest, rents, and royalties. Double taxation is mitigated by either the granting of unilateral relief to the extent of taxing foreign income net of foreign taxes or by treaty relief, which gives credit for foreign tax. Concessional credit relief might be granted in certain limited circumstances upon application.

Jersey currently has DTAs with Australia, Cyprus, Denmark, Estonia, Faroes, Finland, France, Germany, Greenland, Guernsey, Hong Kong, Iceland, Isle of Man, Luxembourg, Malta, New Zealand, Norway, Poland, Qatar, Rwanda, Seychelles, Singapore, Sweden, the United Arab Emirates, and the United Kingdom. The scope varies from agreement to agreement, but most are of limited scope.

Deductions

Normally, business deductions are allowed if they are incurred wholly and exclusively for trade purposes.

Depreciation and depletion

Capital allowances are available using the diminishing-balance method on machinery and equipment, including vehicles, at a rate of 25%. For this purpose, all such assets are pooled, and the allowance is calculated by reference to the value of the pool.

On disposal of an asset, the lower of cost and sale proceeds of the asset is deducted from the pool. A balancing charge is levied if the proceeds exceed the balance of the pool.

Motor vehicles over a certain value and greenhouses are subject to special rules and are not pooled with other assets.

By concession, an alternative is to claim the full cost of replacement in the year of replacement.

Capital allowances are not applicable to buildings or the depletion of natural resources.

Goodwill

Goodwill expenditure is non-deductible for Jersey income tax purposes.

Start-up expenses

Once a company has commenced its trade, start-up expenditure will be deductible for tax purposes if it is not capital in nature and has been incurred wholly and exclusively for trade purposes.

Interest expenses

Interest expense will be deductible if it is incurred for the purposes of a trade or is paid in connection with a loan taken out for a qualifying purpose. Interest relief may be restricted if the interest exceeds the amount that could reasonably be expected to be charged on a commercial basis.

Bad debts

Trading bad debts are normally deductible for Jersey income tax purposes unless they relate to a general provision.

Charitable contributions

Charitable contributions are generally non-deductible for tax purposes, unless the contribution itself provides a benefit to the trade (i.e. marketing).

Fines and penalties

Fines and penalties are generally non-deductible for tax purposes.

Taxes

Local income tax paid is not deductible in computing taxable income. ISE fees paid are a tax-deductible expense.

Net operating losses

No distinction is drawn between different types of income or losses arising from different trades or sources, apart from Jersey property income, which is separately streamed.

Unrelieved losses may be carried forward and used to offset profits in future accounting periods. Alternatively, losses can be group relieved to group companies in the same income tax rate band.

There are only very limited circumstances where a company can obtain relief for carrying back losses.

Where a company has sustained a loss, this loss can be carried forward indefinitely and can be set off against future profits in respect of the same trade.

Payments to foreign affiliates

There are no withholding taxes (WHTs) on patent royalties paid by Jersey companies to non-residents.

Group taxation

Group taxation is not permitted in Jersey. However, there are provisions for group relief between group companies subject to the same rate of tax. It is not possible to relieve losses between two companies taxed at different rates. It is not possible for group companies to relieve losses from Jersey property rental income. Also, it is only possible to relieve losses from Jersey property development profits and from quarrying activities against profits arising from the same activities.

Transfer pricing

There are no specific rules in relation to transfer pricing in Jersey. There is, however, a general anti-avoidance provision in Jersey tax law. It may be applied by the Comptroller of Taxes if a transaction or a combination or series of transactions is entered into for the avoidance or reduction of Jersey income tax. In addition, interest relief may be restricted where the interest incurred exceeds the amount that could reasonably be expected to be charged on a commercial basis.

Country-by-country (CbC) reporting regime

Jersey has formally committed to the Organisation for Economic Co-operation and Development (OECD) model of CbC reporting and has already put in place the relevant implementing regulations for entities with accounting periods commencing on or after 1 January 2016. In addition, Jersey has signed up to the Multilateral Competent Authority Agreement (MCAA) to assist with the sharing of relevant information in relation to CbC reporting, as well as broadly adopting the OECD's CbC reporting implementation package, to facilitate its implementation of this base erosion and profit shifting (BEPS) minimum standard.

Multinationals having global revenues of 750 million euros (EUR) or more are required to file annual reports to tax authorities at three levels. The first element (which taxpayers are generally required to provide for fiscal 2016) is a 'country-by-country report' that gives a detailed picture of business results for each country where the business operates (including things like number of employees, revenues, pre-tax profit, and taxes paid). Companies will also need to give an overall picture of their global business, aggregating data from all of the countries where one operates. In addition, companies will be required to report separately to each country where they operate with business and tax information about the local entities and operations in that country.

The disclosure of this business information will be accessible, through automatic information exchanges, to tax authorities wherever they have a presence (subject to certain conditions). Groups will need to consider how to explain their operational purpose of business arrangements, which may include tax advantages.

The deadline for submission of the CbC report to the Jersey tax authority is within 12 months of the end of the accounting period to which it relates.

Where there is no reporting obligation, there is a requirement to notify the Comptroller of Taxes of the name of the entity that is undertaking the reporting and to provide certain other information. An entity must notify the Comptroller by the last day of relevant accounting period if it is a constituent entity.

Thin capitalisation

There are no specific rules in relation to thin capitalisation in Jersey.

Controlled foreign companies (CFCs)

Jersey has no CFC legislation.

Tax credits and incentives

There are generally no special incentives for locally owned businesses in view of the low rate of tax.

Foreign tax credit

There is no local foreign tax credit regime in Jersey. DTAs need to be considered as appropriate. Unilateral relief may be available under very limited specific circumstances.

Withholding taxes

There are no WHTs on dividends, interest, or royalties paid by Jersey companies to non-residents.

Tax administration

Taxable period

The tax year is the calendar year. Companies are assessed on income earned in respect of the financial year that ends within the applicable calendar year of assessment.

Tax returns

The system relies on the filing of a return of information with the Jersey tax authority, which then raises an assessment (in the case of companies taxed at 10% or 20% on all or part of their income). Companies taxed at 0% are required to submit a tax return but are not required to submit accounts and tax computations.

There is a filing deadline for the corporate return of 6pm on 31 December following the year of assessment and a late filing penalty of GBP 250.

Payment of tax

For companies, tax is payable in arrears during the calendar year following the year of assessment.

Under the law, tax is due the day after the assessment is made. In practice, an estimated assessment is made by the tax office in February/March, which is then appealed based on information at that time. A payment is suggested based on the appeal with the company making a top up payment (if necessary) prior to the surcharge deadline (the Friday after the first Monday each December in the year following the year of assessment) or once a final computation has been produced and submitted.

Tax paid after a prescribed date (usually the first Friday in the December following the year of assessment) incurs a 10% surcharge.

Tax audit process

There is no formal tax audit process in Jersey.

Statute of limitations

There is no statutory limitation date, as such. If the Comptroller discovers profits have not been fully assessed, the Comptroller can issue an amended/additional assessment at any time not later than five years after the expiration of the year of assessment. If the error involves fraud, wilful default, or neglect, then the assessment can be revised at any time.

Topics of focus for tax authorities

The Jersey Taxes Office expects to bring in a new penalty regime during 2018. The date is yet to be confirmed.

Other issues

Intergovernmental agreements (IGAs)

On 13 December 2013, the Jersey authorities signed an IGA with the United States to facilitate tax reporting under the Foreign Account Tax Compliance Act (FATCA) regime. The Jersey authorities also signed a similar IGA with the United Kingdom on 22 October 2013. The IGA with the United Kingdom is sometimes known as UK FATCA. This is because the information exchanged under the UK IGA is similar to that exchanged with the United States under FATCA. It's sometimes also referred to as CDOT (crown dependencies and overseas territories).

The overall aim of the UK IGA is to improve tax compliance through the automatic exchange of information.

Jersey has also committed to the early adoption of the global Common Reporting Standard (CRS) on Automatic Exchange of Information with effect from 1 January 2016, with first reporting of reportable financial accounts having taken place in 2017. The CRS replaced UK FATCA from 1 January 2016.

Tax information exchange agreements (TIEAs)

The Jersey tax authorities are committed to being tax transparent, with an increased emphasis on agreeing to further DTAs and TIEAs. Jersey has signed TIEAs with 38 countries and is negotiating DTAs with several other jurisdictions (*see Foreign income in the Income determination section for a description of DTAs that have been signed*).

Jordan

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Significant developments

Online portal

The tax authority has announced the following:

- As of July 2017 and going forward, they will not be accepting checks nor cash payments for any due tax payment above 5,000 Jordanian dinars (JOD). Instead, the payment shall be done through the online payment portal (E-Fawateercom), which can be accessed through the internet banking service provided by local banks in Jordan. This threshold is reduced to JOD 3,000 as of 2018 and will be reduced to JOD 1,000 as of 2019.
- The tax authority asked all taxpayers to provide their bank account details in order to transfer any payments that are due to the taxpayers through a bank transfer.
- As of 2018, all sales tax and income tax returns will only be accepted using the online portal.

The Social Security Corporation announced in December 2017 that as of 2018 all related forms will only be accepted using the online portal. Furthermore, the Corporation has announced that the all contributions payments will be accepted using an online payment system (E-Fawateercom) only.

Sales tax

The Prime Ministry has published new schedules for the applicable sales tax law with regard to the items that are not subject to the general sales tax rate of 16%, exempt, or out of the sales tax.
The applicable rates are now 16%, 10%, 4%, and 0%. The new rate is 10%.

This decision became effective starting from 17 January 2018.

Taxes on corporate income

The corporate tax rates in Jordan are applied based on the industry/business activities from which the taxpayer generates income. According to the income tax law, the corporate tax rates are as follows:

- 35% for banks.
- 24% for telecommunication, insurance and reinsurance, financial intermediation companies (including exchange and finance leasing companies), companies that generate and distribute electricity, and companies that undertake mining raw material activities.

- 14% for the industrial sector.
- 20% for other companies.

Jordanian resident corporations are not subject to income tax on their worldwide income unless that income is raised from sources that originate and relate to Jordanian deposits and funds. For foreign branches of Jordanian resident corporations, all of the branch net income is taxed at a fixed rate of 10%.

Non-resident corporations are taxed through withholding tax (WHT) (*see the Withholding taxes section*).

Local income taxes

There are no governorate or local income taxes in Jordan.

Corporate residence

An entity will be deemed to be resident in Jordan if it has been established and registered in accordance with the provisions of the Jordanian legislation in force and (i) has an office or branch practicing management and supervision of its work in Jordan, (ii) whose management head office or actual office is located in Jordan, or (iii) which the government or any official or public institutions own more than 50% of its capital.

Permanent establishment (PE)

There are no clear provisions in the Jordan income tax law to define PE.

Other taxes

Sales tax

A general sales tax similar in operation to a value-added tax (VAT) is imposed at the rate of 16% on the following transactions:

- Sales of goods or services, or both.
- Importing any service or goods from outside Jordan or from the free zone areas and markets inside Jordan.

Special tax rates are applied on certain items (*see Excise tax below*).

A zero rate is applied to the export sales of goods and services outside Jordan, to the free zone areas and markets, to the Aqaba Special Economic Zone (ASEZ), and to development areas.

Goods exempt from sales tax include bread, water packed in less than 5 litres, tea, sugar, gold, money, and electricity.

Services exempt from sales tax include the following:

- Air transport.
- Education.
- Disposal of sewage and waste.
- Public health and similar activities.
- Activities of religious organisations.

- Activities of social organisations.

Customs duties

Certain goods imported to Jordan are subject to customs duties. Customs duties vary depending on the type and the origin of imported goods, as prescribed by the Customs Tariff. The Customs Tariff is based on the Harmonised Commodity Description and Coding System (HS Nomenclature).

Excise tax

Excise tax is the special sales tax that is imposed on certain goods and services, including cement, tobacco products, wines, spirits, cars, beer, fuel, and lubricants.

Property taxes

There is a property tax in Jordan that is paid annually, and the tax rate is determined by the municipality depending on the location and size of the property and, in case of buildings, depending on annual rental value.

Transfer property taxes

Transfer of property is subject to tax at a rate of 9% (registration fee at a rate of 5% and sale of property tax at a rate of 4%).

Stamp duty

Generally, an *ad valorem* stamp duty of 0.3% or 0.6% is levied.

Payroll tax

As per the income tax law, the payroll tax rates are imposed at progressive rates ranging from 7% to 20%.

Social security tax

Social security tax is imposed on the employer and the employee at rates of 14.25% and 7.5%, respectively, on the monthly salaries and certain allowances. The employer should report and withhold these contributions on a monthly basis.

Branch income

Operating branches of non-resident companies registered in Jordan are taxed based on their activities/business being carried out in Jordan at the prevailing corporate tax rates. Non-operating branches (regional or representative offices) of non-resident companies registered in Jordan are generally prohibited from carrying on any commercial activity in Jordan.

Income determination

Any income incurred in or from Jordan, regardless of the place of payment, shall be subject to tax. This includes, but is not limited to, income from:

- Professional services or activities.
- Interest, commissions, discounts, currency differences, deposit profits, and profits from banks and other legal resident persons.
- Royalties.

- Selling goods produced in Jordan, whether sold in Jordan or exported.
- Selling or leasing of movable properties located in Jordan.
- Leasing immovable properties located in Jordan and the income from key money.
- Selling or leasing intangible assets in Jordan, including goodwill.
- Insurance premiums due according to insurance and re-insurance agreements for risk in Jordan.
- All forms of telecommunication services, including international telecommunications.
- Transportation between Jordan and any foreign country.
- Re-export.
- Service compensation gained by a non-resident person from Jordan for a service provided to any person if the activity or the work related to this compensation was carried out or the output of this service was used in Jordan.
- Prizes and lottery if exceeds JOD 1,000, whether paid in cash or in kind.
- Any contract in Jordan, such as construction contracting, commercial agencies profits, and any other similar entities, whether their source is inside or outside Jordan.
- Any other source, which has not been exempted according to the provisions of the law.

The following shall be exempted from tax:

- The King's allocations.
- Income of public and official institutions and municipalities, excluding its income from any investment activities or annual surplus that the Council of Ministers decides, upon the recommendation of the Minister, to be subject to tax.
- Income generated by non-operating foreign companies, such as the regional office and the representative office, and which is received for its business abroad.
- Income of charity *awqaf* (public endowment) and income from the Orphans Development Fund.
- Income of unions, professional commissions, cooperation societies, and other societies legally registered and licensed from non-profit activities.
- Income of any religious, charity, cultural, educational, sports, or health institutions with a public character, not aiming to achieve profit.
- Income of exempted registered companies according to the companies' law, which is incurred from activities undertaken outside Jordan, except income derived from income sources subject to tax according to the provision of the law.
- Profits from stocks and dividends distributed by a resident to another resident, except profits of mutual investment funds incurred for banks, financial companies, main telecommunication companies, companies who undertake mining raw materials activities, and insurance and reinsurance companies, and juristic persons who undertake financial lease activities.
- Capital gains incurred inside Jordan, other than profits from assets subject to depreciation.
- Income derived from inside Jordan from trading in dividends and stocks, bonds, equity loan, treasury bonds, mutual investment funds, currencies, commodities in addition to futures and options contracts related to any of them, except that incurred by banks, financial companies, financial intermediation, main telecommunication companies, companies who undertake mining raw materials activities, and insurance and reinsurance companies, and legal persons who undertake financial lease activities.

- Income derived by non-Jordanian resident investors from sources outside Jordan that are initiated from their investments of their foreign capital, returns, profits, and proceeds from their investments' liquidation, returns, or selling of their projects, shares, or stocks after transferring them outside Jordan in accordance to the enacted Investment Law or any other law that will replace it.
- Compensation paid by insurance entities, other than what is paid as reimbursement for the loss of income from business activity or employment.
- Any income generated by banks and financial companies not operating in Jordan from banks operating in Jordan, such as deposit interest, commissions, and deposit profits from investment in interest-free banks and financial companies.
- Profits gained by re-insurance companies from insurance contracts concluded with insurance companies operating in Jordan.
- Income covered by double taxation agreements (DTAs) concluded by the government, to the extent of that which is covered under these agreements.
- The income of public or private pension funds and savings funds and any other funds approved by the Minister shall not be subject to tax if this income is derived from the employees' and employers' contributions.
- Certain types of local origin goods and services' exports outside Jordan may be totally or partially exempted from tax as set forth in regulations issued for this purpose.

Inventory valuation

Inventory is generally valued in accordance to the International Financial Reporting Standards (IFRS) accounting framework.

Capital gains

Capital gains are not taxable in Jordan, except for capital gains that are generated from depreciable assets and goodwill.

Dividend income

Dividend income received from a resident juristic person is not taxable in Jordan. However, dividend income received from a non-resident juristic person is subject to income tax.

Foreign income

Jordanian resident corporations are not subjected to income tax on their foreign income, except for foreign branches of Jordanian resident corporations, whereby, as per the income tax law, all of the branch net income is taxed at a fixed rate of 10%.

Deductions

Depreciation and amortisation

Depreciation and amortisation of fixed assets are determined using the straight-line method, provided that the provisions, procedures, and rates shall be defined by the depreciation regime issued for this purpose.

Goodwill

Purchased goodwill can be amortised using the straight-line method, provided that the provisions, procedures, and rates shall be defined by a regulation issued for this purpose.

Start-up expenses

There is no clear provision in the Jordan income tax law to define the treatment of start-up expenses; however, these expenses can be accepted at the establishment year.

Interest expenses

All interest charges are deductible for all taxpayers.

Bad debt

Bad debts are deductible under certain conditions.

Charitable contributions

A person may deduct any amount paid during the tax period as a donation to any of the governmental departments, public or official institutions, or municipalities from the gross income in the period in which the payment occurred.

Any person may deduct subscriptions and donations paid in Jordan without any personal benefit for religious, charitable, humanitarian, scientific, environmental, cultural, sport, and professional purposes if the Council of Ministers approves its character. The deductible amount according to the provisions of this paragraph shall not exceed 25% of the taxable income after deducting what is provided for in the first paragraph above and before making this deduction.

Fines and penalties

Fines and penalties are not acceptable expenses for income tax purposes.

Taxes

Taxes and fees paid on taxable activities are deductible.

Foreign income tax paid for income earned from sources outside Jordan that was subject to tax under the provisions of the tax law is deductible.

Other significant items

Approved expenses, including the following, are deductible:

- Insurance premiums.
- Amounts paid as civil compensation under contracts concluded by the taxpayer for the purpose of carrying out taxable activities.
- Amounts paid by the employer for employees to the Social Security Corporation.
- Hospitality and travel expenses incurred by the taxpayer.
- Expenditures for employees' medical treatment, meals during duty, travel, transport, and life insurance against work injuries or death.
- Marketing, scientific research, development, and training expenses.
- Expenses of prior tax periods that were neither defined nor final.

Net operating losses

Assessed losses incurred after 1 January 2015 may be carried forward up to five years. As for the assessed losses incurred before 1 January 2015, such losses may be carried forward indefinitely, taking into consideration that these losses should be used first. The carryback of losses is not permitted.

Payments to foreign affiliates

A resident generally may claim a deduction for royalties, management service fees, and interest charges paid to foreign affiliates, taking into account the transfer pricing regime and the applicable WHT.

Group taxation

Group taxation is not permitted in Jordan.

Transfer pricing

Any disposition transaction that is not based on arm's length, is with parties that have mutual interests, and leads to a decrease in the taxable income is ignored, and the real profits are estimated according to the regular market value of the transactions.

Any illusionary or fake disposition transactions are ignored, and the tax due is estimated as if there were no transactions.

Thin capitalisation

There is no thin capitalisation rule in Jordan. All interest charges are deductible for all taxpayers.

Controlled foreign companies (CFCs)

In the Jordanian tax laws, there is no definition of a CFC.

Tax credits and incentives

Jordan has had tax reductions for selective sectors categorised by development zones or free zone areas. Generally, these have required pre-approval.

Foreign tax credit

Foreign tax credit treatment is not available in Jordan.

Withholding taxes

Dividends paid

Dividends are not taxable in Jordan.

Non-resident WHT

With respect to services performed by a non-resident juristic or natural person, under the income tax law, "Amounts received or earned by the non-resident person from the Kingdom, which are derived from services provided to any person if the work or service related has been performed in the Kingdom or if the outcome of such services has been used in the Kingdom as well, is subject to tax in Jordan".

The WHT rate on services performed by a non-resident juristic or natural person is 10% of the payment. The same rate applies to royalty payments to non-residents.

Resident WHT

The following services are subject to resident WHT of 5% if provided by resident natural persons or civil companies: services provided by resident doctors, lawyers, engineers, auditors, experts, consultants, commissioners for taxpayers, insurance and reinsurance agents and brokers, arbitrators, customs brokers, commission brokers and agents, financial intermediaries, and commission shipping agents.

Income from interest, deposits, commissions, and profits of deposits participating in banks and financial company investments that do not take interest and paid by banks and financial companies in Jordan to any person is subject to WHT at the rate of 5%, provided these withheld amounts shall be considered final tax for the non-resident legal person and the physical person. However, interest, profits of deposits, and commissions incurred for banks to other banks and due to any other bodies or entities defined by the executive instructions are exempt for this WHT.

Tax treaties

Jordan has entered into income tax treaties with Algeria, Azerbaijan, Bahrain, Bulgaria, Canada, Croatia, the Czech Republic, Egypt, France, India, Indonesia, Iran, Iraq, Italy, Saudi Arabia, South Korea, Kuwait, Lebanon, Libya, Malaysia, Malta, Morocco, the Netherlands, Pakistan, Palestine, Poland, Qatar, Romania, Sudan, Syria, Tunisia, Turkey, Ukraine, United Arab Emirates, the United Kingdom, Uzbekistan, and Yemen.

Jordan has transportation agreements with many countries and is negotiating treaties with more countries.

Tax administration

Taxable period

A taxpayer's due tax shall be computed on a calendar-year basis.

A taxpayer who closes one's accounts on a date other than the end of the calendar year may calculate the due tax according to the fiscal year, provided that prior approval shall be obtained from the General Director of the income tax department.

A taxpayer who commences activity within the first half of the calendar year shall compute the due tax for the period from the establishment date until the end of the calendar year.

A taxpayer who commences activity within the second half of the calendar year may compute the due tax for the period from the establishment date until the end of the next calendar year.

Tax returns

Taxpayers are obligated to file tax returns before the end of the fourth month following the end of the tax period, including details related to income, expenses, exemptions, and tax due. Tax returns are submitted through the tax authority's online portal.

Payment of tax

The tax balance is due before the end of the fourth month following the end of the tax period.

A taxpayer who is carrying out business activities and has gross income in the previous tax period exceeding JOD 1 million from these activities is required to remit two advance payments on the accrued income tax from these activities using the rates determined for each tax period mentioned in the following schedule. The advance payments are calculated according to the income tax in the financial statements presented to the income tax department for the concerned period. In the absence of the financial statements for this period, the income tax included in the immediate preceding tax declaration will be used to calculate the advance payments.

Tax period	Rate on accrued income tax (%)
2015 and following years	40

The first advance payment is due within a period not exceeding 30 days from the last day of the first half of that income tax period.

The second advance payment is due within a period not exceeding 30 days from the last day of the second half of that income tax period.

Fines and penalties

Failure to pay tax on the assigned dates according to the provisions of the tax law will result in a delay fine at a rate of 0.4% of the value of the tax due or any deductible amounts for each full or partial week of delay.

Tax audit process

The tax audit is likely to take place within one year from the date of filing the return.

Statute of limitations

The tax auditor may not audit a tax return after four years from the date of filing the return.

Topics of focus for tax authorities

Tax authorities tend to focus on WHTs, imported goods or services, and related-party transactions.

Kazakhstan

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Significant developments

The Kazakhstan government adopted a new Tax Code on 25 December 2017. The new Tax Code has introduced a number of new regulations, where most provisions took effect from January 2018 and the rest will become effective within two years. The new Tax Code envisages new provisions including:

- Introduction of the principle of 'good faith' generally applicable during examination of a complaint against a notification on the result of a tax audit (e.g. there should be no fines and penalties if taxpayers fulfilled their tax liabilities based on personalised written clarifications issued by the tax authorities, and which are subsequently recalled, recognised to be incorrect, or replaced). Also, according to this principle, all unclearly prescribed provisions of the tax law should be interpreted in favour of the taxpayers during tax audit result examinations.
- Implementation of a so-called 'horizontal' monitoring starting from 2019 aimed at minimising tax risks and reducing the number of tax audits for taxpayers.
- Reduction of statute of limitation term from five to three years, from 2020 (excluding for subsurface users and large taxpayers subject to monitoring).

Other changes effective in 2018 are as follows:

- Introduction of 3-tier transfer pricing reporting requirements in Kazakhstan Transfer Pricing law (i.e. Country-by-country [CbC] report, Local file, and Master file documentation) as part of the Organisation for Economic Co-operation and Development's (OECD's) base erosion and profit shifting (BEPS)-related recommendations.
- Adoption of the new Kazakhstan Customs Code and Customs Code of the Eurasian Economic Union (EAEU).
- Adoption of the Code on Subsoil and Subsurface Use, which will be effective from June 2018.

Taxes on corporate income

The tax rate for corporations is 20% and is assessed for a calendar year. All Kazakhstan legal entities and branches of foreign legal entities are subject to corporate income tax (CIT). Taxable income is determined as the taxpayer's aggregate annual income less allowable deductions.

Resident companies are taxable in Kazakhstan on their worldwide profits, while non-resident companies operating through a permanent establishment (PE) in Kazakhstan are subject to Kazakhstan CIT only on the profits attributable to that PE.

Non-residents without a PE in Kazakhstan that receive income from sources in Kazakhstan are generally subject to income tax withheld at source of payment on Kazakhstan-sourced income (*please see the Withholding taxes section for more information*).

Reduced CIT rates

A reduced CIT rate of 6% applies to the qualified agricultural income of legal entities producing agricultural products.

In addition, taxpayers operating in special economic zones (SEZs) may enjoy full exemption from CIT if certain statutory requirements established for such benefits are met (*see the Tax credits and incentives section for more information*).

Excess profit tax (EPT)

EPT rates are progressive and range from 10% to 60%. The tax base is comprised of the portion of net income of subsurface users exceeding 25% of deductions for EPT purposes. Subsurface users may include asset acquisition costs, capital costs, and losses (with certain limitations) in immediate deductions.

Starting from 2018, EPT is abolished for subsurface users engaging in extraction of solid minerals. At that, corresponding subsurface use contracts should not envisage extraction of other groups of mineral resources.

In addition, the Tax Code introduced an alternative tax that can substitute for several types of taxes for subsurface users (*see below*).

Alternative tax

The new Tax Code introduced an alternative tax that replaces EPT, mineral extraction tax (MET), and compensation of historical costs and may be applied at the discretion of a taxpayer.

The alternative tax is applicable to subsurface use contracts on production and/or combined exploration and production of oil and gas products, the place of which should be:

- on a continental shelf, and
- at deeply folded oilfields locating not higher than 4,500 metres and with lowest point of bedding at 5,000 metres or lower.

Generally, the calculation of the tax base, the tax period, and the deadlines are similar to the existing CIT framework, except for some specifics (e.g. foreign exchange impact should be disregarded, interest expenses are not allowed for deduction). The tax rate is progressive (from 0% to 30%) and depends on the world price fluctuations of crude oil.

Local income taxes

There are no regional or local income taxes in Kazakhstan.

Corporate residence

Generally, Kazakhstan incorporated companies or other legal entities that have their place of effective management located in Kazakhstan are treated as Kazakhstan tax residents.

Permanent establishment (PE)

Non-resident legal entities having business activities in Kazakhstan may create a PE in the following cases:

- 'Fixed place PE': A non-resident enterprise carries on business activities in Kazakhstan through a fixed place, including, but not limited to, through a place of management.
- 'Services PE': A non-resident enterprise renders services in Kazakhstan through employees or other personnel engaged by the non-resident for such purposes, provided that these activities continue for more than 183 days within any consecutive 12-month period for the same or connected projects.
- 'Construction PE': A construction site, for instance, a shop or an assembly facility, performance of projecting work form a PE, notwithstanding the timing of performing such operations.
- 'Agency PE': A non-resident enterprise carries on business activities in Kazakhstan through a dependent agent. A dependent agent is an individual or a legal entity that meets all of the following criteria simultaneously:
  - Has the contractual authority to represent the non-resident's interests in Kazakhstan and makes use of this authority by acting and signing (negotiating) contracts on behalf of the non-resident (i.e. conclusion of a contract for provision of services or playing a principal role in concluding of such contract or having the ownership right [right to use] for property belonging to the non-resident).
  - The business is carried on outside the activity of either a customs broker or a professional participant of the securities market or other brokerage type of business (except for activity of an insurance broker).
  - Carries on activities that are not limited to those of a preparatory and auxiliary nature.

Other taxes

Value-added tax (VAT)

The current VAT rate is 12%. This tax is applicable to the sales value of goods, works, and services, as well as to imports. Exports of goods and international transportation services are taxed at 0% VAT. There is a list of goods, works, and services exempt from VAT (e.g. financial services provided by financial institutions, financial leasing services, notary and advocacy services, operations with financial securities and investment gold, loan transactions).

Since 11 January 2016, taxpayers have been liable for issuance of electronic invoices ('e-invoicing') on certain goods listed by the government, which was the measure specifically taken by the government following Kazakhstan's accession to the World Trade Organization (WTO), as well as lowering of customs duties on approximately 1,500 products. E-invoicing is obligatory for large taxpayers from January 2018 and will be obligatory for all categories of taxpayers from 2019.

The new Tax Code introduced VAT control accounts (analogue of Azerbaijan VAT deposit account) as an alternative option of VAT refund from the state (which is still applicable, subject to certain criteria). This measure is aimed at tracing VAT payments between suppliers and customers and remittance of VAT to the state. Taxpayers may opt for using VAT control accounts on a voluntary basis.

The obligatory VAT registration threshold in 2018 is retained at 30,000 Monthly Calculation Indices (MCI; currently, 1 MCI = 2,405 Kazakhstan tenge [KZT]).

The VAT reporting period is a calendar quarter.

Customs duties

The new Kazakhstan Customs Code and the Customs Code of the Eurasian Economic Union implemented a number of progressive provisions intended for simplification of customs procedures, integration of information technology (IT) initiatives, and reduction of 'red tape' issues in customs control procedures from January 2018.

In April 2018, full-scale electronic declaration was launched for all customs procedures through Information System 'Astana - 1'.

The Customs Code of the Eurasian Economic Union conceptually changed the definition of a 'customs declarant', which may significantly impact business models of supply chains and logistics.

Finally, the new provisions allow an entity that is qualified as an 'authorised economic operator' to apply simplified customs procedures.

Kazakhstan is a WTO member.

Customs duties apply to goods imported to the Customs Union countries from third countries. Customs duties rates are established either based on a percentage (in general, ranging between 0% and 30%; higher rates exist for certain goods) of the customs value of goods or in absolute terms in Euros (EUR) or US dollars.

Goods of the Customs Union countries should be generally exempt from Kazakhstan customs duties.

In addition to membership in the Customs Union, Kazakhstan concluded a number of bilateral and multilateral Free Trade Agreements with the Commonwealth of Independent States (CIS), which provide for exemption of goods circulated between the CIS member states from customs duties, provided certain conditions are met.

The ATA Carnet temporary import system is launched in Kazakhstan. This system allows the duty-free temporary import and export of goods for specific purposes.

Customs fees

A customs processing fee is assessed at KZT 25,000 for the main page of a customs declaration plus KZT 11,000 for each supplemental page.

Excise taxes

Excise taxes apply to the sale and import of crude oil, gas condensate, petrol/gasoline (excluding aviation fuel), diesel fuel, spirits and alcoholic beverages, beer, tobacco, and passenger cars.

Type of excisable good	Excise tax rate
Crude oil, gas condensate, petrol/gasoline, diesel	KZT 0 to 11,000 per tonne
Alcoholic beverages and beer, tobacco	KZT 0 to 7,500 per item of measure (kilos, litres, or units)
Passenger cars	KZT 100 per each cm^3 of engine capacity

Property tax

Property tax is assessed annually at a general rate of 1.5% of the average net book value of immovable property.

Property tax objects now include buildings and constructions in actual use, even if not registered with the justice authorities.

Land tax

Entities and individuals that own land plots (or land share in cases of commonly shared ownership of land plots) must pay land tax annually. Land tax rates vary based on the purpose for which the land is used, as well as the size and quality of the land.

Transfer taxes

There are no transfer taxes in Kazakhstan.

Stamp taxes

There are no stamp taxes in Kazakhstan.

Payroll taxes

Employment income (salary, compensation, etc.) is subject to withholding individual income tax paid at source. Tax paid at source should be calculated, withheld, and remitted by the Kazakhstan company acting as a tax agent at the rate of 10%.

Social tax

Employers must pay social tax at the rate of 9.5% of gross remuneration (salaries and certain benefits provided) of all employees (local and expatriate).

Obligatory social insurance contributions

Obligatory social insurance contributions are payable by employers at the rate of 3.5% to the State Fund of Social Insurance. Obligatory social insurance contributions are capped at 3.5% of the minimum monthly wage (approximately 3 United States dollars [USD]) per month, and are deductible from social tax. Only Kazakhstan citizens and foreigners holding a residence permit in Kazakhstan are subject to obligatory social insurance.

Obligatory pension contributions

Obligatory pension contributions are withheld at a rate of 10% out of employees' gross income and paid to the State Pension Centre of Pension Payments. The gross income subject to obligatory pension contributions is capped at 75 times the minimum monthly wage (approximately USD 6,428) per employee per month. Only Kazakhstan citizens and foreigners holding a residence permit in Kazakhstan are subject to obligatory pension contributions.

Obligatory social medical insurance contributions

Obligatory social medical insurance contributions should be made by employers at own cost based on the following rates:

- From 1 January 2018: 1.5% of employees' salary.
- From 1 January 2020: 2% of employees' salary.
- From 1 January 2022: 3% of employees' salary.

Starting from 2019, obligatory social medical insurance contributions should also be withheld from employees' gross income and paid by employers at the following rates:

- From 1 January 2019: 1% of employees' salary.
- From 1 January 2020: 2% of employees' salary.

Vehicle tax

Vehicle tax rates are based on MCI and determined in accordance with the type of vehicle, engine volume, operation period of vehicles (aircraft only), and other factors.

Mineral extraction tax (MET)

MET applies to the monetary value of extracted volume of crude oil, gas condensate, natural gas, minerals, and groundwater.

MET is calculated based on the value of the extracted content, which is computed by applying average global prices to the extracted volume (adjusted for content). The determination of average global prices is based on the list of publications that are considered as official sources for computation of MET (Platts Crude Oil Marketwire and Crude Argus).

Currently, MET rates for crude oil and gas condensate range from 5% to 18%, depending on the accumulated production volume for the calendar year. For hydrocarbons, rates can be reduced by 50% if they are supplied to domestic refineries on the basis of a sale/purchase agreement or tolling agreement.

The MET rate for natural gas is set at 10%. For domestic sales of natural gas, MET rates range from 0.5% to 1.5%.

MET rates for minerals that have undergone initial processing (except for widespread minerals) and for coal vary between 0% and 18.5%.

Branch income

Net income of a non-resident legal entity's PE, after CIT at 20%, is subject to a branch profits tax at a rate of 15%, which may be reduced under an applicable double tax treaty (DTT). As such, the effective tax rate for income of a non-resident legal entity's PE equals 32% if there is no reduction under a DTT.

Income determination

Kazakhstan legal entities are taxable on aggregate annual income earned worldwide. Non-resident legal entities, carrying out business activities through a PE in Kazakhstan, are taxable on income attributed to the activities of that PE. All taxpayers must apply the accrual method for recognition of income.

Inventory valuation

For tax purposes, inventory is valued in accordance with International Financial Reporting Standards (IFRS) and Kazakhstan financial accounting legislation. As such, permitted inventory valuation methods include first in first out (FIFO), weighted average, and specific identification methods.

Capital gains

Capital gains are subject to ordinary CIT rates. An exemption is available for capital gains realised from the sale of shares and participation interests in Kazakhstan for legal entities or consortiums that are not engaged in subsurface activities and are held for more than three years.

From January 2018, capital gains from sale of shares/participation interest in subsurface users may be exempt from taxation in Kazakhstan if such subsurface users are engaged in further processing activities, under specific conditions.

Dividend income

Dividend income of a Kazakhstan resident company on inbound dividends is exempt from Kazakhstan taxation. Dividends from a Kazakhstan resident company to another Kazakhstan resident company are exempt from taxation, except for dividends paid by certain types of taxpayers.

Interest income

Interest income should be included in the aggregate annual income of a taxpayer and taxed at the 20% CIT rate.

Royalty income

Royalty income should be included in the aggregate annual income of a taxpayer and taxed at the 20% CIT rate.

Foreign exchange gain

Foreign exchange gain should be determined in accordance with IFRS and Kazakhstan financial accounting legislation. The excess of foreign exchange gain over foreign exchange loss should be included in the aggregate annual income of a taxpayer.

Foreign income

Foreign income is subject to ordinary CIT.

There are no provisions for tax deferrals in Kazakhstan.

For additional information, please refer to Controlled foreign companies (CFCs) in the Group taxation section.

Deductions

Allowable deductions generally include expenses associated with activities designed to generate income, unless specifically restricted for deduction by the tax legislation. All expenses require supporting documentation.

Recognition of expenses is performed in accordance with IFRS and Kazakhstan accounting and financial reporting legislation, unless otherwise stated in new Tax Code. If recognition of expenses as per IFRS differs from the new Tax Code, the latter should prevail.

Depreciation and depletion

Tax depreciation is calculated using the declining-balance method at depreciation rates ranging from 10% to 40%, applied to the balances of four basic categories of assets:

- Buildings and facilities (except for oil and gas wells and transmission facilities): 10%.
- Machinery and equipment (except for machines and equipment for oil and gas production, computers, and equipment for information processing): 25%.
- Computers and equipment for information processing: 40%.
- Fixed assets not included in other groups, including oil and gas wells, transmission equipment, oil and gas machinery and equipment: 15%.

Goodwill

There are no special provisions in the Kazakhstan Tax Code with respect to deductibility of goodwill expenses.

In general, assets not subject to amortisation per financial accounting are not regarded as fixed assets and are not subject to deduction.

Start-up expenses

The Kazakhstan Tax Code does not specifically address deductibility of start-up expenses, but, generally, expenses incurred in relation to business activities and aimed at earning revenue occurring at start-up should be deductible.

Interest expenses

Interest payable to unrelated third parties is deducted in full, except for interest payable to banks and micro-financial institutions, which are deducted within the amounts of actually paid interest. *For information about taxation of interest paid to related parties, please refer to Thin capitalisation in the Group taxation section.*

Bad debt

Receivables that were not paid within three years are to be recognised as bad debt expenses. Such expenses can be deducted in full by a taxpayer, provided that (i) these receivables are reflected in books of the taxpayer and (ii) proper supporting documents are in place.

Charitable contributions

Charitable contributions are entitled to decrease the taxable base but are capped at 4% of a company's annual taxable income (the rate for the large taxpayers subject to monitoring is 3%).

Foreign exchange loss

Foreign exchange loss should be determined in accordance with IFRS and Kazakhstan financial accounting legislation. The excess of foreign exchange loss over foreign exchange gain is allowed for deduction.

Fines and penalties

Generally, deductions are available for forfeits, fines, and penalties that are not payable to the state budget.

Taxes

Taxes remitted to the state budget of Kazakhstan are deductible within accrued amounts, except for the following:

- Taxes excluded prior to calculation of aggregate annual income.
- Income taxes paid in Kazakhstan and other countries.
- Taxes paid in 'black-listed' jurisdictions.
- EPT.
- Alternative tax.

Net operating losses

Net operating losses may be carried forward for up to ten years. Loss carryback is not permitted under the Kazakhstan tax legislation.

Payments to foreign affiliates

Payments to foreign affiliates are deductible for CIT purposes if the payments are intended to generate income, supported by documentation, and comply with the Kazakhstan transfer pricing law.

Group taxation

Kazakhstan tax law does not permit group taxation.

Transfer pricing

Under the Kazakhstan transfer pricing law, both customs and tax authorities have the right to monitor and adjust prices used in cross-border and certain domestic transactions when prices are perceived to deviate from market prices, even if such transactions are with unrelated parties. If the authorities adjust prices, the re-assessed liability will include taxes, duties, penalty interest, and fines to the state budget.

Transfer pricing rules impact the following transactions:

- International commercial transactions.
- Domestic transactions that directly relate to international commercial operations where:
  - the sale relates to a subsurface use contract
  - either party to the transaction has tax preferences, or
  - one of the parties has losses for two years prior the year of the transaction.

Country-by-country (CbC) reporting

From 2018, the Transfer Pricing law introduces a 3-tiered approach to transfer pricing documentation for multinational enterprise (MNE) groups conducting business in Kazakhstan to file a CbC report retrospectively from January 2016, and a Master file and a Local file from January 2019, with the Kazakhstan tax authorities.

Before filing required documentation, MNE groups are liable to submit a notification about being a member of an MNE group not later than September 2018.

Non-compliance with the above requirements will lead to penalties.

Thin capitalisation

Deduction of interest paid to related parties, to unrelated parties under related parties warranties, or to parties registered in countries with privileged taxation depends on the borrower's capital structure; deductible interest will be limited with reference to an 'acceptable' proportion of debt-to-equity (7:1 for financial institutions, 4:1 for all other entities). The list of jurisdictions with privileged taxation, the so called 'black list' established by the government, includes 57 jurisdictions (*see the Group taxation section of Kazakhstan's Corporate tax summary at www.pwc.com/taxsummaries for a current list*).

Controlled foreign companies (CFCs)

The new Tax Code significantly revised the CFC rules. Currently, a CFC is deemed to be an entity that meets both of the following conditions:

- 25% or more of a non-resident's shares belong directly, indirectly, or constructively to a Kazakhstan entity, or the entity is connected with the resident by means of control, and
- the effective income tax rate of the non-resident is less than 10% or the non-resident is registered in a 'black-listed' jurisdiction (*see above*).

The consolidated profit of the CFC (and PE of the CFC) should be included in the taxable income of the Kazakhstan entity and subject to CIT on the portion of undistributed profits from the non-resident company.

In addition, the new Tax Code provides for elimination of double taxation of the CFC's financial profit (subject to certain criteria).

Tax credits and incentives

Foreign tax credit

In general, the Kazakhstan Tax Code allows taxpayers to credit the foreign income taxes paid against the income taxes payable in Kazakhstan, provided the documents confirming the payment of such taxes are available. However, a tax credit may not be granted in certain cases (e.g. for taxes paid in countries with privileged taxation).

Investment incentives

Investment incentives are available to certain Kazakhstan legal entities that fit certain criteria and possess objects (e.g. certain fixed assets) for which investment incentives may be applied. Generally, the investment incentives allow companies to fully deduct, for CIT purposes, the cost of the investment objects and the cost associated with their reconstruction and modernisation either at once or within the first three years of their use.

Based on the Entrepreneurial Code, incentives are granted under an investment contract between the government and companies with focus on priority sectors of the economy, as determined by the government. A qualifying investment project is granted with (i) exemption from customs duties and import VAT exemptions, with some limitations, and (ii) state in-kind grants. Priority investment projects, alongside the above mentioned benefits, get (iii) tax incentives and (iv) investment subsidies. Special investment projects in the form of investment preferences are granted with (v) exemption from custom duties and (vi) tax incentives.

Special economic zones (SEZs)

Currently, the following SEZs have been established in Kazakhstan:

- 'Astana, the New City' in Astana (the expiry date is in 2027).
- 'Aktau Sea Port' in Aktau (the expiry date is on 1 January 2028).
- 'Ontustik' in Sairam district of South-Kazakhstan region (the expiry date is on 1 July 2030).
- 'National Industrial Petrochemical Park' in Atyrau region (the expiry date is on 31 December 2032).
- 'Park of Innovative Technologies' (the expiry date is 1 January 2028).
- 'Saryarka' in Karaganda region (the expiry date is 1 December 2036).
- 'Horgos - the eastern gates' in Almaty region (the expiry date is 2035).
- 'Pavlodar' in Pavlodar (the expiry date is 1 December 2036).
- 'Chemical Park Taraz' in Taraz (the expiry date is 1 January 2037).
- 'International Center for Cross-Border Cooperation Horgos' in Almaty region (the expiry date is 1 January 2041).

In order to enjoy the incentives available in SEZs, a legal entity must meet the following requirements:

- It must be registered by the tax authorities in the territories of SEZs.
- It has no structural subdivisions beyond the boundaries of the territories of the SEZs.
- It must perform activities qualified for priority types of activities within the territory of an SEZ (activities performed by a participant of the SEZ 'Park of Innovation Technologies' may be performed on an extraterritorial basis).

The general incentives available for legal entities in SEZs are:

- CIT: 100% reduction (subject to certain conditions).
- VAT: 0% rate (for goods fully consumed during performance of activities corresponding to purposes of creation of the SEZ and included in the list of goods established by the government of Kazakhstan).
- Land tax and payment for the use of land plots: 0% rate.
- Property tax: 0% rate.
- Social tax: 100% reduction (subject to certain conditions for 'Park of Innovative Technologies').

Astana International Financial Centre (AIFC)

The AIFC aims to create favourable conditions for investment and finance and to develop the securities market, ensuring its integration with international capital markets. The AIFC also intends to develop insurance, banking, and Islamic finance markets in Kazakhstan. The AIFC seeks to become a financial hub for the Central Asian region, member states of the Eurasian Economic Union (EAEU), the Caucasus, Western China, the Middle East, Mongolia, and Europe.

The AIFC provides a special legal regime based on the principles of English law, independent financial regulation in accordance with international standards, tax preferences for a period of 50 years, simplified visa and labour conditions, and has English as an official language. Judges of AIFC`s Court have exclusive jurisdiction over disputes between the AIFC's participants.

Withholding taxes

Generally, Kazakhstan-sourced income of non-residents is subject to withholding tax (WHT) at the rates shown in the table below.

WHT on certain types of activities

Income of non-residents from provision of services in Kazakhstan is subject to WHT at 20%, including certain types of services (management, financial, consulting, engineering, marketing, auditing, and legal) that are deemed as Kazakhstan-sourced income disregarding the place of their actual performance.

WHT on dividends

A non-resident legal entity is exempt from WHT on dividends if the following are met simultaneously:

- dividends are not paid to the entities registered in the 'black-listed' jurisdictions
- the holding period of shares or participation interest is greater than three years (this should include the holding period by a previous holder if such shares/participation interest were received as a result of reorganisation of a previous holder)
- the entity paying the dividends is not a subsurface user, and
- 50% or more of the value of the entity paying the dividends is not derived from property of a subsurface user.

At that, dividend income of a non-resident paid by a subsurface user should qualify for WHT exemption (provided all the above conditions are met) if such subsurface user is engaged in further processing activities, under specific conditions.

WHT on capital gains

A non-resident legal entity is exempt from WHT on capital gains if the following are met simultaneously:

- capital gains are not paid to the entities registered in the 'black-listed' jurisdictions
- the holding period of shares or participation interest is greater than three years (this should include the holding period by a previous holder if such shares/participation interest were received as a result of reorganisation of a previous holder)
- the entity from which the shares/participation interest are disposed is not a subsurface user, and
- 50% or more of the value of the entity from which the shares/participation interest are disposed is not derived from property of a subsurface user.

At that, capital gains of a non-resident that directly or indirectly disposes of shares/ participation interest of a Kazakhstan subsurface user should qualify for WHT exemption (provided all above conditions are met) if such subsurface user is engaged in further processing activities, under specific conditions.

Types of income at source of payment	WHT rate (%)
Dividends, capital gains, interest, royalties	15
Any income of a 'black-listed' entity	20
Insurance premiums under risk insurance agreements	15
Income from international transportation services; insurance premiums under risk reinsurance agreements	5
Other income	20

Benefits paid by a company to a shareholder, founder, participant, or related party, falling under the definition of constructive dividends, are taxed at a rate of 15%.

The rate of WHT may be reduced under an applicable DTT, provided that the following conditions are met simultaneously:

- Existence of bilateral DTT ratified by both parties.
- The non-resident does not create a PE in Kazakhstan.
- The non-resident timely provides to a Kazakhstan tax agent the qualifying tax residency certificate.
- The non-resident should be a beneficial owner in respect of income earned from Kazakhstan sources.

A list of bilateral DTTs concluded and ratified by Kazakhstan is shown below:

WHT rates between Kazakhstan and treaty countries as of 1 January 2018

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	15	15	15
In-force treaties:			
Armenia	10	10	10
Austria	5/15 (4)	10	10
Azerbaijan	10	10	10
Belarus	15	10	15
Belgium	0/5/15 (4, 8)	10	10
Bulgaria	10	10	10
Canada	5/15 (1)	10	10
China	10	10	10
Czech Republic	10	10	10
Estonia	5/15 (2)	10	15
Finland	5/15 (1)	10	10
France	5/15 (4)	10	10
Georgia	15	10	10
Germany	5/15 (2)	10	10
Hungary	5/15 (2)	10	10
India	10	10	10
Iran	5/15 (5)	10	10

Kazakhstan

Recipient	WHT (%) Dividends	Interest	Royalties
Ireland	5/15 (2)	10	10
Italy	5/15 (4)	10	10
Japan	5/15 (11)	10	10
Korea	5/15 (4)	10	10
Kyrgyzstan	10	10	10
Latvia	5/15 (2)	10	10
Lithuania	5/15 (2)	10	10
Luxembourg	5/15 (12)	10	10
Macedonia	5/15 (2)	10	10
Malaysia	10	10	10
Moldova	10/15 (2)	10	10
Mongolia	10	10	10
Netherlands	0/5/15 (9, 10)	10	10
Norway	5/15 (10)	10	10
Pakistan	12.5/15 (10)	12.5	15
Poland	10/15 (3)	10	10
Qatar	5/10 (4)	10	10
Romania	10	10	10
Russia	10	10	10
Saudi Arabia	5	10	10
Serbia	10/15 (2)	10	10
Singapore	5/10 (2)	10	10
Slovakia	10/15 (7)	10	10
Slovenia	5/15 (2)	10	10
Spain	5/15 (4)	10	10
Sweden	5/15 (1)	10	10
Switzerland	0/5/15 (9, 10)	0/10 (16)	10
Tajikistan	10/15 (6)	10	10
Turkey	10	10	10
Turkmenistan	10	10	10
Ukraine	5/15 (2)	10	10
United Arab Emirates	5 (1)	10	10
United Kingdom of Great Britain and Northern Ireland	5/15 (1)	10	10
United States	5/15 (1)	10	10
Uzbekistan	10	10	10
Vietnam	5/15 (13)	10	10
Pending treaties:			
Croatia	5/10 (2)	10	10
Kuwait	0/5/5 (14)	0/10 (15)	10

Notes

1. 5% if the beneficial owner is a company owning, directly (or indirectly in case of Canada and the United Kingdom), at least 10% of the voting power of the company paying the dividends.
2. 5% (10% in the cases of Moldova and Serbia) if the beneficial owner is a company that directly holds at least 25% of the capital of the paying company.
3. 10% if the beneficial owner is a company directly or indirectly holding at least 20% of the capital of the paying company.
4. 5% if the beneficial owner is a company (other than a partnership) that owns not less than 10% of the capital of paying company.
5. 5% if the recipient is a company (other than a partnership) that directly owns not less than 20% of the capital of paying company.

6. 10% if the actual owner is a legal entity that owns not less than 30% of the authorised capital of the legal entity paying the dividends.
7. 10% if the beneficial owner is a company that directly holds at least 30% of the capital of the company paying the dividends.
8. 0% if dividends are paid in consideration of an investment of at least USD 50 million in the paying company.
9. 0% if the company receiving the dividends directly or indirectly holds at least 50% of the capital of the paying company and has made an investment in the company paying the dividends of at least USD 1 million, which investment is guaranteed in full or insured in full by the government of the first contracting state, the central bank of that state, or any agency or instrumentality (including a financial institution) owned or controlled by that government, and has been approved by the government of the other contracting state.
10. 5% (or 12.5% in case of Pakistan) if the beneficial owner is a company that directly owns (or indirectly in case of the Netherlands and Pakistan) at least 10% of the capital of paying company.
11. 5% if the beneficial owner is a company directly or indirectly owning, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting power of the company paying the dividends.
12. 5% if the beneficial owner is a company (other than a partnership) that directly owns not less than 15% of the capital of the paying company.
13. 5% if the beneficial owner is a company that directly owns at least 70% of the voting power of the paying company.
14. 0% if the beneficial owner is the government of the other contracting state or any governmental institution or any economic unit established by governmental or similar bodies; 5% if the beneficial owner is a company that directly holds at least 5% of the capital of the company paying the dividends; additionally, 5% if the beneficial owner of dividends is an individual person.
15. 0% if the beneficial owner is the government of the other contracting state or any governmental institution or any economic unit established by governmental or similar bodies.
16. 0% applies to the credit sale of industrial, commercial, or scientific equipment, and the credit sale of merchandise by one enterprise to another enterprise.

Tax administration

Taxable period

The tax year in Kazakhstan is the calendar year.

Tax returns

Annual CIT declarations are due by 31 March of the year following the tax year-end. However, a taxpayer may take a 30 calendar-day extension of the deadline upon request.

Certain taxpayers are required to submit their estimated calculations of monthly advance payments of CIT.

The deadline for the majority of other tax returns is the 15th calendar day of the second month following the reporting period (usually the calendar quarter). However, a taxpayer may take a 15 calendar-day extension of the deadline upon request.

Payment of tax

CIT advance payments are due every 25th day of the month. Taxpayers with aggregate annual income during the tax period preceding the previous tax period of less than 325,000 times the MCI established for the relevant financial year (approximately USD 2.37 million) are exempt from the obligation to calculate and pay CIT advance payments. Payment of any outstanding CIT liabilities is required within ten calendar days following the submission of the annual CIT declaration (i.e. 10 April).

Most other taxes are payable by the 25th day of the second month following the end of reporting period (calendar quarter).

Fines and interest penalties

Late payment interest is reduced from 2.5 to 1.25 times the refinancing rate set by the National Bank per day of delay.

The National Bank refinancing rate is set at 9.5% *per annum*.

Substantial fines are imposed for understatement of tax liabilities. Generally, the fines amount to 50% of the understated tax, with lower rates for small and medium-sized businesses.

For advance CIT payments, an administrative fine of 20% applies for understated advance tax payments as compared to the finally declared CIT, provided the understated amount is greater than 20% of the final declared amount.

If a taxpayer is deemed to have concealed taxable income, a fine of up to 200% of the concealed amount may be assessed. Small and medium-sized businesses have lower rates.

Tax audit process

Kazakhstan tax authorities have the right to conduct regular tax audits (at least once a year). There are two types of audits, selective and unplanned.

The tax authorities choose taxpayers for selective audits based on special risk assessment criteria. Information about misstatements in tax returns or any other discrepancy may trigger an unplanned tax audit.

In 2019, taxpayers (tax agents) will be categorised by their activity as low, medium, or high risk, represented respectively with green, yellow, or red colour.

With respect to violations identified as a result of tax audit, the Tax Code introduced the following risk classification violations, for which various methods for elimination are provided:

- For high risk: Notification of the elimination of violations.
- For medium risk: Notification of violations.

The level of tax control for low-risk taxpayers is minimised.

Statute of limitations

The statute of limitations for tax purposes in Kazakhstan is five years; it may be extended up to seven years in the part relating to transfer pricing matters. For taxpayers operating under subsurface use contracts, the tax authorities maintain the right to assess or revise the assessed amount of EPT and other taxes and obligatory payments to the state budget, where a methodology of calculation uses one of the following indices: internal rate of return (IRR) or internal revenue rate or R-factor (earning yield), during the effective period of a subsurface use contract and five years after the end of the effective period of the subsurface use contract.

Starting from 1 January 2020, the statute of limitation period for tax liabilities will be:

- Five years for subsurface users and taxpayers subject to horizontal monitoring.
- Three years for other business entities.

Topics of focus for tax authorities

Tax audits may be comprehensive or thematic. Comprehensive tax audits cover all applicable taxes, while thematic tax audits may cover only some specific tax liabilities. As a rule, the Kazakhstan tax authorities are form, rather than substance, driven during tax audits.

Other issues

Accounting system

Kazakhstan legal entities should maintain accounts and produce financial statements in accordance with IFRS or national accounting standards (depending on the size of the company and other factors). In most cases, tax treatment follows the accounting treatment.

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 11 September 2017, Kazakhstan and the United States signed an intergovernmental agreement (IGA) under Model I to improve international tax compliance with respect to the US FATCA, which will enable the automatic exchange of financial information on each country's resident taxpayers to support tax enforcement efforts.

The IGA will be in force after the parties notify each other in writing that all necessary internal procedures have been completed.

Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Strasbourg Convention)

Kazakhstan is a signatory of the Strasbourg Convention (ratified in December 2014) for administrative co-operation with other states in the assessment and collection of taxes with a view to combating tax avoidance and evasion.

Kazakhstan did not join multilateral competent authority agreements on automatic exchange of information under the Strasbourg Convention.

The Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project

Kazakhstan joined the Inclusive Framework on BEPS in January 2017. By joining the framework, Kazakhstan pledged to adopt and promote the implementation of the four minimum standards designed by the OECD in the BEPS project. In 2018, Kazakhstan is planning to sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS and the Common Reporting Standards (CRS) approved by OECD Council.

Kenya

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Significant developments

Tax amnesty on foreign income

The Finance Act, 2016 (which was assented to law on 13 September 2016) introduced a provision effective 1 January 2017 in the Tax Procedures Act (TPA) that will grant a tax amnesty to taxpayers who received untaxed Kenya-sourced income or assets, which are now located outside Kenya.

The Commissioner will refrain from assessing or recovering taxes, penalties, and interest in respect of any year of income ending on or before 31 December 2016 and from following up on the sources of income under the amnesty where:

- the income has been declared for the 2016 tax year by a person earning taxable income in Kenya, and
- the returns or accounts for the 2016 tax year are submitted on or before 30 June 2018.

The amnesty shall not apply:

- to income earned in Kenya where the person earning the income has already been assessed to tax in Kenya, and
- where a person making an application for the amnesty is under a tax audit or investigation by the Commissioner.

Under the Finance Act, 2017 (assented into law on 21 June 2017), the amnesty deadline was extended from 31 December 2017 to 30 June 2018. Further, on 17 July 2017, the Kenya Revenue Authority (KRA) issued revised guidelines on the amnesty (which are dated 10 July 2017). The original guidelines were published by the KRA on 8 March 2017.

The Finance Act, 2017 and the revised guidelines have clarified that for taxpayers to be eligible for the amnesty, declared funds will need to be transferred back to Kenya. Where no funds have been transferred within the period of the amnesty (period up to 30 June 2018), there shall be a five-year period (i.e. up to 30 June 2023) for the remittance, but a penalty of 10% shall be levied on the remittance. Funds have been defined as 'cash declared in the returns or accounts for purposes of transfer back into the country'.

The guidelines provide that an application for the tax amnesty should be made by filing an Amnesty Return on i-Tax, making full and accurate disclosure of assets and income, including confirmation of the actual cost or best estimate of the market value of all assets. The return shall take the format of Form A/37B as set out on i-Tax. The Amnesty Return can be accessed by logging onto your individual i-Tax account and downloading the return. An acknowledgement notice will be issued upon submission of the return declaration and thereafter a certificate will be issued upon approval of the application, where all the requirements are met.

The guidelines do not stipulate any preclusions for taxpayers to transfer the funds repatriated to Kenya under the amnesty back to the foreign country thereafter.

Proposed tax reforms

The government of Kenya's strategy on tax and revenue reforms aims to significantly grow revenue in the 2017/18 fiscal year. To this end, several tax policies and revenue administration reforms have been put in place to enhance taxpayer education, make greater use of technology, and implement a simplified tax regime for the informal sector.

Specific changes introduced

Incentives for businesses operating in special economic zones (SEZs)

The Finance Act, 2017 has introduced a 100% investment deduction for capital expenditure on buildings and machinery. For SEZs located outside Nairobi and Mombasa, an investment deduction equal to 150% is applicable on capital expenditure on buildings and machinery.

The Finance Act, 2017 has exempted withholding tax (WHT) on dividends payable to non-residents by SEZ enterprises, developers, and operators.

Further, a WHT rate of 5% is now applicable on management fees, professional fees, training fees, and royalties payable by SEZ enterprises, developers, and operators to a non-resident person.

Interest payments payable by SEZ enterprises, developers, and operators to a non-resident person have also been incentivised under Finance Act, 2017 and shall now attract WHT at the rate of 5%.

Taxes on corporate income

Resident companies are taxable in Kenya on income accrued or derived from Kenya. Resident companies with business activities outside Kenya are also taxed on income derived from business activities outside of Kenya.

Non-resident companies are subject to Kenya corporate income tax (CIT) only on the trading profits attributable to a Kenyan permanent establishment (PE).

The rate of CIT for resident companies, including subsidiary companies of foreign parent companies, is 30%. The CIT rate for branches of foreign companies and PEs is 37.5%.

Special rates

There are special rates for certain resident and non-resident companies as set out below.

Entity	CIT rate (%)
Export processing zone (EPZ) enterprises:	
First ten years	0
Next ten years	25
Thereafter	30
Registered unit trusts/Collective investment schemes	Exempt (subject to conditions)
Newly publicly listed companies:	
20% of shares listed: first three years after listing	27
30% of shares listed: first five years after listing	25
40% of shares listed: first five years after listing	20
Companies listed on securities exchange	25 (first five years)
SEZ enterprises, developers, and operators	10 (first ten years); 15 (succeeding ten years)
Local motor vehicle assembly companies	15 (first five years); 15 (succeeding five years, subject to conditions)
Rates on gross income of non-residents derived from Kenya:	
Transmission of messages	5
Ownership or operation of ships and aircraft	2.5

Local income taxes

There are no county or provincial taxes on income, as all taxes are collected by the national government. However, county governments are empowered by the Constitution to impose property and entertainment taxes at the county level.

Corporate residence

Kenya-incorporated companies are treated as Kenyan-tax resident. Additionally, companies incorporated overseas are also treated as Kenya resident if their 'management and control is exercised in Kenya in a particular year of income under consideration'. A company may also be declared a tax resident in Kenya pursuant to a declaration in a legal notice by the Cabinet Secretary for the National Treasury.

Permanent establishment (PE)

A business carried on in Kenya through a fixed place of business gives rise to a PE, as does a building site, or a construction or assembly project, that has existed for six months or more.

The definition of a PE has been extended to include a dependent agent that habitually concludes contracts on behalf of others. This definition is closer to that contained in the Organisation for Economic Co-operation and Development (OECD) Model Convention on Double Tax Treaties (DTTs).

Note that the definition of a PE may be modified by a DTT.

Other taxes

Value-added tax (VAT)

VAT is levied under the VAT Act, 2013. VAT is a tax on value addition and is accounted for using an input-output mechanism. There are four types of supplies that attract different VAT rates: 16% for taxable supplies, 0% for zero-rated supplies, exempt supplies, and out of scope supplies.

VAT registration is required for persons making taxable supplies over 5 million Kenya shillings (KES) in a 12-month period. In determining the threshold, it excludes the:

- sale of capital assets
- sale of a person's enterprise, or
- cessation of business permanently.

A person making taxable supplies below the registration threshold may voluntarily apply to the Commissioner and register for VAT.

Input tax on a taxable supply or import may be deducted from the tax payable by a registered person on supplies made by one in a tax period to the extent that the supply or importation was acquired to make taxable supplies. Input tax is allowable for deduction within six months after the end of the tax period in which the supply or importation occurred.

Changes introduced by the Finance Act, 2017

The Finance Act, 2017 (the Act) has effected numerous changes, focusing primarily on zero rating as the core VAT incentive and targeted at economically significant sectors of the economy, to assist with their development. The prominent VAT changes are outlined below:

- In a bid to stimulate local manufacturers and the agricultural sector, the Act has zero-rated agricultural pest control products and all inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products. This exemption will allow local manufacturers to be more competitive and also promote the agricultural sector by reducing the cost of production.
- The Act has exempted from VAT the supply of locally assembled tourist vehicles. This is a positive move towards promoting local assemblers as well as the tourism sector.
- The Act has exempted from VAT asset transfers and other transactions related to the transfer of assets into Real Estates Investment Trusts (REITs) and Asset Backed Securities (ABSs). This exemption will reduce the overall cost of setting up REITs and ABSs.
- VAT exemption for Sharia-compliant finance products. The Act has harmonised the VAT incentives offered across the financial services industry by providing for similar VAT treatment of Islamic finance products as with conventional finance products.
- The Act has zero-rated taxable goods supplied to marine fisheries and fish processors. This is aimed at reviving the fisheries sector and ensuring increased utilisation of marine resources as part of the economic growth agenda.
- Milk and cream, not concentrated nor containing added sugar or other sweetening matter, are now zero-rated by the Act.
- The Act has zero-rated food commodities, such as cassava flour, maize (corn) flour, wheat or meslin flour, and ordinary bread.

Value Added Tax Regulations, 2017

The Value Added Tax Regulations, 2017 (the Regulations) have been published by the Cabinet Secretary for the National Treasury more than three years since the enactment of the Value Added Tax Act, 2013 (VAT Act) in September 2013. Taxpayers have been relying on outdated Value Added Tax Regulations, 1994. The Regulations, which took effect from 4 April 2017, are subsidiary legislation meant to facilitate the efficient implementation of the principal legislation, the VAT Act.

The most notable amendment in the Regulations are procedures relating to the exportation of goods and services. Regulation 13 stipulates that:

- Goods are exported from Kenya when they are entered for export under the EAC Customs Management Act and delivered to a recipient outside Kenya.
- Services are exported from Kenya if they are provided to a recipient outside Kenya for use, consumption, or enjoyment outside Kenya; however, export of services does not include the following:
  - Taxable services consumed on exportation of goods unless the services are in relation to transportation of goods that terminates outside Kenya.
  - Taxable services provided in Kenya but paid for by a person who is not a resident in Kenya.

The documentation required as a proof of exportation of goods and services include:

- A copy of the invoice to the recipient.
- Proof of payment for the exported goods or services.
- For goods, a bill of lading, road manifest or airway bill, the export or transfer entry certified at the port of exit.
- For excisable goods, documents as per the Excise Duty Act, 2015.
- For services, other documents to prove that services were consumed outside Kenya.

Where the Commissioner has reasonable grounds to believe that the goods were not exported, the Commissioner may require evidence from a competent authority outside Kenya confirming that the goods were duly landed and entered for home consumption at a place outside Kenya.

It is important to note that the VAT Act defines services exported outside Kenya to be services provided for use or consumption outside Kenya.

While Regulation 13 requires an invoice showing the recipient of services to be a person outside Kenya as proof of exportation of services, the Regulation, on the other hand, excludes from the scope of exported services those services paid for by 'a person who is not resident in Kenya'.

The Regulation has not addressed the issue of how to determine the place of use, consumption, or enjoyment; the Regulation has rather introduced location of recipient of the services and the location from where payment for services is made as additional tests for determination of export of service. This appears to be a shift from the 'destination principle' enshrined in the VAT Act.

Import (customs) duty

Import duty is levied under the East African Community (EAC) Customs Management Act. Imported goods are generally subject to import duty at varied rates, including 0% for raw materials and capital goods (also exempt from VAT), 10% for intermediate goods, and 25% for finished goods. However, a different rate of duty can be prescribed by the Council of Ministers of the EAC partner states. Enterprises established in an EPZ are exempt from customs duty on machinery and inputs for products manufactured for export while licensed oil and gas contractors with a Production Sharing Contract

(PSC) with the government of Kenya are exempt from customs duty on importation of machinery, spares, and inputs used in exploration activities, excluding motor vehicles.

In addition, enterprises that are established under the SEZs enjoy import duty exemption. Where raw materials that are not subject to 0% import duty are used to manufacture goods for use locally within the EAC and for export outside the EAC, one may apply for remission under the EAC duty remission scheme. This is subject to a requirement for proof of export, and one may be required to execute a bond/bank guarantee. Further, assemblers of motor vehicles and motor cycles, among others, enjoy import duty remission under the scheme.

Additionally, there is a list of other items and persons that are exempted from import duties under the Act.

Changes introduced by the EAC Gazette Notices

The EAC Gazette Notice in June 2017 that introduced budgetary changes for all EAC partner states brought with it a number of changes, including a decrease in the import duty rates for worn clothing and other worn articles from 35% or 0.40 United States dollars (USD)/kg to 35% or USD 0.20/kg, whichever is higher; rice in the husk, husked brown rice, semi milled or wholly milled rice, and broken rice from 75% or USD 345/MT to 35% or USD 200/MT, whichever is higher; and poly vinyl alcohol (form of plastic used in various industries other than beverage) from 10% to 0%, among others. This has the effect of incentivising some key sectors of the economy and addressing a shortage of some commodities in the local market.

On the other hand, the import duty rate increased for various products, including the following: structures of iron and steel from 25% to 25% or USD 250/MT, whichever is higher; liquid petroleum gas (LPG) cylinders from 0% to 25%; road tractors for semi-trailers (tractor heads that pull semi-trailers) from 10% to 25%; and paper and paperboard products from 10% to 25%. The overall effect of these changes is to boost the local industries by protecting them from cheap imports.

The Gazette also granted remission of duty on some items for further manufacturing in Kenya, including wheat grain, with the applicable rate being 10% instead of 35%. A full duty remission on raw sugar for manufacture of sugar for industrial use has been granted on condition that if the finished product is sold within the EAC, then such goods shall attract duties, levies, and other charges provided in the EAC Common External Tariff (EACCET). Other products to be imported at 0% duty rate include inputs for ship assembly, inputs for assemblers of equipment specifically designed for the use by disabled, blind, and physically handicapped persons, raw materials and equipment to be used in the manufacture of textiles and footwear, iron and steel products of HS.7228.20.00 imported for the manufacturer of automobile bolts, nuts, and leaf springs, and inputs for the manufacture of filters. In addition, various assemblers of motor cycles (24 motor cycle assemblers) have been authorised to import specific quantities of completely knocked down (CKD) kits for manufacture of motor cycles at a duty rate of 10% for 12 months under the duty remission scheme.

The Gazette also amended the Fifth Schedule of the EAC Customs Management Act (EACCMA) by removing electrical energy saving bulbs for lighting (compact fluorescent bulbs) from the exemption schedule. Separately, machinery and inputs imported for use in the distribution of oil, gas, and geothermal have been included in the exemption schedule. The exemption was previously restricted to machinery or inputs used in oil, gas, and geothermal exploration and development only and not the machinery or input used for the distribution of these products.

Following the review and modification of the Harmonised Commodity Description and Coding System (HS Code) Version 2012 by the World Customs Organisation (WCO), the Council has reviewed the EACCET into a 2017 version in line with the modified WCO HS Code. This move ensures that the EACCET is up-to-date with regards to global advancement in technology and innovation

In addition to the above WCO HS Code update, in the EAC, the HS Code is usually updated every five years to include new products introduced in international trade that are not accommodated by the existing tariff codes, remove products that are no longer traded, and to take into account the concerns and feedback from international trade players. In this regard, the EACCET has released the new CET 2017.

Excise duty

Excise duty is imposed on the local manufacture or the importation of certain commodities and services. Excisable commodities include items such as bottled water, soft drinks, cigarettes, alcohol, fuels, and motor vehicles. Excisable services include mobile cellular phone services, fees charged for money transfer services, and other fees charged by financial institutions.

Below are the different categories of excisable products and their corresponding rates of excise duty. These include the changes introduced by the Finance Act, 2017.

Category	Goods description	Excise duty rates
Spirits	Spirits of undenatured ethyl alcohol; spirits liqueurs, and other spirituous beverages of alcoholic strength exceeding 10%	KES 200 per litre
Other alcoholic beverages	Wines	KES 150 per litre
	Beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%	KES 100 per litre
	Powdered beer	KES 100 per kg
Tobacco and tobacco products	Cigarettes with filters (hinge lid and soft cap)	KES 2,500 per mille
	Cigarettes without filters (plain cigarettes)	KES 1,800 per mille
	Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	KES 10,000 per kg
	Electronic cigarettes	KES 3,000 per unit
	Cartridge for use in electronic cigarettes	KES 2,000 per unit
	Other manufactured tobacco and manufactured tobacco substitutes; homogeneous and reconstituted tobacco; tobacco extracts and essences	KES 7,000 per kg
Soft drinks	Fruit juices and vegetable juices	KES 10 per litre
	Water and other non-alcoholic beverages, not including fruit or vegetable juices	KES 5 per litre
Other excisable products	Plastic shopping bags	KES 120 per kg
	Food supplements	10%
	Motor vehicles of tariff heading 87.02, 87.03, and 87.04	20%
	Motor cycles of tariff heading 87.11 (excluding motor cycle ambulances and locally assembled motor cycles)	KES 10,000 per unit

Category	Goods description	Excise duty rates
Excisable services	Mobile cellular phone services and other wireless telephone services	10%
	Money transfer services	10%
	Financial services by financial institutions	10%

Finance Act, 2017 provisions

Inflationary adjustment

Effective 1 January 2018, the Finance Act provides for an inflationary adjustment to the rates of excise duty every two years instead of the provision for an annual adjustment as was provided for in the Excise Duty Act, 2015. This is a welcome move specifically for business planning purposes.

Relief for paint and resin manufacturers

Paint and resin manufacturers who use illuminating kerosene to manufacture paint and resin are now required to be registered with the KRA in order to be entitled to a refund of the excise duty already paid for this purpose.

Other changes

The following are the other changes introduced by the Finance Act:

- The excise duty rate for spirits and other spirituous beverages of alcoholic strength exceeding 10% has increased from KES 175 to KES 200 per litre.
- There has been an introduction of a two tier excise duty structure for cigarettes from the current single rate of KES 2,500 per mille. Cigarettes without filters are now chargeable to excise duty at the rate of KES 1,800 per mille while cigarettes with filters are chargeable at KES 2,500 per mille.
- Powdered beer has been defined to mean any powder, crystals, or any other dry substance that, after being mixed with water or any other non-alcoholic beverages, ferments to or otherwise becomes an alcoholic beverage.

Excisable goods supplied to St. Johns Ambulance for official use in the provision of relief supplies in Kenya have been exempted from excise duty. This is in addition to the goods already exempted under Part A of the Second Schedule to the Excise Duty Act, 2015.

Excise Duty Regulations

The Cabinet Secretary for the National Treasury also published regulations for the administration of the provisions of the Excise Duty Act, 2015. The introduction of The Excise Duty (Remission of Excise Duty) Regulations, 2017 has revoked the Customs and Excise (Remission of Excise Duty) Regulations, 2013. These Regulations empower the Cabinet Secretary to grant remission of excise duty with respect to beer made from sorghum, millet, or cassava, or any other agricultural produce grown in Kenya. The remission granted is 80% of the excise duty due and does not apply in respect of beer made from barley.

In addition, the coming into force of The Excise Duty (Excisable Goods Management System) Regulations, 2017, which has also revoked the Customs and Excise (Excisable Goods Management System) Regulations, 2013, requires all classes of excisable goods to be affixed with excise stamps, with the exception of motor vehicles. These regulations specify different stamp prices for different classes of excisable goods ranging from KES 0.6 to KES 2.8 per stamp.

Further, these regulations prescribe a robust system that addresses the loopholes in the entire supply chain from production of excisable goods to retail; including a requirement for retailers of excisable goods to ensure compliance with excise stamp requirements before they stock these products in their premises. These measures are likely to boost revenues for the exchequer while at the same time creating an even ground for the manufacturers and importers of excisable goods by reducing incidences of non-complying excisable goods.

Stamp duty

Stamp duty is payable on transfer of properties, leases, and securities. The Finance Act, 2017 has, however, introduced a provision exempting stamp duty on the transfer of title relating to *Sukuk* arrangements.

For other properties, other rates of stamp duty apply as specified in the Schedule to the Stamp Duty Act. The rates of stamp duty are shown below:

Activity	Stamp duty rate
Transfer of immovable property:	
Urban	4%
Rural	2%
Creation or increase of share capital	1%
Registration of a company (nominal share capital)	0%
Transfer of unquoted shares or marketable securities	1%
Transfer of quoted shares of marketable securities	Exempt
Registration of a debenture or mortgage:	
Collateral security	0.05%
Supplemental security	KES 20 per counter part
Lease:	
Period of three years and under	1% of annual rent
Period over three years	2% of annual rent

Tax on capital gains (CGT)

After being suspended for 30 years, the Finance Act, 2014 reintroduced CGT on transfer of property situated in Kenya. Therefore, gains derived on the sale or transfer of property by an individual or company carried out on or after 1 January 2015 are subject to a final tax at the rate of 5%. The definition of 'property' is widely drawn and includes securities in Kenyan resident private companies (though a specific exemption from CGT exists for securities listed in Kenya).

The High Court recently ruled that Paragraph 11A of the Eighth Schedule of the Income Tax Act cannot impose an obligation on a taxpayer to pay CGT on or before presenting a transfer instrument for registration as opposed to upon registration of the transfer instrument. The KRA has appealed the Court's ruling, but no final decision is available at this date.

Compensating tax

Where a company pays dividends out of profits that have not been subject to CIT, the company will be liable to pay a compensating tax. The compensating tax rate is 42.8%.

The aim of this tax is to ensure that all dividends are paid out of profits that have suffered CIT.

Turnover tax for small business taxpayers

A resident taxpayer whose annual gross turnover does not exceed KES 5 million will be taxed at the rate of 3% per quarter of one's turnover. In such a case, the taxpayer will not be required to register for VAT. Turnover tax does not apply to rental income, management or professional fees, training fees, income subject to WHT as a final tax, and income of incorporated companies. Loss making businesses are allowed to make an election to be exempted from turnover tax. A written application for exemption has to be made to the Commissioner, and there is a procedure to be followed.

Payroll taxes

Payroll taxes are administered through the pay-as-you-earn (PAYE) mechanism of deducting income tax from employment income (salaries, wages, bonuses, commissions, etc.). PAYE also applies to taxable non-cash benefits.

It is the employers' obligation to deduct and account for payroll taxes on a monthly basis.

The PAYE deducted thereof should be paid to the KRA by the 9th day of the following month.

The employer should submit a monthly PAYE return (can be filed online using the KRA's electronic platform, i-Tax). This return, known as form P10, declares the PAYE for a specific month.

The tax tables applicable to individuals are provided in the Taxes on personal income section of Kenya's Individual tax summary at www.pwc.com/taxsummaries.

Employers' National Social Security Fund (NSSF) contributions

Employers and employees are obligated to contribute monthly to the NSSF a standard contribution of KES 200 each. However, the new NSSF Act provides for a higher contribution rate of 6% of pensionable earnings with matching contribution from the employer. The implementation of the new Act awaits conclusion of a pending court case.

National Hospital Insurance Fund (NHIF) contributions

An employer has an obligation to deduct and remit NHIF contributions on a monthly basis.

NHIF is payable by the employee at graduated bands, up to a maximum of KES 1,700 per month. The maximum contribution is reached at a salary level of KES 100,000 per month. There is no corresponding employer contribution.

Business permit

Every person who carries on a business in Kenya is required to apply for a business permit from the relevant local authority. The business permit is usually based on the size of one's business and is renewable on an annual basis.

Tourism levy

The tourism levy is payable to the Tourism Fund by establishments dealing in tourism activities and services as listed in the Tourism Act at a rate of 2% of turnover.

National industrial training levy

All employers are required to pay to the Directorate of Industrial Training a monthly levy of KES 50 per employee. The only exemption is for employers remitting the tourism levy.

Railway development levy (RDL)

The RDL is payable on all imports into the country at 1.5% of the customs value of the goods. This was implemented to provide funds for the construction of a standard gauge railway track.

National construction levy

The National Construction Authority introduced a construction levy for all construction works that commenced after 6 June 2014. The levy is payable at the rate of up to 0.5% of the contract value of any construction project whose construction value exceeds KES 5 million. The levy is in relation to all construction projects relating to buildings, roads, water works, electrical works, and other works that require the service of a contractor.

Advance tax on motor vehicles

Advance tax is payable at varying annual rates depending on the motor vehicles and is creditable against any CIT payable for the year.

Fringe benefit tax (FBT)

The FBT is payable by an employer on interest-free or low-interest loans granted to employees, company directors, and their relatives. FBT is due, whether the employer is exempted from tax or not, at the resident CIT rate of 30%. The benefit is the difference between actual interest charged and the interest computed using the Commissioner's prescribed rate published quarterly. The directors and employees are not personally taxed on the benefit.

Betting, lottery, and gaming taxes

The Finance Act, 2017 has increased the amount of betting, lottery, and gaming taxes with effect from 1 January 2018 as follows:

Tax type	Current rate/Tax base	New rate/Tax base
Betting tax	7.5% of gaming revenue	35% of gaming revenue
Lottery tax	5% of lottery turnover	35% of lottery turnover
Gaming tax	12% of gaming revenue	35% of gaming revenue
Prize competition tax	15% of total gross turnover	35% of total gross turnover

Local government rent and rates

Rent and rates are levied annually on properties in Kenya, and the rateable value that is payable to the county government shall vary in each county based on various forms of ratings, such as area rate, agricultural rental value, or site value.

Branch income

The profit of a PE is taxed at the branch income tax rate of 37.5%, but there is no further taxation on the distribution of branch profits. There are certain restrictions with respect to the tax deductibility of certain costs, such as royalties, interest, and management fees, paid to the head office. However, these payments are also not subject to WHT.

Income determination

Inventory valuation

Inventory is stated at the lower of cost or net realisable value, with the exception of biological assets, whose value is prescribed by the Commissioner.

Capital gains

Tax on capital gains (CGT) has been reintroduced. *See Tax on capital gains (CGT) in the Other taxes section for more information*.

Dividend income

Kenya-source dividends are taxable income in Kenya unless the recipient is a Kenya resident company holding 12.5% or more of voting power of the company paying the dividend. However, for companies holding less than 12.5% of the votes, and other resident taxpayers, the 5% WHT is the final tax. Dividends paid to non-residents and any overseas holding company attract 10% WHT.

Dividends issued in a ratio not proportionate to shareholding of the existing equity are considered as taxable dividends to the extent of the disproportionate increase in the value of the ownership of the company.

Interest income

Interest income is generally included in the determination of taxable income unless expressly exempted for income tax.

Royalty income

Royalty income is subject to CIT at 30%. Given that royalties attract WHT, the WHT credit can be used to offset against the tax liability arising from the royalty income.

Foreign income

In Kenya, companies are taxed on income accrued or derived from Kenya. Resident companies with business activities outside Kenya are taxed on worldwide profits.

Deductions

The general principle in Kenya is that, unless expressly provided otherwise, expenses are tax deductible if they are incurred wholly and exclusively to generate taxable income.

Depreciation and depletion

No deduction is allowed for accounting depreciation or impairment. However, capital allowances are permitted at varying rates (on a straight-line basis) for certain assets used for business purposes, including buildings and machinery used in manufacturing, industrial buildings and hotels, machinery and plant, agricultural works, and mining.

Capital deductions	Rate (%)
Investment deduction:	
Qualifying investment exceeding KES 200 million (outside Nairobi or the municipalities of Mombasa or Kisumu)	150
Other qualifying investment	100
Industrial building allowance: *	
Certified education buildings (straight-line)	50
Qualifying rental residential or commercial building allowance (straight-line)	25
Other qualifying buildings (including hotels, straight-line)	1
Wear and tear allowance:	
Plant and machinery (reducing-balance):	
Class 1	37.5
Class 2	30
Class 3	25
Class 4	12.5
Telecommunication equipment (straight-line)	20
Other allowances:	
Computer software (straight-line)	20
Capital expenditure under a concessionaire arrangement	Equal proportions over the period of the concession
Mining specified minerals:	
Year one	40
Year two through seven	10
Farm works (straight-line)	100

* Different percentages apply for previous years.

Goodwill

Cost acquisition of goodwill and amortisation of goodwill are not deductible since they are capital in nature.

Start-up expenses

There is a specific provision allowing the deduction of certain start-up expenses, provided that the required conditions have been met.

Interest expenses

A deduction for interest is allowed only to the extent that the borrowings are used for the purpose of trade. Where a non-resident person controls a company alone or with four or fewer other persons, interest restriction or 'thin capitalisation' rules apply (*see Thin capitalisation in the Group taxation section*).

Bad debts

Bad debts are deductible in the year in which it is evident that the debt has become irrecoverable. Detailed rules apply for making this determination.

Charitable contributions

Donations to qualifying charities and for certain public works are deductible, subject to certain conditions.

With effect from 3 April 2017, the Finance Act, 2017 provides that expenditure incurred by a taxpayer on donations for the alleviation of distress during national disaster as declared by the President will be deductible expenses for the taxpayer when determining taxable income. Deductible donations will be those made to:

- the Kenya Red Cross
- county governments, or
- any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President.

Fines and penalties

Generally, fines and penalties are not deductible as they are not considered to be expenses incurred for producing profits chargeable to tax.

Taxes

Kenyan income taxes are not deductible while computing income tax of a person. However, foreign income taxes incurred are generally deductible as an expense if tax credit relief is not available under a DTT.

Net operating losses

Losses calculated under the tax rules may be carried forward against income from the same source for a maximum of ten years, including the year in which the losses arise. Losses cannot be carried back, except for petroleum companies, where losses can be carried back indefinitely.

Payments to foreign affiliates

Transfer pricing rules based on OECD principles apply to transactions with foreign affiliates (both companies and branches/PEs). Additionally, there are restrictions on the deductibility of expenses incurred outside of Kenya by non-residents with a Kenyan PE.

Group taxation

Each company in a group is taxed as a separate entity in Kenya.

Transfer pricing

A company that has related-party transactions is required to ensure such transactions are at arm's length. The company is therefore required to prepare a transfer pricing policy to justify the pricing arrangements. The Commissioner is allowed to specify conditions and procedures on the application of the methods for determining the arm's-length price and to adjust the prices if they do not conform to the arm's-length principle. The policy should be prepared and submitted to the KRA upon request.

Thin capitalisation

In Kenya, a company is thinly capitalised if all of the following occur:

- The company is controlled by a non-resident person alone or together with four or fewer persons.
- The company is not a bank or financial institution.
- The highest amount of all loans held by the company at any time exceeds the sum of three times the revenue reserves (including accumulated losses) and the issued and paid up share capital of all classes of shares of the company.

A company that is thinly capitalised cannot claim a deduction on the interest expense incurred by the company on loans in excess of three times the sum of revenue reserves and issued and paid up capital of all classes of shares of the company. The company also cannot claim a deduction for any foreign exchange loss realised by the company with respect to any loans from its shareholders in the period that the company remains thinly capitalised.

For companies in the extractive sector, the debt-to-equity ratio is 2:1.

Deemed interest

The Kenyan tax legislation gives the Commissioner for Domestic Taxes the discretion to 'deem interest' on interest-free borrowings received by foreign-controlled entities in Kenya. The 'deemed interest' is based on the Commissioner's prescribed rates.

This means that WHT is due on the 'deemed interest' as if this was an actual finance charge. The WHT rate on payments of interest to non-residents is currently 15% (in the absence of a DTT).

Controlled foreign companies (CFCs)

Kenya has no specialised rules regarding CFCs.

However, there are restrictions on the deductibility of interest and foreign exchange losses of companies that are foreign controlled and thinly capitalised.

Tax credits and incentives

Foreign tax credit

There is no tax credit for foreign tax paid on business income except as provided for by a DTT (if applicable) between Kenya and the other country. However, foreign tax paid can be deducted as an expense.

Investment deduction

Qualifying investments exceeding KES 200 million incurred outside Nairobi or the municipalities of Mombasa or Kisumu are allowed an investment deduction of 150%. All other qualifying investments are allowed a 100% investment deduction in the year the asset is put into use.

Export processing zone (EPZ)

Companies located in an approved EPZ, principally to export goods, are taxed at a 0% CIT rate for ten years from its commencement and at a rate of 25% for the next ten years.

Special economic zones (SEZs)

Companies registered under the SEZ Act benefit from a reduced CIT rate of 10% in their first ten years of operation. The CIT rate in the succeeding ten years is then 15%.

The Finance Act, 2017 has introduced the following additional tax incentives to SEZ enterprises, developers, and operators with effect from 1 January 2018:

- Dividends payable to non-residents by SEZ enterprises, developers, and operators are exempt from WHT.
- Management fees, professional fees, training fees, and royalties payable by SEZ enterprises, developers, and operators to a non-resident person shall be subject to WHT at the rate of 5% (down from 20%).
- Interest payments payable by SEZ enterprises, developers, and operators to a non-resident person shall be subject to WHT at the rate of 5% (down from 15%).
- 100% investment deduction allowance for capital expenditure on buildings and machinery by an SEZ enterprise.
- 150% investment deduction allowance for capital expenditure on buildings and machinery by an SEZ enterprise located outside Nairobi and Mombasa counties.
- Supply of taxable goods and services to SEZ enterprises, developers, and operators licensed under the SEZ Act, 2015 are VAT exempt.

It should be noted that the 100% investment deduction is granted to the SEZ enterprise and not the SEZ developer who may have incurred considerable costs in putting up the buildings in the SEZ site.

The reduced CIT rate (of 10% for the first ten years of operation and 15% for the next ten years) for SEZ enterprises, developers, and operators has also been clarified to be applicable whether the SEZ enterprise sells its products to markets within or outside Kenya.

The Miscellaneous Fees and Levies Act, 2016 has also been amended to provide that export levy on the goods listed in the Schedule to that Act shall not apply to exports to SEZs. Goods destined for SEZs shall also be exempt from payment of import declaration fees (IDFs).

Listed companies

Companies listed on the Nairobi Securities Exchange are entitled to reduced rates of income tax for a period depending on the percentage of share capital listed (*see the Taxes on corporate income section for the rates*).

Withholding taxes

WHT is levied at varying rates (3% to 30%) on a range of payments to residents and non-residents. Resident WHT is either a final tax or creditable against CIT. Non-resident WHT is a final tax.

Payments	Resident WHT rate (%)	Non-resident WHT rate (%)
Dividend > 12.5% voting power	Exempt	10
Dividend < 12.5% voting power	5	10
Interest:		
Bearer instruments	25	25

Payments	Resident WHT rate (%)	Non-resident WHT rate (%)
Government bearer bonds (maturity ≥ 2 years)	15	15
Bearer bonds (maturity ≥ 10 years)	10	N/A
Other	15	15
Qualifying interest:		
Housing bonds	10	N/A
Bearer instruments	20	N/A
Other	15	N/A
Royalty	5	20
Winnings from gaming and betting (1)	Varied	Varied
Management or professional fees	5	20
Consultancy fees - Citizen of EAC member states	5	15
Training (including incidental costs)	5	20
Rent/leasing:		
Immovable property	N/A	30
Others (other than immovable)	N/A	15
Pension/retirement annuity	Varied (2)	5
Contractual fees	3	20
Sale of property or shares in oil, mining, or mineral prospecting companies	10	20

Notes

1. The taxation of the betting, lottery, and gaming sector has undergone significant change in Finance Act, 2017. *See the Other taxes section.*
2. This will vary depending on the payments paid out.

Oil and gas sector WHT rates

WHT rates applicable on payments to non-residents in the oil and gas sector are shown in the table below:

Payments	Non-resident (oil and gas) WHT rate (%)
Dividends	10
Interest	15
Natural resource income	20
Management or professional fees	12.5

Double tax treaties (DTTs)

Lower rates may apply to non-residents where there is a DTT in force. The table below shows the maximum rates of tax that recipients in those countries with a DTT with Kenya can be charged on dividends, interest, royalties, and management and professional fees. The table only includes agreements that are currently in force.

	WHT (%)		
Recipient	Dividends	Interest	Royalties and management/ professional fees
Canada	15	15	15
Denmark	20	20 (1)	20
France	10	12	10 (5)
Germany	15	15 (1)	15

	WHT (%)		
Recipient	Dividends	Interest	Royalties and management/ professional fees
India	10 (4)	10 (4)	10 (4)
Iran	5	10	10
Norway	15	20 (1)	20
South Africa	10	10	10 (5)
South Korea	10 (6)	12	10
Sweden	15	15	20
United Arab Emirates	5	10	10
United Kingdom	15	15 (1)	15 (2)
Zambia	0 (3)	0 (3)	0 (3, 5)

Notes

1. Interest paid by the government and the Central Bank of Kenya is tax-exempt.
2. The rate is 12.5% for management and professional fees.
3. No Kenya tax is due if subject to tax in Zambia.
4. These rates are effective from 1 January 2018.
5. Management and professional fees subject to normal WHT rates.
6. 8% if the beneficiary holds at least 25% of the capital of the company paying the dividends.

Where the treaty rate is higher than the non-treaty rate, the lower rate applies.

Treaties awaiting conclusion and/or ratification: Italy, Kuwait, Mauritius, Netherlands, Qatar, Seychelles, Singapore, and Thailand.

Tax administration

Taxable period

A company has discretion to determine its financial year-end, provided it is a 12-month period. However, any changes in this must be approved by the Commissioner of the KRA.

Tax returns

Resident companies and PEs of non-resident companies must file a self-assessment tax return annually. The return is accompanied by a tax computation and financial statements, amongst other schedules. The return is due within six months following a company's financial year-end.

Payment of tax

Instalment tax payments must be made quarterly during the year based on the lower of 110% of the previous year's liability or an estimate of the current year's liability. Agricultural companies are required to pay estimated tax in two instalments of 75% and 25% during the year. Any balance of tax at the end of the year must be paid within four months of the financial year-end.

Payment of agency taxes

The tax withheld from payments must be paid by the 20th day of the month following the month in which the deduction is made.

Penalties for non-compliance

If a self-assessment tax return is not submitted by the due date, a penalty of 5% on the unpaid tax for the year may be imposed, subject to a minimum of KES 20,000. Failure or late submission of an EPZ company return will be subject to a penalty of KES 2,000 per day for as long as the failure continues.

A penalty of 20% and interest at 1% per month are imposed on underestimation and late payment of instalment tax and any balance of tax. Interest is charged only on the principal tax due, capped at the amount of the principal tax due.

Failure to make a deduction or to remit the WHT deducted attracts a penalty equal to 10% of the amount of tax involved (subject to a maximum of KES 1 million) and accrues interest at 1% per month.

Tax Procedures Act (TPA)

The TPA, which entered into force on 19 January 2016, aims to provide uniform procedures for consistency and efficiency in the administration of tax laws, facilitate tax compliance by taxpayers, and promote the effective and efficient collection of tax.

The TPA also harmonises and consolidates tax procedural rules. For example, the TPA provides that a taxpayer should keep records for five years. Previously, the different tax laws, such as the VAT Act 2013, Income Tax Act, and Excise Act, prescribed different timeframes that records should be kept by a taxpayer. Given that it is a relatively new piece of tax legislation, there are some inconsistencies when you mirror the TPA and other tax legislation, though we expect these inconsistencies to be addressed with time.

The Tax Appeal Tribunal Act

The Tax Appeal Tribunal Act, which entered into operation on 1 April 2015, establishes one tribunal that will hear appeals for all tax areas. Previously, income tax matters would be heard by the Local Committee whereas VAT matters would be heard by the Tax Tribunal.

Tax audit process

There is no prescribed audit process, as an audit can be triggered by various factors as determined by the KRA. Generally, tax audits should be carried out after every two to four years. The audit or inspection will commence with a request from the KRA for the taxpayer to make available any such records or information as may be required.

Statute of limitations

The tax authorities must commence an audit before the expiry of seven years after the end of a year of income. The KRA may go back past seven years where fraud is suspected. There is no time limit for completing tax audits. However, they are normally completed within a reasonable time, especially if there are no major disputes.

Topics of focus for tax authorities

- Implementation of an aggressive stop filer and nil filer programme to reverse the trend towards non-filing and non-payment.
- Linking of the counties' databases with KRA systems to facilitate identification of potential tax defaulters from the payers of the various license fees/levies and suppliers of goods and services.

- To detect fraudulent behaviour and potential tax evasion by using risk-based approaches and by providing analytic capability and intelligence information to users for better decision making and revenue growth.

Korea, Republic of

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Significant developments

The main focus of the 2018 Corporate Income Tax Law (CITL) reform is to encourage job creation by reforming the existing tax credits for corporate investment to create jobs and additional incentives to stimulate youth employment. Another focus is placed on strengthening the collection of income tax on high-income earners by expanding tax revenue sources through raising the CIT rate for taxable income over 300 billion Korean won (KRW). In addition, the reform proposals include significant changes that would affect cross-border transactions of multinational companies. In the government's commitment to implement the Organisation for Economic Co-operation and Development's (OECD's) recommendations under the base erosion and profit shifting (BEPS) project, the proposals contain new rules to restrict the deduction for hybrid financial instruments and interest expense deductions.

Taxes on corporate income

Resident corporations are taxed on their worldwide income, whereas non-resident corporations with a permanent establishment (PE) in Korea are taxed only to the extent of their Korean-source income. Non-resident corporations without a PE in Korea are generally taxed through a withholding tax (WHT) on each separate item of Korean-source income (*see the Withholding taxes section*).

The following tax table summarises the CIT rates applicable for the fiscal year starting on or after 1 January 2018:

Tax base (KRW million)		Tax rate *	
Over (column 1)	Less than	Tax on column 1 (KRW) *	Marginal tax rate (%)
0	200	0	10
200	20,000	20	20
20,000	300,000	3,980	22
300,000		65,580	25

* Before applying the local income tax.

Additional tax on corporate income

The tax reform has provided that the 10% additional tax provision introduced in 2015 to facilitate the use of corporate retained earnings to fund facility investment, payroll increase, and dividend payment, which was supposed to be terminated by the end of December 2017, has been extended for three additional years until the end of December 2020 and raised tax rates to 20%. The additional tax shall apply to companies whose net assets exceed KRW 50 billion (excluding small and medium-sized enterprises [SMEs]) and companies belonging to business groups subject to restrictions on cross-shareholdings under the Act on Monopoly Regulation and Fair Trade.

Companies should elect one of the following methods in computing the additional tax:

- ([adjusted taxable income for the year x 65%] - the total amount of facility investment, wage increases, and mutual cooperation payments) x 20%, or
- ([adjusted taxable income for the year x 15%] - the total amount of wage increases and mutual cooperation payments) x 20%.

Agriculture and fishery surtax

When a corporate taxpayer claims certain tax credits or exemptions under the Special Tax Treatment Control Law (STTCL), a 20% agriculture and fishery surtax is levied on the reduced CIT liability.

Minimum tax

Corporate taxpayers are liable for the minimum tax, which is defined as the greater of 10% (if the tax base is KRW 10 billion or less, 12% on the tax base exceeding KRW 10 billion but not more than KRW 100 billion, 17% on the tax base exceeding KRW 100 billion) of the taxable income before certain tax deductions and credits pursuant to the STTCL or the actual CIT liability after various deductions and credits.

For SMEs, the minimum tax is the greater of 7% of taxable income before certain tax deductions and credits or actual CIT liability after the deductions and credits. For middle market companies that exceed the size of SMEs (so-called 'medium-scale companies'), an 8% minimum tax rate is applicable for the first three years, starting from the year when the size exceeds an SME for the first time, and a 9% rate is applicable for the next two years.

Local income tax

The local income tax is a separate income tax that has its own tax base, tax exemption and credits, and tax rates. The local income tax rates for corporations are 1% on the first KRW 200 million, 2% for the tax base between KRW 200 million and KRW 20 billion, 2.2% for the tax base between KRW 20 billion and KRW 300 billion, and 2.5% for the excess.

Corporate residence

A corporation having its head office or principal office in Korea is a resident corporation. A corporation with a place of effective management in Korea is also treated as a resident corporation.

Permanent establishment (PE)

A non-resident corporation is generally deemed to have a tax presence (i.e. PE) in Korea in the following cases, among others:

- It has any fixed place of business in Korea, where the business of the entity is wholly or partly carried on.
- It is represented by a dependent agent in Korea, who has the authority to conclude contracts on its behalf and who has repeatedly exercised that authority.

- Its employee(s) provides services in Korea for more than six months within 12 consecutive months.
- Its employee(s) continuously or repeatedly renders similar services in Korea for two or more years, even if each service visit is for less than six months within 12 consecutive months.

Exceptions to a PE in Korea for a non-resident corporation include fixed places of business used only for purchasing or storage of goods, advertising, publicity, collecting or furnishing of information, or other activities that are preparatory or auxiliary in nature.

Other taxes

Value-added tax (VAT)

VAT is levied at a rate of 10% on the supply of goods and services, except zero-rated VAT on certain supply of goods and services (e.g. goods for exportation, certain eligible services rendered to non-residents earning foreign currency, international transportation service by ships and aircraft) and exemption on certain goods and services (e.g. basic life necessities and services, such as unprocessed foodstuffs and agricultural products; medical and health services; finance and insurance services; duty-exempt goods).

Electronic VAT invoicing is a compulsory requirement. If a taxpayer fails to issue the electronic VAT invoice or report electronically to tax authorities, the relevant penalties shall be imposed.

Customs duties

Customs duties are generally assessed on imported goods. 'Importation' refers to the delivery of goods into Korea (in case of goods passing through a bonded area, delivery of such goods into Korea from such a bonded area) to be consumed or to be used in Korea.

Property tax

An annual property tax ranging from 0.07% to 5% is charged on the statutory value of land, buildings, houses, vessels, and aircraft. Five times the property tax rate is applied to factories that are newly constructed or expanded in a designated metropolitan area for the first five years.

Securities transaction tax

Securities transaction tax (at the rate of 0.5% for unlisted shares or interest) is imposed on the transfer of shares or interest, but the government is authorised to adjust the tax rate in certain circumstances. The flexible tax rate prescribed by the Presidential Decree is 0.3% (including 0.15% of agriculture and fishery surtax) for shares traded on the Korea Stock Exchange and 0.3% for shares traded on the Korean Securities Dealers Automated Quotations (KOSDAQ) or the Korea New Exchange (KONEX).

Acquisition tax

Acquisition tax is charged on the price of real estate, motor vehicles, construction equipment, golf membership, boats, etc. The acquisition tax rate varies depending on the type of assets subject to the tax, ranging from 2% to 7%. A weighted rate is charged on acquisitions in a designated metropolitan area or on acquisition of luxury items, such as villas, golf courses, and yachts.

Stamp tax

Stamp tax is levied on a person who prepares a document certifying establishment, transfer, or change of rights to property in Korea. The stamp tax ranges from KRW 50 to KRW 350,000, depending on the type of taxable document. The electronic stamp system has been implemented to make it mandatory to use stamps bought online rather than paper stamps bought in banks or post offices.

Registration tax

Registration tax ranging from 0.02% to 5% is charged upon the act of registering the creation, alteration, or lapse of property rights or other titles and incorporation with the concerned authorities. Registration tax upon the registration of title or right and incorporation for corporations located in a designated metropolitan area may be subject to three times the normal rate of 0.4%.

Gift tax

Gift tax is imposed on a person who acquires any property or value increase by gift. If CIT or individual income tax is imposed on the gifted property, however, the gift tax shall not be imposed. Gift tax ranges from 10% on not more than KRW 100 million in tax base to the top marginal tax rate of 50%.

Inheritance tax

Inheritance tax is imposed upon a person or a company that acquires property through inheritance or bequest. However, an inheritor that is a for-profit company shall be exempt from the inheritance tax. Inheritance tax rates are the same as those for gift tax.

Payroll taxes

Employers are required to withhold income taxes at source on a monthly basis, finalise their employees' tax liability, and file the final tax settlement receipt with the tax authorities no later than the tenth day of March of the following year.

Social security contributions

There are four types of social security contributions in Korea, namely national pension, national health insurance, employment insurance, and worker's accident compensation insurance. Employers and employees are almost equally required to bear a total amount of 8.5% of salaries for the first three types of social security taxes (i.e. national pension, national health insurance, and employment insurance), while the worker's accident compensation insurance is borne by employers only, which varies by industry, ranging from 0.85% (banking, insurance) to 28.25% (coal mining) of salaries.

Branch income

In general, a branch office of a foreign corporation is taxed in the same manner as resident companies.

Remittance of retained earnings from a Korean branch to its head office is subject to reporting to a designated foreign exchange bank in Korea under the Foreign Exchange Transaction Act.

If the tax treaty between Korea and the country in which a foreign corporation is residing allows the imposition of a branch profits tax, the tax is imposed on the adjusted taxable income of the Korean branch.

Where applicable, the branch profits tax is levied in addition to the regular CIT, which is imposed at the rate of 20% (or at a reduced rate as provided in a treaty) of the adjusted taxable income of the Korean branch.

Income determination

Gross income consists of gains, profits, income from trade and commerce, dealings in property, rents, royalties, and income derived from any transactions carried on for gain or profit.

Inventory valuation

Inventories generally are stated at either the lower of cost or market (LCM) or cost method. Any one of LCM and six cost methods, including specific identification, first in first out (FIFO), last in first out (LIFO), weighted-average, moving-average, and retail method, can be elected for tax purposes. The method elected should be applied consistently each year unless an application for change has been submitted before three months from the year-end. Different valuation methods may be used for different categories (i.e. manufactured goods and merchandised goods, semi-finished goods and goods in process, raw materials, supplies in stock) and different business places.

For inventory costing under Korean International Financial Reporting Standards (K-IFRS), LIFO is not an acceptable accounting method. Consequently, in a year when a taxpayer first adopts K-IFRS and duly reports the change of inventory valuation method from LIFO to one of the other costing methods (e.g. FIFO, weighted average), the taxpayer is allowed to exclude the inventory valuation gain arising from the change and include it in its taxable income over the next five-year period using a straight-line method.

Stock valuation

The valuation of securities or bonds shall be made using the cost method. For the cost method, the weighted-average cost method or moving-average cost method shall be applied for the purpose of valuation of securities, and the specific-identification method may be used for valuation of bonds.

Capital gains

Generally, capital gains are taxed at the same CIT rate as ordinary taxable income. For the purposes of taxation, gross income does not include income derived from gains from capital transactions, such as capital surplus, gains on reduction of paid-in capital, etc. However, gains from treasury stock transactions are taxed, and losses are deductible from taxable income.

Note that capital gains from the disposal of non-business purpose land or houses may be subject to additional capital gains tax at the rate of 10% (40% in the case of non-registered land or houses) in addition to the normal CIT.

Dividend income

All distributions to shareholders are taxed as dividend income, whether paid in cash or in stock.

However, a qualified domestic holding company that owns more than 80% (40% in case of listed subsidiary) share ownership in its domestic subsidiary will receive a 100% deduction for dividends, while an 80% deduction is allowed for share ownership of 80% (40% in case of listed subsidiary) or less. A domestic corporation other than a qualified holding company will also receive a 100% deduction for share ownership of 100%, 50% for more than 50% (30% in case of listed subsidiary) share ownership, and 30% for share ownership of 50% (30% in case of listed subsidiary) or less.

Interest income

Except for certain cases, all interest income must be included in taxable income. Generally, interest income is included in taxable income as it is received.

Rental income

Income from the leasing of property shall be included in taxable income. In cases where a company is subject to an estimated tax by the tax authority due to the absence of books of accounts, the deemed rental income as calculated at a term deposit interest rate on the lease deposit received by the company will be included in taxable income.

Royalty income

Royalties are considered to be taxable income when earned.

Gains and losses on foreign currency translation

Companies are allowed to recognise unrealised gains and losses on foreign currency translation of their monetary assets and liabilities in a foreign currency. This recognition is also allowed with respect to currency forward transactions and swaps to hedge foreign exchange risks of such assets and liabilities. In this regard, a taxpayer can choose whether to recognise unrealised gains and losses or not for tax purposes. Once elected, the same method must be consistently used.

Foreign income

Resident corporations are taxed on their worldwide income. A Korean company is taxed on its foreign-source income as earned at normal CIT rates. To avoid double taxation, taxes imposed by foreign governments on the foreign-source income recognised by a resident company are allowed as a credit against CIT or as deductible expenses in computing the taxable income.

Generally, income of foreign subsidiaries incorporated outside Korea is not included in the taxable income of a resident company until the declaration of dividends from the foreign subsidiaries. Therefore, the Korean tax impact may be delayed through deferring the declaration of dividends unless the controlled foreign corporate (CFC) rule under the Law for Coordination of International Tax Affairs (LCITA) is applied.

The CFC rule provides that the undistributed earnings of a resident company's foreign subsidiary located in a low-tax jurisdiction (where the effective tax rate on the income before tax for the past three years averages 15% or less) are taxed as deemed dividends to the resident company that has direct and indirect interest of 10% or more in such subsidiary. The CFC rule does not apply in cases where a foreign subsidiary has fixed facilities (e.g. office, factory) in a low-tax jurisdiction for the conduct of business, it manages or controls the business by itself, and the business is mainly performed in the jurisdiction. Even in this case, however, where passive income (e.g. income from investment in securities or lending loans) is more than 50% of gross income, the CFC rule shall be applicable. Furthermore, in cases where the passive income is between 50% and 5% of the foreign subsidiary's gross income, the CFC rule will apply in a limited manner (i.e. a CFC's undistributed earnings will be included in taxable income of the CFC's domestic related parties in proportion of such passive income to its gross income). However, dividends will be excluded in calculating the amount of passive income if they are derived from shares issued by the company that is 10% or more owned by a CFC.

If dividends from a qualifying subsidiary are included in taxable income of a resident company, the foreign tax paid by a qualifying subsidiary on the subsidiary's taxable income is eligible for a foreign tax credit in the hands of the resident company regardless of whether there are tax treaties with the relevant foreign countries. For this purpose, a qualifying subsidiary refers to the company in which a resident corporation owns 25% or more of its shares for the period of six consecutive months or more prior to the date of dividend declaration. Unused foreign tax credits can be carried forward for five years.

Deductions

In general, expenses incurred in the ordinary course of business are deductible, subject to the requirements for documentary support.

A corporation's disbursements of more than KRW 30,000 for goods or services provided are required to be supported by qualifying evidences, such as credit card sales vouchers, cash receipts, tax invoices, and those vouchers and invoices stored in the company's enterprise resource planning (ERP) system. The corporation is required to maintain these documents for five years. If the corporation fails to maintain proper evidences, a 2% penalty shall be levied on the amount of disbursement.

Accrued expenses are not deductible until the expenses are fixed or determined.

Depreciation and amortisation

Depreciation of all property, plant, and equipment (PP&E), which includes buildings, machinery, and vehicles, used to generate income is allowed as a deduction for CIT. Generally, interest on debt acquired to purchase, manufacture, or construct PP&E must be capitalised until the PP&E is operational. This does not apply to the interest associated with the expansion or improvement of existing PP&E. A detailed list of fixed assets, gross values (including capitalised interest), the useful lives of the assets, and the current year's depreciation charge must be submitted to the tax authorities when filing the annual CIT return.

The tax law allows the following methods for calculating depreciation:

- Straight-line or declining-balance method for tangible fixed assets, other than plant and buildings.
- Straight-line method for plant, buildings, and intangible assets.
- Service-output or straight-line method for mining rights.

- Service-output, declining-balance, or straight-line method for tangible fixed assets used in mining.

In determining depreciation using a straight-line method, salvage value of the assets is regarded as zero. However, where the declining-balance method is used, 5% salvage value is required. Changes in the depreciation method must be approved by the tax authorities in advance, and such approval may only be obtained in exceptional cases (i.e. merger between two corporations having different depreciation methods). Although the tax law specifies the standard useful lives for each type of assets, the useful life of a fixed asset can be increased or decreased by 25% of the standard useful life at the taxpayer's election. The elected depreciation method and useful life should be consistently applied. Also, a taxpayer can apply for a change to the useful life within 50% of the standard useful life, which requires an approval from tax authorities.

The standard useful life and the scope of elective useful life for assets are provided in the following tables:

Tangible fixed assets	Standard useful life (years)	Scope of elective useful life (years)
Vehicles (excluding those used for transportation businesses and leasing service of machinery, equipment, and consumer goods), tools, equipment, and fixtures	5	4 to 6
Ships and aircraft (excluding those used for fishery, transportation, and leasing service of machinery, equipment, and consumer goods)	12	9 to 15
All buildings and constructions of brick structure, block structure, concrete structure, mud structure, mud wall structure, wooden structure, wooden frame mortar structure, and other structures	20	15 to 25
All the buildings and constructions of steel-frame/iron bar concrete structures, stone structures, brick/stone structures, steel-frame structures	40	30 to 50

Note that machinery and equipment used for specific industries shall be subject to different useful lives from four years (e.g. bag manufacturing) to 20 years (e.g. water supply service).

Intangible fixed assets	Useful life (years)
Goodwill, design rights, utility model rights, trademarks	5
Patents	7
Fishery rights, extraction rights under the law of development of mineral resources at the sea bottom (may elect activity method), right of management for toll roads, water rights, right of use for electricity and gas service facilities, right of use for tap water facilities for industrial use, right of use for general tap water facilities, right of use for heating facilities	10
Mining rights (may elect activity method), right of use for exclusive telegraph and telephone facilities, right of use for exclusive sidetracks, right of management for sewage disposal, right of management for tap water facilities	20
Right of use for dams	50

Note that for used fixed assets (including assets acquired through mergers or spin-offs) that have been used for more than half of their standard useful lives, a new useful life may be filed with the tax authorities of between 50% of the standard useful life and the standard useful life.

According to the CITL, depreciation is allowed for tax deduction only when expensed for book purposes. However, in order to alleviate any dramatic increase in tax burden due to decreased depreciation expenses through the adoption of K-IFRS, additional expense deduction may be allowed through tax adjustment. For tax purposes, depreciable assets acquired on or before 2013 may be depreciated at the rate equivalent to the average of three years before the adoption of K-IFRS. Depreciable assets acquired after 2014 may be depreciated using the tax useful lives only if they are the same type of existing assets used for the same business line and the calculation method of deduction is regulated.

Deduction of company car expenses

For company cars provided to officers or employees (whether owned or leased), the amended CITL includes requirements for a company to have appropriate operation records or sufficient evidence to claim the deduction. The depreciation of a company car is limited to KRW 8 million annually for CIT purpose. In addition, the deduction of company car expenses, including depreciation, shall be disallowed for the portion of private use.

Goodwill

Amortisable goodwill for tax purposes is defined as ‘value transferred with consideration, apart from transferred assets included in business transfer, valuated by taking into account business premium factors of the transferor such as permission/licence, legal privileges, geographical advantages, business secrets, credit, reputation, transaction partners, etc.’. Goodwill shall be amortised over five years using the straight-line method for tax purposes.

Start-up expenses

Start-up expenses, such as incorporation expenses, founders’ salary, and registration fees and taxes, are deductible if the expenses are recorded per the articles of incorporation and are actually paid.

Interest expenses

Interest incurred in the ordinary course of business is deductible as long as the related loan is used for business purposes. There are, however, a number of exceptions to the general rule, as follows:

- If borrowings from a foreign shareholder, or from a third party under a payment guarantee by the foreign shareholder, exceed two times the equity of the relevant foreign shareholder, the paid interest and discount fee as to the relevant excessive portion will be disallowed and further treated as a dividend payment.
- Debenture for which the creditor is unknown.
- Bonds and securities on which recipient of interest is unknown.
- Construction loans and loans for the purchase of land and fixed assets up to the date on which the assets are acquired or completed must be capitalised as a part of the cost of the asset and depreciated over the life of the asset. Interest after the date of completion or acquisition is deductible as incurred.
- Interest on loans related to non-business purpose assets or funds loaned to related parties.
- Interest expense paid to an overseas related company that exceeds 30% of taxable income before depreciation and interest of the domestic company.

Contingent liabilities

In general, contingent liabilities are not deductible, except for reserves under the following items, which are counted as losses within the tax limit:

- Reserves for bad debts.
- Liability reserves and emergency reserves prescribed in the Insurance Business Law.
- Reserves for non-profit organisations.
- Reserves for the write-off of a compensation claim set aside by trust guarantee funds in each business year.

The amounts enumerated below are also counted as losses in calculating income for the business year:

- The amount of gains from insurance claims used to acquire the same kinds of fixed assets as the lost fixed assets, or to improve the damaged fixed assets within two years after the first day of the business year following the business year in which the gains fall.
- The amount of a beneficiary's share of construction costs received by a domestic corporation engaged in the electricity or gas business, etc. used for the acquisition of fixed assets.
- The amount of the national treasury subsidies actually used for acquisition or improvement of fixed assets for business.

Bad debt

For companies that are not financial institutions, a doubtful accounts reserve is allowed as a deduction for tax purposes at the greater of 1% on the tax book value of the receivables at a year-end or actual bad debt ratio (deductible bad debts in a current year divided by the preceding year's tax book value of receivables). Bad debts are allowed as a deduction when certain legal proceedings are satisfied or the statute of limitations has lapsed.

Charitable contributions

Donations to public interest entities, such as government authorities and social welfare organisations, as well as donations for academic research, technical development, etc., are classified as *Bub-jung* donations. *Bub-jung* donations are tax-deductible at up to 50% of the total taxable income for the concerned fiscal year after deduction of net operating loss (NOL). *Ji-jung* donations to public entities prescribed by the CITL are also tax-deductible at up to 10% of the total taxable income for the fiscal year after the deduction of deductible *Bub-jung* donations and NOL.

The amount in excess of such limit may be carried over for five years. Donations other than the statutory donations above will not be deductible for tax purposes.

Employee remuneration

There is no statutory limit for employee remuneration as long as it is reasonable, which includes salaries, wages, stipends, bonuses, retirement payments, pensions, and meal and housing allowances, as well as all other kinds of subsidies, payments, and compensation. Remuneration of foreign employees is determined according to their engagement contracts.

Pension expense

Employers hiring one or more employees are required to set aside severance pay or retirement pensions for their employees. Defined contribution (DC) and defined benefits (DB) are the two available schemes for the retirement pension system. Under the DC scheme, the premiums paid by the employer are deductible upon payment, while deductions for the reserve under the DB scheme are subject to a limit.

Payment for directors

Bonuses paid to directors in excess of the amount determined in the articles of incorporation or at a shareholders' meeting, etc. are not deductible. Also, severance benefits paid to directors in excess of the amount prescribed in the tax law are not deductible.

Entertainment expenses

Entertainment expenses of more than KRW 10,000 on an event basis must be supported by corporate credit card vouchers, cash receipts, or tax invoices in order to be deductible. In addition, the entertainment expenses in excess of the tax limit are not deductible.

The deductible limit for entertainment expenses in a business year is computed as:

- an amount calculated by multiplying KRW 12 million (KRW 18 million [temporarily increased to KRW 24 million for the tax years beginning on or after 1 January 2015 and ending on 31 December 2018] for an SME) by the number of months in the respective business year divided by 12, plus
- an amount calculated by multiplying the amount of gross receipts for a business year by the rates listed in the following table (in the case of receipts from transactions between related parties, 10% of the amount calculated by multiplying the receipts by the following rates shall be applied).

Amount of gross receipts (KRW)	Rate
10 billion or less	0.2%
Over 10 billion up to 50 billion	KRW 20 million + 0.1% of the excess over KRW 10 billion
Greater than 50 billion	KRW 60 million + 0.03% of the excess over KRW 50 billion

Insurance premiums

Insurance premiums paid to an insurance company are deductible if the business enterprise is the listed beneficiary. Insurance premiums for which the beneficiary is the employee are also deductible; however, they are treated as salaries for the employees and are subject to WHT on earned income (this excludes the severance insurance premium or social security taxes that are borne by employers).

Fines and penalties

Fines, penalties, and interest on underpayment of taxes are not deductible.

Taxes

Income taxes are generally not deductible in determining income subject to CIT.

Net operating losses (NOLs)

In general, an NOL carryover is allowed for ten years. The amended CITL restricts a company from deducting the NOL in excess of 70% (60% for the fiscal year beginning 1 January 2019 and thereafter) of the taxable income of fiscal year starting 1 January 2018 and ending 31 December 2018. The CITL maintains the current restriction on a foreign corporation from deducting the NOL in excess of 80% of the taxable income. However, SMEs and certain qualifying companies under recovery process, etc., which will be exempt from this rule, are allowed to deduct the NOL without limitation.

Generally, loss carrybacks are not allowed. However, SMEs can carry back an NOL for one year.

Payments to foreign affiliates

With sufficient supporting documentation and under the arm's-length principle, interest, royalty, and management service fees paid to foreign affiliates are deductible for CIT purposes.

Under the LCITA, the following conditions must be met in order for a management service fee charged by a foreign related party to a domestic company to be deductible:

- The services must be provided based on an agreement entered into by the service provider prior to the service transaction.
- The provision of the service can be verified by a schedule of services, description of services, description of the company providing services and its employees, detailed explanation of expenses incurred, and other supporting documentation.
- A company must be able to anticipate the company's additional profit or reduced expense through the services provided by a foreign affiliate.
- Payment for the provided services should be consistent with arm's-length standards.

Group taxation

The consolidated corporate tax filing system can be adopted for a domestic corporation in cases where two or more wholly-owned subsidiaries exist. A taxpayer may elect the consolidated filing scheme upon approval from the tax authorities, but it cannot be revoked for at least five years after the election of the consolidated tax filing.

Transfer pricing

The LCITA authorises the tax authorities to adjust the transfer price based on an arm's-length price and to determine or recalculate the taxable income of a domestic company (including PE of a foreign company) when the transfer price for the transaction between the domestic company and its foreign related party is either below or above an arm's-length price.

The LCITA lists the following methods for determining an arm's-length price: the comparable uncontrolled price (CUP) method, the resale price method, the cost-plus method, the profit-split method, the transactional net margin method, and other reasonable methods. Other reasonable methods can be used only if it is unfeasible to apply one of the aforementioned methods.

The method used and the reason for adopting that particular one for an arm's-length price determination must be disclosed to the tax authorities by a taxpayer in a report submitted along with the taxpayer's annual tax return.

Transfer pricing documentation requirement

In line with the OECD BEPS Action 13, the LCITA includes a reporting requirement for multinational companies in Korea to submit a consolidated report (including local file and master file) on their cross-border, related-party transactions, affecting not only Korean corporations but also foreign corporations having a PE in Korea that meet all of the following conditions: (i) annual gross sales of an individual entity exceeding KRW 100 billion and (ii) international related-party transactions exceeding KRW 50 billion per year. Required information to be submitted for reporting includes organisation, business, intangible assets, related-party transactions, etc. relating to the group and the local entity. Failure to comply with the reporting requirement will result in a penalty.

The amended Law for the LCITA introduces the requirement to submit country-by-country (CbC) reporting following the implementation of the new transfer pricing rules requiring multinationals in Korea to submit local files and master files on their cross-border transactions. The CbC report must be filed within 12 months after the end of the ultimate parents' income tax year. This rule is applicable to the required information for fiscal years starting on or after 1 January 2017.

Thin capitalisation

In cases where a Korean company borrows from its foreign-controlling shareholder and the debt-to-equity ratio exceeds 2:1, a portion of interest payable on the excess borrowing is characterised as dividends subject to Korean WHT (reduced rate if a tax treaty applies) while being treated as non-deductible in computing taxable income.

In line with the OECD's recommendation on the limitation of interest expense deductions (BEPS Action 4), the new rule shall restrict interest deduction on top of the existing thin capitalisation rule. Deduction of net interest (i.e. the amount of interest expense paid to overseas related parties minus the interest income received from overseas related parties) claimed by a domestic company for international transactions will be limited to 30% of the adjusted taxable income (i.e. taxable income before depreciation and net interest expenses) of the domestic company. This will be implemented from the fiscal year beginning on or after 1 January 2019.

Controlled foreign corporations (CFCs)

Under the Korean CFC rule, when a Korean national directly or indirectly owns at least 10% in a foreign corporation and the foreign company's average effective income tax rate for the three most recent consecutive years is 15% or less, the undistributed earnings of the CFC shall be deemed to be paid as a dividend to the Korean national and subject to tax in Korea.

For more information on the CFC rule, see Foreign income in the Income determination section.

Deduction limit on hybrid financial instruments

In a commitment to implement the hybrid mismatch rules recommended by the OECD (BEPS Action 2), a new rule shall limit expense deductions for hybrid mismatch arrangements. Hybrid financial instruments include financial instruments that have debt or equity positions at the same time but are treated as a debt in one country but treated as an equity in the other country (e.g. participating bonds). In principle, expense deduction will be denied for the amount of payment that is not taxed in a counterpart jurisdiction. This rule will apply for the fiscal year beginning on or after 1 January 2018.

Related-party transactions

Under the provision of the CITL, the tax authorities may recalculate the corporation's taxable income when CIT is unreasonably reduced due to transactions with related parties. Generally, if the discrepancy between the transaction price and fair market value exceeds 5% of the fair market value or KRW 300 million, the transaction will be subject to this provision.

Tax credits and incentives

Foreign tax credit

Taxes imposed by foreign governments on income recognised by a resident taxpayer are allowed as a credit within the limit against the income taxes to be paid in Korea, or as deductible expenses in computing the taxable income. The excess foreign tax credit can be carried forward five years.

Indirect foreign tax credit is also available for a Korean parent company in cases where the dividends from a foreign subsidiary are included in the taxable income of the Korean parent company. The conditions on indirect tax credit exclude the overseas grandson subsidiary and raise the shareholding ratio from 10% or more to 25% or more.

Special tax deductions for SMEs

A special deduction on corporate taxes is available for SMEs when they are engaged in a qualified business. The tax deduction ratio ranges from 5% to 30%, depending on corporate location, size, business types, etc., with a cap of KRW 100 million. This incentive is applied to taxable income arising in the tax years that end before 31 December 2020.

Investment incentives

Tax credits are generally available for qualified investment in facilities for productivity enhancement, safety, job-creating investments, etc.

Tax credit for investment in facilities for productivity enhancement

If a resident makes an investment in facilities or equipment to increase productivity by no later than the end of December 2019, then 1% (3% for medium-scale companies and 7% for SMEs) of such investment amount shall be deducted from CIT. The unused tax credit can be carried forward to the next five years.

Tax credit for investment in facilities for safety

If a resident or a domestic corporation makes an investment in a facility (excluding any investment in used assets) for safety that is considered necessary for industrial purposes no later than the end of December 2019, then an amount of 1% (3% for medium-scale companies and 7% for SMEs) of such investment shall be deducted from CIT. The unused tax credit can be carried forward to the next five years.

Tax credit for investment for commercialisation of new growth-engine and core technologies

The amended tax law has introduced a new tax credit in respect of investment in facilities designed to promote the commercialisation of new growth-engine or core technology (e.g. facilities for the manufacturing of new drugs for which patents are obtained by a company based on clinical trials). The tax credit rate is 10% of the amount of investment for SMEs, while the rates are adjusted to 7% for medium-scale companies and 5% for large corporations. This tax credit is applied to investment made until the end of December 2018.

Tax credit for job creation

The STTCL has introduced an employment-promoting tax incentive in respect of new employment depending on the number of increased employees, with certain limits if a company is engaged in businesses except for those that fall under the category of consumption-oriented services (e.g. entertainment and beverage service). This incentive is based on the scheme of having redesigned those tax credits for job-creating investment and to support youth job creation. The amount of tax credit varies: up to KRW 11 million per new employee for SMEs, up to KRW 7 million for medium-scale companies, and up to KRW 3 million for large companies. The proposed change will be temporarily available for two years (one year for large companies) from the year beginning on or after 1 January 2018. The unused tax credit can be carried forward to the next five years.

Tax credit for increase in corporate payroll

The tax law applies tax credits (5% for large companies, 10% for medium-scale companies, and 20% for SMEs) on the incremental amount in average corporate payroll over a certain base level calculated in a prescribed manner by taking into account either the average corporate payroll over the previous three years or the average payroll increase among the SMEs in Korea. This is conditional on there being no decline in the number of full-time employees from the previous year. The tax credit, which was supposed to terminate by the end of December 2017, has been extended three additional years until the end of December 2020. The unused tax credit can be carried forward to the next five years.

Tax credit for re-hiring retired female employees of SMEs

The tax law allows a tax credit to promote the re-employment of female employees of SMEs who retired for pregnancy, childbirth, or care and other personal reasons as prescribed in the Presidential Decree. The tax credit is designed to allow SMEs to subtract the amount, as much as 30% of labour costs of SMEs (15% for a medium-scale companies) paid per re-hired female employee, from their corporation tax payable for the period of two years following the month of re-employment if prescribed conditions are met. The tax credit, which was supposed to terminate by the end of December 2017, has been extended to apply if a company executes an employment contract until the end of December 2020. The unused credit can be carried forward to the next five years.

Research and development (R&D) tax incentives

The STTCL provides various tax incentives to stimulate R&D activities. These include a tax credit for research and manpower development expenses, a tax credit for technology transfer, and tax credits for merger or acquisition of a technology innovative SME.

Tax credit for development of research and manpower

Companies presently claim a tax credit in relation to qualifying R&D expenditure to the extent of either (i) 0% to 2% (8% for medium-scale companies, 25% for SMEs) of the current R&D expenses or (ii) 25% (40% for medium-scale companies, 50% for SMEs) of the incremental portion of the current R&D expenses over the previous year. The incremental method can be applied only when the R&D expenses for the prior year exceed the average R&D expenses for the previous four years. However, for the R&D expenditures in qualified new growth engine and core technology areas designated in the presidential decree, the preferred credit rates are applied 20% to 40%, depending on the type of company. The unused credit can be carried forward to the next five years.

Tax credit for technology transfer among SMEs (Korean patent box regime)

Tax credit and reductions have been introduced to facilitate the transfer of technology between companies so as to enhance technical competencies and the recovery of funds invested in technology more efficiently. CIT on income derived by SMEs and specified medium-scale companies from the transfer of patents, etc. to a Korean national is reduced by 50%. The tax law grants a 25% tax credit for income derived by SMEs and medium-scale companies from the leasing of patents or utility model rights where the company has first filed a registration of such rights. The tax credit is 5% (10% for SMEs) of the amount paid to acquire patents, etc. (ceiling at 10% of CIT). This temporary credit is applicable to transfers, purchases, or leases taking place until the end of December 2018. The unused credit can be carried forward to the next five years.

Tax credit for merger or acquisition of a technology innovative SME

In cases where a domestic company merges with a technology innovative SME in a qualified manner, the merger company shall be permitted to take a 10% tax credit with respect to the payment made in such a merger, up to the value of the acquired technology. This 10% tax credit will also be available for a company that acquires shares in a technology innovative SME in a qualified manner no later than the end of December 2018. In this case, if any of requirements for a qualified manner fails to be met, the amount of tax credited will be collected. The unused credit can be carried forward to the next five years.

Tax credit for investment in facilities for technology and human resources development

A corporation purchasing facilities no later than 31 December 2018 prescribed in the Presidential Decree with the purpose of R&D and job training is eligible for a tax credit of up to 1% (3% for medium-scale companies, 6% for SMEs) of such investment. The unused tax credit can be carried forward five years.

Energy/environmental incentives

Tax credit for investment in energy-saving facilities

If a resident makes an investment (excluding any investment in used goods) no later than 31 December 2018 in energy-saving facilities, 1% (3% for medium-scale companies, 6% for SMEs) of such investment shall be deducted from CIT. The unused tax credit can be carried forward five years.

Tax credit for investment in facilities for environmental protection

If a resident makes an investment (excluding any investment in used goods) in any facility for the purpose of environmental conservation no later than 31 December 2018, then 3% (5% for medium-scale companies, 10% for SMEs) of the investment amount shall be deducted from CIT. The unused tax credit can be carried forward five years.

Inbound investment incentives

The Korean government provides various incentives and benefits for inducing foreign investment under the Foreign Investment Promotion Law.

Among others, foreign-invested companies that engage in certain qualified high-technology businesses can apply for 100% exemption from CIT for five years, beginning from the first year of profitable operations (from the fifth year, if not profitable until then) and a 50% reduction for the following two years in proportion to the foreign shareholding ratio. An exemption from WHT on dividends, which was available for foreign investors in the same manner as above during the same grace period, is no longer granted for tax exemption applications filed on or after 1 January 2014. However, the WHT exemption on dividends already approved will not be affected by the tax law change. In addition, the taxpayer can apply for 100% exemption from acquisition tax and property tax on assets acquired for their exempt business for five years after the business commencement date and 50% reduction for the following two years. For local tax exemption, some local governments grant longer exemption periods (up to 15 years) and higher exemption ratios in accordance with their local ordinances. Qualified foreign investment also can be eligible for exemption from customs duties, VAT, and individual consumption tax on imported capital goods.

In addition, foreign investors satisfying specified criteria are provided with tax incentives and other benefits for investment in specially designated areas, including foreign investment zones (FIZs), free economic zones (FEZs), free trade zones (FTZs), and strategic industrial complexes exclusively developed for foreign invested companies. The tax incentives for qualifying foreign investors in individual type FIZs and FEZs and certain strategic industrial complexes that are approved by the related committee under laws governing the operation of the zones are similar to those of the above foreign invested high-tech companies. Qualifying investors in complex type FIZs, FEZs, FTZs, and strategic industrial complexes may receive the 100% exemption from corporate or individual income tax as well as local taxes for the first three years and 50% reduction for the next two years. They also receive exemption from customs duties on imported goods.

The amended tax law has reformed the scope of businesses eligible for foreign investment tax incentives to be aligned with those that qualify for the foregoing R&D tax credit. This change is applied to foreign investment for which tax incentive is applied on or after 7 February 2017.

To receive tax incentives for inbound investment, an application for tax incentives, together with supporting documents, should be filed with the tax authorities by the end of the fiscal year that the business commencement date belongs to. In addition, foreign investment made via specific countries is excluded from the exemption from corporate or individual income tax and local taxes for inbound investment. They include those countries with which Korea has not entered into income tax treaties (including tax information exchange agreements [TIEAs] and investment promotion and protection agreements), such as Botswana, Republic of Cyprus, Dominican Republic, Guatemala, Lebanon, Nauru, Niue, Seychelles, and Trinidad and Tobago.

Foreign direct investment (FDI) incentive limitations

The FDI credit limits incentives granted to qualified FDIs. The ceiling has been set to encompass both investment amount and job-creation. In terms of investment amount, the level of incentives for FDI is allowed up to 50% of the aggregated FDI amount for companies benefiting from a seven-year incentive period (40% ceiling for companies enjoying a five-year incentive period). In terms of job-creation, the level of incentives for FDI is allowed up to 50% of the aggregated FDI amount for companies benefiting from a seven-year incentive period (40% for companies enjoying a five-year incentive period) based on the number of employees.

Companies that have enjoyed tax benefits based on job-creation will be subject to tax assessment in cases where there is a net decrease in employment within the subsequent two years in comparison to the year that the relevant tax credit was obtained.

Withholding taxes

Foreign corporations with income derived from sources in Korea are subject to CIT on such income. If the foreign corporation has no 'domestic place of business' in Korea, it will be subject to tax on its Korean-source income on a withholding basis in accordance with the tax laws and the relevant tax treaty, if applicable. Any Korean-source income attributable to a domestic fixed place of business of a foreign corporation will be subject to Korean CIT.

For residents of countries having a tax treaty with Korea, reduced WHT rates may apply. An application form must be submitted to the withholding agents in order to apply the treaty rate. If a beneficiary cannot be identified in the application form, the withholding agents should withhold the tax at the non-treaty rate.

For dividends, interest, and royalties, the WHT rates are limited as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations (1)	0	14/25	0
Resident individuals (1)	14	14/25/30	0
Non-resident corporations and individuals:			
Non-treaty (2)	20	14/20 (35)	20 (38)
Treaty:			
Albania	5/10 (8)	10	10
Algeria	5/15 (8)	10	2/10 (14)
Australia	15	15	15
Austria	5/15 (8)	10	2/10 (14)
Azerbaijan	7	10 (36)	5/10 (21)
Bahrain	5/10 (8)	5	10
Bangladesh	10/15 (3)	10	10
Belarus	5/15 (8)	10	5
Belgium	15	10	10
Brazil	10	10/15 (5)	10/25 (6)

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Brunei	5/10 (8)	10	10
Bulgaria	5/10 (7)	10	5
Canada	5/15 (8)	10	10
Chile	5/10 (8)	10/15 (30)	5/15 (32)
China, People's Republic of	5/10 (8)	10	10
Colombia, Republic of	5/10 (11)	10	10
Croatia	5/15 (8)	5	0
Czech Republic	5/10 (8)	10	10
Denmark	15	15	10/15 (4)
Ecuador	5/10 (3)	12	5/12 (21)
Egypt	10/15 (8)	10/15 (9)	15
Estonia	5/10 (8)	10	5/10 (32)
Ethiopia	5/8 (8)	7.5 (36)	5
Fiji	10/15 (8)	10	10
Finland	10/15 (8)	10	10
France	10/15 (3)	10	10
Gabon	5/15 (8)	10	10
Georgia	5/10 (3)	10	10
Germany	5/15 (8)	10	2/10 (14)
Greece	5/15 (8)	8	10
Hong Kong	10/15 (8)	10	10
Hungary	5/10 (8)	0	0
Iceland, Republic of	5/15 (8)	10	10
India	15	10	10
Indonesia	10/15 (8)	10	15
Iran	10	10	10
Ireland, Republic of	10/15 (3)	0	0
Israel	5/10/15 (12)	7.5/10 (13)	2/5 (14)
Italy	10/15 (8)	10	10
Japan	5/15 (8)	10	10
Jordan	10	10	10
Kazakhstan	5/15 (3)	10	2/10 (14)
Kenya	8/10 (8)	12	10
Kuwait	5	5	15
Kyrgyzstan	5/10 (8)	10	5/10 (32)
Laos	5/10 (3)	10	5
Latvia	5/10 (8)	10	5/10 (32)
Lithuania	5/10 (8)	10	5/10 (37)
Luxembourg	10/15 (8)	10	10/15 (15)
Malaysia	10/15 (8)	15	10/15 (16)
Malta	5/15 (8)	10	0
Mexico	0/15 (17)	5/15 (18)	10
Mongolia	5	5	10
Morocco	5/10 (8)	10	5/10 (19)
Myanmar	10	10	10/15 (4)
Nepal	5/10/15 (31)	10	15
Netherlands	10/15 (8)	10/15 (20)	10/15 (21)
New Zealand	15	10	10
Norway	15	15	10/15 (21)

Korea, Republic of

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Oman	5/10 (3)	5	8
Pakistan	10/12.5 (11)	12.5	10
Panama	5/15 (8)	5	3/10 (32)
Papua New Guinea	15	10	10
Peru	10	15	10/15 (39)
Philippines (2)	10/25 (22)	10/15 (23)	10/15 (24)
Poland	5/10 (3)	10	5
Portugal	10/15 (8)	15	10
Qatar	10	10	5
Romania	7/10 (8)	10	7/10 (21)
Russia	5/10 (25)	0	5
Saudi Arabia, Kingdom of	5/10 (8)	5	5/10 (32)
Serbia	5/10 (8)	10	5/10 (19)
Singapore	10/15 (8)	10	15
Slovak Republic	5/10 (8)	10	0/10 (33)
Slovenia	5/15 (8)	5	5
South Africa (2)	5/15 (8)	10	10
Spain	10/15 (8)	10	10
Sri Lanka	10/15 (8)	10	10
Sweden	10/15 (8)	10/15 (10)	10/15 (21)
Switzerland	5/15 (3)	5/10 (18)	5
Tajikistan	5/10 (8)	8	10
Thailand (2)	10	10/15 (26)	5/10/15 (34)
Tunisia	15	12	15
Turkey	15/20 (8)	10/15 (27)	10
Turkmenistan	10	10	10
Ukraine	5/15 (11)	5	5
United Arab Emirates	5/10 (3)	10	0
United Kingdom	5/15 (8)	10	2/10 (14)
United States (2)	10/15 (29)	12	10/15 (28)
Uruguay	5/15 (11)	10	10
Uzbekistan	5/15 (8)	5	2/15 (14)
Venezuela	5/10 (3)	5/10 (18)	5/10 (32)
Vietnam	10	10	5/15 (21)

Notes

1. Dividends and interest paid to resident individuals by corporations generally are subject to a 14% WHT rate. In addition to this, there is a resident surtax of 10% on the CIT liability.
2. In addition to the indicated tax rate, a resident surtax is charged at a rate of 10% of the respective tax rate.
3. Lower rate applies in case of equity ownership of 10% or more.
4. 10% rate applies to royalties paid for the use of or the right associated with industrial activities.
5. 10% rate applies if the loan period extends to seven years or more, the recipient is a financial institution, and the loan is used for certain designated purposes.
6. 25% rate applies to royalties associated with the use of trademarks or trademark rights.
7. 5% rate applies in case of equity ownership of 15% or more.
8. Lower rate applies in case of equity ownership of 25% or more.
9. 10% rate applies if the term of loans exceeds three years.
10. 10% rate applies when a recipient of interest income is a bank and income is connected with a loan with a term in excess of seven years.
11. Lower rate applies in case of equity ownership of 20% or more.
12. 5% rate applies if a recipient holds 10% or more ownership in a paying corporation but, even in case of 10% or more ownership, 10% rate applies if the dividends are paid out of profits subject to tax at a

lower rate than the normal corporate tax rate of a country where a payer resides. In other cases, 15% rate applies.
13. 7.5% rate applies when a recipient of interest income is a bank or a financial institution.
14. 2% rate applies to royalties paid for use of or the right to use industrial, commercial, or scientific equipment.
15. 10% rate applies if it is for the use of or the right to use industrial, commercial, and scientific equipment or information.
16. 15% rate applies if royalties are for use of or the right to use cinematography films or tapes for radio or television broadcasting or any copyright of literary or artistic work.
17. 0% rate applies in case of equity ownership of 10% or more.
18. 5% rate applies if a recipient is a bank.
19. 5% rate applies to royalties for use of copyrighted literature and music.
20. 10% rate applies if the term of the loans exceeds seven years.
21. Lower rate applies if it is for the use of or the right to use a patent, trademark, design, or secret formula, or industrial, commercial, and scientific equipment or information.
22. 10% rate applies in cases of equity ownership of 25% or more, or dividend paid by a resident company engaged in a preferred pioneer area and registered with the Board of Investment.
23. 10% rate applies in cases where the interest is paid in respect of public offering of bonds, debentures, or similar obligations or interest paid by a company that is a resident of the Philippines, registered with the Board of Investment, and engaged in preferred pioneer areas of investment under the investment incentive laws.
24. 10% rate applies in case of royalties paid by a company that is a resident of the Philippines, registered with the Board of Investment, and engaged in preferred pioneer areas of investment under the investment incentives laws.
25. 5% rate applies if a recipient holds 30% or more of equity interest in the amount of at least 100,000 United States dollars (USD).
26. 10% rate applies if a beneficial owner of the income is a financial institution (including insurance company) or resident of Thailand who is paid with respect to indebtedness arising as a consequence of a sale on credit by a resident of Thailand of any equipment, merchandise, or services, except where the sale was between persons not dealing with each other at arm's length.
27. 10% rate applies if the term of the loan exceeds two years.
28. 10% rate applies to royalties for use of copyrighted literature, music, films, and television or radio broadcasts. Otherwise, 15% rate applies.
29. 10% rate applies if equity ownership is 10% or more and not more than 25% of the gross income of a paying corporation for a preceding tax year consists of interest or dividends.
30. 10% rate applies when a recipient of interest income is a bank or an insurance company.
31. 5% rate applies when a recipient holds 25% or more of equity interest, and 10%, when a recipient holds 10% or more of equity interest. In other cases, 15% rate applies.
32. 5% rate applies to royalties paid for the use of or the right associated with industrial, commercial, or scientific equipment.
33. 0% rate applies to royalties paid for the use of academic rights.
34. 5% rate applies to royalties paid for the use of or the right associated with any copyright of literary, artistic, or scientific work, including software, and motion pictures and works on film, tape, or other means of reproduction for use in connection with radio or television broadcasting. 10% rate applies to royalties paid for the use of or the right to use a patent, trademark, design or model, plan, secret formula, or process. 15% rate applies to royalties paid for the use of or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
35. 14% rate applies if interest arises from bonds issued by a Korean company or government bodies.
36. 0% rate applies if a recipient of interest income is government, central bank, etc.
37. 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment.
38. Fees arising from rental of industrial, commercial, scientific equipment, etc. are classified as rental income subject to 2% WHT.
39. 10% rate applies to royalties paid for technical support.

If a foreign company is located in a foreign jurisdiction designated as a tax haven by the Minister of Strategy & Finance, any Korean-source income of such foreign company will be subject to the domestic withholding rate of 20% regardless of whether or not the foreign company is resident of a treaty country. Currently, only Labuan is designated as such a jurisdiction. The foreign company may claim a refund of any excess WHT paid within three years if it proves to the Korean Tax Office that it is entitled to the reduced treaty rates as the substantive and beneficial owner of the income. Alternatively, a foreign company may attempt to seek a pre-approval in order to have the treaty benefits apply upfront by making an application to the Commissioner of Taxation.

Tax administration

Taxable period

In Korea, the taxable year is on a fiscal-year basis as elected by the taxpayer. However, it cannot exceed 12 months.

Tax returns

A corporation must file an interim tax return with due payment for the first six months of the fiscal year, and the filing/payment must be made within two months after the end of the interim six-month period.

A corporation must file an annual tax return with due payment for the fiscal year, and the filing/payment must be made within three months (four months for the consolidated tax return) from the end of the fiscal year. In case the external audit is not completed and the financial statements are not fixed, a corporation can request for extension of tax filing by one month with delinquent interest of 1.8% *per annum*.

Payment of tax

Where the tax amount to be paid by a resident corporation is in excess of KRW 10 million, part of the tax amount to be paid may be paid in instalments within one month of the date of the expiration of the payment period (two months for SMEs).

Where the tax amount to be paid is KRW 20 million or less, the excess of KRW 10 million may be paid in instalments; and where the tax amount to be paid exceeds KRW 20 million, 50% or less of the tax amount may be paid in instalments.

Functional currency

In instances where the taxpayer adopts to use a foreign currency as its functional currency, there are three ways to calculate the CIT base: (i) calculate the tax base using the financial statements in functional currency and translate it into Korean won; (ii) prepare the financial statements in Korean won and calculate the tax base; or (iii) translate the financial statements into Korean won and calculate the tax base. Once elected, the same method must be consistently used.

Tax audit process

For large companies whose sales revenue exceeds KRW 300 billion, a tax audit will be conducted every five years. Other companies are selected by certain standards, which were announced by the National Tax Service (NTS). An official notification of an intended tax audit must be made 15 days prior to the audit.

Statute of limitations

The statute of limitations is generally five years from the statutory filing due date of the annual CIT return. However, the statute of limitations is extended further in the following cases:

- Seven years if a taxpayer does not file its tax base by the statutory due date.
- Ten years if a taxpayer evades taxes by fraud or unjustifiable means.
- 15 years for fraud or unjustifiable means involving cross-border transactions. For this purpose, a ‘cross-border’ transaction means when a party or parties to the transaction include(s) non-resident(s) or foreign corporation(s) (excluding domestic business places of non-resident(s) or foreign corporation(s)).

Period of extinctive prescription for collection of national taxes

The period of extinctive prescription for collection of national taxes is five years (ten years for national tax payable worth KRW 500 million or more) from the date on which the government's right to collect a national tax becomes exercisable. Along with the five-year extinction prescription period of national tax collection, the extinction prescription period of tax refund request of taxpayers is extended to five years, which was previously three years from the tax return filing due date, effective for tax refund requests made on or after 1 January 2015.

Topics of focus for tax authorities

The recent topics of focus for tax authorities are as follows:

- Implementation of new tax information reporting systems as planned in the BEPS project.
- Increased tax audit on tax avoidance through internal transactions or gifts among group companies and major shareholders.
- Increased scrutiny over the prevention of offshore tax evasion through a cross-border tax information exchange program.
- Selection of tax audit targets through a sophisticated analysing and verification system and expansion of the number of corporate taxpayers subject to the regular five-year period audit cycle.
- New provision in the National Tax Basic Law to add accounting credibility to the existing tax audit selection criteria. Accounting credibility includes auditor's opinion, hours spent for external audit, etc.
- Increased application of forensic and electronic audit schemes and use of big data analysis to examine potential tax avoidance.

Additionally, the tax policy that the newly elected president has pledged during his campaign should be noted. To finance spending on expanded social welfare investment, the taxation systems on corporate taxpayers and high income earners are expected to be reinforced.

Other issues

Exchange controls

Most transactions involving foreign exchange generally do not require approval or reporting under the Foreign Exchange Transaction Act (FETA), with a few exceptions as prescribed by the FETA. Receipt of foreign exchange from outside Korea is freely permitted, and payments to foreign companies are not regulated. Most restrictions on Korean companies' foreign currency transactions with foreigners have been removed. However, the government continues to monitor certain flows of foreign currency in an attempt to minimise incoming speculative currency and outgoing capital flight.

Advance reporting is required for most capital transactions. For example, foreign currency loans obtained by a Korean resident or loans provided by a Korean resident to an overseas resident should be reported in advance. Foreign currency deposits should also be reported in advance. The agency to which the reporting should be made again differs based on materiality of the transaction amount or transaction type.

In addition, reporting in advance to the appropriate agency is required for the netting of receivables and payables with a foreign resident, third party payments where a payment is made to a foreign resident other than the transaction counterpart, and cross calculation, which is similar to netting, but the concerned company opens a bank account in which the offsetting takes place for future receivables and payables.

Ever since Korea's currency crisis, most restrictions on short-term as well as mid and long-term borrowings from overseas by corporations have been removed. Most foreign currency loans are allowed and are subject to reporting to a foreign exchange bank. There are no specific regulations, except the reporting requirements, on borrowings from overseas by foreign investment companies in Korea.

Automatic exchange of tax information

The Korea-United States (US) agreement on Automatic Exchange of Tax Information was ratified by the National Assembly on 7 September 2016. Based on the agreement, the tax authorities of both countries collect financial information on financial accounts held by individuals and entities and exchange this information. Korea-based financial institutions conduct their Foreign Account Tax Compliance Act (FATCA) due diligence procedures and report information on certain financial accounts held by US individuals and entities to the NTS, and then, the NTS will report this information to the US Internal Revenue Service (IRS). The type of information generally includes the name, address, tax identification number, account number, account balance as of the end of a relevant reporting period, and gross amount of income (such as interest and dividends).

Starting from 2017, Korea has exchanged with 53 countries, including the United Kingdom, Cayman Islands, British Virgin Islands, etc., certain information on financial accounts and income according to the Multilateral Competent Authority Agreements (MCAA). From 2018, Korea has exchanged such information with more countries because additional countries, including Switzerland, Singapore, etc., signed the MCAA. The NTS should be motivated to actively mobilise its infrastructure to exchange offshore financial and non-financial tax information for the purpose of pursuing taxpayers suspected of being engaged in offshore tax avoidance and conducting tax audits of such tax avoidance.

Choice of business entity

The following types of commercial entities are permitted in Korea:

- Corporation (*Hoesa*): There are five classes of corporation, outlined as follows:
  - Limited corporation:
    - *Jusik Hoesa* (JH): A corporation incorporated by one or more promoters, with each shareholder's liability limited to the amount of contributed capital. This type of entity is the most commonly used in Korea.
    - *Yuhan Hoesa* (YH): A corporation incorporated by one or more members, with each member's liability limited to the amount of that member's contribution to the corporation.
    - *Yuhan Chegim Hoesa*: A corporation incorporated by one or more members, with each member's liability limited to the amount of that member's capital contribution. With significantly fewer restrictions for establishment and operation, *Yuhan Chegim Hoesa* provides more flexibility and self-control than YH.
  - Unlimited corporation:

    - *Hapmyong Hoesa*: A corporation incorporated jointly by more than two members who are responsible for corporate obligations if the assets of the corporation are insufficient to fully satisfy those obligations.
    - *Hapja Hoesa*: A corporation composed of one or more partners who have unlimited liability and one or more partners with limited liability.
- Partnership: *Hapja Johap* is a legal form of partnership allowed under the Commercial Code.
- Joint venture: A joint venture is generally established as a domestically incorporated corporation whose shareholders have limited liability regarding the obligations of the corporation under the Commercial Code.
- Branch: A foreign corporation can perform its business operation in Korea by setting up a taxable presence in the form of a branch office. The branch office can be classified as a corporation and be taxable under the CITL if one of the following conditions is met; otherwise, the foreign entity shall be classified as an individual and be subject to the Individual Income Tax Law:
    - The foreign entity is a corporation under the laws of one's home country.
    - The foreign entity is composed of only limited liability members.
    - The foreign entity has an independent ownership of assets or separate right of lawsuit from its members.
    - An entity similar to the foreign entity is classified as a corporation under Korean law.
- Liaison office: A foreign corporation can establish a liaison office, which is not allowed to execute income-generating business activities in Korea.
- Sole proprietorship: Sole proprietorships are not a legal form of entity in Korea.

Guidance on taxation of an off-shore partnership

Under the CITL, a foreign corporation is defined as a corporation that has a head office or principal office in a foreign country (only if the foreign corporation shall not have the place of effective management in Korea).

Based on the nature of business, an off-shore partnership would be categorised as a foreign corporation if one of the following conditions is met:

- Has a legal personality.
- Only comprised of partners with limited liability.
- Has the legal rights and liabilities that are distinct from its members, including taking possession of assets or having the legal capacity to be a party against a law suit.
- The same or the most similar kind of domestic business entity constitutes a corporation under Korean laws.

Off-shore partnerships with a legal personality like corporate entities prescribed in the Korean Commercial Act, such as stock corporations (*Chusik Hoesa*), limited corporations (*Yuhan Hoesa, Yuhan Chegim Hoesa*), and unlimited corporations (*Hapmyong Hoesa, Hapja Hoesa*), are treated as foreign corporations for Korean CIT purposes. Also, off-shore partnerships having the nature of limited corporations prescribed in the Korean Commercial Act, such as stock corporations (*Chusik Hoesa*) and limited corporations (*Yuhan Hoesa, Yuhan Chegim Hoesa*), are treated as foreign corporations.

Kosovo

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Significant developments

In July 2017, Kosovo introduced transfer pricing rules, which are applicable from fiscal year 2017.

These rules apply to Kosovo corporate income taxpayers that have entered into controlled transactions with related parties established in foreign tax jurisdictions.

The transfer pricing rules generally follow the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, whereas documentation requirements are as per the European Union (EU) Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union (2006/C 176/01).

Recognised transfer pricing methods include the comparable uncontrolled price (CUP) method, resale price (RP) method, cost plus (C+) method, transactional net margin (TNM) method, and profit split (PS) method. A simplified approach is applicable for low value-adding intra-group services.

Taxpayers with controlled transactions exceeding 300,000 euros (EUR) in a calendar year are required to:

- prepare transfer pricing documentation as per the EU Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union (2006/C176/01), and
- submit an Annual Controlled Transactions Notice by 31 March of the following year, along with statutory financial statements and a corporate income tax (CIT) declaration.

Taxpayers with controlled transactions of EUR 300,000 or less in a calendar year are required to prepare documentation, but are not required to submit an Annual Controlled Transactions Notice.

Taxes on corporate income

The tax system of the Republic of Kosovo consists of tax treaties, tax laws, administrative instructions, regulations, individual and public rulings, decisions, and other official documents pertaining to the application of the CIT provisions.

The CIT system in Kosovo is based on the principle of worldwide taxation.

Taxpayers subject to CIT are the following:

- Corporations and other legal persons.
- Business organisations operating with public/state-owned assets.
- Non-resident persons with a permanent establishment (PE) in Kosovo.

Resident taxpayers are generally subject to tax on foreign and Kosovo-source income, whereas non-resident taxpayers are generally subject to tax only on their Kosovo-source income.

The CIT rate is 10%.

A special corporate tax rate of 5% is applicable for insurance companies, which is levied on total gross premiums accrued during the year and is paid on a quarterly basis.

Taxpayers whose gross annual income does not exceed EUR 50,000 are not subject to CIT but have to file quarterly payments of tax on gross receipts, as follows:

- 3% of gross income received from trade, transport, agricultural, or similar activities (subject to a minimum payment of EUR 37.50).
- 9% of gross income for the quarter from services, professional, vocational, entertainment, or similar activities (subject to a minimum payment of EUR 37.50).
- 10% of gross rent income for the quarter.

Corporate residence

Based on Kosovo legislation, a legal entity is considered to be resident in Kosovo if it has its head office or its place of effective management in Kosovo.

Permanent establishment (PE)

A PE includes any place of management, branch, office, factory, workshop, mine, oil or gas source, quarry, or other place of exploitation of natural resources.

A PE is deemed to have been created by any building site, construction, assembling or installation project, or supervisory activity in connection therewith, but only if such site, project, or activity lasts longer than 183 days within any 12-month period.

Similarly, furnishing consultancy services for a period of 90 days or more by a non-resident person triggers a PE, as well as owning immovable property by a non-resident.

For countries with which Kosovo has double tax treaties (DTTs), PE rules are as per the relevant provisions in such treaties. *See the Withholding taxes section for a list of countries with which Kosovo has a DTT*.

Other taxes

Value-added tax (VAT)

The VAT law and system in Kosovo is based on the EU Directive for VAT (Directive 2006/112/EC and its subsequent amendments). VAT legislation is regulated by Law No.05/L-037 ‘On Value Added Tax’ and the corresponding sub-legal acts.

Registration for VAT

All taxable persons who import/export and taxable persons whose turnover is above EUR 30,000 within a calendar year are required to register for VAT.

Where turnover is less than the threshold, voluntary registration for VAT is possible.

VAT registration for foreign entities or persons not established in Kosovo should be completed from the beginning of their economic activity in Kosovo, regardless of the threshold. Nonetheless, this is not required of persons who make supplies for which the place of supply is considered to be Kosovo and the recipient is liable for the payment of VAT.

Object of taxation

VAT is levied on:

- supplies of goods or services with place of supply in Kosovo, and
- importation of goods.

VAT rates

The standard VAT rate is 18%.

A reduced rate of 8% applies to the following supplies:

- Supply of water, except bottled water.
- Supply of electricity, including transmission and distribution services, with central heating, waste collection, and other waste treatment.
- Grains, such as barley, corn, maize varieties, oats, rye, rice, and wheat.
- Products made from grain for human consumption, such as flour, pasta, bread, and similar products.
- Cooking oils made from grains or oilseeds for use in cooking for human consumption.
- Dairy and dairy products intended for human consumption.
- Salt used for human consumption.
- Eggs for consumption.
- Textbooks and serial publications.
- Supply, including lending, of books from libraries, including brochures, leaflets and similar printed materials, children's picture books, drawing and colouring books, music printed texts or manuscripts, maps, and hydro graphic charts, and similar.
- Information technology (IT) equipment.
- Supply of medicines, pharmaceutical products, instruments, and medical and surgical devices.
- Medical equipment, ambulances, aids, and other medical devices to facilitate or treat inability for exclusive use by the disabled, including the repair of such goods and supply of children's vehicle seats.

Chargeability of VAT

VAT generally becomes chargeable when the goods or services are supplied. Specific rules apply in cases where supply of goods or services occurs over a period of time, where successive payments are made, and in case of long-term contracts.

VAT becomes chargeable whichever of the following conditions is fulfilled first: payment is made, invoice is issued, or the supply of goods/services is carried out.

VAT refunds

Taxable entities have the right to carry forward to following tax periods the VAT credit or to claim VAT refund if the following conditions are met:

- The taxable person is in VAT credit position for three consecutive months.
- At the end of the third month the amount of VAT credit exceeds EUR 3,000.
- All VAT and other tax returns for all past tax periods have been submitted.

While taxable persons that have exports may claim VAT refund on a monthly basis after each tax period if the following conditions are met:

- The amount of VAT credit exceeds EUR 3,000 at the end of the tax period.
- The taxable person complies with all applicable customs and VAT provisions.
- All VAT and other tax returns for all past tax periods have been submitted.

The Tax Administration of Kosovo (TAK) shall review the VAT refund claim request within a maximum of 30 days.

Invoicing

Invoices for supplies subject to VAT must always be issued by the 15th day of the month following that in which the chargeable event occurs, at the latest.

Place of supply of goods/services

Place of supply of goods or services is determined in line with the provisions set out in EU Directive 2006/112/EC on the Common System of Value Added Tax.

In respect of goods, special rules apply to establish the place of supply of goods with and without transport, on board ships, aircraft, or trains, and supply of natural gas and electricity through distribution systems.

In respect of services, there are two main rules: general and particular. The general rule defines the place of supply of services to a taxable person, which is where that person has established one's business. Particular rules apply to specific services related to immovable property, passenger transport, restaurant and catering services, short-term rent of transportation equipment, and cultural, artistic, or similar events.

For the supply of services to a non-taxable person, the general rule is that the place of supply is the place where the supplier has established one's business. The particular rules for supplies to non-taxable persons apply to specific services as outlined above.

The place of supply of the following services to a non-taxable person established outside of Kosovo is the place where that person is established: transfers of copyrights, patents and similar rights; advertising services; consultancy, engineering, accounting, legal, and data processing services; banking, financial, and insurance transactions; supply of staff; hiring of movable tangible property (except transport); provision of access and transport or transmission through to natural gas and electricity distribution systems; telecommunication, radio, and television broadcasting services; and electronically supplied services.

Reverse-charge mechanism

Reverse charge is applied on supplies of goods and/or services that are supplied from a taxable person not established in Kosovo.

When the recipient of such services/goods is registered for VAT in Kosovo, the place of supply of such services/goods is considered to be Kosovo, and the recipient will be liable for paying the VAT.

In cases where the recipient is not registered for VAT in Kosovo, the supplier is liable to pay VAT and is obligated to register for VAT in Kosovo via a tax representative.

A special reverse-charge scheme is applicable for the supply of construction and construction-related works, as well as supplies where personnel is engaged in construction activities.

Similar to the regular reverse-charge mechanism, the person liable to pay the VAT on the supply is the recipient of the construction services.

VAT exemptions

VAT exemptions without the right to deduction are applicable to activities in the public interest, welfare, education, culture, sports and religious activities, media, and public transportation. Other activities exempt from VAT include financial services, health and life insurance, lottery, land, housing for residential purposes, etc.

VAT exemptions with the right to deduction include exports, international transport, intermediary services, and special customs arrangements.

Importing of production lines and machinery for use in the production process, raw material used in the production process, as well as IT equipment, newspapers, and periodic publications, and equipment required for electronic and printed media benefit from VAT exemption (with crediting rights) on importation.

Supplying goods and services that are co-financed by donations from foreign governments and the Kosovo government and destined for projects with the public as the beneficiary are exempt from VAT (with deduction rights) if such exemption is foreseen between the parties and the participation from the Kosovo government is not more than 20%.

The right to deduct VAT

The right to deduct input VAT arises at the time when VAT becomes chargeable and such VAT is related to goods or services obtained for business purposes.

Input VAT is non-deductible for several goods/services, including the purchase of yachts, boats, private aircraft, cars, and motorcycles intended for recreation and used for non-business purposes, as well as representation costs related to entertainment during business or social contacts. A taxable person can, however, deduct input VAT on advertising expenses, meals, and transportation for personnel.

For cars used for both business and personal purposes, only 50% of input VAT can be deducted. The use of immovable property in the same manner allows VAT deductibility only up to the proportion of the property’s use for business purposes.

In case purchased goods and services are used to make both taxable and exempt supplies, VAT shall be deducted proportionally to the transactions for which VAT is deductible.

VAT compliance

Monthly submission of VAT returns to the TAK and monthly payment of VAT are due by the 20th day of the month following the end of each tax period.

In addition, VAT records have to be kept for six years after the end of the tax period to which they relate.

Customs import duties

The rate of customs import duty is zero on goods that originate in the territory of a country that is a party to the Central European Free Trade Agreement (CEFTA), and for some goods imported from the European Union as per the provisions of the Stabilization and Association Agreement.

Most rates of import duty on goods that originate outside of the CEFTA are 10% *ad valorem* (10% of the price paid or payable for the imported goods); however, some imported goods are exempt from the payment of the 10% import duty. The Integrated Tariff Code of Kosovo (TARIK) provides detailed information on import duty rates, VAT rates, and excise tax rates (if any), as well as any required certificates or licences that pertain to all imported goods.

Excise taxes

Excise tax is levied as a percentage of the value of the goods or represents a fixed amount per specified quantity. Excise tax in Kosovo is applicable on certain goods like beer, wines, alcohol, liquors, and other alcoholic beverages, cigarettes, other tobacco products, cars, petrol, diesel, etc.

For applicable excise taxes on these items, please see: *http://www.kuvendikosoves.org/common/docs/ligjet/2010-220-eng.pdf*

Property taxes

The property tax payable depends on the type of use of the property, on the area the property is located, and on the market value of the property. Property taxes are levied and collected at the municipal level.

Property tax rates also vary for each municipality. For the capital city of Pristina, the following rates are applicable based on the category of the real estate and activity undertaken:

- Residential: 0.15%.
- Commercial: 0.17%.
- Social/cultural/institutional: 0.17%.
- Services: 0.17%.
- Transportation: 0.17%.
- Industrial: 0.17%.
- Processing: 0.15%.
- Recreational: 0.15%.
- Uncategorised/unrecognised: 0.15%.
- Abandoned: 0.15%.
- Habitable: 0.15%.
- Agricultural: 0%.
- Unfinished: 0%.
- Garage: 0%.

- Other exempt: 0%.

The valuation of the property for property tax purposes (calculated in EUR/m2) depends on the location and type of property.

Transfer taxes

Transfer of immovable property is subject to a property transaction fee levied at the municipal level at EUR 150 per unit. One unit equals 100m² of residential/commercial building or 1 hectare of land.

Stamp taxes

There are no stamp taxes in Kosovo.

Payroll taxes

Entities are required to withhold personal income tax (PIT) from the gross salaries of their employees. Progressive tax rates ranging from 0 to 10% are applied to gross income.

Social security contributions

Both employer and employee are subject to compulsory pension contributions in Kosovo. The total compulsory contribution is 10%, where 5% represents the employee's share (withheld from gross wages) and 5% the employer's share.

Employers and employees may contribute additional pension contribution up to 30% (15% + 15%).

The compulsory pension contributions are deductible for CIT purposes of the employer, whereas voluntary contributions and those exceeding 15% of the annual salary are not deductible.

Other local taxes

Taxes are collected by the municipalities and vary on the activity and location of the business. Such taxes include vehicle tax, property tax, ecological tax, and advertising tax.

Branch income

Branch income in Kosovo is subject to the same taxes as all other forms of legal entities.

Income determination

Inventory valuation

In order to determine the cost of goods sold, the taxpayer must use one of the inventory methods prescribed by the Kosovo Accounting Standards, which permit the use of first in first out (FIFO) and average cost, but prohibit last in first out (LIFO).

Capital gains

Capital gains and losses are realised through the sale or other disposal of capital assets, including real estate and securities. Capital gains and losses are recognised as business income and business losses, respectively, and the latter can be carried forward for up to six successive tax periods. Capital gains are taxed at the standard CIT rate of 10% (i.e. are taxed at the same rate).

Dividend income

Dividends received by residents and non-residents are exempt from any form of taxation.

Interest income

Interest income is taxed at the CIT rate of 10%.

Rental income

Rental income is taxed at the CIT rate of 10%.

Royalty income

Royalty income is taxed at the CIT rate of 10%.

Partnership income

The partnership is not taxed itself; however, the members of the partnership are taxed separately at the standard CIT rate of 10% depending on their share in the partnership.

Foreign currency exchange gains/losses

Foreign currency exchange gains are subject to tax as capital gains.

Foreign income

Kosovo resident corporations are taxed on their worldwide income. If a DTT is in force, double taxation is avoided either through an exemption or by granting a tax credit up to the amount of the applicable Kosovo CIT rate.

Kosovo legislation does not contain any provisions under which income earned abroad may be tax deferred.

Deductions

Expenses paid or incurred in relation to business activities are deductible for CIT purposes.

Business representation expenses with elements of entertainment cannot exceed 1% of annual gross income. Bad debt expenses are allowable under certain conditions. Business travel expenses are allowable if documented properly.

Expenses that are subject to withholding tax (WHT) on rent (such as payments for lease) are only CIT deductible if the corresponding WHT is paid by 31 March of the period following that in which they were incurred, at the latest.

Depreciation and amortisation

Depreciation expenses are calculated via the straight-line method, depending on the category of asset concerned. For buildings, the rate is 5%; for vehicles, furniture, and equipment, the rate is 20%; and for plant and machinery, the rate is 10%.

Amortisation expenses are allowed in accordance with the useful life of the intangible asset, but, at most, 20 years if not specified.

Goodwill

No specific tax provisions cover the treatment of goodwill.

Start-up expenses

Only expenses incurred in the current tax period reported can be deducted.

Interest expenses

Interest expenses are deductible, provided that such expenses have been paid or incurred in relation to business activities and any WHT due has been paid on or before 31 March of the year following that in which interest expense arose.

Bad debt

A bad debt shall be considered an expense if it meets all of the following conditions:

- The amount that corresponds to the debt has previously been included in income.
- The debt is written off in the taxpayer's books as worthless for accounting purposes.
- There is no dispute of the legal validity of the debt.
- At least six months of the debt term have been exceeded.
- There is adequate evidence of substantial attempts made by the taxpayer to collect the debt (i.e. including final decision of a competent court certifying that the debt is uncollectible).
- Payment has not been received in whole or in part and has been declared as uncollectable thus initiating procedures with judicial bodies.
- For the amount up to EUR 500 treated as a bad debt, there shall not be required the initiation of procedures at judicial bodies.
- Uncollected amount shall not be considered as bad debt if:
  - transactions with the same debtor have been repeated after the announcement of bad debt, excluding public services
  - bad debt is between the related parties
  - there is no sufficient evidence that there were substantial attempts made to collect debt, including any applicable action to maximise the debt collection, or
  - the obligation for payment is 24 months overdue.

Charitable contributions

Contributions made by a taxpayer in the form of donations or sponsorship for humanitarian, health, education, religious, scientific, cultural, environmental protection, and sports in accordance with the CIT law are considered as contributions given for public interest and are allowed as a deduction up to a maximum of 10% of taxable income, computed before these contributions are deducted.

An additional 10% deduction may be applicable if prescribed so by other laws pertaining to sponsorships of certain activities.

A taxpayer who claims a deduction in respect of charitable contributions made during the tax period shall furnish receipts signed and stamped by the beneficiaries of the charitable contributions, confirming the purpose of those donations, the amounts of the donations, and the times when the donations were made.

A charitable contribution deduction can only be claimed by a taxpayer who pays tax on an accrual or real income basis.

Pension expenses
Pension contributions are deductible up to the limit of 15% of gross salary.

Bribes, kickbacks, and illegal payments
Bribes, kickbacks, and illegal payments are non-deductible for tax purposes.

Fines and penalties
Fines and other tax-related sanctions are non-deductible expenses.

Taxes
Income taxes, VAT, and excise duties are non-deductible expenses.

Other significant items
Provision expenses are only allowable for banks as per the rules prescribed by the Central Bank of Kosovo.

Net operating losses
Tax losses can be carried forward for up to six consecutive tax years. However, restrictions may apply in cases of change of business or change of ownership; if the business changes its type of business organisation or has an ownership change of more than 50%, the tax loss is not allowed to be carried forward.

Carryback loss provisions are not allowable.

Payments to foreign affiliates
Payments to foreign affiliates are subject to WHT at 5% if they represent services provided with physical presence in Kosovo by the affiliate, unless tax relief is requested in accordance with the local legislation or any DTT in place. These payments are tax deductible if they are properly documented and incurred for business purposes only.

Payments to foreign affiliates made for the purpose of transferring profits may be subject to revaluation by the tax authorities. Any transactions/payments made to foreign affiliates shall be performed on an arm’s-length basis.

Group taxation

There are no group taxation rules applicable in Kosovo.

Transfer pricing regime
In July 2017, Kosovo introduced transfer pricing rules, which are applicable from fiscal year 2017.

These rules apply to Kosovo CIT payers that have entered into controlled transactions with related parties established in foreign tax jurisdictions.

The transfer pricing rules generally follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, whereas documentation requirements are as per the EU Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union (2006/C 176/01).

Recognised transfer pricing methods include the comparable uncontrolled price (CUP) method, resale price (RP) method, cost plus (C+) method, transactional net margin (TNM) method, and profit split (PS) method. A simplified approach is applicable for low value-adding intra-group services.

Taxpayers with controlled transactions exceeding EUR 300,000 in a calendar year are required to:

- prepare transfer pricing documentation as per the EU Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union (2006/C 176/01), and
- submit an Annual Controlled Transactions Notice by 31 March of the following year, along with statutory financial statements and CIT declaration.

Taxpayers with controlled transactions of EUR 300,000 or less in a calendar year are required to prepare documentation, but are not required to submit an Annual Controlled Transactions Notice.

Thin capitalisation rules

There are no thin capitalisation rules applicable in Kosovo.

Controlled foreign companies (CFCs)

There is no CFC regime in Kosovo.

Tax credits and incentives

Taxpayers that purchase new heavy machinery categorised under the 10% depreciation rate group enjoy an additional one-time 10% deduction for CIT purposes.

Wages of persons with disabilities are exempt from employment taxes.

Foreign tax credit

Taxpayers who receive income from sources outside Kosovo and pay tax on such income in other countries are allowed the right to a tax credit for the amount of the tax paid abroad or up to the applicable Kosovo income tax rate, whichever is lower. Foreign tax credits can be claimed even if there is no DTT between Kosovo and the respective country where such income arose, subject to proper documentation.

Withholding taxes

Resident taxpayers paying rent, interest, royalties, and non-resident services shall withhold tax at the time of payment and shall transfer the amount of the tax withheld not later than the 15th day of the month following the tax period.

Taxpayers shall withhold tax at the time of payment or credit. A WHT obligation applies only when the underlying amount (e.g. rent, interest) is actually paid, not when it accrues.

WHT rates are provided below:

- Interest and royalties: 10%.
- Rent: 9%.
- Services provided from non-residents: 5%.
- Payments to non-business natural persons, farmers, recycled materials collectors, etc.: 3%.

For payments made to recipients in countries with which Kosovo has a DTT, the rates of WHT may be eliminated/reduced under the terms of the treaty.

There is no WHT on dividends, as dividends received by residents and non-residents are exempt from taxation in Kosovo.

Double tax treaties (DTTs)

Currently, Kosovo has DTTs in place with the following countries:

	WHT (%)	
Recipient	**Interest**	**Royalties**
Non-treaty	10	10
Treaty:		
Albania	10	10
Belgium	10 (1)	10
Croatia	5	5
Finland	0 (2)	10
Germany	0 (2)	10
Hungary	0 (2)	0 (2)
Macedonia	10	10
Netherlands	0 (2)	10
Slovenia	5	5
Turkey	10	10
United Arab Emirates	5	0 (2)
United Kingdom	0 (2)	0 (2)

Notes

1. As per the DTT, it is not to exceed 15%, but the non-treaty domestic rate is 10%.
2. Only taxable in the state of residence.

Tax administration

Taxable period

The taxation period for which the CIT is assessed is the calendar year.

Tax returns

CIT returns are filed annually, and the deadline to submit the annual return is 31 March of the following year.

Payment of tax

Taxpayers with income from economic activities exceeding EUR 50,000 per year are obligated to make quarterly advance payments (15 April, 15 July, 15 October, and 15

January) that amount to ¼ of 110% of the total tax liability for the previous tax period. If it is the taxpayer's first year of business and/or a tax loss was incurred in the previous year, quarterly advance payments are made on the principle of estimation of that year's CIT liability.

Final CIT payment is due with the return on 31 March.

Tax audit process

The Kosovo tax system is based on self-assessment. Tax audits include all types of taxes that the business is subject to. If any discrepancies result from the tax audit, the tax authorities issue an audit report and re-assessment notices, which the taxpayer can appeal to the Appeals Department within the tax authority.

A taxpayer may submit an amended tax declaration if one subsequently discovers an error in a tax declaration that has already been submitted. The deadline for submitting an amended declaration is six years after the due date of the declaration being amended.

Statute of limitations

The statute of limitations in general circumstances is six years.

Topics of focus for tax authorities

During a tax audit, the main focus of the tax authorities is on areas relating to CIT expense deductibility, VAT crediting rights, WHT compliance, etc.

Other issues

Choice of business entity

Business entities that may be registered with the Business Registration Agency in Kosovo are the following:

- Personal business enterprise.
- General partnership.
- Limited partnership.
- Limited liability company.
- Joint stock company.

Apart from the above forms of establishment, foreign business organisations may also carry out economic activity in Kosovo through a branch office, upon registration with the Business Registration Agency in Kosovo.

Adoption of International Financial Reporting Standards (IFRS)

IFRS is adopted and recognised under Law No.04/L-014 on Accounting, Financial Reporting and Audit.

Intergovernmental agreements (IGAs)

Kosovo is a member of the Central European Free Trade Area (CEFTA).

The Stabilization and Association Agreement aimed at liberalizing trade with the European Union entered into force in April 2016.

On 26 February 2015, the Government of the United States of America and the Government of the Republic of Kosovo signed an IGA entitled, 'Agreement between the Government of the United States of America and the Government of the Republic of Kosovo to Improve International Tax Compliance and to Implement FATCA [Foreign Account Tax Compliance Act]'. The IGA requires, in particular, the exchange of certain information with respect to US reportable accounts on an automatic basis.

Tax information exchange agreements (TIEAs)

Specific TIEAs have not been signed with any country, except for standard information exchange provisions within existing DTTs.

Kuwait

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Significant developments

There have been no significant corporate tax developments in Kuwait during the past year.

Taxes on corporate income

Kuwait does not impose corporate income tax (CIT) on companies wholly owned by the nationals of Kuwait or other Gulf Cooperation Council (GCC) countries (Bahrain, Oman, Qatar, Saudi Arabia, and the United Arab Emirates). However, GCC companies with foreign ownership are subject to taxation to the extent of the foreign ownership. CIT is imposed only on the profits and capital gains of foreign 'corporate bodies' conducting business or trade in Kuwait, directly or through an agent.

Income earned from activities in Kuwait shall be considered subject to tax in Kuwait on the basis that it is Kuwait-sourced income. In cases where a contract involves the performance of work both inside and outside Kuwait, the entire revenue from the contract must be reported for tax in Kuwait, including the work carried out outside Kuwait. *Please refer to the Income determination section for more information on income that is subject to tax in Kuwait*.

The current CIT rate in Kuwait is a flat rate of 15%.

Foreign companies carrying on trade or business in the offshore area of the partitioned neutral zone under the control and administration of Saudi Arabia are only subject to tax in Kuwait on 50% of their taxable profit under the law.

Please see the Withholding taxes section for the description of the 5% tax retention requirement.

Zakat

Zakat is imposed on all publicly traded and closed Kuwaiti shareholding companies at a rate of 1% of the companies' net profits.

Contribution to the Kuwait Foundation for the Advancement of Sciences (KFAS)

All Kuwaiti shareholding companies are required to pay 1% of their net profits as per their financial statements, after transfer to the statutory reserve and the offset of losses carried forward, to the KFAS, which supports scientific progress.

Corporate residence

A company is resident in Kuwait for CIT purposes if it earns income from Kuwait, directly or indirectly. Given that CIT in Kuwait does not apply to Kuwaiti entities, only foreign entities earning income from Kuwait would be subject to tax. In addition, any foreign corporate body that is a shareholder in a Kuwaiti limited liability company would be subject to tax to the extent of the foreign ownership (*see the Taxes on corporate income section*). For the purpose of the CIT law, GCC entities wholly owned by GCC residents are treated in the same manner as Kuwaiti business entities.

Permanent establishment (PE)

A place of business or the presence of company employees/representatives in Kuwait, even if for short-term visits, can trigger a PE in Kuwait. If the company is proven to have a PE in Kuwait, the Kuwait Tax Authority can subject to tax either the profit attributable to the PE or the full value of the contract, including the value of work performed outside Kuwait. The interpretation and application of the tax law by the Kuwait Tax Authority is usually inconsistent with international standards, and is subject to the widest possible interpretation in order to tax all income from Kuwait.

Other taxes

Value-added tax (VAT)

The GCC states (including Kuwait) executed the GCC VAT framework agreement in February 2017. The signing of the treaty paves the way for the introduction of VAT with effect from 1 January 2018 in the GCC. However, the GCC countries could implement VAT in either 2018 or 2019 as per the terms of the treaty. In Kuwait, the GCC framework agreement is currently under discussion in the Parliament while the draft Law is under preparation by the government.

Customs tariffs

The GCC states have approved a unified customs tariff of 5% on cost, insurance, and freight (CIF) invoice price, subject to certain exceptions. A higher tariff is imposed on imports of tobacco and its derivatives, among other products.

Excise taxes

There are no excise taxes in Kuwait.

Property taxes

There are no property taxes in Kuwait.

Transfer taxes

There are no transfer taxes (e.g. stamp duty, real estate) in Kuwait.

Payroll taxes

There are no payroll taxes applicable in Kuwait, other than those for social security contributions (*see below*).

Social security contributions

For Kuwaiti employees, contributions are payable monthly by both the employer and employee under the Social Security Law. The employer's contribution is 11.5% and the employee's is 8% of monthly salary, up to a ceiling of 2,750 Kuwaiti dinars (KWD) per month. Benefits provided include pensions on retirement and allowances for disability, sickness, and death.

In addition to the above contributions, the employee must contribute 2.5% of their monthly salary, up to a ceiling of KWD 1,500 per month, under the Social Security Law.

There are no social security obligations for expatriate workers. However, for foreign employees, it is generally necessary to make terminal indemnity payments calculated at 15 days' pay-per-year for the first three years of service and 2/3 month's pay-per-year thereafter.

National Labour Support Tax (NLST)

The purpose of the NLST law is to encourage the national labour force to work in the private sector by closing the gap in salaries and benefits between public and private sectors.

As per the law, Kuwaiti companies listed in the Kuwait Stock Exchange (KSE) are required to pay an employment tax of 2.5% of the company's net annual profits.

Branch income

The tax rate on branch profits is the same as on corporate profits, a 15% flat tax rate.

Income determination

Income tax is imposed on the profit of a business in Kuwait as calculated by the normal commercial criteria, using generally accepted accounting principles (GAAP), including the accrual basis. Note that provisions, as opposed to accruals, are not deductible for tax purposes. In addition, for contract accounting, revenue is recognised by applying the percentage of completion method.

Article 2 of the Executive Bylaws to the Kuwait Tax Law provides that income earned from the following activities in Kuwait shall be considered subject to tax in Kuwait:

- Any activities or business carried out either entirely or partially in Kuwait, whether the contract has been signed inside or outside Kuwait, as well as any income resulting from the supply or sale of goods, or from providing services.
- The amounts collected from the sale, rent, or granting of a franchise to utilise any trademark, design, patent, copyright, or other moral rights, or those related to intellectual property (IP) rights for the use of rights to publish literary, arts, or scientific works of any form.
- Commission earned or resulting from agreements of representation or commercial mediation, whether such commission is in cash or in kind.
- Having a permanent office in Kuwait where the sale and purchase contracts are signed and/or where business activities are performed.
- Profits resulting from the following:
  - Any industrial or commercial activity in Kuwait.
  - Disposal of assets, either through the sale of the asset, part of the asset, the transfer of the asset's ownership to others, or any other form of disposal,

including the disposal of shares in a company whose assets mainly consist of immovable capital existing in Kuwait.
- Granting loans in Kuwait.
- Purchase and sale of property, goods, or related rights in Kuwait, whether such rights are related to monetary assets or moral rights, such as mortgage and franchise rights.
- Lease of property used in Kuwait.
- Providing services, including profits from management, technical, and consultancy services.
- Carrying out trading activities in the KSE, whether directly or through portfolios or investment funds.

Inventory valuation

Inventory is normally valued at the lower of cost or net realisable value, on a first in first out (FIFO) or average basis.

Capital gains

Capital gains on the sale of assets and shares by foreign shareholders are treated as normal business profits and are subject to tax at a 15% rate. The tax law provides for a tax exemption for profits generated from dealing in securities on the KSE, whether directly or through investment portfolios.

Dividend income

Dividends declared by companies listed on the KSE after 10 November 2015 are exempt from tax in Kuwait.

Interest income

In principle, tax is levied on the foreign company's share of the profits (whether or not distributed by the Kuwaiti company) plus any amounts receivable for any other income in Kuwait (e.g. interest, royalties, technical services, management fees). However, the Kuwait tax law will still subject the interest received from a Kuwaiti source to tax in Kuwait, whether this interest is the only source of income for the foreign entity in Kuwait or the foreign entity has more sources of income in Kuwait other than the interest income.

Royalty income

Royalty income earned from "the sale, lease, grant of franchise to use or utilise any trademark, design, patent, intellectual property, or copyright in Kuwait" is taxable in Kuwait. Kuwait tax law imposes a deemed profit of 98.5% on royalties earned from Kuwait (1.5% being an allowance for head office overhead), on which the prevailing flat corporate tax rate of 15% is applied.

Foreign currency exchange rates and related profits and losses

The tax treatment for realised and unrealised losses and gains related to foreign currency transactions are as follows:

- Unrealised foreign exchange gains are required to be reported in the tax declaration. However, unrealised gains may be excluded from taxable income for calculating the tax due for the fiscal year.
- Realised foreign exchange gains are taxable in Kuwait and are therefore added to calculate taxable profits.

- Unrealised losses are not considered as tax deductible costs and are therefore excluded for calculating taxable profits.
- Realised losses may be claimed as tax deductible costs, provided such losses are supported by adequate supporting information and documents.

Exempt income

The following sources of income are exempt from tax in Kuwait:

- Profit from the sale of goods to a buyer in Kuwait, where the supplier is not involved in any operations in Kuwait.
- Profits of a corporate body generated from dealing in or disposing of securities listed on the KSE, whether such activities are carried out directly or through investment portfolios or funds.

Foreign income

The Kuwait tax law does not clearly provide for the tax treatment of foreign income. Such income is currently treated on a case-by-case basis.

Deductions

For expenses to be deductible, they must be incurred in the generation of income in Kuwait. Such expenses must be supported by adequate documentary evidence.

Depreciation

Depreciation is taken on a straight-line basis at specified rates. However, within 90 days prior to submission of the tax declaration, the taxpayer may request that the tax department calculate the depreciation using a different method than the straight-line method. The tax department shall accept this request if it is based on a reasonable basis in accordance with the tax accounting principles and rules.

The principal depreciation rates are specified in the law, as follows:

Type of fixed asset	Depreciation rate (%)
Buildings	4
Pre-fabricated buildings, furniture, and office equipment	15
Electronics and electrical equipment	15
Transportation and freight vehicles (trucks)	15
Tools and equipment	20
Cars and buses	20
Drilling equipment	25
Software	25
Computer equipment and accessories	33.3

Goodwill

In accordance with Executive Rule No. 30, amortisation of incorporated body goodwill is not allowed as a tax deductible expense.

Start-up expenses

Expenses incurred prior to signing of the contract are not allowed as tax deductible costs.

Interest expenses

Interest expenses are deductible if they are related to operations in Kuwait and are paid to a local bank.

Bad debt

Bad debt is deductible if it is related to operations in Kuwait and a final decision by the court is available.

Charitable contributions

Grants, donations, and subsidies paid to licensed Kuwaiti public or private agencies are deductible.

Fines and penalties

Fines and penalties are not tax deductible.

Taxes

Taxes and fees, except income tax, are deductible in Kuwait.

Subcontract costs

A subcontractor is any third party, provider, or beneficiary that in any way executes a portion of the contract or any phase thereof.

As per Executive Rule No. 28, subcontract costs are deductible if the following conditions are met:

- The work performed by the subcontractor is related to the main contract.
- The cost of the subcontractor's work does not exceed the revenue for such work.
- The necessary documents (e.g. the contract, invoices, settlement documents) are available.
- In the event that the incorporated body implementing the contract sells or assigns it to the subcontractor or any other party, official written approval from the contracting body is provided.
- In the event that the subcontractor sells or assigns the contract to another subcontractor, official written approval from the contracting body and the incorporated body implementing the contract is provided.

During inspection, the tax department shall disallow the amounts paid to subcontractors if the incorporated body does not notify the tax department of the subcontractors or does not withhold 5% of the contract value signed with the subcontractor as income tax retention.

Net operating losses

As per the amended tax law, losses may be carried forward for a maximum of three years, provided that the following situations do not arise in the fiscal period following the period in which the loss was recorded:

- The tax declaration does not include any revenue from the business activities of the taxpayer in Kuwait.
- Change in the legal structure of the taxpayer.
- Merger of the taxpayer with another entity.
- Liquidation or ceasing of the activities of the taxpayer in Kuwait.

Please note that losses cannot be carried back under the Kuwait tax law.

Head office expenses/payments to foreign affiliates

The deduction of head office expenses (the overhead or the indirect expenses) is limited to 1.5% of the company's Kuwait revenue after deducting the subcontractors' shares (if any).

The direct costs allocated by the head office (e.g. supply of goods, design and consultancy costs) are regulated as follows.

For costs of supply from outside Kuwait:

Supply from	Maximum allowable costs as a percentage of revenue
Head office	85%
Affiliated companies	90%
Third parties	95%

For design costs incurred outside Kuwait:

Work conducted by	Maximum allowable costs as a percentage of revenue
Head office	75%
Affiliated companies	80%
Third parties	85%

For consultancy costs incurred outside Kuwait:

Work conducted by	Maximum allowable costs as a percentage of revenue
Head office	70%
Affiliated companies	75%
Third parties	80%

In case there is no separate revenue for consultancy, design, or supply work, although the nature of the contract requires the existence of such work, the following formula shall be applied:

Consultancy, design, or supply revenue = (consultancy, design, or supply costs / total direct costs) x contract revenue

Group taxation

If a foreign company conducts more than one business activity in Kuwait, one tax declaration aggregating the income from all activities is required to be submitted in Kuwait. In addition, in case two affiliates are involved in similar lines of business or work on the same project, their taxable results may be aggregated for the assessment of tax by the Department of Inspection and Tax Claims (DIT), a department of the Kuwait Tax Authority.

Transfer pricing

There is no Transfer Pricing Law in Kuwait. However, Executive Rule No. 49 to the Kuwait Tax Law states that inter-company transactions should be comparable to transactions among companies that are not legally or financially associated. It also states that the Kuwait Tax Authority is entitled to inspect such transactions to ensure that they are made on an arm's-length basis and not made for obtaining illegal tax privileges.

Thin capitalisation

Executive Rule No. 38 deals with the tax treatment of interest and letters of credit. Through this rule, the DIT will accept the interest paid by a company, provided it is fully supported, paid to a financial institution, and related to the Kuwait operations. However, the tax law provides the DIT with the right to determine the proper tax treatment on a case-by-case basis (if required).

Controlled foreign companies (CFCs)

There are no CFC rules in Kuwait.

Tax credits and incentives

Leasing and Investment Companies Law No. 12 of 1998

Leasing and Investment Companies Law No. 12 of 1998 allows the formation of investment and leasing companies having their principal place of business in Kuwait, with Kuwaiti or foreign shareholders. The law grants a five-year tax holiday to non-Kuwaiti founders and shareholders of such companies, beginning on the date of establishment of the companies.

Foreign Direct Investment Law No. 116 of 2013 (FDI Law)

The FDI Law provides foreign companies with several incentives, including:

- Expedited process by introducing a one-stop-shop authority, the Kuwait Direct Investment Promotion Authority (KDIPA), that is responsible for evaluating and granting the licence and approval for foreign companies operating in Kuwait (compared to the old committee and Council of Ministers).
- Added flexibility of allowing foreign companies the possibility of establishing and operating through a 100% foreign-owned 'branch' or 'representative office' in Kuwait.
- Allowable tax credit for a certain number of years.
- Total or partial exemption from customs duties on imports.
- Recruitment of required foreign labour.

The incentives granted to foreign investors in Kuwait under the FDI Law are applicable to activities in certain economic sectors and subject to the fulfilment of certain requirements including:

- The transfer of advanced technology to Kuwait.
- Stimulation of the local market through engagement of local suppliers for operational purchases.
- Creation of job opportunities for Kuwaiti nationals.

Kuwait Free Trade Zone (KFTZ)

Businesses set up in the KFTZ for carrying on specified operations are exempt from taxes on operations conducted in the zone. Foreign entities can own 100% of such businesses. Currently, the government of Kuwait has stopped issuing KFTZ licences.

Circular No. 50 of 2002

As per Circular No. 50 of 2002 issued by the DIT regarding treatment of tax-exempted companies under the tax law, other special laws, and/or tax treaties, exempted companies shall comply with submitting a tax declaration, the inspection process, and the assessment procedures like other companies in order to be eligible for exemption.

Build, operate, and transfer (BOT)

Kuwait has begun to use the BOT method in respect of some large infrastructure projects. Tax and tariff concessions may be built into a BOT contract.

Foreign tax credit

Foreign taxes paid in a country with which Kuwait has a treaty for avoidance of double taxation may be eligible for credit, up to the maximum of the Kuwaiti tax that would have been payable on such income.

Withholding taxes

Kuwaiti tax law does not impose withholding tax (WHT). However, all public bodies and private entities are required to retain 5% from the contract, agreement, or transaction value or from each payment made to any incorporated body until presentation of a tax clearance certificate, by the recipient of such payment from the Ministry of Finance (MoF), confirming that the respective company has settled all of its tax liabilities in Kuwait. The final payment should not be less than 5% of the total contract value.

Tax treaties

Kuwait has entered into tax treaties with several countries for the avoidance of double taxation. Treaties with several other countries are at various stages of negotiation or ratification.

The interpretation of tax treaties by the Kuwait Tax Authority is not always consistent or in line with the interpretation generally considered appropriate by the taxpayers and usually does not follow the OECD's guidance or the international standards for the interpretation of tax treaties. As a result, disputes on the interpretation of various clauses in tax treaties between taxpayers and the DIT are common. Disputes with the DIT regarding tax treaties normally arise with respect to the following topics:

- Existence of a PE.
- Income attributable to a PE.
- Tax deductibility of costs incurred outside Kuwait.

The domestic tax law in Kuwait does not provide for WHTs. The WHT rates listed in the table are for illustrative purposes only.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	0	0	0
Treaty:			
Albania	0/5/10 (15)	10	10
Armenia	5	5	10

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Austria	0	0	10
Azerbaijan	5/10 (16)	7	10
Belarus	0/5 (3)	0/5 (3)	10
Belgium	0/10 (33)	0	10
Brunei	0	0	15
Bulgaria	0/5 (10)	0/5 (6)	10
Canada	5/15 (13)	0/10 (34)	10
China	0/5 (1)	0/5 (1)	10
Croatia	0 (12)	0	10
Cyprus	0	0 (2)	5
Czech Republic	0/5 (10)	0	10
Denmark	0/5/15 (17)	0	10
Djibouti	0	0	15
Egypt	10	10	10
Ethiopia	0/5 (3)	0/5 (2)	30
France	0	0	0
Georgia	0/5 (18)	0	10
Germany	5/15 (5)	0	10
Greece	0/5 (35)	0/5 (35)	15
Hong Kong	0/5 (19)	0/5 (19)	5
Hungary	0	0	10
India	10 (14)	10 (14)	10
Indonesia	0/10 (3)	0/5 (2)	20
Iran	5	5	5
Ireland	0	0	5
Italy	5	0	10
Japan	5/10 (20)	0/10 (21)	10
Jordan	0/5 (3)	0/5 (2)	30
Korea	5	0/5 (36)	15
Lao People’s Democratic Republic	0	0	10
Latvia	0/5 (37)	0/5 (38)	5
Lebanon	0	0	5
Macedonia	0	0	15
Malaysia	0	10	10/15 (22)
Malta	10/15 (4)	0	10
Mauritius	0	0/5 (39)	10
Mexico	0	4.9/10 (45)	10
Moldova	0/5 (40)	0/2 (41)	10
Morocco	2.5/5/10 (23)	10	10
Netherlands	0/10 (9)	0	5
Pakistan	10	0/10 (7)	10
Philippines	10/15 (24)	0/10 (42)	20
Poland	0/5 (10)	0/5 (10)	15
Portugal	5/10 (25)	10	10
Romania	1	1	20
Russian Federation	0/5 (3)	0	10
Singapore	0	0/7 (2)	10
Slovakia	0	10	10
Slovenia	0/5 (43)	0/5 (43)	10

	WHT (%)		
Recipient	Dividends	Interest	Royalties
South Africa	0	0	0
Spain	0/5 (26)	0	5
Sri Lanka	5/10 (27)	0/10 (27)	20
Sudan	0/5 (8)	0/5 (8)	10
Switzerland	15	10	10
Syria	0	0/10 (11)	20
Thailand	10	0/10/15 (44)	20
Tunisia	0/10 (3)	0/2.5 (2)	5
Turkey	10	10	10
Ukraine	5	0	10
United Kingdom	5/15 (5)	0	10
Uzbekistan	5/10 (28)	8	20
Venezuela	5/10 (29)	5	20
Vietnam	10/15 (30)	0/15 (44)	20
Yemen	0	0	10
Yugoslavia	5/10 (31)	10	10
Zimbabwe	0/5/10 (32)	0	10

Notes

1. The rate is 0% for amounts paid to a company of which the government owns at least 20% of the equity.
2. The rate is 0% for interest paid to the government of the other contracting state. Under the Ethiopia treaty, the rate is also 0% for the interest paid to entities in which the government owns a specified percentage of the equity and for interest paid on loans guaranteed by the government.
3. The rate is 0% for dividends and interest paid to the government of the other contracting state. Under the Ethiopia treaty, the rate is also 0% for dividends paid to entities in which the government owns a specified percentage of the equity.
4. The rate is 10% for dividends paid to the government of Kuwait or any of the institutions or any intergovernmental entities. The rate is 15% for other dividends.
5. The 5% rate applies if the recipient of the dividends owns, directly or indirectly, at least 10% of the payer. The 15% rate applies to other dividends.
6. The rate is 0% for amounts paid to the government or governmental institution of the other contracting state. The 5% rate applies to other dividends.
7. The rate is 0% for amounts paid to the government of the other contracting state and to entities of which the government owns at least 51% of the paid-up capital.
8. For dividends and interest, the rate is 0% if the payments are made to the government or a governmental institution of the other contracting state, or to a company that is a resident of the other contracting state and is controlled by, or at least 49% of the capital is owned, directly or indirectly, by, the government or a governmental institution. A 0% rate also applies to interest arising on loans guaranteed by the government of the other contracting state or by a governmental institution or other governmental entity of the other contracting state.
9. A 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the capital of the company paying the dividends.
10. The rate is 0% if the payments are made to the government or a governmental institution of the other contracting state, or to a company that is resident of the other contracting state and is controlled by, or at least 25% of the capital is owned, directly or indirectly, by, the government or a governmental institution of the contracting state. The 5% rate applies to other dividends.
11. The rate is 0% if the beneficial owner of the interest is a resident in the other contracting state and the loan is secured or financed, directly or indirectly, by a financial entity or other local body wholly owned by the government of the other contracting state.
12. The 5% rate applies if the recipient of the dividends owns, directly or indirectly, at least 25% of the payer. The 10% rate applies to other dividends.
13. Except in the case of dividends paid by a non-resident-owned investment corporation that is a resident of Canada, the rate is 5% if the beneficial owner of the dividends is a company that owns 10% or more of the issued and outstanding voting or 25% or more of the value of all of the issued and outstanding shares. The 15% rate applies to other dividends.
14. Dividends or interest paid by a company that is resident of a contracting state is not taxable in that contracting state if the beneficial owner of the dividends or interest is the government or governmental institution of the other contracting state.

15. The rate is 0% if the dividend is paid to the other contracting state or any government or governmental institution therein. The 5% rate applies if the dividend is paid to a company that directly holds at least 10% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
16. The rate is 5% if the dividend is paid to (i) a government or governmental institution of the other contracting state or (ii) a company that directly or indirectly controls at least 15% of the capital of the company paying the dividends and its participation in that company exceeds 200,000 US dollars (USD). The 10% rate applies to other dividends.
17. The 0% rate applies if (i) the dividend is paid to a company that holds at least 25% of the capital of the company paying the dividends or (ii) the beneficial owner of the dividend is the other contracting state or any governmental institution. The 5% rate applies if the dividend is paid to a pension fund or other similar institutions. The 15% rate applies to other dividends.
18. The 0% rate applies if the dividend is paid to a company that has invested more than USD 3 million in the capital of the company paying the dividends. The 5% rate applies to other dividends.
19. The 0% rate applies if the dividend or interest is paid to the government or any governmental institution of the other contracting state. The 5% rate applies to all other dividends and interest.
20. The 5% rate applies if the dividend is paid to a company that owns at least 10% of the voting shares of the company paying the dividends. The 10% rate applies to other dividends.
21. The 0% rate applies if the interest is paid (i) to the government or governmental institution of the other contracting state or (ii) to a resident of that other contracting state with respect to debt-claims guaranteed, insured, or indirectly financed by the government or governmental institution of that other contracting state. The 10% rate applies to other interest.
22. The 10% rate applies where the royalties arise from the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or any copyright of scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience. The 15% rate applies where the royalties arise from the use of, or the right to use, cinematograph films, tapes for radio or television broadcasting, or any copyright of literary or artistic work.
23. The 2.5% rate applies if the dividend is paid to the government of the other contracting state. The 5% rate applies if the dividend is paid to a company that holds at least 10% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
24. The 10% rate applies if the dividend is paid to a company that holds at least 10% of the capital of the company paying the dividends. The 15% rate applies to other dividends.
25. The 5% rate applies if the dividend is paid to (i) a company that directly holds at least 10% of the capital of the company paying the dividends or (ii) a resident of the other contracting state. The 10% rate applies to other dividends.
26. The 0% rate applies where the company receiving the dividends is a resident of the other contracting state that directly holds at least 10% of the capital of the company paying the dividends. The 5% rate applies to other dividends.
27. The 5% rate applies where the dividend is paid to a government or governmental institution of the contracting state. The 10% rate applies to other dividends and interest. The 0% rate applies to interest paid to a government or governmental institution or to loans given to such institutions.
28. The 5% rate applies where the dividend is paid to a company that directly holds at least 25% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
29. The 5% rate applies where the dividend is paid to a company that directly holds at least 10% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
30. The 10% rate applies where the dividend is paid to the government or any governmental institution in the other contracting state. The 15% rate applies to other dividends.
31. The 5% rate applies if the dividend is paid to a company that directly holds at least 25% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
32. The 0% rate applies where the dividend is paid to the government or any governmental institution of that contracting state. The 5% rate applies where the beneficial owner of the dividend is a company that directly or indirectly controls at least 10% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
33. The 0% rate applies where dividends are paid by a company that is a resident of Belgium to (i) the government of Kuwait or any governmental institution established in Kuwait or (ii) a company that is a resident of Kuwait in whose capital the government of Kuwait directly or indirectly owns at least 25%.
34. The 0% rate applies to (i) interest paid to a government or any governmental institution of contracting state or (ii) interest arising from loan or credit made by a governmental institution for financing exports. The 10% rate applies to other interest.
35. The 0% rate applies where the dividend or interest is paid to the central bank, government, or any governmental institution. The 5% rate applies to other dividends and interest.
36. The 0% rate applies where interest is paid to the central bank, government, or any governmental institution. The 5% rate applies to other interest.
37. The 0% rate applies if the dividend is paid to (i) a company that directly holds at least 10% of the capital of the company paying the dividends or (ii) a government or any governmental institution. The 5% rate applies to other dividends.
38. The 0% rate applies where the interest is paid to a bank, government, or any governmental institution. The 5% rate applies to other interest.
39. The rate of 5% applies if the beneficial owner of the interest carries on business in the other contracting state through a PE and the debt on which the interest is paid is connected to such PE.
40. The 0% rate applies where the dividend is paid to the government or any governmental institution of that contracting state. The 5% rate applies to other dividends.

41. The 0% rate applies where interest is paid to the central bank or government of a contracting state. The 2% rate applies to other interest.
42. The 0% rate applies where interest is paid to the government or any governmental institution of a contracting state.
43. The 0% rate applies where the dividend or interest is paid to the government or any governmental institution of a contracting state. The 5% rate applies to other interest and dividends.
44. The 0% rate applies where interest is paid to the government or any governmental institution of a contracting state. The 10% rate applies to interest paid to financial institutions. The 15% rate applies to all other interest.
45. The 4.9% rate applies in case of interest paid to banks, and 10% in other cases.

Kuwait is awaiting conclusion or ratification of treaties with Algeria, Bangladesh, Benin, Bosnia and Herzegovina, Guyana, Kenya, Lithuania, Luxembourg, Nigeria, Senegal, and Seychelles.

Tax administration

Taxable period

Tax is imposed on profits arising in a taxable period, which is defined as the accounting period of the taxpayer and further assumed to be one calendar year. The first taxable period can, however, be a minimum of six months and a maximum of 18 months. The DIT may also agree to a written request from the taxpayer to change the year-end to a date other than 31 December.

Tax returns

The taxpayer must submit a tax return, based on the taxpayer's books of account, within three months and 15 days from the end of the taxable period. Taxpayers can, in certain cases, request an extension of up to 60 days to file the tax return. If such an extension is granted, no tax payment is necessary until the tax declaration is filed, and payment must then be in one lump sum.

The taxpayer must maintain certain accounting records in Kuwait, which are subject to inspection by the tax department's officials after submission of the tax declaration. Accounting records can be in English and may be in a computerised system used to prepare financial statements if the system includes the required records and the tax department is previously informed.

The tax return should be supported by the following:

- Audited balance sheet and profit-and-loss account for the period.
- Detailed list of fixed assets (e.g. additions, disposals).
- List of inventory (e.g. quantities and values).
- List of subcontractors and the latest payments to them.
- Copies of current contracts and a statement of income and expenditure for each.
- Trial balance, forming the basis of the accounts.
- Last payment certificate from the client.
- Insurance companies must attach to the Public Budget and the tax declaration a detailed statement with the reinsured documents and the related terms and conditions.

As a general rule, an assessment is finalised only after inspection of the client's records by the tax department. As indicated above, proper documentation must be maintained to support expenditures and to avoid disallowances at the time of tax inspection. If support is considered inadequate, the assessment is apt to be made on the basis of deemed profitability. This is computed as a percentage of turnover and is fixed arbitrarily, depending on the nature of the taxpayer's business.

Payment of tax

Tax is payable in four equal instalments on the 15th day of the fourth, sixth, ninth, and 12th months following the end of the tax period. If an extension is granted by the DIT, all of the tax is payable upon the expiration date of the extension. Failure to file or pay the tax on time attracts a penalty of 1% of the tax liability for every 30 days of delay or part thereof.

Objection process

If a company disagrees with an assessment issued by the DIT, the company should submit an objection within 60 days from the date of the assessment. The DIT is required to resolve the objection within 90 days of the filing of the objection, after which a revised tax assessment is issued by the DIT. Upon issuance of a revised tax assessment, any additional tax is payable within 30 days. If the DIT issues no response within 90 days of filing the objection, this implies that the taxpayer's objection has been rejected.

Appeals process

In case the objection is rejected or the taxpayer is still not satisfied with the revised tax assessment, the company may contest the matter further with the Tax Appeals Committee (TAC) by submitting a letter of appeal within 30 days from the date of the objection response or 30 days from the expiry of the 90 days following submission of an objection if no response is provided by the DIT.

The matter is then resolved through appeal hearings, and a final revised assessment is issued based on the decision of the TAC. Tax payable per the revised assessment must then be settled within 30 days from the date of issuance of the revised assessment. Failure to do so results in a delay penalty of 1% of the amount of the tax due per the final assessment for each period of 30 days or part thereof of the delay.

Statute of limitations

The statute of limitations period is five years. Moreover, under Article No. 441 of the Kuwait Civil Law, any claims for taxes due to Kuwait or applications for tax refunds may not be made after the lapse of five years from the date on which the taxpayer is notified that tax or a refund is due.

Topics of focus for tax authorities

The DIT has implemented an active approach to ensure the compliance of local companies with the tax retention mechanism in order to ensure that foreign entities earning income from Kuwait are subject to tax on such income. The DIT's attention is often directed to local companies having franchise operations and agreements with foreign franchisors in Kuwait. In some cases, the DIT has asked the Kuwaiti companies to settle the 5% retention where the franchisors have failed to comply with the tax law requirements.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

The state of Kuwait has signed an Intergovernmental Agreement (IGA) with the United States, dated 29 April 2015, in light of FATCA. In this regard, Ministerial Order Number 48 of 2015 (MO No. 48) was issued on 3 September 2015, setting a compliance framework for the financial institutions operating in Kuwait.

Financial institutions (FIs) operating in Kuwait have a series of compliance requirements to adhere to within the deadlines provided by MO No. 48. FIs were primarily required to register with the US Internal Revenue Service (IRS), appoint the Responsible Officer, and implement the compliance requirements by 31 December 2015.

FIs in Kuwait are expected to report on an annual basis on or before 30 September of each year; the report is to include the Specified US Persons identified for each period ending 31 December (i.e. nine months from the year-end). It has been the practice of the MoF to request the reports by 30 August to ensure all financial institutions are reporting prior to the deadline specified by the IRS.

The Common Reporting Standard (CRS)

Kuwait committed to the CRS on 19 August 2016 by signing the Multilateral Competent Authority Agreement (MCAA), with a plan to commence the first reporting period in 2018.

On 12 July 2017, MO No. 36 of 2017 was published in the Official Gazette, which confirmed Kuwait's commitment to implement the CRS. On 20 August 2017, MO No. 46 of 2017 was issued, whereby specific deadlines for reporting, due diligence, and update of on-boarding procedures were published. Moreover, as specified by the MO, the FIs are required to hire an auditor to provide an opinion on the process and reporting undertaken by the FI to meet the requirements of the CRS. As per MO No. 36 of 2017, the first report by FIs is expected on or before 31 May 2018. The cut-off date for pre-existing accounts is 31 March 2017 and for new customer accounts on or after 1 April 2017. That said, as of March 2018, the MCAA is yet to be approved by the Kuwaiti Parliament.

Kyrgyzstan

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Significant developments

In 2018, the rates of excise tax for tobacco goods increased to 460 Kyrgyzstani som (KGS) per 1 kg, and for cigars to KGS 115 per 1 unit. Note that the excise tax rate for cigarettes and cigarillos increased in 2018 to KGS 1,250 and KGS 920 per 1,000 units, respectively.

Consideration of the new Tax Code is postponed indefinitely.

Taxes on corporate income

Pursuant to the Tax Code, resident entities are subject to a corporate income tax, called the 'profit tax', on their aggregate annual income earned worldwide. Non-resident legal entities carrying out business activities through a permanent establishment (PE) in Kyrgyzstan are subject to profit tax on the income attributed to the activities of that PE.

Profit tax is calculated at a rate of 10% of aggregate annual income less allowed deductions.

Gold industry profit tax

The profit tax rate for taxpayers extracting and selling gold ore, gold concentrate, gold alloy, and refined gold is set at 0%.

Additionally, there is a tax ('income tax') specifically for taxpayers extracting and selling gold ore, gold concentrate, gold alloy, and refined gold.

Income tax is calculated at a varying rate of 1% to 20% (depending on the world price of a troy ounce of gold) of revenues from selling gold alloy and refined gold or of the value of gold in the gold-bearing ore and gold concentrate calculated on the basis of world prices.

Local income taxes

There are no provincial or local income taxes in Kyrgyzstan.

Corporate residence

There is no concept of corporate residence in the Kyrgyzstan tax legislation.

Kyrgyzstan

Legal entities formed under the Kyrgyz law should be taxed in Kyrgyzstan on their worldwide income, whereas foreign legal entities should be taxed only in relation to Kyrgyzstan-sourced income.

Permanent establishment (PE)

Under Kyrgyzstan tax legislation, a PE is a permanent place of business through which a non-resident carries out business operations, including activities performed through an authorised person. A PE includes the following:

- Any place of management, department, office, factory, workshop, mining, oil and gas wells, land, construction site, or project.
- Any services rendered by non-residents by hiring personnel working in the territory of Kyrgyzstan for a duration of more than 183 calendar days within any consecutive 12-month period.

A PE is not created in Kyrgyzstan if a non-resident is limited to the following activities in Kyrgyzstan:

- Use of warehouses or buildings exclusively for storage or demonstration activities.
- Use of a fixed place of business exclusively for preparatory purposes.
- Performance of activities in Kyrgyzstan through an agent in cases where such agent usually performs such activities in the ordinary course of business.

Creation of a PE may be connected with the establishment of a branch or subsidiary. Both branches and subsidiaries are considered appropriate business vehicles for foreign investors, and the choice between them is determined by the business the investor is engaged in, along with various other factors.

Other taxes

Value-added tax (VAT)

As part of the gradual incorporation of Kyrgyzstan into the Eurasian Economic Union (EAEU) and the harmonisation of tax legislation between the member countries, the VAT part of the Tax Code has been amended.

In Kyrgyzstan, VAT is assessed on taxable supply and taxable imports. Input VAT assessed on purchases used for business purposes is generally offset against output VAT on taxable supplies. The VAT rate is 12%. Certain supplies are eligible for zero-rate VAT; there are also VAT-exempt turnovers (*see below*).

All taxpayers registered for VAT purposes are required to charge VAT on their taxable supply and to calculate and report their VAT liabilities. The threshold for obligatory registration as a VAT payer has been increased to KGS 8 million. Even if an entity is not required to register for VAT purposes, it may still do so voluntarily by submitting an application to the appropriate tax committee.

Place of supply of goods

Goods and services are subject to VAT if they are deemed to be supplied in Kyrgyzstan under the place of supply rules. According to these rules, transactions are deemed to be made at the place where transport of the goods begins if the goods are transported by the supplier and at the place where the goods are transferred to the customer in all other cases. The rules regarding services are more complicated. Services that are not specifically mentioned are deemed to be supplied at the place where the service provider has established a place of business. Certain other services are deemed to be supplied at the place of the purchaser.

Import of goods

Generally, imports of goods are subject to VAT.

Non-deductible input VAT

The input VAT is not allowed for offset if it is subject to payment in connection with the receipt of goods, works, or services not related to entrepreneurial activity, or if it relates to inputs for VAT-exempt supplies.

Zero-rated supplies

Certain supplies are zero-rated for VAT purposes. These include exports (except for certain limited types of export), international transportation, and services connected with the service of transit air flights related to international transportation. Supply of goods, works, or services for official use of diplomatic and consular representations is taxable, but may be refunded, provided that certain conditions are met.

Exempt supplies

Certain supplies are VAT-exempt, including supplies and exports of gold and silver alloy and refined gold and silver; supplies of pharmaceuticals; land plots; supplies and import of jet fuel consumed by international air carrier operators; residual buildings and construction; insurance, pension, and financial services; and export of works and services. When a taxpayer generates both taxable and exempt supplies, input VAT proportional to the ratio of the exempt supply to the total supply is disallowed for offset.

VAT incentives

Certain imports are VAT-exempt, including imports of technological equipment, if used for one's own production purposes. A preferential offset method of VAT settlement in respect of certain fixed assets imported to Kyrgyzstan is also available.

Reverse-charge VAT

The current Tax Code does not have any provisions on reverse-charge VAT.

VAT liability calculation and VAT offset carryforward

In general, the VAT liability of a taxpayer is calculated as output VAT (i.e. VAT charged by a taxpayer) less input VAT (i.e. VAT paid by a taxpayer to its suppliers) in a reporting period. The excess of input VAT over output VAT may generally be carried forward against future VAT liabilities.

VAT compliance

The tax period for VAT is a calendar month. The submission of the VAT declaration is due by the 25th day of the month following the reporting period (except for major taxpayers, for which it is due by the end of the month following the reporting period). Payment of the VAT liability is due by the 25th day of the month following the reporting period.

Sales tax

Sales tax is assessed on Kyrgyz legal entities or foreign entities operating through a PE in Kyrgyzstan for any sales of goods or rendering of services. The sales tax mechanism differs from VAT, i.e. sales tax is levied for whole sales turnover and does not take into account the purchases (input turnover).

Sales tax rates are as follows:

- In case of sale of goods, works, or services that are VATable and VAT exempt that are paid for in cash:
  - Trading activities: 1%.
  - Other activities: 2%.
- In case of sale of goods, works, or services that are VATable and VAT exempt that are paid for via non-cash settlement: 0%.
- In case of sale of goods, works, or services not outlined above:
  - Trading activities: 2%.
  - Other activities: 3%.
- 2% for banks.
- 5% for mobile communication activities.

The Kyrgyzstan Tax Code further defines 'trading activities' as activities on sale of goods purchased for re-sale purposes.

The tax period of sales tax is a calendar month. Taxpayers have to submit tax returns and make payments of sales tax at the place of tax registration by the 21st day of the month following the reporting month.

Customs duties and regimes

According to the Customs Code, the customs value of goods imported to the customs territory of Kyrgyzstan is determined by applying the following methods:

- Transaction value of imported goods.
- Transaction value of identical goods.
- Transaction value of similar goods.
- Deductive method.
- Computed method.
- Provisional method.

Based on the Kyrgyzstan customs legislation, the rates of customs duties may be:

- *Ad valorem* - charged in percentage to customs value of the taxable goods.
- Specific - charged within established size for unit of the taxable goods.
- Combined - including both above mentioned types.

The rates in percentage range from 0% to 65%.

Import restrictions

Generally, all entities or persons have equal rights to import and export or transfer goods into the Kyrgyzstan territory, including when carrying out foreign trade activity, except in special cases as stipulated by legislation and international treaties.

Import of certain goods (e.g. weapons, nuclear materials) is subject to licensing.

Temporary import relief

There is a temporary import regime under which foreign goods are used in Kyrgyzstan with full or partial conditional exemption from the payment of customs duties and taxes and without application of non-tariff regulatory measures. The term of the 'temporary import' customs regime may not exceed two years.

Customs duties incentives

Certain items are exempt from customs payments, including:

- Transportation vehicles used in the international conveyance of passengers and goods and items of material and technical supply in transit.
- Goods imported in the customs territory or imported from the customs territory for official and personal use by official state representatives of foreign states.

Kyrgyzstan provides preferential rates or exemptions on the importation (and export) of certain goods, including goods originating from the states that form free trade zones or a customs union with Kyrgyzstan and goods originating from developing countries, included on a special list provided by the government.

Documentation and procedures

Kyrgyzstan pays close attention to formalities/documentation, so it is necessary to furnish the customs authorities with a set of required documents. For import, such documents usually include cargo customs declaration, invoices, contracts, etc.

Warehousing and storage

There is a bonded warehouse customs regime in Kyrgyzstan. Under this regime, imports entering into Kyrgyzstan may be stored in special facilities or special areas that have the status of a customs warehouse under the customs legislation of Kyrgyzstan. This regime implies exemption from customs duties and taxes.

Generally, most goods (unless otherwise specifically provided for) can be placed under the bonded warehouse customs regime. The period for storage of goods at a bonded warehouse is determined by the person placing the goods into the customs warehouse but cannot exceed three years from the date when the goods were placed under the bonded warehouse customs regime.

Re-exports

The re-export regime is similar to that used in international practice. It is defined as a customs regime under which goods previously imported into Kyrgyzstan are exported without payment or with a refund of the paid amounts of import customs duties and taxes and without applying the non-tariff regulatory measures with respect to the goods in compliance with Kyrgyz legislation.

There are certain conditions under which goods can be re-exported. Customs duties and taxes are not charged for goods declared as goods intended for re-export. However, if the goods do not meet the re-export criteria, customs duties and taxes are paid in the amount that would be payable if the goods, at their importation, were declared for release for free circulation, as well as interest on them paid at the National Bank rates, as if deferment was provided with respect to the amounts at placement of the goods under the customs regime of re-export.

Excise tax

Certain goods manufactured in Kyrgyzstan or imported to Kyrgyzstan are subject to excise tax. These include certain alcohol and alcoholic drinks, fortified drinks, beer, tobacco goods, platinum, and oil products.

The rates of excise tax are adopted annually by the Kyrgyzstan government and range from KGS 30 for 1 litre of beer (pre-packaged and not packaged) to KGS 5,000 for 1 ton of fuel. In 2018, the rates of excise tax for tobacco goods increased to KGS 460 per 1 kg, and for cigars to KGS 115 per 1 unit. Note that the excise tax rate for cigarettes and cigarillos increased in 2018 to KGS 1,250 and KGS 920 per 1,000 units, respectively.

Stamp taxes

There are no stamp taxes in Kyrgyzstan.

Subsurface use taxes

The subsurface use taxes consist of separate bonus and royalty taxes on subsurface users, both Kyrgyz legal entities and branches of foreign legal entities. Under Kyrgyz legislation, subsurface users are legal entities and individuals who perform exploration and/or extraction of mineral resources.

The government, depending on the type of mineral resources, establishes the bonus rates.

The royalty rates are estimated either as a percentage of sales turnover (1% to 12%) or in absolute terms in Kyrgyzstani som, depending on the type of mineral resources.

Payroll taxes

The employer is obligated to withhold and transfer to the budget the income tax from its employees' gross remuneration less allowable deductions. The income tax rate is 10%.

Social contributions

The social security system in Kyrgyzstan is comprised of the Pension Fund, Obligatory Medical Insurance Fund, and Employees Recovery Fund. The employer pays social contributions at 17.25% of employees' gross remuneration from its own funds.

The employer is also required to withhold social contributions at 10% out of the salary that is payable by the employees to the Pension Fund and State Saving Fund.

Local taxes

There are two local taxes in Kyrgyzstan, property tax and land tax.

Property tax

Property tax is a local tax payable quarterly by legal entities owning transport vehicles and immovable property in Kyrgyzstan, including apartment houses, apartments, boarding houses, holiday inns, sanatoria, resorts, production, administrative, industrial, and other buildings or facilities. Certain real estate may not be subject to this tax according to special lists approved by the government.

In respect of immovable property, the tax rate is established by the city or local authorities at a rate not to exceed 0.8% of the taxable base, except for apartment houses and apartments designated solely for residence, for which the rate may not exceed 0.35% of the taxable base. For transport vehicles, the tax is computed in Kyrgyzstani som, depending on engine volume and year of production.

Land tax

Land tax is paid quarterly by legal entities on the area of owned land. The basic rates are provided in the Tax Code, depending on the location and purposes of the land. The basic rates may range from KGS 0.9 to KGS 2.9 per square metre.

Branch income

Branch income is subject to the profit tax. There is no special branch profits tax in addition to profit tax.

Income determination

Aggregate annual income is comprised of all types of income, including, but not limited to, the following, in addition to gross revenue from the sale of goods, works, or services:

- Dividends.
- Interest income (except for income already subject to withholding tax [WHT]).
- Royalties.
- Assets received free of charge.
- Rental income.
- Income from the reduction of liabilities.
- Foreign exchange gain.
- Write-off liability.

The Tax Code envisages some profit tax privileges aimed at developing certain areas of the business economy. Currently, these include privileges/preferences for:

- Charity organisations.
- Associations of invalids of I and II groups (i.e. persons with disability with different levels of physical disability); associations of blind and deaf persons.
- Agricultural organisations.
- Institutions of criminal-executive systems of Kyrgyzstan.
- Growing of berries, fruits, and vegetables.
- Credit unions.
- Companies that have been involved in the food industry for less than three years and included in the Kyrgyzstan government’s list of exempt companies.
- Leasing companies (from 2017).
- Pre-school education organisations.
- Private medicine institutions focused on cardiac surgery.

Non-taxable revenues include, *inter alia*, the following:

- Property received as a charter capital contribution and income from realisation of shares of organisations.
- Property donated to special organisations using such property for development purposes under the government’s social culture plan. Despite being designated as

property used for social culture purposes, such property may still be used for other purposes (i.e. citizen defence projects, mining equipment, water intakes, heat networks, roads, stations).

Inventory valuation

There are no special provisions on inventory valuation in the Kyrgyzstan Tax Code. Inventory valuation is conducted in accordance with the International Financial Reporting Standards (IFRS).

Capital gains

Capital gains are subject to the ordinary profit tax rate. There is an exemption available for capital gains from selling shares that occur on the date of a given sale in the official lists of the stock exchange in the top two categories of listing.

Dividend income

Dividends from participation in Kyrgyz legal entities are exempt from profit tax. All other dividends are subject to the ordinary profit tax rate.

Interest income

Interest income should be included into the aggregate annual income and taxed at the standard profit tax rate, provided the tax has not already been withheld at the source of payment in Kyrgyzstan at the 10% rate.

Royalty income

Royalty income should be included into the aggregate annual income and taxed at the standard profit tax rate.

Partnership income

Simple partnerships are not taxpayers in their own right, and income and expenses flow through to the partners for tax reporting purposes. Kyrgyzstan limited liability partnerships are taxed as corporations.

Foreign income

Generally, Kyrgyz legal entities are taxable on income earned worldwide. Foreign income is subject to the ordinary profit tax rate.

There are no tax deferral provisions in Kyrgyzstan tax legislation.

Deductions

Depreciation

The Tax Code establishes a deduction for depreciation based on the declining-balance method. Depreciable fixed assets are divided into several groups, for which maximum depreciation rates range from 10% to 50%.

Group	Assets	Maximum rate of depreciation (%)
I	Cars, automobile and tractor equipment for use on roads, special instruments, sundries, and accessories; computers, telephone sets, peripherals, and equipment for data processing	30

Group	Assets	Maximum rate of depreciation (%)
II	Automotive transport rolling stock: trucks, buses, special automobiles, and trailers; construction equipment; machines and equipment for all sectors of industry, including the foundry; smith-pressing equipment; electronic and simple equipment, agricultural machines. Office furniture, intangible assets	25
III	Depreciable fixed assets not listed in other groups and expenses equated to them	20
IV	Railroad, sea, and river transport vehicles, power machines, and equipment: thermal-engineering equipment, turbine equipment, electric motors and diesel-generators, electricity transmission and communication facilities, pipelines	10
V	Buildings and constructions	10
VI	Taxpayer's costs of geological preparation of deposit reserves, design and engineering-research works, and obtaining the licence for the use of deposits, as well as mining-capital and mining pre-works aimed at further extraction of minerals, as well as the fixed assets of the mining and/or mining-processing enterprises put into operation and actually used in deposit exploration	50

Certain expenses are deductible within specified limits, including expenses on repairs, expenses on procuring and producing capital production assets, and certain other expenses.

Goodwill

Kyrgyzstan domestic tax legislation does not stipulate the allowance of a deduction for goodwill for profit tax purposes.

Start-up expenses

Kyrgyzstan domestic tax legislation does not stipulate the allowance of a deduction for start-up expenses for profit tax purposes.

Interest expenses

Deductions for interest actually paid on debts, where the loan proceeds were used to fund expenses incurred for the taxpayer's business activity, are allowed within limitations provided in the Tax Code, depending on methodology and nature of the debt. For example, interest on loans connected with the purchase of depreciable assets is not deducted, but increases their value.

Bad debt

Bad debt amounts are deductible in Kyrgyzstan. The Tax Code defines a 'bad debt' as the amount the taxpayer is unable to fully receive as a result of the termination of an obligation by the court, bankruptcy, liquidation, or death of the debtor, or expiry of the limitation period provided by the civil legislation of Kyrgyzstan.

Charitable contributions

Deductions for donations of assets to charity and budget organisations are limited to 10% of taxable income.

Fines and penalties

Fines and interest penalties paid to the state budget are not deductible.

Taxes

The following taxes may be deducted:

- Land tax.
- Property tax.
- VAT not allowed for offset.
- Subsurface use taxes.

Other significant items

Generally, other expenses related to the earning of aggregate annual income are considered deductible for profit tax purposes, including:

- Business trip expenses that were actually incurred and supported by appropriate documentation (*per diems* during business trips are deductible only within the established statutory limits).
- Commissions on payroll expenses for labour.
- Material and social benefits provided to employees.
- Representational expenses connected with earning income (transportation, hotel, and translator services).
- Training and retraining of employees.
- Scientific development and exploration works (deductions are relevant for fixed assets).
- Any other costs related to earning income, which can be supported by appropriate documentation in terms of their nature and amount (e.g. invoices, payment orders, receipts).

The other categories of expenses that are not deductible include, *inter alia*:

- Capital expenses and expenses connected with the purchase, production, and installation of equipment.
- Any expenses incurred on behalf of any other third persons, except in cases where documentation proves business needs for such expenses.
- Pricing losses caused by rates, understated below-market prices, and price incentives.
- Expenses connected with purchases of services in entertainment, vacations, and leisure.

Net operating losses

Net operating losses can be carried forward for up to five years. There are no provisions in Kyrgyz legislation allowing carryback of losses.

Payments to foreign affiliates

Payments to foreign affiliates are deductible for profit tax purposes if they are aimed at earning income and supported by documentation.

Group taxation

Group taxation is not permitted in Kyrgyzstan.

Transfer pricing

While there is no special law on transfer pricing in Kyrgyzstan, rules on transfer pricing are found in the Tax Code. The general transfer pricing provisions set in the Tax Code do not follow Organisation for Economic Co-operation and Development (OECD) guidelines (thus, no advance pricing agreement [APA] mechanism is provided). According to the Kyrgyz transfer pricing regulations, the tax authorities are empowered to determine the value of the following transactions:

- Transfers between related parties.
- Barter transactions.
- Cross-border transactions.

Provisions to the transfer pricing regulations were also developed granting the tax authorities the right to carry out transfer pricing controls on operations with goods for which the minimum target price has been established.

Thin capitalisation

There are no thin capitalisation limitations under the Kyrgyzstan Tax Code.

Controlled foreign companies (CFCs)

There are no provisions for CFCs in Kyrgyzstan.

Tax credits and incentives

Foreign tax credits

There is no possibility to offset the amount of tax paid outside Kyrgyzstan against the Kyrgyz tax if there is no double taxation treaty (DTT) with the country.

Investment incentives

Kyrgyzstan has an article in the Tax Code regarding the specifics of profit taxation on earnings from large investments. Based on the article, profit earned by a local company from own-produced or re-processed goods in Kyrgyzstan using only new equipment (not used or bought before 1 May 2015) is subject to 0% profit tax if the taxpayer has:

- annual turnover exceeding KGS 170 million
- monthly profit tax exceeding KGS 150,000, or
- charter capital of the local company exceeding KGS 10 million.

Please note that companies in the tobacco, mining, alcohol, retailing, and information technology (IT) sectors are not able to apply such incentives to their profit.

Moreover, dividends of a foreign company that engaged in large investment projects in Kyrgyzstan, not related to PE activities in Kyrgyzstan, received as part of the profit with 0% profit tax are subject to 0% WHT.

Special economic zones

There are four special economic zones in Kyrgyzstan: Naryn, Karakol, Bishkek, and Maimak. The special economic zones generally provide for a tax-neutral regime, exemption from customs duties, and a liberal currency control regime. However, there is a special fee for incentives, which varies from 0.1% to 2% of sales (depending on the region).

Park of Innovative Technologies

Activities of residents of the Park of Innovative Technologies are exempt from profits tax, sales tax, and VAT, providing they meet requirements of the Tax Code of Kyrgyzstan. The tax rate for employees of residents of the Park of Innovative Technologies and individual entrepreneurs is 5%.

Withholding taxes

Income of a non-resident deemed as income from sources in Kyrgyzstan that is not connected with a PE is subject to taxation at source of payment, without applying deductions, at the following rates:

- Dividends and interest: 10%.
- Insurance premiums received under risk insurance or re-insurance agreements: 5%.
- Authors fees and royalties: 10%.
- Income from telecommunication or freight services in international communication and transportation between Kyrgyzstan and other countries: 5%.
- Other services and activities: 10%.

WHT applies to Kyrgyzstan-source income regardless of whether the payment is made within or outside of Kyrgyzstan.

The application of DTTs often effectively provides a reduction of WHT rates or an income tax exemption. Note that the application of treaty privileges is not necessarily automatic, and taxpayers may need to comply with certain administrative procedures to secure relief.

Double taxation treaty (DTT) relief

Kyrgyzstan has enforced DTTs with 27 countries and 3 DTTs that are pending. In cases when certain DTTs envisage the tax rates applying for taxation of dividends, interest, or royalties that exceed the rates envisaged by the Kyrgyzstan domestic tax legislation, we believe that such income is subject to taxation at the rate envisaged by the above-mentioned tax legislation. Information outlined in the below table is provided for application by business entities. The below table does not represent tax provisions provided by respective DTTs for government-owned legal entities, governmental institutions, or governmental organisations (central/national banks).

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	10	10	10
Treaty:			
Austria	5 (1a)/15	10	10
Belarus	15	10	15
Canada	15	15	0 (3a, 3b)/10
China	10	10	10
Estonia (pending)	5 (1b)/10	10	5
Finland	5 (1a)/15	10	5
Georgia (pending)	5 (1a)/10	5	10
Germany	5 (1a)/15	5	10
India	10	10	15
Iran	5 (1a)/10	10	10

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Kazakhstan	10	10	10
Korea, Republic of	5 (1a)/10	0 (2a)/10	5 (3c)/10
Kuwait	0	0	10
Latvia	5 (1a)/10	5 (2b)/10	5
Lithuania	5 (1c)/15	10	10
Malaysia	5 (1d)/10	10	10
Moldova	5 (1a)/15	10	10
Mongolia	10	10	10
Pakistan	10	10	10
Poland	10	10	10
Qatar	0	0	5
Russia	10	10	10
Saudi Arabia	0	0 (2c)	7.5
Switzerland	5 (1a)/15	5	5
Tajikistan	5 (1e)/15	10	10
Turkey	10	10	10
Ukraine	5 (1e)/15	10	10
United Arab Emirates	0	0	5
United Kingdom (pending)	5 (1f)/15	0 (2d)/5	5
Uzbekistan	5	5	15

Notes

1. Where the following condition is met:
   a. Beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the paying company.
   b. Beneficial owner is a company that directly holds at least 20% of the capital of the paying company.
   c. Beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the paying company.
   d. Beneficial owner is a company (other than a partnership) that owns not less than 10% of the capital of the paying company.
   e. Beneficial owner is a company that owns not less than 50% of the capital of the paying company.
   f. Beneficial owner is a company that directly or indirectly holds at least 25% of the capital of the paying company.
2. Where the following condition is met:
   a. Interest is paid in respect to credit sales of industrial, commercial, or scientific equipment, goods and merchandise, or sale of goods by an enterprise to another enterprise, given that the interest is beneficially owned by a resident of the another contracting state.
   b. Recipient is a bank or any financial institute, and interest is paid in respect to provision of a loan to another bank or financial institute.
   c. Interest applied to income deemed as income from debt-claim. The term ‘income from debt-claim’ means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds, or debentures. Penalty charges for late payment should not be considered as income from debt-claims for the purpose of corresponding DTT.
   d. Interest is paid in respect of indebtedness arising as a consequence of the sale on credit of any equipment, merchandise, or services.
3. Where the following condition is met:
   a. Copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting).
   b. (i) the payer and the beneficial owner of the royalties are not associated persons within the meaning of subparagraphs 1 (a) or 1 (b) of Article 9 (‘associated enterprises’) of corresponding DTT (*for more details, please see corresponding DTT*); (ii) royalties are paid for the use of, or the right to use, application software or any patent or for information concerning industrial, commercial, or scientific experience (but not including any such information provided in connection with a rental or franchise agreement).

c. Royalties are paid for the use of, or a right to use, industrial, commercial, or scientific equipment.

Tax administration

Taxable period

The taxable period for profit tax is one calendar year.

Tax returns

The Tax Code stipulates that the Aggregate Annual Income Tax Declaration must be filed with the tax authorities by 1 March of the year following the reporting year.

Tax authorities may grant an extension for filing a tax return for up to one month upon application by the taxpayer. Such extension does not relieve or prolong the taxpayer's obligation to pay the tax in a timely manner.

Payment of tax

Tax payments should be made as follows:

- Advance payments on profit tax: Taxpayers (except for zero-rated taxpayers and taxpayers exempt from profit tax) should file tax reporting and pay to budget a preliminary amount of profit tax on a quarterly basis (from the second quarter). The reporting period for the preliminary amount of the profit tax is established as the first quarter, first half year, and first nine months of the current fiscal period. The advance profit tax amount for the reporting period shall be determined in the amount of 10% of the profit calculated for the reporting period according to the rules established by Kyrgyz legislation on accounting. The advance profit tax amount payable to the budget for the reporting period shall be defined as the positive difference between the advance profit tax calculated for the reporting period and advance profit tax calculated for the previous reporting period.
- Final payments on profit tax: 1 March of the year following the reporting year.
- Tax withheld at the source of payment by a tax agent: By the 20th day of the month following the month when income was recognised.

Tax audit process

The State Tax Committee of the Ministry of Finance of Kyrgyzstan and its local tax authorities are the only state authorities that have the right to perform tax audits. The Kyrgyzstan tax service consists of relevant subdivisions of the revenue committee of the Ministry of Finance of Kyrgyzstan and its local authorities.

A tax audit is performed based on a written notification from the Head of the State Tax Inspectorate, which specifies the name of the company to audit, the scope of the audit, and the terms of the audit. Tax audits may be performed not more than once a year by one of the tax authorities (district, city, region, or the state tax authorities) and should not last more than 30 days (50 days for large level taxpayers). If necessary, however, a tax audit may be extended for ten additional days with written approval from the State Tax Inspectorate.

Statute of limitations

The period of limitation for tax liability is six years.

Topics of focus for tax authorities

Generally, the Kyrgyz tax authorities focus on the support for profit tax deductions, correctness of tax calculations, and WHT issues during the tax audits. Recently, we have also observed a rising interest from the tax authorities in transfer pricing issues as well as sales tax and VAT on telecommunication companies.

Lao People's Democratic Republic

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Significant developments

There have been no significant corporate tax developments in Lao People's Democratic Republic (PDR) during the past year.

Taxes on corporate income

Profits tax (PT)

All companies (including all forms of legal entities) that are registered under Lao PDR law are subject to PT on their worldwide income. Companies formed under foreign law, operating a business in Lao PDR, and conducting business in Lao PDR are subject to tax on their income derived in Lao PDR.

The standard rate of PT for companies in Lao PDR is 24% of net profit after adjustments for non-deductible expenses and others according to Lao Tax Law No. 70/NA, dated 15 December 2015. The 24% rate applies to both domestic and foreign investors.

Tax holidays and reduced PT rates are applicable to companies whose investment activities qualify as promoted investment activities (*see the Tax credits and incentives section for more information*) or large investments in mining and hydro power project (tax incentive is dependent on negotiation).

Lump-sum tax

The lump-sum tax is imposed on small and medium business operators that are not registered in the value-added tax (VAT) system and companies that did not prepare Lao accounting books. The lump-sum tax is paid in lieu of the PT, based on an agreement with the tax office; consequently, the lump-sum tax is regarded as a tax within the PT category.

Local income taxes

There are no provincial or local income taxes in Lao PDR.

Corporate residence

There is no definition of residence or permanent establishment (PE) provided in the amended Lao Tax Law No. 70/NA, dated 15 December 2015 (effective 24 May 2016), as well as the latest VAT Law, dated 23 July 2014 (effective 3 July 2015).

According to the double tax treaties (DTTs) of Lao PDR, 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

It is understood that the reason for having no PE definition in the law is because there is foreign withholding tax (FWHT) levied on foreign entities conducting their business activities in Lao PDR. *For more information about the FWHT, please see the Withholding taxes section*.

Currently, the government is reassessing tax privileges and DTTs that they have offered to some businesses/signed with some countries in the past, and they have planned to cancel some; however, this is not yet final.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 10%.

VAT is imposed on the final consumer of goods and services. Domestic goods and services used for production, trading, and consumption in Lao PDR, goods imported into Lao PDR, and services rendered by foreigners to Lao PDR customers are subject to VAT.

Certain goods and services are exempt from VAT. Exempted items include unprocessed agricultural products, seeds, fertilisers, textbooks, education services, medical services, certain bank services, and financial institution services.

Exported goods are zero-rated, except export of natural resources that aren't finished goods, which are subject to 10% VAT. The conventional credit method is used to calculate the VAT payable (i.e. output VAT less input VAT). Excess input VAT can be carried forward for six months (extendable) relating to goods and services. Excess input VAT arising from the capital expenditures that are regarded as fixed assets can be claimed until it is fully utilised. Input VAT for exports is refundable.

There is no concept of export services in the VAT Law. It appears that all services from all sources are subject to VAT.

Business operators engaged in production or trading of taxable goods and services must register in the VAT system if their annual revenue is 400 million Lao kip (LAK) or more. Companies below this threshold may voluntarily register. Only registered VAT payers may claim VAT refunds.

One unique feature of Lao PDR VAT is that VAT is imposed on the services rendered by overseas service providers to domestic service users (withholding VAT). Domestic service users have an obligation to withhold VAT on top of the service fees paid to overseas service providers. The rate of withholding VAT is 10%.

Import duties

All goods imported into Lao PDR are subject to import duty. Exemptions are available to enterprises operating promoted investment activities (*see the Tax credits and incentives section for more information*).

Lao PDR has adopted the General Agreement on Tariffs and Trade (GATT) valuation principles.

Duty rates are based on the Association of Southeast Asian Nations (ASEAN) harmonised tariff nomenclature for imports from ASEAN member countries (ASEAN Trade in Goods Agreement [ATIGA]).

Lao PDR has also signed free trade agreements (FTAs) with ASEAN dialogue countries: Australia and New Zealand (under their Closer Economic Relations FTA), China, India, Japan, and Korea; otherwise, normal rates are applied. Duty rates range between 0% and 40%, depending on whether the goods are ASEAN or other source.

Excise taxes

Excise tax is levied on consumers of certain imported goods, domestic produced goods, and services within the territory of Lao PDR. The rates range from 5% to 90%. Importers file and pay excise tax at the time of filing at the customs declarations at the customs checkpoints. Domestic producers and service suppliers shall file their monthly excise tax returns no later than the 15th day of the following month.

Property taxes

The land tax is based on both the location and the size of the land and is levied at annual rates per square metre. Land tax is payable in the first quarter of the relevant calendar year.

Transfer taxes

There are no transfer taxes in Lao PDR.

Stamp taxes

The stamp taxes in Lao PDR range from LAK 2,000 to LAK 20,000, depending on the types of documents.

Payroll taxes

Income from salaries and wages, including extra allowances, over-time work, position allowances, career allowances, annual bonuses, meeting allowances for members of the executive board of the companies, and other benefits received in cash and in kind, is subject to income tax withholding by employers at the progressive rates ranging from 0% to 24%. Personal income tax (PIT) is calculated based on gross revenue, as mentioned above, on a monthly basis, and is not recalculated again on an annual basis.

Social Security Scheme contributions

An enterprise with ten or more employees must register itself and its employees in the Social Security Scheme and make contribution to the scheme. Both the enterprise and its employees are obligated to contribute to the Social Security Scheme a combined 11.5% of the employees' basic salaries or wages. The enterprise contributes 6%, and each employee contributes 5.5%.

According to Notification No. 0824/NSSFO of Ministry of Labour and Social Welfare, the basic amount for Social Security Scheme calculation is LAK 4.5 million.

The Social Security Scheme contribution shall be paid by 15th day of the following month.

Administrative fees

Under the Tax Law, government sectors can collect fees for issuing fiscal licences, business licences, permits, visas, advertisement boards, broadcasting rights, and other services. The charges and service fees are set periodically by Presidential Decree.

Branch income

Branches of foreign companies are taxable on their income from carrying on business in Lao PDR. However, not all foreign companies can establish a branch in Lao PDR. Branches are applicable only to industries such as banking, financial institutions, aviation, and consulting.

Income determination

The PT calculation is based on an entity's actual accounting profits, prepared in accordance with the Lao Accounting Manual, as adjusted for tax purposes. The Lao PDR tax regulations are silent on the treatment of a large number of items. Generally, in such cases, the tax treatment will follow the accounting treatment. Some of the more common differences are depreciation, entertainment expenses, and the non-deductibility of reserves and provisions (until actually paid). In addition, there is a limitation on some expenses, such as travel expenses and charitable contributions.

Inventory valuation

Inventory valuation for tax purposes follows the method used for accounting purposes in Lao PDR. All allowances are non-deductible expenses.

Capital gains

There is no separate tax on capital gains in Lao PDR. However, profits from the sale of shares are subject to tax at the following rates based on the Law on Tax No. 70/NA, dated 15 December 2015:

- In case there is evidence of a cost certificate: 10% of the gain.
- In case there is no evidence of a cost certificate: 2% of the value of the selling price.

There is no tax for the gain on sale of investments in listed companies in Lao PDR.

The buyer of shares, except for purchase/sale of shares of a company listed in the stock market, is required to withhold and remit the tax.

The rate of income tax on sales or transfers of real property are as follows based on Law on Tax No. 70/NA, dated 15 December 2015:

- In case there is evidence of the cost of trading or transfer certificate: 5% of the gain.
- In case there is no evidence of the cost of trading or transfer certificate: 2% of the selling price.

Dividend income

Dividends received from another Lao PDR company or a foreign company are taxed at a flat rate of 10%, except for dividend income of listed companies in Lao PDR.

Interest income

Interest income is taxable in Lao PDR, except for interest income derived from loans lent by commercial banks and interest income derived from money deposited with commercial banks. The rate of income tax on interest income is 10%.

Rental/royalties income

Rental income and royalties income are taxable in Lao PDR. The rate of income tax on rental income is 10%, and the rate of income tax on royalties income is 5%.

Unrealised exchange gains/losses

Unrealised exchange gains are not taxable and losses are not deductible in Lao PDR.

Foreign income

There is no controlled foreign company (CFC) or similar regime in Lao PDR. Profits of a foreign subsidiary are taxable when remitted as dividends.

Deductions

Accrued expenses are deductible in Lao PDR. Reserves and provisions are not deductible until actually settled.

Depreciation

Depreciation rates prescribed under the Lao Tax Law No. 70/NA, dated 15 December 2015, may differ from financial accounting. Depreciation is on a straight-line basis over prescribed useful lives, as follows:

Assets	Years
Buildings used for industrial purposes:	
With useful life of 20 years or less	20
With useful life over 20 years	50
Buildings used for commercial and residential purposes:	
Permanent structures	20
Semi-permanent structures	10
Machinery, equipment, vehicles	5
Software	2
Land and water transport vehicles	5
Ships, cruises, ferries, and other similar boats	10
Office equipment	5
Passenger aeroplane and cargo	Depending on flight hour

Goodwill

There is no specific guidance on the deductibility of goodwill or amortisation in Lao PDR.

Start-up expenses

Start-up expenses are amortisable over two years in Lao PDR.

Interest expenses

Interest is deductible on an accrual basis following the accounting treatment. All interest payments must be supported by documents showing that the payments are commercially reasonable. Interest paid to a shareholder is not deductible.

Bad debt

Bad debt reserves are not deductible in Lao PDR. However, a deduction is allowed if a certain procedure has been followed, one still cannot recover the debt, and the debt is ultimately written off.

Charitable contributions

Charitable contributions in Lao PDR are limited to 0.30% of total annual business turnover.

Travel expenses

Travel expenses for administrative activities are limited to 0.60% of total annual business turnover.

Reception and telephone expense

Reception and telephone costs are each limited to 0.40% of total annual business turnover.

Entertainment expenses

Entertainment expenses are non-deductible in Lao PDR.

Advertisements

Advertisement costs are limited to 0.50% of total annual business turnover.

Pension expenses

Pension expenses are deductible when paid in Lao PDR.

Bribes, kickbacks, and illegal payments

Bribes, kickbacks, and illegal payments are not deductible in Lao PDR.

Fines and penalties

Fines and penalties are not deductible in Lao PDR.

Taxes

PT and input VAT paid when purchasing fixed assets are not deductible for PT calculation purposes.

Net operating and capital losses

Tax losses can be carried forward for three years, but no carryback is allowed. A change in control will not impact a company's loss carryforward. Capital losses are treated as ordinary losses.

Payments to foreign affiliates

Payments to foreign affiliates are deductible if in the ordinary course of business.

Group taxation

Consolidation or grouping is not permitted, and each entity must file on a separate basis in Lao PDR.

Transfer pricing

There are no specific transfer pricing rules in Lao PDR. However, inter-company transactions should be at arm's length.

Thin capitalisation

The ratio of debt to capital must not exceed 70% of the total capital for concession investment activities. There are no thin capitalisation rules for general investment activities in Lao PDR.

Controlled foreign companies (CFCs)

There is no CFC or similar regime in Lao PDR.

Tax credits and incentives

Foreign tax credit

There is no foreign tax credit regime in the Law on Tax. However, certain tax treaties entered into by Lao PDR do have provisions for either deductibility of foreign tax or a credit.

PT incentives

PT incentives are provided under the Law on Investment Promotion 2016. This law divides investment areas into three zones, namely Zone 1, Zone 2, and Zone 3. The PT exemptions are as follows:

Zone	Areas	PT exempted (years)	Additional PT exempted (years)
1	Poor zone, remote zone with socio-economic infrastructure unfavourable to investment.	10	5*
2	Zone with socio-economic infrastructure favourable to investment.	4	3*
3	Special economic zone.	Shall comply with the specific regulation.	

* Note: If invest in the activities set out in item 2, 3, 5, and 6 of Article 9 of the Law on Investment Promotion, as follows:

- Item 2: Clean, toxic-free agriculture, planting seed production, animal breeding, industrial plantation, forestry development, protection of environment and bio diversity, activities promoting rural development and poverty reduction.
- Item 3: Environmental friendly agricultural processing industry, national traditional and unique handicraft processing industry.
- Item 5: Educations, sports, human resources development and labour skill development, vocational training institutions or centres, production of educational and sports equipment.
- Item 6: Construction of modern hospitals, pharmaceutical and medical equipment factory, production and treatment by traditional medicine.

PT exemption starts from the date of the investing enterprise generating business revenues. After finishing the period of PT exemption as mentioned above, the enterprise shall pay PT in accordance to the Law on Tax.

Concession business shall comply with relevant laws or according to the concession agreement.

Incentives related to customs duty and other taxes

In addition to the incentives related to PT, investors shall also be entitled to the following customs duty and other tax incentives:

- Exemption from PT in the accounting year after the incentives for PT exemption for a business that spends its net profit to expand its business.
- Import of materials, equipment, which may not be supplied or produced in Lao PDR, to form the fixed assets, and machinery and vehicles directly used for production will receive customs duty exemption and pay VAT at the rate of 0%. Importation of all types of fuel, gas, lubricant, administrative vehicles, and other materials shall comply with the relevant laws and regulations.
- Import of raw materials, equipment, and spare parts to be used in the production for export shall be exempted from customs duty at the time of import and granted the custom duty exemption at the time of export and pay VAT at the rate of 0%. Use of domestic raw materials that are not natural resources for producing finished and semi-finished products at the time of export shall pay VAT at the rate of 0%.
- Investors can transfer the annual losses to the next following year to be deducted from profit within the period of three years; however, the losses shall be audited and certified by the tax officer. After this period, the remaining loss is not allowed to be deducted from profit anymore.
- In the case of the Special and Specific Economic Zones, the incentives related to customs duties and other taxes shall comply with the Decrees on the establishment and management of each zone.

Specific promotion incentives

Investment in hospitals, kindergartens, academic schools, vocational schools, colleges, universities, research centres, and some activities related to public utilities shall obtain an exemption of rental or land concession as follows:

- Zone 1: Exemption of rental or land concession for a maximum of 15 years.
- Zone 2: Exemption of rental or land concession for a maximum of 8 years.
- Zone 3: Shall comply with the specific regulation.

Withholding taxes

WHT is applied to various types of payments made to domestic and foreign recipients.

Payment	WHT rate (%)
Dividend	10
Interest from lending activities (non-bank), commission, and guarantee fees	10
Profit from sale of shares	2 to 10
Income from business activities of the State Organizations, Lao Front for National Construction, Mass Organization, and Civil Society	10
Prizes and lottery prizes with the value of LAK 5 million and above	10
Intellectual property (IP) royalty	5
Sale or transfer of real property	2 to 5

Lao PDR has DTTs with the following countries, and WHT rates under the treaties are as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Belarus (not in force) (1)	5/10 (2)	8	5
Brunei	-	-	-
China	5	5	5
Kuwait (not in force)	-	-	-
Luxembourg	5/15 (3)	10	5
Malaysia	5	10	10
Myanmar	-	-	-
North Korea	5	10	5
Russia	10	10	0
Singapore	5/8 (4)	5	5
South Korea	-	-	-
Thailand	10	10	5
Vietnam	10	10	5

Notes

1. Not effective. Requested for ratification.
2. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividend; 10% of the gross amount of the dividends in all other cases.
3. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividend; 15% of the gross amount of the dividends in all other cases.
4. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividend; 8% of the gross amount of the dividends in all other cases.

Foreign withholding tax (FWHT)

An FWHT applies where a registered entity in Lao PDR contracts with a foreign supplier of goods and services (i.e. regardless of whether the services are provided in Lao PDR or outside Lao PDR) not registered in Lao PDR. The FWHT comprises both a PT and VAT (i.e. service only) element and is the final tax on the foreign supplier. The FWHT withholding and filing obligation rests with the Lao PDR customer, and it is applied before payment to the foreign supplier.

For foreign suppliers, PT must be withheld at a deemed percentage of taxable turnover. The deemed rates are determined according to the nature of the contract or activity.

Activity	**Deemed profit margin (% of business revenue)**	**Deemed PT rate (%)**
Commerce	5	1.2
Production	3	0.72
Services:		
Transportation goods and services	5	1.2
Building service - repair	10	2.4
Exploration - mineral	20	4.8
Excavation - trees	5	1.2
Exploration - embankments	15	3.6

Activity	Deemed profit margin (% of business revenue)	Deemed PT rate (%)
Entertainment services	25	6.0
Consulting services	10	2.4
Broker and developer	20	4.8
Other services	10	2.4

The above rates are under Article 33 of the Law on Tax No. 70/NA, dated 15 December 2015.

These PT rates are then added to the VAT at 10% to determine the total FWHT. For example, a foreign service charge of LAK 1,000 would result in LAK 48 of withholding PT and add on of LAK 100 of VAT for a total FWHT of LAK 148. Payments to foreign suppliers for services rendered are subject to both PT WHT and VAT WHT, while payments for foreign suppliers of goods are only subject to PT WHT since VAT is paid before the goods enter Lao PDR.

Tax administration

Taxable period

PT is determined on a calendar-year basis.

Tax returns

According to the Lao Tax Law No. 70/NA, dated 15 December 2015, the annual tax return is due by 10 January of the subsequent year. Submission of the final tax return will be followed by an audit by the Tax Department.

Payment of tax

PT is payable quarterly in advance, with a final payment after year-end. The first three payments must be paid by 10 April, 10 July, and 10 October of the current tax year. The final payment is due with the submission of the final tax return by 10 January of the subsequent year. The quarterly payments are either based on the actual or prior year's PT (or expected tax for the current year). Any excess PT payment can be carried forward to the subsequent year.

Tax audit process

According to the Enterprise Law 2013, the audit of a large company, who has assets of more than LAK 50 billion, is mentioned. However, in practice, the tax authorities will access the company after the annual tax filing and issue a certificate to the company after they complete their audit process. Most large companies are audited annually in Lao PDR.

Statute of limitations

The statute of limitations is generally three years in Lao PDR.

Topics of focus for tax authorities

There are no areas of special focus in tax examinations in Lao PDR.

Latvia

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Significant developments

Tax reform

Corporate income tax (CIT)

Due to the CIT reform, the approach to calculating CIT has changed fundamentally in 2018. Under the new model, taxation of corporate profits is postponed until those profits are distributed as dividends or deemed to be distributed. The main highlights are the following:

- 20% CIT on payment of dividends to individuals and entities.
- 0% CIT on retained earnings.
- 20% CIT on entertainment and non-business expenses and other deemed profit distributions.
- Tax losses do not accrue/are not available.
- No capital allowances for investment in non-current assets.
- CIT should be paid and reported for each tax period by the 20th day of the next month. Monthly filings are not required if there is no taxable item.

Availability of existing tax relief/tax attributes

Large investment relief (LIR) and reliefs for special economic zone (SEZ) and free port companies may still be claimed by reducing CIT on declared dividends.

Profits accumulated before 2018 can be utilised by declaring dividends free of CIT indefinitely.

Accrued tax losses can be offset by reducing CIT on declared dividends for five years (with several limitations).

Micro-business tax (MBT)

The tax reform has changed certain MBT criteria and administration procedures for MBT payers. The main highlights are as follows:

- The standard rate of 15% on revenue continues.
- The revenue cap is lowered to 40,000 euros (EUR) a year.
- A person can be employed only in one MBT payer.

Transfer pricing rules - draft

Proposed changes are to bring Latvian transfer pricing requirements into line with:

- the Organisation for Economic Co-operation and Development (OECD) guidelines for preparing transfer pricing documentation, and
- the new CIT Act adopted as part of Latvia's tax reform.

The changes introduce the master file and the local file.

As a result, the transfer pricing requirements face a number of changes, of which the following are key:

- a modified range of taxpayers governed by the requirements for preparing mandatory transfer pricing documentation
- a substantially increased amount of information to be disclosed
- an obligation to file annual transfer pricing documentation with the State Revenue Service (SRS) if certain criteria are met, and
- requirements for preparing and filing mandatory transfer pricing documentation.

Taxes on corporate income

Under the new CIT model, all undistributed corporate profits are exempt. This exemption covers both active (e.g. trading) and passive (e.g. dividends, interest, royalties) types of income. It also covers capital gains arising on the sale of all types of assets, including shares and securities, except for the sale of immovable property by non-residents. This tax regime is available to Latvian-resident companies and non-resident companies' permanent establishments (PEs) registered in Latvia.

The taxation of corporate profits is postponed until those profits are distributed as dividends or deemed to be distributed.

Profit distributions:

- Dividends (including interim dividends).
- Payments equal to dividends (i.e. profit share-outs by [a] cooperative societies, [b] sole traders, [c] partnerships, and [d] PEs).
- Deemed dividends (i.e. part of earnings being added to share capital).

Deemed distributions:

- Non-business expenses.
- Bad debts.
- Excess interest payments.
- Loans to related parties (with several exclusions).
- Transfer pricing adjustments.
- Surplus assets on liquidation.
- Benefits a non-resident gives to employees of its PE.

For non-business expenses, a non-taxable cap on representation expenses and staff sustainability expenses is calculated as 5% of the company's total gross wages for the past year.

For bad debts, there is no CIT to pay on the allowance if the debt is recovered within 36 months. An exemption is also available if several conditions of the CIT Act are satisfied.

For excess interest payments, only one method will apply up to EUR 3 million, (i.e. a debt-equity ratio of 4:1). A second method (30% of earnings before interest, taxes, depreciation, and amortisation [EBITDA]) will come into play if interest payments exceed EUR 3 million.

Lending to related parties will be considered a profit distribution, except for the parent's loans to a subsidiary; short-term loans for up to 12 months; a loan not exceeding one received from an unrelated party or not exceeding a certain level of registered share capital; or if the lender has no retained earnings at year-start.

The definition of 'related party' has been extended to include Latvian companies with at least 20% shareholders.

Distributed profits are generally subject to a 20% CIT at 20/80 of the net profit distribution.

From a Latvian perspective, this tax is considered a CIT, not a withholding tax (WHT), so the rate is not affected by an applicable double tax treaty (DTT).

In Latvia, resident companies are taxed on profits distributed from their worldwide income, while PEs of non-residents are taxed only on profits distributed from Latvian-source income. Other Latvian-source income derived by non-residents may be subject to a final WHT or CIT by way of assessment.

Micro-business tax (MBT)

The Micro-business Tax Act permits existing and newly-formed businesses to acquire micro-business status and register for MBT if they meet the following criteria:

- Their shareholders are individuals.
- Their revenue does not exceed EUR 40,000 in a calendar year.
- The number of employees does not exceed five at any time.
- One person is employed in one MBT payer only.
- Members of the board are employees of the MBT payer.
- Remuneration of each employee does not exceed EUR 720 a month.

The standard rate is based on a micro-business's revenue of up to EUR 40,000 and covers payroll taxes, business risk duties, and CIT.

Revenue of up to EUR 40,000 is subject to a 15% MBT.

The standard rate may be increased in the following cases:

- If the quarterly headcount exceeds five, then 2% per extra employee will be added to the standard rate.
- If a person is employed in more than one MBT payer, then 2% per extra employee will be added to the standard rate.
- If revenue exceeds EUR 40,000 in a calendar year, the excess will attract a 20% MBT.
- If an employee's net income exceeds EUR 720 a month, the excess will also attract a 20% MBT.

There is no extra rate if the MBT payer has reported a steady revenue growth in the financial statements over the last two tax years, capped at 30% a year. Similar rules apply to a micro-business`s headcount growth, capped at one to two employees a year.

If a micro-business has reported no revenue or if its MBT charge for the tax period (calendar year) does not exceed EUR 50, the MBT payer has to pay a charge of EUR 50 within 15 days after the date of filing the tax return for the fourth quarter of the tax year.

Corporate residence

A company is considered resident in Latvia if it is or should have been incorporated in Latvia.

Permanent establishment (PE)

Under the Latvian Taxes and Duties Act, a non-resident has a PE in Latvia if all three of the following conditions are met simultaneously:

- The non-resident uses a fixed place for activities in Latvia.
- That place is used permanently or has been established for permanent use.
- The place is used for the conduct of commercial activities.

A non-resident is also considered to have a PE in Latvia if one performs at least one of the following activities in Latvia:

- Uses a construction site or performs construction or installation work, or carries out supervisory or consulting activities related to such site or work.
- Uses equipment or installations, drilling platforms, and special ships intended for the research or extraction of natural resources, or carries out related supervisory or consulting work.
- Within a time period, which together exceeds 30 days in any six-month period, provides services, including consulting, management, and technical services, utilising one's employees or associated personnel.
- Uses the activity of an individual, entity, or other person for the benefit of one's commercial activities, with that person being authorised to enter into contracts on behalf of the foreign entity and exercising such authority regularly (more than once in a tax period).

PE risk for entities located in treaty countries should be tested in accordance with the relevant DTT.

Other taxes

Value-added tax (VAT)

The following VAT rates apply in Latvia:

Description of goods	VAT (%)
The standard rate on supplies of goods and services, commodity imports, services rendered by non-residents and treated as supplied in Latvia, and intra-Community acquisitions of goods.	21
A reduced rate on specified fruits, berries, and vegetables, medicines, medical devices, specialised baby food, domestic public transport services, household heating charges, firewood and wooden heating material for households, textbooks, original literature publications, accommodation services, newspapers, and other periodicals, except electronically supplied media information.	12
Exemption with credit on intra-Community supplies of goods to taxable persons registered for VAT in other member states.	0
Exemption with credit on commodity exports and supplier goods not released for free circulation in the European Union (EU), supplies of goods and services to diplomats, and supplies of goods and services financed by foreign aid.	0

A number of services are exempt, including education, financial, medical, and insurance services; nursery fees; and the sale of used real estate, including land (except for building land, which is taxable).

Customs duty

Customs duty is levied on goods imported into Latvia. The rate of customs duty is generally between 0% and 20% of the value of imported goods, depending on their type and origin. Exports are generally exempt.

Excise

Excise is levied on specified categories of goods, mostly as a fixed amount per unit. Excise applies to the following goods, whether made in Latvia or imported:

Product	Excise amount
Oil and oil products	Up to EUR 594 per 1,000 litres, depending on the type of the product.
Alcohol	EUR 64 to EUR 1,400 per 100 litres, depending on the type of alcohol.
Beer	EUR 4.50 for each percent of absolute alcohol, but not less than EUR 8.20 per 100 litres of beer.
Tobacco products	EUR 73 per 1,000 cigars or cigarillos.
	EUR 67 per 1,000 cigarettes less than 80 mm in length plus 25% of the maximum retail selling price, but not less than EUR 99 per 1,000 cigarettes.
	EUR 134 per 1,000 cigarettes plus 25% of the maximum retail selling price for cigarettes between 80mm and 110mm in length, but not less than EUR 198 per 1,000 cigarettes.
	EUR 201 per 1,000 cigarettes plus 25% of the maximum retail selling price for cigarettes between 111mm and 140mm in length, but not less than EUR 297 per 1,000 cigarettes.
	EUR 268 per 1,000 cigarettes plus 25% of the maximum retail selling price for cigarettes exceeding 140mm in length, but not less than EUR 396 per 1,000 cigarettes.
	EUR 62 per 1,000 grams of fine-cut smoking tobacco intended for the rolling of cigarettes.
	EUR 62 for other smoking tobacco.
E-liquid	EUR 0.01 per 1 ml liquid plus EUR 0.005 per 1 ml nicotine.
Certain soft drinks	EUR 7.40 per 100 litres.
Natural gas	EUR 1.65 per 1 MWh for use as heating fuel.
	EUR 9.64 per 1 MWh for use as fuel.

Real estate tax (RET)

RET is payable annually on:

- Business properties, such as land and buildings used for economic activities, as well as engineering structures, such as motorways, streets, roads, parking places, bridges, elevated highways, tunnels, pipelines, communication lines, and power lines.
- Buildings that form part of a private dwelling house development (also if owned by a company but not used for living purposes).

Municipalities may determine a rate between 0.2% and 3%. A rate above 1.5% may be applied to buildings that are not maintained according to maintenance requirements.

If a municipality does not announce rates by 1 November before the tax period, then statutory rates will apply.

Statutory RET rates are as follows:

- The standard rate of 1.5% on the cadastral value of land, buildings, and engineering structures.
- A progressive rate on dwelling houses, their parts, and any parts of a non-residential building that are functionally used for living and not used in trade or business:
  - 0.2% of cadastral values up to EUR 56,915.
  - 0.4% of cadastral values between EUR 56,915 and EUR 106,715.
  - 0.6% of cadastral values exceeding EUR 106,715.
- Up to 3% on uncultivated land capable of agricultural use, unless it is up to one hectare in area or subject to statutory restrictions on agricultural activity. By law, uncultivated land capable of agricultural use is agricultural land that is not used for making or growing agricultural products (including harvesting, grazing, and keeping animals for agricultural purposes) or is not kept in a good agricultural and environmental condition. Municipalities may also determine an extra rate of 1.5% on uncultivated land, and so the total rate on such land may reach 4.5%.

A 3% RET applies on buildings under construction if the permitted construction period has expired. The tax is applicable until the building is accepted for use. The rate will be charged on the cadastral value of the related land or on the cadastral value of the building, whichever is higher.

Residential property owned by companies is eligible for reduced rates (0.2% to 0.6%), but only where such property is rented out and tenancy rights properly entered on the Land Register of Latvia.

Stamp duty

Stamp duties are levied on certain legal and other kinds of services, such as court trials, company formation and registration, licences for certain types of business activity, provision of information, notary services, operation of bills of exchange, and registration of real estate at the Land Registry (e.g. if real estate is sold, stamp duty is 2% of the deal value or the cadastral value, whichever is higher, capped at EUR 42,686.15 per property).

Stamp duty is not payable if re-registration of real estate at the Land Registry is necessary because of a reorganisation. Stamp duty payable to re-register title to immovable property in the case of a contribution in kind to a company's capital is 1%.

Payroll taxes

The employer is responsible for withholding personal income tax (PIT) at a rate of 20% on income up to EUR 20,004, at 23% income between EUR 20,004 and EUR 55,000, and at 31.4% on income over EUR 55,000.

National social insurance contributions (NSIC)

The employee's part of NSIC, at a rate of 11%, is deducted from gross employment income. The employer's part of NSIC, at a rate of 24.09%, is calculated on top of gross employment income. NSIC is payable on annual income up to EUR 55,000. A solidarity tax applies to annual income over EUR 55,000 at the same rates as NSIC.

Natural resource tax

Any natural resources acquired as a result of economic activities (e.g. surface and underground water, dolomite, quartz sand), the collection of edible park snails, taking advantage of useful features of the bowels of the earth by pumping natural gas or greenhouse gases into geological structures, pollution (waste, emissions, and pollutants), products harmful to the environment (e.g. lubricating oil, electric batteries, oil filters, tyres), electrical and electronic equipment and appliances, radioactive substances, packaging, disposable tableware, means of transport, the volume of emitted greenhouse gasses that is not included in the number of emission quotas surrendered, coal, coke, and lignite are subject to a natural resource tax in Latvia. The rates are specific for each product and are based on weight, volume, or the amount of the product.

The taxpayer may reduce one's tax liability by taking part in recycling programmes for packaging, products harmful to the environment, electrical and electronic equipment and appliances, and means of transport. Taxpayers do not have an obligation to recycle themselves to be entitled to relief; instead, they can conclude an agreement with a recycler.

On some of the products, the taxpayer must also pay disposal tax at varying rates.

Vehicle taxes

There are three vehicle taxes in Latvia, a vehicle usage tax, a light corporate vehicle tax, and a foreign-registered vehicle tax. The first is payable on the use of all vehicles (except tractors, car trailers not exceeding 3,500 kg, trams, trolleybuses, off-road vehicles, snowmobiles, mopeds, and bicycles). The second is payable on light vehicles held or owned by a company. The third is for M1 and N1 category vehicles registered abroad.

Vehicle usage tax

Vehicle usage tax is payable annually on the use of vehicles, and it must be fully paid before the state technical inspection.

The amount of vehicle usage tax depends on the classification of vehicles according to their features under statutory provisions. The tax charge depends on various criteria, such as date of first registration, gross weight, engine volume, maximum engine power, carbon dioxide (CO_2) emissions per kilometre, etc.

Light corporate vehicle tax (LCVT)

LCVT is paid on vehicles owned or held (e.g. rented) by a person engaged in economic activity, which are registered for the first time after 1 January 2005 and have details of engine volume on their registration certificate. There is a fixed rate of LCVT calculated according to the engine volume. The fixed monthly rates of LCTV are as follows:

- EUR 29 up to 2,000 cc.
- EUR 46 between 2,001 cc and 2,500 cc.
- EUR 62 over 2,500 cc.

LCTV on a vehicle in which, according to its construction, power from an electrical energy/power storage device (e.g. battery, capacitor, flywheel, generator) inside the vehicle is used as its only mechanical propulsion power, will be EUR 10 a month.

LCTV on vehicles not mentioned in the above criteria will be EUR 46 a month.

Foreign-registered vehicle tax

Foreign-registered vehicle tax is paid on the use of foreign-registered M1 and N1 category vehicles in Latvia. The tax is payable by the driver: EUR 10 per day, EUR 250 per month, EUR 600 per six months, and EUR 1,000 per year.

Lottery and gambling tax

A lottery and gambling tax is levied on licensed organisers of games or lotteries. Licence fees range from EUR 2,000 to EUR 427,000. Game organisers, gambling places, and gambling machines are subject to gambling tax. The rates depend on the number and type of gambling machines or percentage of income for several gambling types.

Electricity tax

Electricity tax is levied on electricity supplied to final consumers or consumed by suppliers. The rate is EUR 1.01 per MWh. Exemptions are available to producers of electricity and for electricity used by domestic public transport and households.

Local duties

Certain activities are subject to local duties (e.g. construction permits).

Branch income

As a general rule, branches and resident companies are taxed alike, with certain adjustments for payments to the head office.

Income determination

Distributable profits are measured according to financial statements drawn up in accordance with Latvian Generally Accepted Accounting Principles (GAAP) or International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS), and there are no adjustments to accounting profits for tax purposes (e.g. tax depreciation/capital allowances, tax loss carryforward/carryback).

The CIT liability associated with the distribution of dividends is recorded as an expense at the time the dividends are declared, regardless of when the profits were generated or distributed.

Dividends paid by Latvian companies are generally subject to a 20% CIT at the level of the distributing company.

Certain domestic and foreign taxes can also be credited against the 20% CIT charge under domestic law or DTTs.

Deemed dividends

Deemed dividends are a part of share capital increase from retained earnings arising from 2018 onwards. They become subject to CIT once that part of share capital is reduced and distributed to the shareholders.

Capital gains

A gain arising on the disposal of a capital asset (except real estate sold by non-residents) is treated as ordinary income and is subject to a 20% CIT only if profit is distributed.

If a taxpayer has received income from the sale of direct participation shares one has held for at least 36 months, then it is possible to reduce the dividends included in the tax base by the amount of income received from the sale of shares.

If a non-resident sells real estate (or shares in a real estate company) located in Latvia, the sale will be subject to a 3% tax on gross proceeds. Residents of an EU/European Economic Area (EEA) member state or a country that has an effective DTT with Latvia may pay a 20% tax on the resulting capital gains instead.

Dividend income

Dividends received from any foreign or Latvian company may be excluded from the CIT base, except for dividends from companies registered in blacklisted tax havens (a list of tax havens is provided in the *Withholding taxes section*) or if the structure may be considered artificial.

Interest income

Interest income is treated as ordinary income and is subject to a 20% CIT only if profit is distributed.

Royalty income

Royalty income is treated as ordinary income and is subject to a 20% CIT only if profit is distributed.

Foreign income

Resident companies are taxed on their worldwide income. Any foreign tax paid on income included in the tax base is allowed as a credit against the CIT charged for the year. However, the credit must not exceed the Latvian tax attributable to the income taxed abroad. Any unused tax credit may be carried forward.

Deductions

Depreciation and amortisation

Distributable profits are measured according to financial statements drawn up in accordance with Latvian GAAP or IAS/IFRS, and there are no adjustments to accounting profits for tax purposes (e.g. tax depreciation/capital allowances, tax loss carryforward/carryback).

Start-up expenses

There is no specific treatment for start-up expenses.

Input VAT on goods or services acquired before VAT registration is recoverable if those items are to be used for taxable suppliers.

Non-business expenses

Non-business expenses include costs that are not directly related to commercial activities; all expenses incurred for the leisure and recreation of owners and employees; entertainment trips taken by owners and employees in company vehicles; any benefits, gifts, credits, and loans turned into gifts to owners and employees; and any other disbursements in cash or in kind to owners or employees that are not part of remuneration or that are not related to the taxpayer's commercial activities, etc.

Non-business expenses are considered a deemed profit distribution, and CIT is payable on these expenses monthly. Accountants often recognise expenses without supporting documents as non-business expenses (e.g. representation expenses or fuel costs not accompanied by appropriate documentation).

Representation expenses and staff sustainability expenses

Representation expenses, by definition, are expenses a taxpayer incurs to build one's prestige, entertain one's customers and suppliers, and provide meals, as well as amounts spent on low-value items intended to make the taxpayer popular.

A new concept of 'staff sustainability' events has been introduced from 2018. These are expenses a taxpayer incurs to motivate one's staff, build teams, or maintain social infrastructure.

Representation expenses and staff sustainability expenses are capped at 5% of gross wages for the past year. There is no taxable item until the cap is reached, but afterwards CIT is payable monthly.

To apply the exempt 5% limit, the company should keep a separate record and accurately describe representation expenses and staff sustainability expenses in its accounting policy, as well as provide supporting documents.

Fines and penalties

Any fines, contractual penalties, and statutory interest on arrears (including an increase in principal debt) that are disproportionate to the deal value or are made to a related party or one that is registered in a tax haven are considered non-business expenses and subject to CIT 20/80.

Interest expenses

Excess interest payments are considered a deemed profit distribution and subject to 20% CIT. *For further details, see Thin capitalisation in the Group taxation section*.

Bad debts

A bad debt that remains unrecovered within 36 months after a provision was made for it should be added to the tax base, unless the exemption criteria are met. An internal checklist can be drawn up for claiming an exemption. It is also important to ensure that accounting records are transparent, including a separate record of bad debts incurred before 2018 and an accurate record of new bad debts arising after 2017. This will allow the company to select information about the age of a provision from its accounting records and to consider claiming an exemption in the case of writing off that provision.

Lending to related parties

From 1 January 2018, lending to related parties is treated as a profit distribution subject to a 20% CIT. This rule has been adopted as an anti-avoidance measure to prevent taxpayers who want to pay a dividend from making a loan instead, which is essentially a hidden dividend.

The law lays down criteria for loans that are not treated as a profit distribution, such as a short-term loan maturing in up to 12 months or one that does not exceed the amount borrowed from an unrelated party. It is therefore necessary to revise the conditions for cash movements between related companies and define internal criteria for recording related-party loans by keeping a separate record of loans that are deemed distributions and on which CIT has been paid.

When repaying a loan that was included in the tax base for a past tax period, any repaid amount of the loan can be deducted from the tax base for the current tax period.

Donations

Donations exceeding the statutory criteria are taxable. Donations paid to charitable institutions, non-profit making foundations, churches, monasteries, and various other welfare institutions may qualify for tax relief if certain criteria are met (*see the Tax credits and incentives section*).

Luxury vehicles

All costs associated with luxury vehicles (i.e. light passenger cars worth more than EUR 50,000, excluding VAT) are considered non-business expenses and subject to a 20% CIT. These rules do not, however, apply to special purpose vehicles (such as emergency vehicles and special passenger vehicles).

Provisions

Under the new CIT model, any movement of provisions in accounting records after 2017 will no longer affect the tax base.

Special clauses of the transition rules should be followed in order to write off any provisions on the balance sheet as at 31 December 2017 that have been added to taxable income in past tax periods.

Any provisions on the balance sheet as at 31 December 2017 to be reduced after 2017 can be deducted from the tax base and attract a coefficient of 0.75, subject to the following conditions:

- The provisions were included in the tax base in the period they were recognised.
- They are recorded separately from other provisions after 2017.

If provisions recognised in the financial year 2017 exceed provisions recognised in the financial year 2016, then additional restrictions apply:

- Any reduction in these provisions attracting a coefficient of 0.75 can be deducted only from dividends or deemed dividends included in the tax base.
- These provisions should be recorded separately from other provisions after 2017.

Accordingly, the transition rules do not restrict the period for reducing the tax base, but they do restrict the tax base a company can reduce, in certain cases, to dividends paid. The administrative burden will also increase considerably, given the transitional obligation to separately record provisions recognised before 2018 and after 2017, as well as provisions recognised in the financial year 2017.

Net operating losses

There is no such concept as a tax loss under the new CIT model, and utilising tax losses is subject to a five-year restriction. A company can utilise 15% of its loss, capped at 50% of the CIT charge on dividends. Thus, losses brought forward can be utilised only if the company distributes profits arising after 2017. Given this restriction, the company should assess whether it will be able to distribute new profits over the next five years and then make necessary adjustments to its shareholders' equity.

Payments to foreign affiliates

Any payments to foreign affiliates that are not arm's length may be considered a profit distribution and subject to a 20% CIT.

Companies registered in tax havens are also considered affiliates. Such payments may be subject to WHT (*see the Withholding taxes section*).

Group taxation

Group consolidation is not permitted for tax purposes.

Transfer pricing

The rules governing the application of the CIT Act states that the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations may be used for Latvian transfer pricing purposes.

Latvian law requires that related-party transactions be arm's length. In other words, the conditions made or imposed between two related enterprises in their commercial or financial relations must not differ from those that would be agreed between independent enterprises engaging in similar transactions under similar circumstances.

A tax audit may examine and adjust the price of a transaction in the following circumstances:

- A transaction between related parties.
- Barters and set offs.
- A price deviation exceeding 20% of prices the taxpayer has applied to similar goods or services over a short period.
- Exports and imports.

The arm's-length requirement primarily applies to transactions between two or more related companies. Latvian legislation also requires that a taxpayer should adjust one's taxable income for the difference between the price applied in a transaction and its arm's-length price if the transaction involves:

- individuals related to the company
- related foreign companies
- companies exempt from CIT or enjoying CIT relief under other Latvian laws
- a Latvian-related company with which it forms a single tax group, or

- a company located in a jurisdiction with a more favourable tax regime.

This provision may apply to any transaction, including purchases and sales of fixed assets and goods, supplies of services, loans and borrowings, and intellectual property (IP). It is possible to use corresponding adjustments and adjust taxable income if a related party has made adjustments to its income according to transfer pricing rules. This is possible only if the related party is registered in the European Union or a country that has an effective DTT with Latvia and if documentary evidence from the foreign tax authority is received.

Latvian taxpayers who enter into transactions with any of the parties listed above and whose annual revenue exceeds EUR 1,430,000 and related-party transactions reach or exceed EUR 14,300 are required to prepare transfer pricing documentation for transactions exceeding the statutory limits.

Within one month after receiving a request from the SRS, the taxpayer must submit full transfer pricing documentation containing the following information:

- Industry analysis giving a general overview of the industry in which the taxpayer operates.
- Company analysis.
- Functional analysis giving information on the related parties' functions, risks, and assets.
- Economic analysis, including:
  - a description of how the transfer pricing method was selected and
  - a benchmarking study.

While the full transfer pricing documentation requirement applies to entities exceeding the statutory limits on revenue and annual related-party transactions, other entities will still be required to prove that their transfer pricing is arm's length. Normally, the SRS expects taxpayers to be able to demonstrate which transfer pricing method is used and how it is applied (i.e. a benchmarking study of third-party comparables showing that the prices applied by the taxpayer fall within the arm's-length range).

Latvian taxpayers can apply to the SRS for an Advance Pricing Arrangement (APA). The APA is an administrative instrument issued by the SRS to address a taxpayer's request for establishing transfer pricing conditions and methodology in one's related-party transactions for a maximum period of three years.

This option is available to companies whose annual transactions with foreign related parties are expected to exceed EUR 1,430,000.

An APA application fee of EUR 7,114 is payable to the SRS as follows:

- 20% on submitting the application to the SRS.
- 80% after the SRS issues an official decision to initiate an APA with the taxpayer.

If the SRS refuses to initiate an APA with the taxpayer, the SRS reserves the right not to refund the 20% down payment.

Country-by-country (CbC) reporting

In 2017, the Latvian Parliament approved a law that introduced a CbC reporting obligation for multinational enterprises with consolidated revenue of over EUR 750 million. The first reporting period was set for 2016, with the exception that subsidiaries operating in Latvia are obligated to submit the report for 2017 for the first time in case the parent company does not comply with the reporting obligation for 2016.

Latvian tax residents who are members of large multinational groups and are not the reporting entity of the CbC report need to notify the Latvian tax authorities about the group's reporting entity. Once the notification has been submitted, there is no need to provide the information on an annual basis, unless the reporting entity changes.

The deadline for the CbC report is on 31 December following the reporting period, at the latest.

Thin capitalisation

Thin capitalisation rules apply to interest payments exceeding a specified amount.

Only one method is available for interest payments of up to EUR 3 million: a debt-to-equity ratio of 4:1 (interest in proportion to the excess of the average liability over an amount equal to four times shareholders' equity at the beginning of the tax year less any revaluation reserve).

A second method (30% of EBITDA) is available for interest payments exceeding EUR 3 million.

The higher amount of interest that exceeds these calculations should be added to the tax base.

The following interest payments are exempt from thin capitalisation rules:

- Interest paid on borrowings from credit institutions resident in Latvia, EEA member states, or countries that have an effective DTT with Latvia.
- Interest paid to the Latvian Treasury, Finance Development Institution, Nordic Investment Bank, European Bank for Reconstruction and Development, European Investment Bank, European Council Development Bank, or the World Bank Group.
- Interest paid on Latvian or EEA debt securities in public trading.
- Interest expenses directly or indirectly paid to government finance, foreign trade, or guarantee organisations in a country that have an effective DTT with Latvia.

Controlled foreign companies (CFCs)

There is no CFC regime in Latvia for taxation of companies' substantial participation. A CFC regime does apply to individual shareholders; *for more information, please see Latvia's Individual tax summary at www.pwc.com/taxsummaries*.

Tax credits and incentives

Foreign tax credit

Any foreign tax paid on income included in the tax base is allowed as a credit against the CIT charged for the year. However, the credit must not exceed the Latvian tax attributable to the income taxed abroad and must be confirmed by the foreign tax authority. Any unused tax credit may be carried forward.

Donations to public benefit organisations

Donation relief is available on donations to Latvian public benefit organisations or their equivalents in an EU/EEA member state or a country that has an effective DTT with Latvia. The donor can take relief on one's total donations by using one of the following three methods:

1. Exclude donations from the tax base at up to 5% of profit after taxes for the past year.
2. Exclude donations from the tax base at up to 2% of total gross wages on which NSIC were paid in the past year.
3. Reduce the CIT charge on dividends by 75% of the donated amount, capped at 20% of the CIT charge on dividends.

Donations to public benefit organisations are not considered non-business expenses if the company has chosen method 1 or 2 and does not exceed its limits.

Large investment relief (LIR)

No new LIRs will be granted after 2017. According to transition rules, LIR may still be claimed by reducing CIT on declared dividends for LIR applications filed before 2018.

Free ports and special economic zones (SEZs)

Companies operating in a free port or SEZ are entitled to CIT and RET relief. These areas include the free ports of Ventspils and Riga and the SEZs of Rezekne, Latgale, and Liepaja.

Qualifying companies may claim CIT relief of up to 80% of the CIT charged on dividends. Companies may also claim 80% WHT relief on payments made to non-resident companies.

RET relief amounts to 80%, and the municipality could waive the remaining 20% up to 2016. Consequently, qualifying companies that fulfilled certain criteria could bring their RET liability to zero.

Under the new amendments, a municipality that issues binding rules will have the power to reduce the percentage amount of an RET rebate to 10% of the tax charge (without applying any other rebates). Taking this new option will prevent the municipality from taking the old option of increasing the rebate by 20%.

Municipalities are to publish their binding rules for the coming tax year by 1 November. Thus, each free port and SEZ municipality will be able to decide about an RET rebate to apply in the coming year according to its budgetary projections.

Total CIT and RET relief a company can claim depends on the amount of qualifying investment it has made in the free port or SEZ area. Depending on the size of the company, the total available tax relief ranges from 50% to 70% of the amount invested.

Deferred tax

The new CIT rules have cancelled all temporary differences between the financial accounting basis and tax basis of assets and liabilities from 1 January 2018. With temporary differences between the values of assets and liabilities in financial accounting and for tax purposes ceasing to exist from that date, no deferred tax asset will be realised or deferred tax liability settled after 2017. As a result, generally deferred tax assets or liabilities will no longer be recognised on the balance sheet as at 31 December 2017.

Tax incentive for deductibility of research and development (R&D) costs

After the new CIT rules were introduced on 1 January 2018, the tax incentive for deductibility of R&D costs was cancelled.

Withholding taxes

The following types of payments to non-residents, and in certain cases under Latvian transfer pricing rules to related Latvian companies using CIT reliefs, are subject to WHT.

Management fees

Management and consulting fees are subject to a 20% WHT. The term 'management and consulting' means activities a non-resident carries out directly or through outsourced personnel to ensure the management of a Latvian company or to provide necessary advice.

A Latvian company can rely on a DTT to reduce the rate of WHT to zero for management fees if the non-resident does not create a PE. To this end, the Latvian company must obtain a valid residence certificate for each type of payment to each recipient before filing the annual CIT return. A valid residence certificate is one approved by the foreign tax authority and the SRS.

Disposal of real estate

A 3% WHT applies to proceeds from real estate disposals. This also applies to income arising on the disposal of shares or other participation in a Latvian or foreign-registered company or other entity if real estate in Latvia made up more than 50% of the asset value of that company, whether directly or indirectly through shareholdings in one or more other entities established in Latvia or abroad, in the period of disposal or the previous period.

Dividends

Dividends paid to residents of tax havens are subject to a 20% WHT.

Interest and royalties

Interest and royalty payments attract WHT only if made to companies in tax havens. A 20% rate applies on all interest and royalty payments to tax havens.

Option for EU/DTT country residents

In the case of management fees and real estate disposal, EU/DTT country residents may choose between a WHT charge on total fees or a 20% tax on profit, provided the non-resident can present proof of expense. The Latvian company must first withhold the applicable tax, and the non-resident may later recover tax in excess of 20% charged on profit (income less expenses) by submitting a separate tax return.

Reporting payments to non-residents

Companies are required to notify the SRS of all amounts paid to non-residents on transactions made on or after 1 January 2017, regardless of whether the payment was subject to WHT. This is in line with the requirements of Council Directive 2011/16/EU on administrative cooperation in the field of taxation, which provides for automatic exchange of information on non-residents' revenues.

Summary of WHT rates

Please see the following table for WHT rates applicable to the payments described above:

	WHT (%)				
Recipient	**Dividends (1)**	**Interest (1)**	**Royalties (1)**	**Management fees (3)**	**Disposal of real estate**
Non-resident companies and related Latvian companies using certain CIT reliefs	0	0	0	20	3
Companies in tax havens (2)	20	20	20	20	20

Notes

1. No WHT, except tax-haven companies.
2. 20% WHT applies to all payments to companies located in tax havens. Goods/securities acquired at market prices are exempt.
3. Payments to residents of DTT countries are not subject to WHT, provided the non-resident does not have a PE in Latvia and a residence certificate is available.

Tax havens

The list of tax havens is provided by Cabinet Regulation No. 655 of 7 November 2017, which lists 25 tax havens in total. However, a country is no longer considered a tax haven from the year a DTT begins to apply to that country or from the date the country is covered by a tax information exchange agreement (TIEA), unless those agreements provide otherwise.

With many of the blacklisted countries having signed the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which entered into force in Latvia on 1 November 2014, the list of tax havens has been significantly reduced.

Below is an updated list of countries and territories that are considered tax havens:

- Antigua and Barbuda
- Bahamas
- Bahrain
- Brunei Darussalam
- Dominica
- Djibouti
- Ecuador
- Grenada
- Guam (US)
- Jamaica
- Jordan
- Kenya
- Liberia
- Macao (China)
- Maldives
- New Caledonia (France)
- São Tomé and Principe
- Saint-Pierre and Miquelon (France)
- Saint Helena (UK)
- Tahiti (French Polynesia)
- Tonga
- US Virgin Islands
- Vanuatu
- Venezuela
- Island of Zanzibar (Tanzania)

Tax administration

Taxable period

The taxable period is one month. If a taxpayer is allowed to book supporting documents quarterly, then the tax period is a quarter.

Tax returns

Items subject to CIT should be included in the tax return for the tax period in which costs were incurred. If a tax base arises, a tax return should be filed each month on or before the 20th day of the following tax period. If a tax return is not filed with the SRS, this will mean that no tax liability arose in that month. The tax base can be adjusted for non-business expenses only in the month they were incurred. Accordingly, if an adjustment is still needed, a late fee will be charged.

It is mandatory for taxpayers to file a tax return for the last month of the financial year.

Under the transition rules, the first single tax return prepared according to the new CIT model can cover an extended tax period running from January to June 2018. The taxpayer should file the return by 20 July 2018 and pay the tax due.

The transition rules govern cases where a taxpayer's financial year is different from a calendar year. In that case, the taxpayer should prepare interim financial statements and the CIT return.

Payment of tax

If a tax base arises, the tax charge should be paid each month on or before the 20th day of the following tax period.

Tax audit process

A tax audit begins with an audit note for open tax years (up to three years after a tax payment was due, and, from 2013 onwards, up to five years if transfer prices are audited). An audit may last a few weeks or a few months, but not exceeding 90 days. It can be extended to 150 days if information is requested from a foreign tax authority. If a simultaneous tax audit with a foreign tax authority is initiated, then such extension is not limited.

The SRS should inform the taxpayer of a tax audit no later than ten working days before the start of the audit with notification about documents the SRS would like to see.

During a tax audit, the auditors will notify the taxpayer about any irregularities in the calculation of tax payments and any fines that could be levied. Before issuing the tax audit decision, the auditors will invite the taxpayer to final negotiations to discuss the tax audit results.

Following the tax audit and notification of its findings, the company may take the following steps:

- Negotiate with the SRS to reduce the tax burden and achieve an 'out-of-court settlement'. The out-of-court settlement makes it possible to reduce fines by up to 100% and late charges by up to 85%, but not the additional tax assessment. Entering

into such a settlement presupposes that the company accepts the audit findings for the audited years.
- Appeal the decision to the Director General of the SRS.
- After receiving the decision of the Director General, the taxpayer may take the case to court. An advance payment of the additional tax liability and late charges is required. The first decision normally takes up to two years and another two years until a decision by the Court of Appeal and the Supreme Court is issued.

Statute of limitations

The SRS may collect any unpaid taxes within three years after tax payment was due. Transfer prices may be examined for five years.

Topics of focus for tax authorities

The SRS tends to scrutinise:

- Transfer pricing, non-arm's-length lending, and other arrangements with related parties.
- Non-business, marketing, and representation expenses.
- Payments to and from non-resident companies, including tax haven companies.
- Obligation to register a PE in Latvia.
- Unpaid payroll taxes or hidden employment.
- Recoverability of input VAT.

Other issues

Implementation of base erosion and profit shifting (BEPS) provisions

Following the OECD initiative, Council Directive (EU) 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation was introduced on 25 May 2016. Under the directive, Latvia is a part of the mandatory automatic exchange of information (AEOI) mechanism in the field of taxation and has implemented the CbC report by adopting the Cabinet of Ministers' Regulation No. 397 of 4 July 2017.

Latvia has transposed the OECD Common Reporting Standard (CRS) as well as Council Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, into domestic law. Latvian financial institutions covered by the CRS must report certain income and asset information on certain non-resident account holders to the Latvian tax authorities.

EU state aid investigations

Latvian law provides the necessary references to EC Regulation No. 651/2014, which ensures that the EU funding intensity complies with EU rules for state aid. Currently, there are no investigations on the part of the European Commission with regard to Latvian tax law.

Double tax treaties (DTTs) and intergovernmental agreements (IGAs)

Latvia has effective DTTs with 61 countries and continues developing its tax treaty network. Latvia has signed the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Latvia

Latvia has also signed an IGA with the United States (US) government to implement the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA). On 2 April 2014, the US Treasury announced that the IGA was 'in effect' and, on 27 June 2014, the US Treasury and Latvia signed and released the IGA.

Lebanon

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Significant developments

A new Law no. 64, dated 20 October 2017, (published in the Official Gazette on 26 October 2017) introduced new tax measures and amended several tax articles to fund the increase of the minimum wages and the cost of living for the public sector. The corporate income tax (CIT) rate increased to 17% and value-added tax (VAT) rate increased to 11%.

The Ministry of Finance (MoF) issued the 2018 Budget Law no.79, dated 18 April 2018 (published in the Official Gazette no.158, dated 19 April 2018). It does not include any changes in the CIT and VAT rates.

The major tax amendments and exemptions are incorporated in the appropriate summary sections.

Taxes on corporate income

Under the income tax law in Lebanon, tax is levied based on income type. Accordingly, the income tax law divides income into the following three categories:

- Chapter I: Profits from industrial, commercial, and non-commercial professions.
- Chapter II: Salaries and wages and pension salaries.
- Chapter III: Revenues from moveable capital (Chapter III mainly covers all types of dividend income, board member appropriations from profits, and interest income, including interest on bonds and treasury bills).

The income tax law does not provide for a single tax on income. Accordingly, where a taxpayer has income from different sources, each type of income is taxed according to the tax chapter it falls under. The applicable rates are as follows:

- CIT: 17% (15% applicable for the period starting 1 January 2017 till 26 October 2017 inclusive, while 17% starting 27 October 2017).
- Capital gains on disposal of fixed assets: 15% (10% applicable for the period starting 1 January 2017 till 26 October 2017 inclusive, while 15% starting 27 October 2017).
- Dividend distribution withholding tax (WHT): 10%.
- Non-resident WHT: 7.5% for services and 2.25% for other than services.
- Payroll tax: From 2% to 20%.
- WHT on interest income: 7% (5% applicable for the period starting 1 January 2017 till 26 October 2017 inclusive, while 7% starting 27 October 2017).

Not all businesses are taxed in the same manner. Depending on the relative size and structure of a business, the tax method applied is assessed depending on real (or actual) profits or deemed profits.

Real profit method

In Lebanon, tax is charged on the total income or profits derived in Lebanon. Based on the income tax law and the principle of territoriality, the main premise for considering a profit to have been realised in Lebanon is if it was generated through an effort or activity exerted in Lebanon.

The tax base (the determination of profits) and the tax rates differ between resident and non-resident taxpayers.

For resident corporate entities, CIT is computed at 17% based on the taxpayer's accounting profits after adjustments resulting from tax rules through the schedule of accounting-to-tax calculation.

The use of the real profit method is mandatory for the following:

- Corporations (SAL).
- Limited liability companies (SARL).
- Companies of individuals.
- Branches of foreign companies.
- All entities employing more than four employees or importing goods.

Small entities may choose voluntarily to be subject to the real profit method; however, once they choose the real profit method, they cannot revert back to the deemed profit method.

Concerning tax on non-residents, WHT applies at 2.25% on payments for goods and 7.5% on payments for services.

Deemed profit method

A deemed profit method is imposed on insurance and savings institutions, taxable transport companies, oil refineries, and public work contractors.

Taxation is based on deemed profits and is levied at a flat rate of 17%.

The rate of deemed profit for public work contractors, as approved by the MoF, is currently set at either 10% or 15% of total amounts collected per year, based on the type of activity performed by the contractor.

For insurance companies, the deemed profit rate ranges between 5% and 10%, depending on each insurance activity.

Local income taxes

There are no governorate or local government taxes on income in Lebanon.

Corporate residence

Tax is levied on all corporeal/natural and incorporeal/artificial persons, resident in Lebanon or outside, on all profits that they generate in Lebanon. The main premise for considering profits to have been realised in Lebanon is when such profits have occurred from an effort exerted in Lebanon, irrespective of the identity of the taxpayer or place of residency.

Tax is levied on profits generated by two categories of taxpayers: resident taxpayers and non-resident taxpayers.

Resident taxpayers

The Lebanese Parliament legislated a new Law no. 60, dated 3 November 2016, relating to the amendment of Law no. 44, Tax Residency in Lebanon, including that any company is considered tax resident in Lebanon if it has:

- been established according to the Lebanese laws
- been registered according to the Lebanese laws, or
- a place of business in Lebanon.

Non-resident taxpayers

Non-resident taxpayers can consist of persons residing in Lebanon and persons residing outside Lebanon. A corporeal person residing in Lebanon is subject to the non-resident WHT (*see the Withholding taxes section for more information*) if neither of the following two terms are satisfied:

- Practise a certain trade in a normal and repetitive manner in Lebanon, irrespective of whether or not they have a known registered place of business.
- Have a known registered place of business in Lebanon.

A person residing outside Lebanon is subject to the non-resident WHT on the amounts, revenues, profits, or proceeds obtained from Lebanon as a result of undertaking an activity in whole or in part on Lebanese territory or as a result of exploiting rights in Lebanon.

Permanent establishment (PE)

There are no clear provisions in the Lebanese income tax law to define PE.

Other taxes

Value-added tax (VAT)

The standard VAT rate in Lebanon increased from 10% to 11% effective 1 January 2018. Unless specifically exempt, VAT is levied on all commercial transactions undertaken by business entities. Export of goods and services and export-related services, international transport, and some of the intermediate operations are zero-rated. Banking, financial services, and insurance operations are exempt from VAT.

Note that the recharge of expenses from an entity in Lebanon to another entity abroad is subject to VAT at 11% instead of 10% effective 1 January 2018.

The threshold for mandatory registration is a turnover that exceeds 100 million Lebanese pounds (LBP) in four consecutive quarters.

Customs duties

Modern, simple, and efficient assessment means are adopted by the customs authorities (e.g. electronic declarations, declaration in advance, applying international procedures in clearing the goods, selective inspection, auditing the goods after their release, and adopting the unique declaration).

Customs rates are imposed and modified according to decisions from the Lebanese customs authorities. These decisions are adopted based on the need of the Lebanese markets of some goods and the will to protect national production sectors.

Safeguard measures are provided for in relation to imported goods. The purpose behind such measures is to protect the domestic production sectors when an increase of imports is witnessed when compared to the same period during the previous year.

The rates are determined based on a specific schedule created in conformity with the Harmonised System of Nomenclature. This conformity with the unified system allows Lebanon to represent an 'importer friendly' environment for importers.

The normal rates are applied where there is no preferential agreement. When the origin of the good or part of the good is from a country with which Lebanon has a preferential customs treatment, preferential rates apply.

Customs rates in Lebanon are either determined in percentage or paid as a lump sum per unit of imported products.

Excise taxes

Excise taxes are mainly applicable in Lebanon on certain beverages and spirits, tobacco products, gasoline, and vehicles.

Built property tax (BPT)

The BPT is an annual progressive tax, ranging between 4% and 14%, on built property.

Stamp duty

Two kinds of stamp duties are levied. A proportionate stamp duty of 0.4% effective 26 October 2017 is levied on all deeds and contracts (written or implied) that mention specific payments or other sums of money. A fixed stamp duty ranging between a minimum of LBP 250 and a maximum of LBP 2 million is applicable on documents in accordance with schedules appended to the stamp duty law.

Capital gains tax

Under local legislation, companies are permitted to revalue their fixed assets every five years. Capital gains recognised from such a revaluation, as well as any profits that may be realised from the disposal of fixed assets, are subject to a capital gains tax of 10%.

Income from disposal of shares realised by a company is subject to 15% capital gains tax.

Income from disposal of fixed assets realised by a company is subject to 15% capital gains tax when the shares are classified as financial assets on the company's balance sheet.

Income from disposal of shares realised by a company whose main activity is the acquisition of investments is subject to 17% CIT.

Registration taxes

The estimated cost of establishing a company in Lebanon is around 7,500 United States dollars (USD). This includes lawyer's fees and registration fees. The registration fees will increase if the company is established with capital exceeding the minimum requirement. However, the registration fees should not normally exceed 1% of the value of capital.

For branch offices and representative offices, establishment costs are lower and may be estimated at USD 5,000.

When transferring ownership of real estate, registration fees of approximately 6% are applicable.

Lump-sum licence fee

Decision no. 993/1, dated 21 November 2016, relating to imposing an annual lump-sum licence fee was introduced. With some exceptions for certain types of companies (holdings and offshore companies, institutions exempt from tax as per Article 5 of the income tax law), the annual lump-sum licence fee for joint stock companies is LBP 2 million, for limited liability companies is LBP 750,000, for establishments assessed based on real profit is LBP 550,000, and for taxpayers assessed on assumed profits is LBP 50,000. The above-mentioned licence fees apply to local head offices, branches, outlets, and to any place in which the taxpayer carries on its activity or receives customers. For income tax purposes, the lump-sum licence fee is considered as a non-deductible expense. This Decision became effective on 1 January 2018.

Payroll taxes

Employers are responsible for withholding and declaring payroll taxes on behalf of their employees. Payroll tax is levied at progressive rates of 2% to 20%.

Social security contributions

Social security contributions are the following:

- Borne by the employer: 8% for the maternity and sickness benefit schemes, on a maximum of LBP 2.5 million per month, and 6% for the family benefit schemes, on a maximum of LBP 1.5 million per month, in addition to 8.5% of total annual earnings for the end of service indemnity, with no ceiling.
- Borne by the employee: 3% for the medical scheme, on a maximum of LBP 2.5 million per month.

Branch income

Net income derived from a branch's operations in Lebanon is subject to Lebanese CIT, levied under the real profit method at a rate of 17%. Taxable profits of foreign branch offices are deemed to be distributed on a yearly basis and are subject to a dividend distribution tax at the rate of 10%.

Representative offices

Representative offices do not pay CIT as long as they do not carry out commercial activities. Representative offices are required to submit annual tax declarations along with detailed company information that includes employee information, a balance sheet, an income statement, a non-resident tax schedule, and a schedule of payments to professionals. The declaration, with all relevant documentation, should be submitted as one single set. All the information included should be based on accounting records. The deadline for submitting the declaration depends on the legal form of the parent company (i.e. before 1 June of the following year for SAL or SARL companies and before 1 May of the following year for others).

Income determination

Inventory valuation

For tax purposes, inventory is valued using the weighted average cost method.

Capital gains

Capital gains are not generally subject to CIT, but may be subject to capital gains tax. *See Capital gains tax in the Other taxes section for more information*.

Note that income from disposal of shares realised by a company whose main activity is the acquisition of investments is subject to 15% CIT.

Dividend income

Dividends received as a result of a taxable person's activity are deemed trading income and are subject to 17% CIT. Dividends received as passive income are subject to 10% tax in Lebanon. However, dividends received from Lebanese entities are exempt from CIT, as the dividend tax is withheld at source, but are not exempt from further tax upon distribution from the recipient entity.

Stock dividends

The Lebanese law is silent on the tax implications of stock dividends. However, when share capital is increased by reducing retained earnings, no tax is applicable.

Interest income

Interest earned by corporations is now considered as a tax deductible expense starting 27 October 2017. No more relief is given on the WHT suffered on bank accounts, treasury bills, and bonds. The interest earned prior to 26 October 2017 is added to the taxable income.

Rental income

Rental income should be deducted from the accounting result to reach the taxable result. Moreover, expenses related to property that is rented out should be added back to the accounting result to reach the taxable result.

A BPT is paid on rental income at progressive rates ranging between 4% and 14%.

Royalties income

Royalties received by a holding company from Lebanese companies for patents and the like are taxed at a rate of 10%. Royalties received by holding companies from abroad are exempt from tax.

Royalties received by other than holding companies are taxed as ordinary income at 17%.

Unrealised exchange gains/losses

Unrealised exchange gains and losses are not treated differently from any other gain or loss for tax purposes (i.e. unrealised exchange gains are subject to CIT at 17% and unrealised exchange losses are deductible for CIT purposes).

Foreign income

Resident corporations are not taxed on foreign-source income derived from activities carried out abroad through foreign branches.

Deductions

Depreciation

Depreciation of property, plant, and equipment (at rates fixed by ministerial decree) is deductible. The depreciation method to be used is the straight-line method. If a depreciation rate that is higher than the low rate is adopted, the MoF should be notified. The allowable depreciation rates are as follows:

Assets	Low rate (%)	High rate (%)
Buildings (commercial, touristic, and services)	2	5
Buildings (industrial and artisanal)	3	10
Buildings and constructions (commercial or industrial)	6	20
Freehold improvements and decorations	6	25
Technical installations and industrial equipment	8	25
Computer hardware and software	20	50
Vehicles (cars)	10	25
Vehicles (transport of goods/buses)	6	20
Sea transport	5	10
Air transport	20	25
Office equipment and furniture	8	25
Glassware and silverware (hotels, restaurants, etc.)	Inventory at year-end	Inventory at year-end
Gas cylinders	8	20

Goodwill

Under Lebanese tax rules, goodwill cannot be amortised.

Organisation and start-up expenses

Organisation and start-up expenses are amortised over three to five years for tax purposes.

Interest expenses

Interest on business loans is deductible, under certain conditions. Interest paid on the taxpayer's capital is not deductible.

Bad debt

Bad debts are deductible if all means for collection of the debt have been exhausted.

Provisions for bad debts are deductible if a debtor has been declared bankrupt. Surplus provisions are added to profits.

Charitable contributions

Charitable contributions are deductible if made to approved charitable, social, cultural, or sporting institutions, within certain limits.

Gifts

Gifts given by the company in cash are non-deductible.

Gifts given by the company in-kind to customers when the amount of each gift exceeds LBP 1 million per person per year and when the total amount of gifts in-kind exceeds 1% of the turnover are non-deductible.

Fines and penalties

Fines and penalties are not deductible in Lebanon.

Taxes

Taxes and duties incurred in the course of business (except CIT) are deductible.

Taxes due to foreign governments on income earned in Lebanon are non-deductible.

Exceptional taxes and fines are non-deductible.

Other significant items

Other deductible expenses include:

- Cost of goods sold.
- Cost of services rendered.
- Rent of business premises or, if the premises are owned by the taxpayer, their depreciation.
- Salaries, wages, and other employee benefits, including end-of-service indemnities.
- General business expenses, including insurance premiums.
- Reserves for severance payments, pensions, and disability payments. Surplus provisions are added to profits.
- Advertising and publicity expenses, within certain limits.
- Travel, telephone, and vehicle expenses, within certain limits.
- Entertainment expenses that are properly supported.
- Board remuneration against services performed.
- Accrued expenses as long as their occurrence is certain.
- Employees' life insurance premiums are deductible as long as they are included in the employees' benefits subject to payroll tax.

Other non-deductible expenses include:

- With the exception of normal maintenance expenses, costs that increase the value of the property, plant, or equipment (such costs should be capitalised and depreciated in accordance with the fiscal depreciation rates).
- Losses or share-in-costs resulting from enterprises, offices, and branches situated outside Lebanon.
- Representation allowances in excess of 10% of an employee's basic salary, as well as unjustifiable and unreasonable salaries.
- Personal expenses, such as payments deducted by an employer or partner for the management of the business and for certain business expenses incurred by the employer or partner.
- Appropriations made to board members that do not comprise remuneration for work done.
- Provisions, other than those specifically allowed by law. Examples of non-deductible provisions include provisions for bad debts, provisions for slow moving items, and provisions for bonuses, contingencies, and charges.

Net operating and capital losses

Tax losses may be carried forward for up to three years after the year in which they were originally incurred. The carryback of losses is not available.

Capital losses may be used to offset taxable profits of the current year but may not be carried forward.

Payments to foreign affiliates

Payments to foreign affiliates are generally subject to WHT.

Based on guidance issued by the MoF, recharges from the head office located abroad (including advertising) are deductible up to a certain limit, calculated as follows:

(Assets of the branch in Lebanon / Consolidated assets) x Central administrative expenses

However, a ceiling of 3% of the branch's revenues is applied.

Group taxation

There is no group taxation in Lebanon.

Transfer pricing

In Lebanon, there are no clear and detailed transfer pricing or general anti-avoidance rules. However, even in the absence of clear transfer pricing rules, exchanges or transactions made between related parties should be done on an arm's-length basis.

The tax administration has the right to reassess related-party transactions and adjust their value in order to reflect the taxable amount related to the period under study.

Thin capitalisation

In Lebanon, there are no clear or detailed thin capitalisation rules.

Controlled foreign companies (CFCs)

There are no CFC rules in Lebanon.

Tax credits and incentives

Foreign tax credit

There are no specific regulations concerning foreign tax credit in Lebanon.

Holding companies

Lebanese holding companies are exempt from CIT and from WHT on dividends. However, they are subject to a tax on their paid-up capital and reserves. In any given tax year, total tax payments on paid-up capital and reserves are capped at LBP 5 million.

Interest, management fees, and royalties received by holding companies from abroad are exempt from tax in Lebanon.

Holding companies are subject to a 10% tax on interest received from loans granted for a period of less than three years to companies operating in Lebanon. Management fees received by the holding company from companies operating in Lebanon are subject to a 5% tax. Capital gains on financial assets in Lebanese companies held for less than two years are subject to a 10% tax. Royalties received from Lebanese companies for patents and the like are taxed at a rate of 10%.

Offshore companies

Offshore companies are exempt from CIT and from the WHT on dividends, and are instead subject to a lump-sum annual tax of LBP 1 million. Contracts related to offshore activities outside Lebanon are exempt from Lebanese stamp duty.

Offshore companies are required to be registered as SAL companies and, with a few exceptions, are subject to the same regulations as a SAL company. The business objectives of an offshore company are limited.

Permanent exemptions from CIT

Companies and organisations that are granted an indefinite exemption from CIT include the following:

- Educational institutions.
- Hospitals, orphanages, asylums, and other shelters that admit patients free of charge.
- Shipping, sea, and air transport associations (subject to certain restrictions).
- Farmers, provided they do not display farm produce and cattle outlets or sell products and meat after conversion tax.
- Syndicates and other types of professional associations.
- Miscellaneous non-profit organisations and co-operatives.
- Holding companies and offshore companies.
- Public sector bodies that do not compete with private institutions.

Reinvestment incentives

Industrial companies using operating profit to finance certain capital investments are exempt from up to 50% of their CIT liabilities for a period of up to four years, provided that such exemptions do not exceed the original investments made. In areas designated 'development zones', 75% of a company's tax liabilities may be exempt.

In order to take advantage of this regulation, investments should consist of capital expenditures designed to increase a company's manufacturing capacity or of investments in housing facilities for the company's staff and other employees.

Withholding taxes

WHT on interest

The income, revenues, and interest earned from accounts opened at Lebanese banks and from treasury bonds are subject to a 7% WHT that is non-refundable and cannot be carried forward. The tax on interest is now considered a tax deductible expense starting 27 October 2017.

WHT on dividends

Tax is withheld from dividends paid to resident and non-resident shareholders/ partners at a rate of 10%.

Movable capital WHT

A 10% WHT is levied on income derived from movable capital generated in Lebanon. Taxable income is comprised of the following:

- Distributed dividends, interest, and income from shares.
- Directors' and shareholders' fees.
- Distribution of reserves or profits.
- Interest from loans to corporations.

Non-resident WHT

Revenues earned by non-residents in Lebanon are subject to an effective WHT of 2.25% on revenue from the sale of materials and equipment, and 7.5% on the revenue in the case of sale of services.

Double tax treaties (DTTs)

DTTs provide the following WHT benefits. Note that treaty rates do not override lower non-treaty rates. Treaty members may take advantage of the non-treaty rates.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	10	10	7.5
Treaty:			
Algeria	15	10	10
Armenia	5/10 (1)	8	5
Bahrain	0 (2)	0 (2)	0 (2)
Belarus	7.5	5	5
Bulgaria	5	7	5
Cyprus	5	5	0 (2)

Lebanon

Recipient	WHT (%) Dividends	Interest	Royalties
Czech Republic	5	0 (2)	5/10 (3)
Egypt	10	10	5
France	0 (2)	0 (2)	7.5
Iran	5	5	5
Italy	5/15 (10)	0 (2)	0 (2)
Jordan	10	10	10
Kuwait	0 (2)	0 (2)	5
Malaysia	5	10	8
Malta	5 (4)	0 (2)	5
Morocco	5/10 (5)	10	5/10 (7)
Pakistan	10	10	7.5
Poland	5	5	5
Qatar	0 (2)	0 (2)	0 (2)
Romania	5	5	5
Russia	10	5	5
Senegal	10	10	10
Sultanate of Oman	5/10 (6)	10	10
Syria	5	10	18
Tunisia	5	5	5
Turkey	10/15 (8)	10	10
United Arab Emirates	0 (2)	0 (2)	5
Ukraine	5/15 (9)	10	10
Yemen	10	5	7.5

Notes

1. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the equity capital of the company paying the dividends.
   - 10% of the gross amount of the dividends in all other cases.
2. Dividends, interest, or royalties arising in a contracting state and paid to a resident of the other contracting state shall be taxable only in that other state.
3. Shall not exceed:
   - 5% of the gross amount of royalties paid for the use of, or the right to use, any industrial, commercial, or scientific equipment.
   - 10% of the gross amount of royalties paid for the use of or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for radio or television broadcasting any software, patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience.
4. Where the dividends are paid by a company that is:
   - A resident of Lebanon to a resident of Malta who is the beneficial owner thereof, the Lebanese tax so charged shall not exceed 5% of the gross amount of the dividends.
   - A resident of Malta to a resident of Lebanon who is the beneficial owner thereof, the Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.
5. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the equity capital of the company paying the dividends.
   - 10% of the gross amount of the dividends in all other cases.
6. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the equity capital of the company paying the dividends.
   - 10% of the gross amount of the dividends in all other cases.

7. Shall not exceed:
   - 10% of the gross amount of royalties paid for the use of or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for radio or television broadcasting.
   - 5% of the gross amount of royalties paid in other cases.
8. Shall not exceed:
   - 10% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 15% of the equity capital of the company paying the dividends.
   - 15% of the gross amount of the dividends in all other cases.
9. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the equity capital of the company paying the dividends.
   - 15% of the gross amount of the dividends in all other cases.
10. Shall not exceed:
    - 5% of the gross amount of the dividends if the beneficial owner is a company that has owned at least 10% of the capital of the company paying the dividends for a period of at least 12 months preceding the date the dividends were declared.
    - 15% of the gross amount of the dividends in all other cases.

Tax administration

Taxable period

Lebanon's fiscal year runs from January to December and is based on the Gregorian calendar. With the special approval of the local tax authorities, companies may, however, use their own accounting year.

Tax returns

Taxes on business income in any given year are based on the profits of the previous financial year.

Tax returns by artificial persons (entities) must be filed by 31 March of the year following the year of income. Tax returns by capital companies must be filed by 31 May of the year following the year of income.

Submission deadlines of annual declarations for institutions that are exempt from income tax (other than companies) are as follows:

- Before 1 February for institutions adopting the cash basis of accounting.
- Before 1 April for institutions adopting the accrual basis of accounting and for representative offices that represent non-corporate entities.
- Before 1 June for representative offices that represent corporations.

If taxpayers fail to submit a tax return, realisation penalties will be due.

Payment of tax

The same deadlines for tax returns apply for tax payments.

If taxpayers fail to make payment, late payment penalties will be due.

Tax audit process

The most common ways for the tax authorities to select companies for tax audits are the size of the company, the type of business, and certain risk assessment measures.

Tax audits typically cover a single type of tax.

In a typical situation, a tax audit is likely to take less than one year from first information request to substantive resolution.

Statute of limitations

The tax administration has four years to collect its rights. The period is calculated from the end of the year that follows the current business year.

The taxable person may request the refund of excess tax within four years starting from the end of the year where the refund right was created.

The tax administration can exceed the statute of limitations in cases where a profit or revenue has been proven by a court order, arbitration, or inheritance clearance. The extension is limited till the end of the calendar year following the end of the year in which the tax administration was notified of such event.

Under the statute of limitations, a company should keep its accounting books and documentation for ten years.

Topics of focus for tax authorities

Lately, several topics have been of interest to the tax authorities in Lebanon, including transfer pricing, payments of royalties and management fees to non-resident parties, provisions, and employee compensation.

Other issues

Foreign ownership of real estate restrictions

The following restrictions apply to foreign ownership of real estate:

- Up to 3,000 square metres does not require Council of Ministers approval.
- Exploitation and normal lease right extending for a period of more than ten years cannot be attained without obtaining approval.
- Real estate owned by foreigners, for which approval has been obtained, cannot exceed, over all of the Lebanese territory, 3% of the total area of Lebanon. In each province, the total area owned should not exceed 3% of its area. With respect to Beirut, the total area owned should not exceed 10% of its area.
- The approval is nullified if not acted upon during a period of one year.
- When approval is granted, the building on the real estate should be constructed within a period of five years (renewable once by the Council of Ministers).

Choice of business entity

Lebanon's commercial law provides for a range of business entities available to both local and foreign investors. These consist of the following:

- Sole proprietorships.
- General partnerships.
- Limited partnerships.
- Joint-stock companies (SAL).
- Limited liability companies (SARL).
- Holding companies.
- Offshore companies.
- Representative offices and branches of foreign companies.

Legal structures commonly used by foreigners in conducting business in Lebanon are SALs, SARLs, and branch offices.

Joint-stock companies (Société anonyme libanaise or SAL)

Lebanese joint-stock companies are permitted to engage in all kinds of business activity. Shareholders of a SAL have no liability beyond their actual capital subscriptions.

With a small number of exceptions (such as real estate companies and banks), there are no limits on the amount of capital that can be held by foreign investors.

The management of a SAL is entrusted to a board of directors with a minimum of three and a maximum of 12 members. The majority of board members must be Lebanese, but the chairman may be a foreign national.

Certain types of businesses, such as banks and insurance companies, are required to incorporate as joint-stock companies.

The minimum capital is LBP 30 million, and the applicable CIT rate is 17%, in addition to a WHT on dividends of 10%.

Limited liability companies (Société à responsabilité limitée or SARL)

Members of a limited liability company are partners, and the company's capital is divided into parts rather than shares. Partners are liable only to the extent of their parts, and individual partners' claims on the company's capital are fixed in the partnership deed.

All partners may be foreigners, with the exception of companies seeking to engage in commercial representation.

Limited liability companies may not be active in certain sectors of the economy, such as in insurance, banking, fund management, or air transportation.

The transfer of parts in a limited liability company is subject to the consent of partners representing at least three-quarters of the capital. Existing partners enjoy priority in the purchase of parts offered for transfer.

A limited liability company is managed by one or several directors (managers) who may or may not be selected from among the partners.

The minimum capital is LBP 5 million, and the applicable CIT rate is 17%, in addition to a WHT on dividends of 10%.

Intellectual property (IP)

The law in Lebanon does not contain a clear definition of author's rights. It protects all products of the human intellect whether written, pictorial, sculptural, scriptural, or oral, regardless of its value, importance, destination, or form of expression.

The law provides patent protection for inventions and plant varieties and a *sui generis* protection for layout designs of integrated circuits. Furthermore, the law provides protection for undisclosed information. According to an assessment conducted by the World Intellectual Property Organization (WIPO) in July 2002, the Patent law is in complete conformity with the WTO's Agreement on Trade-Related Aspects of

Intellectual Property Rights (TRIPS). It was also pointed out that the provisions of the Plant Varieties exceed the minimum requirements of the TRIPS Agreement.

The law does not explicitly protect notorious trademarks and geographical indications. However, those are provided protection via Lebanon's membership to the Paris Convention. Moreover, geographical indications are provided protection under the provisions of the Law on Customs, the Law on Fraud Control, and the Criminal Law.

The copyright protection originally available to literary and artistic works is now extended to computer software, video films, and all kind of audio-visual works. The law provides stiffer penalties for offenders and better compensation to the persons whose rights have been infringed. The manner in which the copyright is breached has also been extended.

Exchange of information agreements

The Lebanese Parliament legislated a new Law no. 55, dated 27 October 2016, relating to the implementation and execution of exchange of information agreements used for tax purposes. Under Law no. 55, exchange can occur under several scenarios. Exchange of Information on Request (EIOR) or Automatic Exchange of Information (AEOI) based on the Common Reporting Standard (CRS) or in the context of signed DTTs. This legislation authorised the Finance Minister of Lebanon on behalf of the Lebanese government to sign the Multilateral Convention on Mutual Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange on Financial Account Information related to the commitment to the implementation of CRS. Under the EIOR approach and upon receiving a request to share information, the Lebanese Competent Authority will assist the requesting country based on the agreement signed. It has the right to request additional information before sharing the information or reject the request in case it conflicts with the signed agreement. Failure to abide by this legislation will result in penalties ranging from LBP 100 million to LBP 200 million. These penalties are in addition to penalties set by the related regulatory authorities. It is worth noting that information exchanged under the AEOI and EIOR, each under the related agreement or this legislation, will be treated as confidential/secret as per Article no. 25 of the Tax Procedure Law.

On 12 May 2017, the MAC and the MCAA were officially signed by the Lebanese authorities. On 7 July 2017, the CRS guidance notes were issued in the Official Gazette under Decree No. 1022. On 25 October 2017, under Circular No. 3222/LMD/2017, the Insurance Control Commission (ICC) issued the CRS guidance notes to help the insurance companies implement the CRS requirements.

Libya

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Significant developments

Since 2011, there have been no significant corporate tax developments.

Taxes on corporate income

For any Libyan registered entity, income arising both in Libya and abroad (i.e. worldwide) is assessable for corporate income tax (CIT) purposes in Libya.

CIT is imposed annually on the same basis for Libyan controlled corporate entities, foreign controlled corporate entities, and branches of foreign companies.

CIT is levied on taxable profits at a flat rate of 20%.

Jehad Tax

There is a flat rate of Jehad Tax assessed at 4% on taxable corporate profits.

Local income taxes

Libya has no provincial income tax laws.

Corporate residence

Corporate residence is not specifically dealt with under the tax laws of Libya. The tax authorities will seek to assess any income derived from services provided in Libya.

Permanent establishment (PE)

Double tax treaties (DTTs) that have been signed introduce the concept of PE. However, general law requires that any foreign entity seeking to provide services in Libya should obtain a business licence, which necessitates it registering as a legal entity. Historically, unregistered foreign entities have provided services in Libya, but this is not in line with the law.

Other taxes

Value-added tax (VAT)

There is no VAT in Libya.

Customs duties

Customs duties were abolished in 2005, except for tobacco and tobacco products.

A service fee of 5% on the value on most imports also exists. There are various exemptions to this service fee, specifically under Investment Law and within the oil sector.

Other dues and taxes on importation are estimated at 0.5%. Initially, a temporary import licence is issued for six months that can be extended to a maximum of three years. A guarantee or a deposit can be provided by the importer to the Customs Department.

Excise taxes

Libya has no excise taxes.

Property taxes

Libya has no specific property taxes.

Transfer taxes

Libya has no transfer taxes.

Stamp duty

Stamp Duty Law levies a schedule of duties and rates on various documents and transactions. The most relevant to corporate entities is Schedule 28, which prescribes the rate of duties on contracts for the provision of services or supply. The duty on main contracts is 1% and on subcontracts is 0.1%. Note that there is a duty of 0.5% on all payments to the Tax Department as well.

Payroll taxes

An employer is responsible for collecting taxes and contributions for the state. When an entity is audited by the tax authorities, the assessment is effectively on the employer for failing in its statutory obligation to collect those taxes and contributions. Note that individuals are not required to file annual statements of income.

Social security contributions (INAS)

Social security contributions are payable by all persons working in Libya, including expatriates.

Social security contributions are computed on gross income, and current rates are as follows:

Gross income	Foreign branch (%)	Libyan entity (%)
Employee's contribution	3.75	3.75
Employer's contribution	11.25	10.50
Contribution from public treasury	-	0.75
Total	15.00	15.00

Social security is withheld by the employer and payable monthly, within ten days after the month end. For social security purposes, a late payment fine of 5% *per annum* is assessed on the amount due.

Branch income

Tax rates on branch profits are the same as on corporate profits. However, the Income Tax Law allows the Tax Department to assess income tax on branches of foreign companies as a percentage of turnover via the 'deemed profit' basis of assessment. Tax is therefore payable even where tax losses are declared.

The level of deemed profit applied to turnover varies according to the branch's type of business activity. This ranges from 10% to 15% for civil works and contracting (turnkey projects), 15% to 25% for oil service, and between 25% and 40% in the case of design/consulting engineers. A deemed profit of between 5% and 7% is also assessed on supply. The deemed profit percentage applied to any year will be higher than the profit percentage declared in the annual tax return since the deemed profit basis is applied during the course of a tax audit and is effectively a revenue generating exercise for the tax authorities. Historically, tax audits have not resulted in credits or reimbursements.

Income determination

No specific rules apply on income determination for the following categories:

- Interest income.
- Partnership income.
- Rent/royalties income.
- Foreign income.

The Income Tax Law allows entities to account on an accrual basis or on a cash basis.

Inventory valuation

The Commercial Code allows inventory to be valued at the lower of cost and net realisable value.

Capital gains

Any chargeable gains on the sale of capital assets are taxed as ordinary income. For entities assessed on a deemed profit basis, capital gains should be added to the deemed taxable income.

Dividend income

Historically, dividend income has not been subject to any additional taxes.

Inter-company dividends

Libyan taxation laws do not contain any special provisions regarding inter-company dividends.

Stock dividends

Stock dividends are not specifically dealt with in Libyan taxation laws. The current practice is for dividend distributions not to be taxed.

Deductions

Taxable income is determined after deducting all expenditure and costs incurred in the realisation of the gross income (*for more details on the deemed profit basis of assessment on branches of foreign companies, see the Branch income section*).

For any entity (not a foreign branch) seeking to be assessed on an add-back basis, it should ensure, in accordance with Stamp Duty Law, that the majority of its costs can be supported by tax-registered documents (i.e. declared payrolls and registered contracts and invoices).

Depreciation

Depreciation should be calculated in accordance with the Executive Regulations of the law.

Assets	Depreciation rate (%)
Buildings:	
Building in which machines are fixed	4
Building without fixed machines	2
Moveable buildings	10
Means of transport:	
Passenger	20
Cargo and freight:	
Less than 3 tons	15
Over 3 tons	10
Ships	5
Fishing boats	5
Aeroplanes	8
Furniture:	
Office, ship, and domestic furniture	15
Hotel, restaurant, cafes, and hospital furniture	20
Work camps outside of cities	20
Food utensils and furnishings for restaurants, hotels, and the like	25
Machines:	
Office machines	15
Electric generators	20
Computers and accessories	25
Software	50
Other machines	15

Goodwill

Purchased goodwill can be amortised on a straight-line basis over five years.

Organisation and start-up expenditure

Organisational and start-up expenditure can be capitalised and amortised over five years on a straight-line basis.

Interest expenses

No specific rules apply for the deduction of interest expenses.

Bad debt

Bad debts are only recognised to the extent that they have been recognised as such legally.

Charitable contributions

Donations to charities recognised by the state are permitted at up to 2% of net income.

Fines and penalties

No specific rules apply for the deduction of fines and penalties.

Taxes

No specific rules apply for the deduction of taxes.

Net operating losses

Losses may be carried forward and deducted from future profits, for up to five years. The Income Tax Law has no provision for the carryback of losses.

Payments to foreign affiliates

No specific rules apply for the deduction of payments to foreign affiliates.

Group taxation

There is no recognition of a group for taxation purposes.

Transfer pricing

No transfer pricing rules exist in the general law.

Thin capitalisation

No thin capitalisation rules exist in the general law.

Controlled foreign companies (CFCs)

No rules on CFCs exist.

Tax credits and incentives

Foreign tax credit

Under general tax law, no provision exists for allowing the deduction of foreign tax credits.

CIT exemption

Exemptions to CIT exist, most notably, under the Investment Law. General projects registered under the Investment Law are permitted a five-year CIT holiday with a possibility to extend for a further three years.

Exemptions also exist for strategic infrastructure projects. Such exemptions must be awarded by the legislative body, either by ratifying the relevant contract, which includes a tax exemption clause, or by the issuance of a separate law.

Customs and stamp duties exemption

The Investment Law also provides exemptions for customs duties and stamp duty. The exemptions that exist are bestowed on subcontractors to the relevant projects.

The Petroleum Law provides exemption to customs duties on oilfield-specific equipment and materials, which is also provided to oil service companies.

Withholding taxes

Libyan law has no withholding taxes (WHTs). Generally, for unregistered foreign entities seeking to register a contract with the tax authorities, CIT will be assessed (and must be settled) on a deemed profit basis at the time of registration. It may be possible to negotiate a WHT in preference to the aforementioned general procedure for a significant contract where there is greater uncertainty as to the estimated contract value.

Tax administration

Taxable period

The tax year is generally a calendar year, although assessments can be made on the basis of a company's own year-end, provided permission is granted in advance from the Tax Department and the company then adheres consistently to the same date.

Tax returns

All corporate entities must make an annual filing within four months of its year-end or within one month of its audit report, whichever is earlier.

Payment of tax

CIT is payable on a quarterly basis (10 March, 10 June, 10 September, and 10 December) normally commencing the first quarter date after an assessment has been issued.

Late payment penalties

A late payment penalty is assessed on the tax due at the rate of 1% to a maximum of 12%. In addition, the remaining quarterly payments are due immediately for failing to make an instalment on time.

The law also imposes the following penalties:

- A fine of not less than three times the amount of unpaid tax due shall be applied to any person who fails to pay tax by the due date.
- Without prejudice to any harsher penalty, a fine of not less than four times the amount of tax due and unpaid will be applied to any person who, with intent to evade all or part of the tax, commits any of the following acts or abets, agrees, or aids a person who commits such an act:
  - The making of false statements in declarations submitted under this law.
  - The preparation of false accounts, books and records, reports, or budgets.
  - The use of fraudulent means to conceal or attempt to conceal taxable amounts due under this law.

Tax audit process

Tax audits typically occur every three or four years.

Statute of limitations

The statute of limitations for CIT purposes is seven years.

Topics of focus for tax authorities

The tax authorities' focus during audits continues to be on confirming revenue, ensuring major services providers contracts are tax registered, and seeking additional undeclared salaries and benefits.

Other issues

Statutory Books

Business entities operating in Libya are required by Libyan Law to maintain a General Ledger and a General Journal (i.e. the Statutory Books).

Before use, these must be stamped as registered with the Revenue Authorities and the Commercial Court. It should be noted that a Ledger or Journal will not be registered if it already contains accounting entries (i.e. one cannot register existing books of account).

Similarly, transactions pre-dating the date the books are registered will be disallowed. In theory, transactions should be entered daily, but in practice, most companies write up their statutory records on the basis of monthly transactions summaries.

The Tax Inspector will always request production of the Statutory Books at the commencement of a tax audit. If these are not available, a perfunctory audit of the English (or other language) books of account will be made, and it is likely that there will be a punitive increase in taxable income as a consequence.

The Commercial Code allows approved computer-based ledgers to be used instead of the traditional manual ledgers.

Liechtenstein

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Significant developments

Recent developments with regard to tax treaties

- A double taxation treaty (DTT) with Monaco has been signed and entered into force on 1 January 2018.

Taxes on corporate income

In principle, all corporations, foundations, and establishments are subject to a profit tax at a flat rate of 12.5%. Resident companies are subject to unlimited tax liability on worldwide income. Non-resident companies are subject to limited tax liability on income from properties or branches within Liechtenstein.

Minimum tax

All legal entities are subject to an annual corporate minimum tax of 1,800 Swiss francs (CHF) for tax years starting 1 January 2017. This tax can be fully credited to the profit tax.

The full tax amount is due even if the corporation is not resident in Liechtenstein for the whole tax period.

Under a lone exception, minimum tax is not due if the total assets of an operating entity did not exceed CHF 500,000 during the last three years.

Corporate residence

A company is considered to be resident in Liechtenstein if its registered seat (incorporation) or place of effective management is within Liechtenstein.

Companies that have neither a domicile nor effective place of management in Liechtenstein, as well as special asset dedications without legal personality (e.g. trusts), are subject to limited tax liability for the following income:

- Corporate income from the cultivation of domestic real estate used for agriculture and forestry.
- Rental and lease income from real estate situated within Liechtenstein.
- Taxable net corporate income of permanent establishments (PEs) situated in Liechtenstein.

Permanent establishment (PE)

Please note that Liechtenstein has only a limited number of DTTs (*see the Withholding taxes section*). However, Liechtenstein is in the process of negotiating various new DTTs and has generally included PE definitions according to the Organisation for Economic Co-operation and Development (OECD) model treaty.

Other taxes

Value-added tax (VAT)

Liechtenstein has adopted the VAT law of Switzerland, while having its own VAT administration.

The general VAT rate is 7.7%. A reduced rate of 2.5% is applicable to deliveries of food, drugs, newspapers, magazines, and books. Furthermore, lodging/accommodation is taxed at a reduced rate of 3.7%. Note that various services are VAT-exempt (e.g. health, social security, education, banking, insurance).

Any person who, irrespective of legal form, carries on a business is liable for VAT. Any person liable for VAT that is involved in domestic entrepreneurial activity with a taxable turnover that is less than CHF 100,000 within a financial year can be exempted from taxation. Special regulations apply for non-profit institutions as well as for non-profit sport or cultural clubs. Reverse charge is applicable for services and certain deliveries from an entity domiciled abroad.

Customs duties/import tariffs

Based on the customs union treaty of 1923 between Liechtenstein and Switzerland, Switzerland customs duties and import tariffs are applicable for Liechtenstein as well. The tariffs and duties depend on various specific attributes of the products and are listed on comprehensive tariffs and duties lists; consequently, the specific tariffs and duties must be checked for every case individually.

Excise taxes

Several excise taxes apply in Liechtenstein (e.g. petroleum tax, tobacco tax, car tax, performance-related heavy vehicle fee, beer tax, taxation of distilled spirits).

Property taxes

No property taxes are applicable in Liechtenstein.

Stamp duty

Based on the customs union treaty of 1923 between Switzerland and Liechtenstein, the Swiss stamp duty tax law of 27 June 1927 is applicable in Liechtenstein. The stamp duty law, *inter alia*, includes the issuance stamp tax and the security transfer tax.

Issuance stamp tax

Upon the formation of legal entities whose capital is divided into shares (e.g. company limited by shares, limited liability company, establishment with capital divided into shares), the stamp duty amounts to 1% of the nominal value or the higher amount effectively paid (above par). The first CHF 1 million is tax exempt.

The same duty also becomes due when the capital is increased or when the shareholders make contributions without increasing the capital. There is no stamp duty tax on bonds and money market certificates.

Various exemptions should also be considered.

Security transfer tax

Security transfer tax is due on all transactions of qualifying securities if a security dealer is involved. The tax amounts to 0.15% for domestic securities (Switzerland and Liechtenstein) and 0.3% for foreign securities.

In particular, banks and financial intermediaries qualify as security dealers and are liable for the payment of the security transfer tax. Furthermore, legal entities with qualifying securities with a book value of more than CHF 10 million also qualify as security dealers and are also liable for the payment of the security transfer tax.

Formation tax (Gründungsabgabe)

Unless Swiss stamp duty law applies, a formation tax in the amount of 1% of the statutory nominal capital is levied upon the formation or relocation of legal companies in Liechtenstein (e.g. foundation, establishment) as well as for capital increases.

The general tax rate of 1% is reduced to 0.5% for amounts greater than CHF 5 million and to 0.3% for amounts greater than CHF 10 million. The first CHF 1 million is tax exempt.

Foundations are subject to the formation tax at a tax rate of 0.2%, but at least CHF 200.

Real estate profit tax

Capital gains from the sale of real estate, or equivalent actions with the same result, are subject to a separately assessed real estate profit tax. The taxable gain is generally the difference between proceeds of the sale and the original purchase price of the property plus any capital expenditure incurred. The basic tax rate can be up to 24%, depending on the amount of taxable real estate gain. The transfer of the economic ownership of real estate (e.g. via the sale of the majority of the shares in a real estate company) may trigger real estate tax as well.

Tax on insurance premiums

Liechtenstein levies a tax on certain insurance premiums. The tax rate amounts to 5% of the cash premium (2.5% for life insurance). Cash premiums in foreign currency have to be converted to Swiss francs at the time the tax claims arise.

Various exemptions should also be considered.

Social security contributions

Employers, in general, are required to account for social security contributions on the salaries of their employees. If the employee is subject to the Liechtenstein social security system, the following compulsory social security contributions are concerned:

- Old age, survivors', and disability insurance (9.3%, the employer's share is 4.75% and the employee's share is 4.55%).
- Family compensation fund (1.9%, fully employer financed).

- Unemployment insurance/supplementary unemployment insurance (1%, the employer's share is one half).
- Occupational accident insurance (approximately 0.1%, fully employer financed).
- Occupational pension scheme (2nd pillar) (contributions depend on pension plan, the employer's share is usually one half).

Branch income

The principles applicable to corporations also apply for branch income, provided that transactions with the head office or other branches are at arm's length. Liechtenstein taxation is imposed on the profit attributable to the branch. The annual corporate minimum tax of CHF 1,800 is also applicable.

There is no withholding tax (WHT) on profit transfer to the head office.

Income determination

The corporate profit tax is determined according to the taxable corporate net income, which is based on the financial statements under consideration of the following provisions.

Inventory valuation

Inventories must be stated at the lower of cost or market. Cost is generally determined by the first in first out (FIFO) or by the average cost method. The tax authorities permit a general reserve against stock contingencies of up to one-third of the inventory cost or market value at the balance sheet date without inquiry into its justification, provided a detailed record of inventory is available for review by the tax authorities. The need for a reserve in excess of this amount (e.g. for obsolescence, slow-moving-stocks) must be substantiated to the satisfaction of the tax authorities.

Capital gains

Capital gains derived from the sale of shares are tax-exempt. Capital gains from the sale of real estate are subject to a separately assessed real estate profit tax (*see the Other taxes section for more information*).

Dividend income

Liquidation proceeds are tax-exempt. Dividend income is tax-exempt for corporate investors (shareholders or beneficiaries), provided that the payment from 25% (or greater) participations is not tax deductible in the source country.

Interest income

Interest income is taxable and must be at arm's length if it is in respect to related parties (*for safe harbour rates, see Interest expenses in the Deductions section*).

Royalty income

Royalty income is subject to ordinary income taxation. Prior to 1 January 2017, a deduction of 80% was allowed on the net income from intellectual property (IP) rights (e.g. royalty income). With the tax law amendments that entered into force on 1 January 2017, the Liechtenstein IP box regime was abolished, with a phase-out period for existing IP boxes until 2020.

Income from investment funds

For corporate investors, income from investment funds is subject to corporate profit tax at a rate of 12.5%. Since units in investment funds do not constitute participations in legal persons, to the extent that investment funds in turn invest in participations in legal persons, dividends and capital gains (including non-realised capital gains) from such investments are tax-exempt. Since investment funds are subject to proper accounting rules, the net income shown in the financial statements provides for the taxable basis. If in practice, however, based on proper accounting, it is not possible to differentiate between income from dividends, capital gains, or interests, a simplified approach can be used to calculate the taxable basis for the fiscal year 2014 going forward. The simplified approach will be guided by the equity exposure of investment funds. Accordingly, the higher the investments in participations in legal persons are, the higher the lump sum tax exemption for dividends and capital gains will be.

Foreign income

Resident corporations operating locally are generally taxed on their worldwide income. However, income from foreign real estate and PEs situated abroad is exempt from taxation in Liechtenstein.

Deductions

Depreciation and amortisation

Depreciation of tangible fixed assets and amortisation of intangible assets is allowed if it is 'commercially justified'. For tax purposes, either the straight-line (depreciation based on the acquisition value) or the declining-balance method (depreciation based on the book value) may be used. Depreciation and amortisation not recorded in statutory accounts are not deductible for tax purposes.

A special (higher) rate of depreciation may be allowed for assets used only for short periods or for assets for which a rapid decrease in value can be proved.

The depreciation/amortisation rate *per annum* of various property types are provided below. Note that these depreciation rates relate to write-downs on the book value. If the write-down is performed on the acquisition value, then the rates enumerated below should be reduced by half.

Property type	Rate per annum (%)
Immovable assets:	
Real estate (dwelling houses, offices, shops, restaurant and hotel buildings, industrial buildings, factories, warehouses, and parking spaces)	5
Movable assets:	
Mobile structures, technical installations (air conditioning plant, gas and electricity mains for industrial purposes), elevators, investments in foreign real estate, high rack warehouses, and airplanes	15
Office furniture and machines, workshop, and storeroom equipment	20
Furniture used for the hotel and restaurant trade	25
Machines and accessories for production purposes, vending machines, telephone installations, and operating applications	30
Machinery used in more than one shift or used under heavy conditions, motor vehicles	35

Property type	Rate per annum (%)
Information technology (hardware and software), office furniture and machines, workshop and storeroom equipment, hotel and restaurant cookery, cutlery, and linen	50
Officially approved installations and equipment against water pollution, energy-saving equipment, and installations using solar energy	50
Intangible assets:	
Goodwill, patent, licence, and other rights of use	40

Start-up expenses

In general, the expenses for a start-up are tax deductible as long as they are economically justified.

Please see Formation tax (Gründungsabgabe) in the Other taxes section.

Interest expenses

Interest paid by a corporation to a third party is a deductible business expense. Interest paid to related parties (affiliates or shareholder) has to reflect the fair market rate and has to be at arm's length.

With respect to related parties, the tax administration of Liechtenstein annually issues safe harbour interest rates to be used on loans denominated in Swiss francs on the one hand and in foreign currencies on the other hand. The corporation may deviate from these safe harbour rates as long as it can prove that the rates are at arm's length and more appropriate in the present case.

Safe harbour rates 2018

Loans in Swiss francs	Minimum interest rate (%)
For loans made to related parties:	
Financed from equity and no interest-bearing debt capital	1.5
Financed from debt capital:	
Cost price	+ 0.5
At least	1.5

	Maximum interest rate (%)
For loans received from related parties	1.5

For loans in the following currencies, the same mechanism applies:

Currency	2018 (%)	2017 (%)	Currency	2018 (%)	2017 (%)
EUR	1.75	2.00	USD	3.75	3.75
GBP	2.75	2.75	JPY	1.50	1.75
SEK	1.75	1.50	NOK	2.75	2.75
CZK	2.75	2.00	PLN	3.75	3.50
AUD	4.00	3.50	HKD	3.25	2.75
CAD	3.75	2.50	ZAR	8.50	9.00

Furthermore, the tax authorities ask for an economic justification if loans are not in the currency of the statutory accounts.

Notional interest deduction (NID) on equity

The NID on equity is a standardised deduction for interest on equity based on the multiplication of the 'modified' equity by the interest rate (according to the annual finance law). For 2017 and 2018, the equity interest rate is 4%. Losses due to the NID are not accepted; consequently, a negative result due to this deduction does not generate loss carryforward.

To determine the modified equity, the following terms have to be considered:

- Paid-in capital and open reserves plus taxed hidden reserves, such as:
  - Deduction of own shares.
  - Deduction of participations/shares.
  - Deduction of non-operating related assets.
  - Deduction of 6% of total assets (except the above mentioned assets).
- Equity increases and decreases, based on the capital at the beginning of the business year.

	Example 1	Example 2	Example 3	Example 4	Example 5	Example 6
Modified equity	1,000,000	500,000	500,000	1,000,000	1,000,000	1,000,000
Loans	0	500,000	500,000	0	0	0
Profit	100,000	100,000	200,000	1,000,000,000	30,000	60,000
Interest on loans (4%)	0	(20,000)	(20,000)	0	0	0
Profit	100,000	80,000	180,000	1,000,000,000	30,000	60,000
Interest on equity (4%)	(40,000)	(20,000)	(20,000)	(40,000)	(40,000)	(40,000)
Taxable profit	60,000	60,000	160,000	999,960,000	0	20,000
Profit tax rate	12.50%	12.50%	12.50%	12.50%	12.50%	12.50%
Tax burden	7,500	7,500	20,000	124,995,000	0	2,500
Effective tax rate	**7.50%**	**9.38%**	**11.11%**	**12.50%**	**0.00%**	**4.17%**

According to the Liechtenstein Tax Act, modified equity is defined as the equity amount minus own shares, participations in corporations, and assets not operationally necessary.

In addition, modified equity must be further reduced by 6% of all assets qualifying for the NID. This means that, after deducting non-qualifying assets (own shares, participations, non-operating assets), an additional deduction of 6% on the remaining assets has to be made.

Furthermore, if a related-party loan has an interest rate below the level of the NID of 4%, the difference in the amount has to be deducted from the modified equity. However, no deduction has to be made if the loan arises from the operating business of the company.

Provisions

Bad debt provision

It is admissible to set up an accounting provision for specific impaired debt; additionally, it is possible to account for a general bad debt provision of up to 10% on receivables from Liechtenstein and Switzerland and up to 15% on receivables from any other country if no specific provision has been accounted for the corresponding debt. These provisions are not accepted regarding receivables to corporations and institutions under public law, banks, or for inter-company receivables.

Inventory provision

See Inventory valuation in the Income determination section for a description of the inventory provision regime.

Provisions on financial investments

Provisions on financial investments are possible but must be proved by an established corporate evaluation method or other suitable documents.

Other provisions

Provisions at the expense of the profit and loss statement are admissible for obligations during the business year whose amount is not yet determined or for other immediately imminent losses during the business year.

Charitable contributions

Charitable contributions to legal persons and special asset dedications with domicile in Liechtenstein, in another country member of the European Economic Area (EEA), or in Switzerland, which are exempt from tax liability in light of exclusively and irrevocably common-benefit purposes, are deductible, up to the amount of 10% of the taxable corporate net income.

Deduction for income from intellectual property (IP)

With the tax law amendments that entered into force on 1 January 2017, the Liechtenstein IP box regime was abolished with a phase-out period for existing IP boxes until 2020.

Prior to 1 January 2017, a deduction of 80% was allowed on the net income from IP rights that was created or acquired after 1 January 2011. IP rights, in the sense of the tax law, consisted of patents, supplementary protection certificates, utility models, trademarks, and designs, which must be protected by registration in a national, foreign, or international Register, as well as software and technical/scientific databases.

The Liechtenstein IP box was approved by the European Free Trade Association (EFTA) Surveillance Authority (ESA).

Fines and penalties

Fines and penalties are not tax deductible, provided the penal nature predominates.

Taxes

Taxes are not deductible in Liechtenstein.

Net operating losses

A loss can be carried forward and offset against the profits for future years. There is no time limitation of loss carryforwards as well as loss offsetting. Losses cannot be carried back.

The loss carryforward is limited to 70%. The other 30% can still be carried forward indefinitely. As a consequence, 30% of the taxable profit is subject to annual taxation even if corresponding losses from previous years exist.

Losses from foreign PEs and group loss offsetting

Losses from a foreign PE can be offset with taxable net corporate income to the extent these losses were not already taken into account in the country where the PE is situated or in another country. If that PE records profits in the following years, these profits need to be added to taxable net corporate income again. The period a loss can be carried forward is limited up to five years. Afterwards, the losses will be added if not yet added to the taxable profit due to foreign loss offsetting. The same limitation of loss carryforward applies to group taxation as well.

Payments to foreign affiliates

Interest, royalties and licences, and other fees to foreign affiliates are allowed as deductions to the extent that they meet the arm's-length test (i.e. equivalent to charges that would be made by an unrelated third party).

For interest payments between affiliated companies or between shareholders and companies, Liechtenstein tax authorities publish safe harbour rules annually (i.e. generally accepted interest).

Group taxation

Resident and non-resident corporations have the possibility to opt for group taxation (i.e. tax group) if they meet the legal requirements (e.g. more than 50% of capital and 50% of voting rights). The ultimate group leader must either be a corporation domiciled in Liechtenstein or with the effective place of management in Liechtenstein.

In order to form multi-level group structures, sub-groups may also be built. The same rules are applicable for the group leader of the sub-group as for the primary group leader.

A written application for forming a tax group must designate the group leader and group members to be filed with the tax authorities. It is not necessary that all associated companies have to become group members. The group leader can decide, for each company that fulfils the conditions, which company will be included in the group or not. The group leader and the group members need to have uniform business years.

Losses of group members can be offset against profits of the (sub) group leader within the same year. The offsetting is only possible under the following conditions:

- Only losses incurred after the option for group taxation can be considered.
- Losses need to be calculated according to Liechtenstein profit calculation rules.

The losses are allocated to the (sub) group leader according to the direct participation quota of the (sub) group leader to the group member whose losses should be offset. If the losses cannot be used at the level of the (sub) group leader, they can be allocated to other group members. However, the minimum tax is applicable for each group member.

Losses that have been attributed to the (sub) group leader must be adjusted in the following cases:

- Losses can be offset against profits on the level of the group member.
- Exit of group member from the group.
- Reduction of participation quota of a group member.
- Depreciation is made on a participation due to losses.

The (sub) group leader must provide evidence annually that no adjustment needs to be made. Even if the conditions for adjustment are not fulfilled, losses that have been attributed to the (sub) group leader must be adjusted five years after attribution.

Transfer pricing

Until 1 January 2017, Liechtenstein did not have specific transfer pricing rules apart from the rule that intra-group transactions are carried out at arm's-length terms. However, since the tax law amendments entered into force on 1 January 2017, all companies will be obligated to provide, upon request by the tax authorities (i.e. no periodical filing), documentation regarding the adequacy of transfer prices of transactions with related companies or PEs. Large companies have to prepare the transfer pricing documentation based on an internationally accepted standard. If a company exceeds at least two of the following three criteria, it qualifies as a large company (based on Liechtenstein company law):

- Total assets of CHF 25.9 million.
- Net revenue of CHF 51.8 million.
- Annual average of 250 full time employees.

Small companies (i.e. not exceeding two of the above criteria) are not required to prepare transfer pricing documentation in accordance with an international accepted standard.

Country-by-country (CbC) reporting

The CbC reporting law entered into force on 1 January 2017. CbC reporting is applicable for Liechtenstein group holding companies with a consolidated turnover of at least CHF 900 million. The legal basis of the CbC reporting law is the Convention on Mutual Administrative Assistance in Tax Matters (MAC). The MAC entered into force on 1 December 2016 and is applicable for tax years starting 1 January 2017.

Thin capitalisation

Liechtenstein does not have thin capitalisation rules.

Controlled foreign companies (CFCs)

Liechtenstein does not have specific CFC rules. However, legal or actual structures that appear inappropriate to the economic circumstances and whose sole economic purpose consists in attaining tax advantages are considered abusive if:

- the granting of this tax advantage would violate the object and purpose of the tax law, and
- the taxpayer is unable to present any economic or other substantial reasons for the choice of this structure and if the structure does not yield any independent economic consequences.

Tax credits and incentives

The following tax incentives are currently applicable:

- Profit tax exemption for corporations that have an irrevocable charitable, cultural, or ideal purpose without commercial activity.
- Profit tax exemption of dividend income and capital gains on shares/participations (especially interesting for holding companies).
- NID on equity (*see the Deductions section*).
- Private asset structure (PAS).

Private asset structure (Privatvermögensstrukturen or PAS)

Liechtenstein offers tax privileges for PASs. A PAS must not conduct any economic activity. The purpose of a PAS is limited to acquiring, holding, administrating, and selling financial instruments according to the Liechtenstein assets management law as well as cash and bank accounts. Participations may only be held if it can be proved that the shareholders or beneficiaries have no influence on the administration of this company.

The articles of the PAS must contain a clause that the regulations for PASs are applicable. Exemptions of this rule are applicable for legal entities that existed before the introduction of the tax law as of 1 January 2011.

The investors of a PAS must be individuals who administrate their own assets or structures acting in the interest of individuals.

The company or the audit company needs to confirm, upon formation or after major changes, that the conditions for the PAS structure are fulfilled. This is supervised by the tax authorities or a neutral certified accountant.

A PAS only pays the minimum tax of CHF 1,800 annually.

This tax scheme was qualified as in conformity with the provisions on state aid set out in Article 61 of the Agreement on the European Economic Area by the ESA.

Avoidance of double taxation

Foreign taxes shall be allowable against domestic taxes (credit method) under circumstances where (i) the income is derived or wealth is owned in a country that has concluded an agreement for the avoidance of double taxation with Liechtenstein and such agreement provides for a tax credit or (ii) reciprocity is granted. Income or wealth shall be exempted from taxation in Liechtenstein (exemption method) if the agreement for the avoidance of double taxation provides tax exemption or if reciprocity is granted.

Withholding taxes

Liechtenstein does not levy any WHTs.

Tax treaties

Currently, a comprehensive DTT on income is in effect with Andorra, Austria, Czech Republic, Georgia, Germany, Guernsey, Hong Kong, Hungary, Iceland, Luxembourg, Malta, Monaco, San Marino, Singapore, Switzerland, the United Arab Emirates, the United Kingdom (UK), and Uruguay.

Liechtenstein has concluded tax information exchange agreements (TIEAs) with the following governments: Andorra, Antigua and Barbuda, Australia, Belgium, Canada, China, Denmark, Faeroe Islands, Finland, France, Germany, Greenland, Iceland, India, Ireland, Italy, Japan, Mexico, Monaco, Netherlands, Norway, St. Kitts and Nevis, St. Vincent and the Grenadines, South Africa, Sweden, the United Kingdom, and the United States.

Tax administration

Taxable period

The tax year corresponds with the business year. Consequently, the applicable accounting period, which may end at any date within the calendar year, is the basis for corporate taxation.

Tax returns

Corporations resident in Liechtenstein or with PEs in Liechtenstein must file a tax return by 1 July of the calendar year following the fiscal year-end.

Due to a substantiated written request, the tax authorities may extend the submission deadline by six months. A deadline extension requires the payment of the provisional invoice. In especially justified cases, the submission deadline may be extended once again. Such a request must be made before expiry of the first deadline extension.

The tax assessment issued by the tax administration is based on the company's tax return, including the attachments and the financial statements filed.

Payment of tax

Companies must pay tax within 30 days of receipt of the assessment. The defaults charge rate is 4%.

Tax audit process

Generally, the Liechtenstein tax system is based on self-assessment. In the past, the Liechtenstein tax authorities assessed an entity based on the documents and information provided by the entity itself and additional documents or explanations requested by the tax authorities. Currently, however, the Liechtenstein tax authorities aims to carry out external tax audits in-house. However, due to limited resources, profit tax audits happen rarely.

Statute of limitations

The limitation of the right to assess a tax is five years, starting after the end of the tax year in terms of periodic tax and after the end of the year in which the taxable incidence had taken place in terms of non-periodic tax. The tax claims, in any case, are prescribed ten years after the end of the year in which the taxes have been assessed on a final basis.

Topics of focus for tax authorities

The tax authorities especially focuses on payments between affiliated companies (e.g. inter-company loans). Furthermore, all provisions and depreciations will be checked under the premise of economic necessity.

Other issues

Restructurings

Restructurings (e.g. change of corporate form, merger, spin-off) can be carried out tax neutrally, provided certain conditions are met.

All restructurings have in common that they can only be carried out tax neutrally if they are performed at tax book value and if the assets remain taxable within Liechtenstein. Furthermore, specific/additional conditions must be met for each kind of restructuring.

Foreign Account Tax Compliance Act (FATCA)

A Model 1 intergovernmental agreement (IGA) for the implementation of FATCA was signed between the governments of Liechtenstein and the United States on 16 May 2014.

Under the Model 1 IGA, Liechtenstein financial institutions will be required to report to local tax authorities on the accounts of US citizens. The Liechtenstein tax authorities will then send the tax information to the US Internal Revenue Service (IRS).

Automatic information exchange

Liechtenstein, *inter alia*, has committed to implement the Common Reporting Standard (CRS) for automatic exchange of tax information, which the G20 Finance Ministers endorsed on 23 February 2014. Accordingly, Liechtenstein belongs to the group of early adopters leading to the first automatic information exchanges in 2017 for the year 2016. The Liechtenstein Parliament passed the law on the automatic exchange of information (AIA law), with various amendments to the Liechtenstein Tax Act, on 6 November 2015. The AIA law corresponds mainly with the OECD CRS and shall introduce a uniform standard for exchanging tax information with tax authorities of other countries. The AIA law entered into force on 1 January 2016.

Lithuania

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Significant developments

The following changes to the Law on Corporate Income Tax (CIT) entered into force as of 1 January 2018:

- Collective investment undertakings are recognised as taxable units for CIT purposes, and all of their income can be non-taxable if certain conditions are met.
- Capital gains derived from the transfer of shares in collective investment undertakings are treated as non-taxable income, provided that those collective investment undertakings are not registered or otherwise organised in blacklisted territories and/or are not residents of such territories.
- For the first year of operations, 0% CIT rate is applied for the small entities employing fewer than ten employees and with annual turnover not exceeding 300,000 euros (EUR) per tax period (in subsequent periods, 5% CIT rate is applied for such entities).
- Companies implementing investment projects are entitled to fully reduce their taxable profit by actually incurred acquisition costs of long-term assets meeting certain requirements (previously, the profits might have been reduced by up to 50% of such costs).
- A new incentive for companies investing into research and development (R&D) was presented. Such companies now have the possibility to not only deduct the expenses incurred for R&D works from the taxable income three times, but they are also entitled to apply the reduced 5% CIT rate on the profit deriving from the commercial exploitation of patented inventions.
- The deduction of only 50% of representation expenses is allowed (previously, 75% of representation expenses were attributable to deductible expenses for CIT purposes). Moreover, deductible representation expenses shall not exceed 2% of the company's income during the tax period.
- Proceeds from the sale of shares are tax exempt if more than 10% of the voting shares were held for not less than two years (previously, the required percentage of voting shares to be held was 25%).

On 7 June 2017, Lithuania signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) Multilateral Instrument (MLI); however, it has not been ratified yet. Lithuania has decided to apply Article 7(4) and option B under Article 13(1) of the MLI. It is planned to ratify the MLI and modify the Double Tax Treaties (DTTs) in 2018.

Please note this information is current as of 1 June 2018. Typically, pending legislation is announced in June or July. Please visit the Worldwide Tax Summaries website at *www.pwc.com/taxsummaries* to see any significant corporate tax developments that occurred after 1 June 2018.

Taxes on corporate income

The standard CIT rate is 15%. However, small companies and agricultural companies can apply a reduced CIT rate of 0% or 5% if certain conditions are met.

Generally, CIT is applied on taxable income received by a Lithuanian tax resident from its local and worldwide activities. Taxable income is calculated by reducing general income of a certain tax period with deductible expenses and non-taxable income.

Income of a tax resident company is not subject to taxation in Lithuania if it was received from activities through a permanent establishment (PE) in a foreign country that is in the European Economic Area (EEA) or that has a DTT with Lithuania and if the income was subject to taxation there.

Furthermore, CIT may be reduced or even not applied if foreign-sourced income received not through a PE is taxed with a withholding tax (WHT) in a foreign country and this country has a DTT with Lithuania.

Non-resident companies are generally taxed on Lithuania-sourced income received through a local PE and reduced by deductible expenses or on income subject to WHT in Lithuania.

Reduced CIT rate for small companies

Entities with fewer than ten employees and less than EUR 300,000 in gross annual revenues can benefit from a reduced CIT rate of 5%. From 1 January 2018, the CIT rate is reduced to 0% for the first year of operations if certain conditions are met.

CIT regime for certain maritime activities

The rate of CIT on certain maritime activities is 15%, with the base set by reference to the functional capacity of the ship. This fixed CIT may be applied to maritime entities that fulfil certain conditions indicated in the law. An election must be made to the tax authorities to apply this regime.

Local income taxes

There is no local or municipal CIT in Lithuania.

Corporate residence

A company is resident in Lithuania if it is incorporated there or its activities create a PE for tax purposes.

Permanent establishment (PE)

According to local legislation, a foreign company is deemed to have a PE in Lithuania when:

- it permanently carries out commercial activities in Lithuania in whole or in part
- it carries out its activities through a dependent representative (agent)
- it uses a building site or construction, assembly, or equipment objects, or
- it uses equipment, including drilling installations and ships, for exploration or extraction of natural resources.

DTTs may establish different rules of PE recognition. According to domestic law, where there is a DTT, the provisions of the treaty take precedence.

A PE must be registered as a taxpayer with the tax authorities in the territory where its activities are carried out. Its profits are subject to CIT at the rate of 15%.

Other taxes

Value-added tax (VAT)

Supply of goods and services for consideration within the territory of Lithuania, performed by a taxable person engaged in economic activity, is subject to VAT in Lithuania.

The standard VAT rate is 21%.

The reduced rate of 9% applies to:

- Books and publications.
- Public transport services.
- Supply of heating to residential premises and supply of hot water.
- Accommodation services (applicable until 31 December 2022).

The reduced rate of 5% applies to:

- Technical aid devices and their repair services for the disabled.
- Pharmaceuticals and medical aid devices compensated by the state (under certain conditions).
- Not compensated prescription drugs.

Supply of goods exported outside of the European Union (EU) as well as supply of goods to VAT payers registered in another EU member state is subject to VAT at the rate of 0% (exempt with credit). There are other supplies of goods and services that are exempt with credit (e.g. goods and services for vessels and aircraft, transportation and linked services related to export or import of goods).

In order to apply zero-rated VAT on goods carried out from Lithuania, VAT payers must hold supporting documents as evidence that these goods were actually exported from the European Union or carried out from Lithuania to another EU member state.

Goods and services that are exempt without credit include, but are not limited to, the following:

- Supply of goods/services related to health care.
- Social services supplied by non-profit entities.
- Education and training services.
- Cultural and sports services rendered by non-profit entities.
- Services provided by political parties, trade unions, and other non-profit membership based legal entities to their members, meeting certain requirements.
- Services provided by religious communities, other communities, and centres to their members, meeting certain requirements.
- Postal services.
- Radio and TV broadcasting services provided by non-profit legal entities.

- All types of insurance and re-insurance services.
- Financial services meeting certain requirements (option to tax may be exercised for some financial services).
- Lotteries and gambling.
- Rent or sale of immovable property (option to tax may be exercised, certain conditions apply).
- Supply of goods where the VAT payer has not deducted any proportion of the VAT on purchases and/or importation thereof (certain conditions apply).

Sale and contribution in kind of a business or part of a business is treated as being out of scope of VAT (under certain conditions).

Customs duties

EU customs law is applicable in full.

EU customs law, also known as the Union Customs Code, compiles the rules, arrangements, and procedures applicable to goods traded between the European Community and non-member countries. The Union Customs Code indicates an obligation on a person to pay the amount of the import or export duties that apply to specific goods under the Community provisions in force. The application of the EU customs law means that:

- trade between Lithuania and other EU countries is customs-free
- imports from non-EU countries are subject to EU customs tariffs, and
- numerous free trade agreements concluded between EU and non-EU countries apply to Lithuania.

Excise taxes

Excise duty is imposed on the following goods produced in or imported into Lithuania: ethyl alcohol and alcoholic drinks, including beer and wine; processed tobacco, including cigarettes, cigars, cigarillos, and smoking tobacco; energy-related products, including petrol, kerosene, gasoline, fuel oil, lubricating oils, natural gas, and their substitutes and additives; coal, coke, and lignite; and electricity. The tax rate depends on the type and quantity of goods.

Land tax

Lithuanian and foreign entities are subject to land tax collected by the municipalities for the land they own in Lithuania. Roads for general use and forestland are exempt. The assessment and payment terms are set forth by the municipalities, which are also entitled to grant land tax incentives.

The annual land tax rate ranges from 0.01% to 4%, depending on local municipalities. Please see the table below describing the main features of the land tax:

Tax rate	0.01% to 4%, defined by municipality.
Taxable value	The average market value determined in the map of values established according to the mass valuation.
	The mass valuation is performed not rarer than every five years.
	A possibility to apply the value determined during the individual valuation if it differs from the market value by more than 20% (principles are similar to real estate tax).

Declaration	Template of a tax return is completed and sent by the tax authorities until 1 November.
Payments	One annual payment due 15 November.

Land lease tax

State-owned land that is leased for Lithuanian and foreign companies is subject to land lease tax at a rate established by the municipalities. The minimum tax rate set by the government is 0.1%, and the maximum rate is 4% of the value of the land.

Real estate tax

The real estate tax rate ranges from 0.3% to 3%. Tax is levied on the value of real estate owned by individuals and used for commercial purposes or owned by legal entities (with certain exemptions). Municipal councils establish a specific tax rate for real estate situated in their territories annually.

State duties (stamp taxes)

There are no stamp duties applied in Lithuania; however, minor fees for the services of state institutions, such as the issuance of documents having legal force and other deeds, may apply (e.g. notary fees apply on share purchase agreements [SPAs] meeting certain criteria).

Payroll taxes

Employers should withhold personal income tax (PIT) at the flat rate of 15% from the employee's salary.

There are no additional payroll taxes applicable to an employer other than the employee's and employer's social security contributions and the employer's contributions to the Guarantee Fund and to the Long-term Employment Fund (*see below*).

Social security contributions

The standard rate of social security contributions ranges from 30.48% to 32.1% for employers and is 9% for employees. At present, there are no upper limits set for social security contributions on employment-related income. However, social security contributions must be paid on the official minimum monthly salary amount in force regardless of the fact that an employee receives lower salary (not applicable when an individual is employed in another company, receives an old age pension benefit, or is not older than 24 years).

Contributions to the Guarantee Fund and Long-term Employment Fund

Contributions to the Lithuanian Guarantee Fund are calculated by employers at a rate of 0.2% on the gross salary payable to employees. The Guarantee Fund provides support to employees in case of employer's bankruptcy.

Employers also pay an additional contribution to the Long-term Employment Fund amounting to 0.5% on employee remuneration in order to entitle the individuals to receive payment from this fund if their employment agreement is terminated upon employer's initiative without employee's fault (special conditions apply).

Environmental tax

Environmental tax is imposed on pollutants discharged into the environment, dumped waste, a few specified products (e.g. tyres, batteries), and certain types of packaging.

Tax on natural resources

A tax on natural resources is payable on the value of extracted natural resources.

Branch income

A branch of a foreign company is defined as a structural subunit of a foreign company that has an establishment in Lithuania and is entitled to engage in commercial activities in Lithuania as well as conclude contracts and undertake obligations according to the power of attorney issued to the branch by its founder. A branch does not have the status of a legal person. It is taxed in the same manner as a PE (*see the Taxes on corporate income section*).

Income determination

Inventory valuation

Under domestic accounting legislation, stock used in the production and included in the cost of produced goods is valued in the financial statements by the first in first out (FIFO) method. The last in first out (LIFO), weighted-average, progressive-average, actual-price, or another method that corresponds to the stocks' movement can also be used. However, the method used must be disclosed in the notes to the annual accounts, and, among other things, the note must report the profit that would have been calculated if the FIFO method of valuation had been used. For CIT purposes, usage of another method than FIFO should be approved by the tax authorities.

Capital gains

Capital gains are taxed as part of the corporate profit of the enterprise.

Capital gains are treated as non-taxable income when they are derived from the transfer of shares in a company incorporated in the European Economic Area or in a country with which Lithuania has a valid DTT and that pays CIT or an equivalent tax. This holds true if the Lithuanian holding company holds more than 10% (before 1 January 2018, more than 25%) of voting shares for a continuous period of (i) at least two years or (ii) at least three years when the shares were transferred in one of the established forms of reorganisation. Certain restrictions apply.

As of 1 January 2018, capital gains derived from the transfer of shares/units in collective investment undertakings are treated as non-taxable income, provided that those collective investment undertakings are not registered or otherwise organised in blacklisted territories and/or are not residents of such territories.

Dividend income

The receiving company does not include the dividends received from other entities in its taxable income.

Interest income

Interest income is treated as general taxable income and is subject to 15% CIT.

Royalty income

Royalty income is treated as general taxable income and is subject to 15% CIT.

Exemptions from taxable income

The following additional types of income are exempt from CIT:

- Insurance indemnity not in excess of the value of lost property or other losses or damages, the refunded part of insurance premiums in excess of the premiums deducted from income in accordance with the procedure established, and the part of insurance indemnity in excess of the premiums deducted from income in accordance with the procedure established.
- Proceeds of a bankrupt company received from sale of its property.
- The balance of the formation fund of an insurance company as prescribed by the law on insurance.
- Income of collective investment undertakings and venture capital and private entity funds, except from the income received from the companies registered or otherwise organised in blacklisted territories or residents of such territories.
- Income derived by health care institutions for their services that are financed from the funds of the Compulsory Health Insurance fund.
- Income derived from revaluation of fixed assets and liabilities as established by laws and regulations, except for income derived from the revaluation of derivative financial instruments acquired for hedging purposes.
- Default interest, except for that received from foreign companies registered or otherwise organised in blacklisted territories or residents of such territories (*see Blacklisted territories in the Deductions section*).
- All or part of the profit gained from legal entities of unlimited civil liability that are payers of CIT and with income that is subject to CIT under the law or to a similar tax under respective statutes of foreign countries, with certain exceptions.
- Fees collected by seaports and airports, charges for air traffic navigation services, and funds collected from the lease of seaport-owned land.
- Results arising from adjustments made for the previous tax periods as prescribed by the law on accounting.
- Indemnification for damages received by the company, with certain exceptions.
- Compensation received according to the Lithuanian programmes of the EU financial support relating to taking fishing ships for scrap.
- Life insurance payments received by insurance companies, provided the term of the life insurance policy is valid for not less than ten years or at the date of the receipt of the insurance benefit the recipient has reached the pension age in accordance with the additional law on pensions. Additionally, life insurance investment income of insurance companies, except for dividends and other distributable profit, is exempt along with investment insurance income of insurance companies received according to the contracts of life insurance occupational pensions concluded in accordance with the law on accumulation of occupational pensions.
- Direct and other compensational allowances that are received by units performing agricultural activities to maintain their level of income, which meet the requirements established in the laws and other legal acts of Lithuania.

Foreign income

Income is not subject to taxation in Lithuania if it was received from activities through a PE in a foreign country that is in the European Economic Area or that has a DTT with Lithuania and if the income was subject to taxation there. Since such income is not subject to taxation in Lithuania, costs related to the income cannot be deducted from income that is subject to taxation in Lithuania.

Deductions

Allowable deductions include all the usual costs that an entity actually incurs for the purpose of earning income or receiving economic benefit unless the law on CIT provides otherwise.

Depreciation

Tangible and intangible assets may be depreciated using a directly proportional (straight-line) depreciation method, a production depreciation method, or a double-declining-balance depreciation method. Depreciation may not exceed maximum rates established by the law. For certain typical assets, depreciation rates relevant for tax purposes are shown in the chart below:

Asset	Depreciation period (years)	Annual depreciation rate (%)
New buildings used for business activities	8	12.5
Residential buildings	20	5
Plant and machinery	5	20
Trucks (not older than 5 years)	4	25
Computer and communications equipment	3	33.3
Software	3	33.3

Goodwill

Goodwill can be amortised for tax purposes using a straight-line method over 15 years after a merger of a purchasing company and an acquired company, provided that certain conditions are met.

Start-up expenses

Generally, startup expenses are deductible for tax purposes.

Interest expenses

Interest expenses are generally deductible for tax purposes. Interest expenses should be generally recognised as non-deductible for tax purposes if, after acquisition, a purchasing company and an acquired company are merged and debt used for acquisition of shares is pushed down to the acquired company (possibility to deduct interest after merger remains only if certain conditions are met, e.g. economic benefit for surviving entity from such exercise is substantiated).

Interest paid to related parties may be non-deductible for tax purposes if thin capitalisation rules are infringed and the interest rate on a debt from the related party does not correspond to a fair market interest rate (*see Transfer pricing and Thin capitalisation in the Group taxation section*).

Bad debts

Bad debts are deductible only if proved that they cannot be recovered and specific criteria are met. Provisions are non-deductible.

Charitable contributions

Generally, double the amount of donation/sponsorship can be deducted for tax purposes (i.e. 200% deduction is available) but only if donation/sponsorship was provided to registered recipients and only up to a limit of 40% of taxable result before deduction of donation/sponsorship and utilisation of tax losses carried forward.

Fines and penalties

Fines and penalties are generally non-deductible for tax purposes.

Taxes

All taxes, fees, and other compulsory payments to the state budget are deductible for CIT purposes, except VAT and CIT paid to the budget. Note that VAT can be treated as deductible for CIT purposes if it is treated as fully or partly non-deductible for VAT purposes and this input/import VAT relates to deductible expenses.

Other significant items

Limited deductible expenses also include the following:

- Maintenance, repair, and reconstruction expenses of tangible fixed assets: If the repair or reconstruction increase the service period and improve the qualities (useful characteristics of the fixed assets), the value of repair or reconstruction shall be added to the acquisition value of the tangible fixed assets.
- Business travel expenses: Deductible with restrictions.
- Advertising and representation expenses: As of 1 January 2018, 50% of representation expenses not exceeding 2% of the company's income for the tax period are deductible (previously, a 75% limit was applied).
- Natural losses: Deduction limited to not more than 1% (3% for fresh fruits, vegetables, and some other cases) of turnover.
- Contributions and expenses for the benefit of employees: Deductible with restrictions.
- Special provisions of credit institutions and insurance companies: Calculated according to the methods established by the Bank of Lithuania and the Commission of Insurance Supervision.
- Membership fees, contributions, and premiums: Deductible with restrictions.

Non-deductible expenses also include the following:

- Default interest (forfeit), fines, and late interest paid to the state budget as well as other sanctions imposed for violations of laws and regulations of Lithuania.
- Interest or any other indemnity paid due to non-performance of contractual obligations by related parties.
- Amount of the limited deductible expenses in excess of the established limits.
- Expenses attributed to allowable deductions more than 18 months past, although the payments for goods or services supplied by the entities registered or otherwise organised in blacklisted territories (*see below*) have not been made.
- Sponsorship and gifts that do not correspond to the requirements of CIT law.
- Payments to blacklisted territories (*see below*) if they are not verified and payments are not subject to WHT.
- Indemnification for damages inflicted by the entity.
- Dividends or otherwise distributed profits.

- Other expenses not related to the deriving of income and not attributed to operating activities of the entity, as well as the expenses that are not considered allowable deductions under the law.
- Amounts resulting from adjustments and corrections of errors of previous tax periods.
- Expenses related to revaluation of fixed assets and securities, except for financial instruments acquired for hedging purposes.
- Expenses incurred while earning non-taxable income.
- Expenses related to income from certain international maritime activities if a maritime entity chose to apply a fixed CIT.

Net operating losses

Operating losses may be carried forward for an indefinite period, provided that certain requirements are met.

Current year operating losses can be transferred to another legal entity of the group if certain conditions are met.

Losses incurred due to the transfer of securities and/or derivative financial instruments may be carried forward for five years (indefinitely for financial institutions).

Reduction of taxable profit by accumulated tax losses is limited to 70% of the taxable profit for the current year (except for entities that are subject to the reduced CIT rate of 5%). The rest of the accumulated tax losses can be carried forward for an unlimited period of time.

No carryback of losses is available in Lithuania.

Payments to foreign affiliates

Payments to foreign affiliates (e.g. interest, royalties, management fees, fees for other services) are deductible for tax purposes if the payment serves a business purpose, provides a benefit to the payer, is at arm's length, and is substantiated by sufficient documentation. Payments to foreign affiliates may also be subject to various WHTs. Certain payments to affiliates located in tax haven (blacklisted) countries are subject to a 15% WHT rate.

Blacklisted territories

A blacklisted territory is a foreign country or territory that is included on a list of offshore territories established by the Minister of Finance that meets at least two of the following criteria:

- Similar tax rate in such territory is below 75% of that set in the Lithuanian CIT law.
- In such territory, different rules for levying a similar tax are applied, depending on the country where the parent company (controlling entity) is registered or otherwise organised.
- In such territory, different rules for levying a similar tax are applied, depending on the country where the business is conducted.
- The company (the controlled taxable entity) has entered into agreement with the tax administrator of that territory with regard to the application of a tax rate or tax base.
- There is no effective exchange of information in such territory.

- There is no financial and administrative transparency in such territory, the tax administration rules are not quite clear, and the application thereof is not communicated to tax administrators of other countries.

A list of 58 offshore territories has been published. With certain exceptions specified in the law, all payments to offshore companies or their branches for any work or services, commodities, interest on funding, insurance premiums, guarantees, etc. are non-deductible for CIT purposes unless the Lithuanian entity provides evidence to the state tax authorities that:

- the payments are related to usual activities of the paying and the receiving business entities
- the receiving foreign business entity manages the property necessary to carry out such usual activities, and
- there is a connection between the payment and the economically grounded business operation.

Group taxation

Group taxation legislation and regimes are not available in Lithuania. Each Lithuanian entity is regarded as a separate taxpayer and may not deduct tax losses accumulated from previous tax periods at the level of any other group entity.

Transfer of current year operating tax losses incurred to an entity of the same group of companies is allowed if certain requirements are met.

Transfer pricing

All transactions between associated parties must be performed at arm's length. The tax authorities have a right to adjust transaction prices if they do not conform to market prices.

The Lithuanian rules refer to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations established by the Organisation for Economic Co-operation and Development (OECD) to the extent that they do not contradict with the domestic rules.

According to the Lithuanian transfer pricing regulations, companies may apply the following methods, although traditional methods should be given preference:

- Comparable uncontrolled price method.
- Resale price method.
- 'Cost plus' method.
- Profit split method.
- Transactional net margin method.

All entities with an annual revenue exceeding EUR 2.9 million, as well as all banks, insurance companies, and credit institutions, are required to prepare transfer pricing documentation in a specifically prescribed form. The documentation may be in a foreign language, but has to be translated to Lithuanian upon request.

Penalties, amounting from EUR 1,400 to EUR 4,300, for non-compliance with the transfer pricing documentation procedures for transactions between associated persons can be imposed. For a repeated breach, penalties can amount from EUR 2,900 to EUR 5,800.

Advance pricing agreements (APAs) and binding rulings are available in Lithuania. Taxpayers can apply for an APA or a binding ruling from the Lithuanian tax authority in respect of future transactions.

Decisions in the form of a binding ruling or APA will be issued by the Lithuanian tax authority regarding the application of tax legislation provisions and pricing principles. The above-mentioned decisions will be particularly relevant to companies planning to undertake new transactions where the taxation principles of such transactions are not clearly defined in the tax legislation and to international companies planning to perform significant transactions with associated parties.

Country-by-country (CbC) reporting

In 2017, the Lithuanian tax authorities approved rules that apply the CbC reporting obligation to multinational enterprises with consolidated revenue of over EUR 750 million. According to the approved rules, the CbC report must be submitted within 12 months after the last day of the taxpayer's financial year. The first CbC report must be submitted no later than the end of the first quarter of 2018.

The CbC report can be submitted in parts, and it will be considered to be submitted when the last part of the CbC report is submitted. The reports will be submitted electronically through the systems developed by the Lithuanian tax authorities.

The Lithuanian rules on the preparation and submission of the CbC report also provide that the CbC reporting notification (i.e. information for the Lithuanian tax authorities about the legal entity filing the CbC report on behalf of the multinational group of companies) is to be submitted in a free form by the end of the Lithuanian company's financial year. Lithuanian tax authorities confirmed that the notification for the years 2016 and 2017 should be submitted by 31 December 2017 (if the financial year matches calendar year).

Thin capitalisation

The Lithuanian thin capitalisation rules apply in respect to borrowings from related parties as well as borrowings from third parties guaranteed by related parties. The controlled debt-to-fixed-equity ratio is 4:1. The above provisions do not apply if a Lithuanian company can prove that the same loan under the same conditions would have been granted by a non-related entity.

Controlled foreign companies (CFCs)

Positive income of a CFC, i.e. income not derived from operating activity (including interest, royalties, leasing, dividend income, etc.), shall be included in the taxable income of a controlling Lithuanian company if a CFC is established or organised in a country that is:

- a blacklisted territory (*see Blacklisted territories in the Deductions section)*
- on the 'white' list of countries as defined by the Ministry of Finance but is eligible for special CIT or an equivalent tax relief in a country of establishment, or
- neither on the 'white' list nor on the 'black' list of countries and is subject to a CIT or an equivalent tax lower than 11.25% in a country of establishment.

Certain other conditions apply.

A Lithuanian company may reduce tax payable in Lithuania by the tax paid in a foreign country on the positive income of CFC included in the tax base of that Lithuanian company.

Tax credits and incentives

Foreign tax credit

A company may reduce tax payable on certain foreign-sourced income in Lithuania by taxes paid on that income in a foreign country if that Lithuanian company has received appropriate notice from that foreign country. The tax credit may not exceed the CIT rate payable in Lithuania.

Investment project incentive

As of 1 January 2018, entities involved in an investment project are able to reduce their taxable profits by up to 100% of the actually incurred acquisition costs of long-term assets meeting certain requirements (previously, a 50% limit was applied). Please note that depreciation (amortisation) expenses of such assets shall be deducted in a common manner.

Taxable profits can be reduced by such costs incurred from 2009 to 2023.

This relief is applied to the following categories of fixed assets:

- Machinery and equipment.
- Computer and communication equipment.
- Software and acquired intellectual property (IP) rights.
- Lorries, trailers, and semi-trailers.

The costs exceeding the above-mentioned 100% limit can be carried forward for four years.

There are certain criteria defining what could be considered an investment project. The project should be precisely described to meet the criteria allowing a company to use the tax relief.

Tax relief for research and development (R&D)

Expenses, except for fixed assets' depreciation (amortisation) expenses, incurred for R&D purposes can be deducted three times in the tax period when they are incurred, provided that R&D works performed are related to ordinary business activities.

A company applying tax relief for R&D has to prepare R&D documentation. This documentation has to cover the performed project, substantiate conformity with certain tax requirements, and specify the amount of expenses for R&D activities.

As of 1 January 2018, a new tax incentive for companies investing into R&D was introduced. Such companies have the possibility to not only deduct the expenses incurred for R&D works from the taxable income three times, but they are also entitled to apply the reduced 5% CIT rate on the profit deriving from the commercial exploitation of patented inventions.

Funds granted for producing a film or a part of a film

Funds granted for producing a film or a part of a film can be deducted from taxable income and from CIT payable due during the period of 2014 to 2018 if the following conditions are met:

- The film meets the criteria of cultural substance and evaluation of the production.
- Not less than 80% of the film production expenses are incurred in Lithuania, and the amount exceeds EUR 43,000.
- Total amount of funds granted by all companies may not exceed 20% of total expenses of the film production.

Certain restrictions for reduction of taxable income and tax due apply.

Free economic zones (FEZs)

Entities that invest in Lithuanian FEZs are entitled to partial or complete CIT relief (depending on the investment amount), relief of tax on real estate, and 50% relief of land lease tax. In 1996, two FEZs were established for a period of 49 years: one in Kaunas and the other one in Klaipėda. As of 1 January 2012, five more FEZs were established in Akmenė, Kėdainiai, Marijampolė, Panevėžys, and Šiauliai.

An association uniting FEZs operating in Lithuania was established at the end of 2015. Its goal is to create 2,000 new jobs and attract investments of more than EUR 400 million.

Withholding taxes

Domestic legislation

Generally, income of a foreign entity in Lithuania not derived through a PE is deemed to be Lithuanian-source income and is subject to WHT at the following rates:

- Interest on any type of debt obligations, including securities: 10%.
- Proceeds from the sale, transfer (with title), or lease of immovable property located in Lithuania: 15%.
- Income derived from sports activities or performers' activities: 15%.
- Income from distributed profits: 15%.
- Royalties: 10%.
- Annual payments (*tantiems*) to the members of the board or supervisory board: 15%.
- Indemnities received for the infringement of copyrights or neighbouring rights: 10%.

0% WHT is applied on royalties paid to related parties meeting requirements of the European Commission (EC) Interest and Royalty Directive.

Lithuanian WHT on interest paid to EU entities or DTT tax residents is 0%.

WHT is not applied on government securities issued on international financial markets, interest accumulated and paid on deposits, and interest on subordinated loans that meet the criteria established by legal acts adopted by the Bank of Lithuania.

Dividends distributed by a resident company to another resident company are subject to a 15% CIT, which is withheld by a distributing company.

The dividends distributed by a resident company are exempt from WHT if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period. However, this relief is not applied if the foreign entity (recipient) is registered or otherwise organised in blacklisted territories (*see Blacklisted territories in the Deductions section*), as specified by the Ministry of Finance. Please note that the requirement of the 12-month holding period does not necessarily have to be fulfilled on the day of dividend distribution.

Dividends paid out to foreign companies or received from foreign companies are not subject to tax exemption in cases where tax benefit is the main or one of the main objectives of a particular structure of companies. Dividends received from foreign companies are also not subject for tax exemption if they were deducted from taxable profit at the distributing company level.

The receiving company may reduce its CIT payable for that period when dividends were received by the amount of CIT withheld from the received dividends. Any excess credit may be offset with other taxes payable.

Dividends distributed by a foreign entity are generally subject to a 15% CIT that is to be paid by the receiving Lithuanian entity.

Dividends distributed by a foreign company to a Lithuanian company are exempt from CIT if the distributing foreign entity is established in the European Economic Area and related profit is properly taxed in the domiciled country.

The dividends are also exempt from WHT if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period and the profit of a distributing entity is subject to CIT or similar tax. This participation exemption satisfies the requirements of the EC Parent-Subsidiary Directive. The exemption also applies to dividends paid by non-EU foreign companies, except those registered or organised in blacklisted territories.

According to the changed provisions of the CIT Law, the payments received by a foreign entity for the activities of the members of the supervisory board in Lithuania are recognised as income of the foreign company in Lithuania, regardless of the frequency of such payments and whether they are paid as *tantiemes* or as other types of payments. These payments are subject to 15% WHT, which should be withheld by the paying company in Lithuania. The tax is applicable only if the member of the supervisory board is a foreign company (not an individual).

Tax treaties

Where a treaty for the avoidance of double taxation and prevention of fiscal infringement with the country in question contradicts the local regulations, the treaty provisions prevail. Lithuania now has 55 DTTs in force with foreign countries.

The following WHT rates apply to dividends, interest, and royalties paid to a recipient or beneficial owner resident in a tax treaty country. The lower of the domestic or the treaty rate is given.

Lithuania

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (3)**
Non-treaty	0/15	0/10	0/10
Treaty:			
Armenia	0/5/15	0/10	10
Austria	0/5/15	0/10	0/5/10 (4)
Azerbaijan	0/5/10	0/10	10
Belarus	0/10	0/10	10
Belgium	0/5/15	0/10	0/5/10 (4)
Bulgaria	0/10	0/10	0/10
Canada	0/5/15	0/10	10
China, People's Republic of	0/5/10	0/10	10
Croatia	0/5/15	0/10	0/10
Cyprus	0/5	0	0/5
Czech Republic	0/5/15	0/10	0/10
Denmark	0/5/15	0/10	0/5/10 (4)
Estonia	0/15	0/10	0/10
Finland	0/5/15	0/10	0/5/10 (4)
France	0/5/15	0/10	0/5/10 (4)
Georgia	0/5/15	0/10	10 (4)
Germany	0/5/15	0/10	0/5/10 (4)
Great Britain and Northern Ireland	0/5/15	0/10	0/5/10 (4)
Greece	0/5/15	0/10	0/5/10 (4)
Hungary	0/5/15	0/10	0/5/10 (4)
Iceland	0/5/15	0/10	5/10 (4)
India	0/5/15	0/10	10
Ireland, Republic of	0/5/15	0/10	0/5/10 (4)
Israel	0/5/15	0/10	5/10 (4)
Italy	0/5/15	0/10	0/5/10 (4)
Japan	0/10	0/10	0
Kazakhstan	0/5/15	0/10	10
Korea, Republic of	0/5/10	0/10	5/10 (4)
Kuwait	0/5/15	0/10	10
Kyrgyzstan	0/5/15	0/10	10
Latvia	0/15	0	0
Luxembourg	0/5/15	0/10	0/5/10 (4)
Macedonia	0/10	0/10	10
Malta	0/5/15	0/10	0/10
Mexico	0/15	0/10	10
Moldova	0/10	0/10	10
Netherlands	0/5/15	0/10	0/5/10 (4)
Norway	0/5/15	0/10	5/10 (4)
Poland	0/5/15	0/10	0/10
Portugal	0/10	0/10	0/10
Romania	0/10	0/10	0/10
Russian Federation	0/5/10	0/10	5/10 (4)
Serbia	0/5/10	0/10	10
Singapore	0/5/10	0/10	7.5
Slovakia	0/10	0/10	0/10
Slovenia	0/5/15	0/10	0/10
Spain	0/5/15	0/10	0/5/10 (4)

Recipient	WHT (%) Dividends (1)	Interest (2)	Royalties (3)
Sweden	0/5/15	0/10	0/5/10 (4)
Switzerland	0/5/15	0/10	5/10 (4)
Turkey	0/10	0/10	5/10 (4)
Turkmenistan	0/5/10	0/10	10
Ukraine	0/5/15	0/10	10
United Arab Emirates	0/5	0	5
United States of America	0/5/15	0/10	5/10 (4)
Uzbekistan	0/10	0/10	10

Notes

1. Dividends are exempt from WHT if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period. However, this relief is not applied if the foreign entity (recipient) is registered or otherwise organised in blacklisted territories (*see Blacklisted territories in the Deductions section*), as specified by the Ministry of Finance. If participation exemption criteria are not met, the standard WHT rate of 15% should be applied. However, some of the DTTs allow applying WHT at a reduced rate of 5% or 10%.
2. Under the domestic law, the rate is nil if interest is paid to a company established in a country that has a DTT with Lithuania or is a member of a European Economic Area. In other cases, except for Cyprus, Latvia, and the United Arab Emirates where 0% WHT is established in the DTT, a 10% WHT rate should be applied.
3. Under the domestic law, 0% WHT is applied on royalties paid to related parties meeting requirements of the EC Interest and Royalty Directive.
4. Royalties for the use of industrial, commercial, or scientific equipment: 5%; other royalties: 10%.

Reduction of, or exemption from, WHT under a DTT may be obtained if a special residence certificate (Form DAS-1) is completed and approved by the tax authorities before a taxable payment is transferred. If a payment that would have been subject to a tax treaty has already been made and WHT at the local rate was withheld, it is possible to obtain an appropriate refund (reduction) by completing a special claim for a refund of the Lithuanian tax withheld at source (Form DAS-2) and obtaining the approval of the tax authorities.

In addition, the tax authorities may require completion of a special certificate giving information about income received and taxes paid in Lithuania (Form DAS-3).

Tax administration

Taxable period

The Lithuanian tax year runs from 1 January to 31 December. However, a corporation may apply to adopt a substitute year of reporting (e.g. 1 July to 30 June).

Tax returns

According to Lithuanian legislation, all the tax returns (except annual PIT returns) are submitted electronically, excluding cases when it is not possible to submit tax returns by electronic means due to objective reasons or the submission of a return by electronic means would cause disproportionate administrative burden.

CIT

CIT returns must be submitted by the 15th day of the sixth month of the following tax period (15 June for companies using the calendar year).

Advance CIT due based on activity results for the previous year should be calculated and declared as follows:

- The advance CIT due for the first six months of the tax period should be calculated based on results of the tax period before the last tax period (e.g. the advance CIT for the first six months of 2018 would be calculated based on the appropriate portion of the actual amount of CIT for 2016).
- The advance CIT return for the first six months of the tax period should be submitted by the 15th day of the third month of the tax period (usually 15 March).
- The advance CIT due for the remaining six months of the tax period should be calculated based on results of the last tax period (e.g. the advance CIT for the last six months of 2018 would be based on the appropriate portion of the actual amount of CIT for 2017).
- The advance CIT return for the remaining six months should be submitted by the 15th day of the ninth month (usually 15 September) of the tax period.

Previously, if advance CIT due was calculated based on activity results for the previous year, the advance CIT return for the first nine months of the tax period was to be submitted by the last day of the first month (usually January) of the tax period. The return for the remaining months of the tax period was to be submitted by the last day of the tenth month (usually October) of the tax period.

The taxpayer may choose to pay the advance amount based on the projected amount of CIT calculated for the current year. The advance amount of CIT calculated on the basis of the projected amount of CIT for the tax period shall account for not less than 80% of the actual amount of the annual CIT; otherwise, late payment interest shall be calculated in respect of each amount of advance CIT that was not paid for the quarter.

If the taxpayer had chosen to pay the advance amount based on the projected amount of CIT for the current year, the return must have been submitted not later than the last day of the first month of the tax period.

WHT on dividends

A tax-withholding entity must submit to the tax authorities a special form of a return reporting the dividends paid and tax withheld within ten calendar days after the end of the month of the dividend payment.

WHT on payments other than dividends

A tax-withholding entity must submit to the tax authorities a special form of a return reporting the amounts of payments paid and taxes withheld during the calendar month no later than 15 days after the end of the month in which the amounts were paid.

Payment of tax

CIT

The final payment deadline for CIT is aligned with the annual CIT return submission deadline (i.e. from 2017, the 15th day of the sixth month of the following tax period).

The advance CIT must be paid no later than the 15th day of the last month of the respective quarter.

If the amount of tax indicated in the annual CIT return exceeds the amount actually paid during the tax period (i.e. the advance CIT), the taxpayer is obligated to transfer the additional amount no later than the annual CIT return submission deadline (i.e. by the 15th day of the sixth month of the following tax period). Overpaid tax can be offset with other tax dues or refunded in accordance with the law on tax administration.

WHT on dividends

WHT on dividends is to be calculated, withheld, and remitted by a Lithuanian company that pays dividends within 15 calendar days after the end of the month of the payment.

WHT on payments other than dividends

WHT on payments other than dividends is to be calculated, withheld, and remitted by a Lithuanian company or a PE of a foreign company no later than the return submission deadline.

Tax audit process

The Lithuanian tax system for companies is based on self-assessment; however, the tax authorities undertake ongoing compliance activity to ensure corporations are meeting their tax obligations. The tax authorities take a risk-based and materiality approach to compliance and audit activities, with efforts generally focused on taxpayers with a higher likelihood of non-compliance and/or material consequences of non-compliance. Compliance activities take various forms, including general risk reviews, questionnaires, reviews of specific issues, and tax audits.

Files and data reported to the tax authorities

Accounting data reporting: Standard Audit File for Taxes (SAF-T)

Full accounting data reporting in xml format (SAF-T) was implemented in Lithuania as of 1 January 2017.

Entities are obligated to be ready to submit accounting data upon request of the tax authorities as follows:

- If net sales revenue for the 2015 financial year exceeded EUR 8 million, then an entity has to be ready to submit the file for periods starting from 1 January 2017.
- If net sales revenue for the 2016 financial year exceeded EUR 700,000, then an entity has to be ready to submit the file for periods starting from 1 January 2018.
- If net sales revenue for the 2017 financial year exceeded EUR 300,000, then an entity has to be ready to submit the file for periods starting from 1 January 2019.

The requirement to be ready to submit the file does not apply to certain entities (e.g. foreign entities registered for VAT purposes in Lithuania, branches, representative offices, PEs).

Invoice data reporting (i.SAF)

All VAT-registered taxable persons are required to report monthly data on invoices issued and received to the tax authorities' i.SAF subsystem.

Transport data reporting (i.VAZ)

The transport document data for the dispatch of goods to other entities within the territory of Lithuania (local dispatches) has to be reported to the tax authorities' i.VAZ subsystem (certain exceptions apply) before the dispatch occurs.

Statute of limitations

Generally, the tax authorities may investigate current and five previous tax periods. However, the limit of ten previous tax periods applies where the tax authorities are of the opinion there has been fraud or tax evasion.

Topics of focus for tax authorities

The Lithuanian tax authorities are focusing on the following areas of corporate taxpayers' compliance:

- Topics driven by OECD movement on BEPS (e.g. economic substance of companies, business reasons of transactions).
- Obligation to register PE in Lithuania (investigations of foreign companies that perform activities in Lithuania without registering as local taxpayers).
- Compliance with transfer pricing rules and thin capitalisation rules.
- Applications of tax reliefs (e.g. investment project incentive, relief for R&D).
- Proper recognition of costs for non-business related assets and expenses.
- Social security contributions' optimisation schemes.

Other issues

Foreign Account Tax Compliance Act (FATCA) agreement with the United States (US)

Lithuania signed an intergovernmental agreement (IGA) with the United States under the framework of FATCA. Lithuania and the United States will exchange information about the accounts of foreign (US or Lithuania, respectively) residents held in local financial institutions or local branches of foreign financial institutions.

Implementation of base erosion and profit shifting (BEPS) provisions

The OECD has announced a package of BEPS recommendations aiming to increase transparency of international taxation and prevent tax evasion and aggressive tax planning. Many OECD countries, as well as Lithuania (not an OECD member yet), have already started shifting certain provisions related to implementation of the BEPS recommendation package into their tax legislation. On 30 May 2018, an agreement on Lithuania's accession to the OECD was signed, meaning that Lithuania will officially become the 36th member of the organisation.

Common Reporting Standard (CRS)

Information disclosure requirements related to international transparency movements (i.e. Common Reporting Standard) that has been adopted into national law state that if certain conditions are met, financial market participants are required to provide the tax authorities with information on their clients' accounts (both individual and legal entities), such as account turnover and year-end balances, interest due and debt obligations, trade in securities, insurance premiums, pension insurance premiums, and other details. Moreover, legal entities in Lithuania are required to submit information on services acquired from foreign companies (which partially or entirely are provided in Lithuania), where the value of the transaction or several transactions made with the same foreign entity within a year is EUR 15,000 or higher.

Luxembourg

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Significant developments

New tax law for 2018

Reduction of the corporate income tax (CIT) rate

The CIT rate for companies having a net taxable base of more than 30,000 euros (EUR) is reduced to 18% for 2018, leading to an overall tax rate of 26.01% in Luxembourg City for fiscal year (FY) 2018 (taking into account the solidarity surtax of 7% on the CIT rate, and including the 6.75% municipal business tax rate applicable).

Also, the CIT rate for small and start-up companies (i.e. companies having taxable income below EUR 25,000) has been reduced to 15%, leading to an overall tax rate of 22.08% in Luxembourg City (taking into account the solidarity surtax of 7% on the CIT rate, and including the 6.75% municipal business tax rate applicable). For companies with a tax base of between EUR 25,000 and EUR 30,001, the CIT would be EUR 3,750 plus 33% of the tax base above EUR 25,000.

New intellectual property (IP) regime

The new measures related to a new IP regime proposed in Bill No. 7163 in August 2017 have been approved by the Luxembourg Parliament on 22 March 2018. This new IP regime, applicable since 1 January 2018, provides for an 80% tax exemption on eligible net income for qualifying IP rights. The new regime is fully consistent with all recommendations made by the Organisation for Economic Co-operation and Development's (OECD's) Forum on Harmful Tax Practices, including those set out in the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project Action 5 Final Report published in October 2015. The new regime thus adopts the 'nexus approach', to ensure that only activities with enough substance can qualify for beneficial treatment. This approach is also in line with positions taken by the European Union's (EU's) Code of Conduct Group on business taxation, which monitors IP regimes operating in EU member states.

The new regime also seeks to promote research and development (R&D) activity in Luxembourg.

Tax credit for investments

The scope of the regime offering tax credits for investment is extended to include the acquisition of software, provided that this software has not been acquired from any associated entity (as defined under article 56 of Luxembourg Income Tax Law [LITL]).

The above measure only relates to the acquisition of software and does not include software created by the taxpayer itself. The revenues from such software can instead potentially benefit from partial tax exemption under Luxembourg's new IP regime, applicable since 1 January 2018. Conversely, a taxpayer claiming tax credits for investment for the acquisition of software cannot also benefit from the 2018 IP regime on any revenue derived from such software (so as to prevent any double tax advantage arising).

Under this new measure, a separate tax credit is given for investment in software, although the amount that can be claimed partly mirrors the rules for calculating the existing wider overall tax credit for investment; the tax credit for software is set as 8% of the cost of investment up to EUR 150,000 in a tax period and 2% for any investment exceeding EUR 150,000. However, one further restriction applies; the credit may not exceed 10% of the tax due for the tax year during which the acquisition of software occurs. There are no measures that allow any credits that are not available because of this restriction to be deferred to a subsequent period; such potential credits are permanently lost.

In addition, in order to offer a further incentive for sustainable mobility, some specific types of cars will become eligible assets for all components of the tax credits for the investment regime. To be eligible, the vehicles must be:

- passenger cars
- ‘zero emissions’, running exclusively on electricity or hydrogen cells
- classified as M1, having a passenger compartment designed exclusively for the carriage of passengers and having not more than nine seats (including the driver’s seat), and
- first registered after 31 December 2017.

Taxes on corporate income

Luxembourg taxes its corporate residents on their worldwide income and non-residents only on Luxembourg-source income.

Businesses with taxable income lower than EUR 25,000 are subject to CIT at a rate of 15%. Businesses with taxable income between EUR 25,000 and EUR 30,001 are subject to CIT computed as follows: EUR 3,750 plus 33% of the tax base above EUR 25,000 (for FY 2018). The CIT rate is 18% for companies with taxable income in excess of EUR 30,000.

The CIT does not apply to tax-transparent entities (e.g. general or limited partnerships or European Economic Interest Groupings).

Although there used to be a minimum CIT for Luxembourg resident companies, no such minimum CIT is applicable as of 2016. It has been replaced by a minimum net wealth tax (*see Net wealth tax [NWT] in the Other taxes section*).

Solidarity surtax

A 7% solidarity surtax is imposed on the CIT amount.

Taking into account the solidarity surtax, the aggregate CIT rate is 19.26% for companies with taxable income in excess of EUR 30,000.

Municipal business tax on income

Municipal business tax is levied by the communes and varies from municipality to municipality. The municipal business tax for Luxembourg City is 6.75%.

The effective combined CIT rate (i.e. CIT, solidarity surtax, and municipal business tax) for Luxembourg City is 26.01%.

Corporate residence

Based on domestic law, a company is considered to be resident in Luxembourg if either its registered office or place of central administration is located in Luxembourg. The registered office is designated as such in the company's articles of incorporation.

The place of central administration is generally understood to mean the place where the company is managed and controlled. While this term is not legally defined, the location of the company's major establishment is determined by facts and circumstances, including the following:

- The place where meetings of the board of directors are held.
- The place where shareholders meetings are held.
- The place where the company's officers make their decisions.
- The place where the company's books and records are kept.
- The place where other, similar factors evidencing management control occur.

Permanent establishment (PE)

The provisions on PEs included in the tax treaties concluded by Luxembourg generally follow the wording of the OECD model.

Under Luxembourg domestic tax law, a similar PE concept exists but is defined in a broader way and is to be understood as every fixed piece of equipment or place that serves for the operation of an established business.

Other taxes

Value-added tax (VAT)

Supplies of goods and services, which are deemed to take place in Luxembourg, are subject to VAT at the standard rate of 17% (lowest standard VAT rate in the European Union) or, on certain transactions, at 14% (e.g. certain wines, advertising pamphlets, management and safekeeping of securities), 8% (e.g. supply of gas or electricity), or 3% (e.g. food [except most alcohol beverages]; pharmaceutical products; books [except e-books]; radio and television broadcasting services [except adult entertainment]; shoes, accessories, and clothes designed for children under the age of 14). Some transactions, such as export and related transport, are zero-rated.

Taxpayers whose activities are subject to VAT are entitled to offset against their VAT payable the amount of such tax charged to them by their suppliers or reverse charged (i.e. self-accounted) by them on import or acquisitions of goods or services from abroad.

Banking, financial, insurance, and reinsurance transactions are generally exempt activities. The VAT paid on costs that have a direct and immediate link with these transactions cannot be recovered except when related to services performed for persons established outside the European Union. VAT on expenses made in the context of 'passive' holding activities, which are considered as outside the scope of VAT, are not recoverable.

A Circular letter released by the Luxembourg VAT authorities has confirmed that the activity performed by independent directors is an economic activity that makes them VATable persons (irrespective of whether the director is a company or a private individual). This activity is, as a rule, subject to VAT at the standard rate of 17% (there are some exceptions to the principle of taxation). VAT returns must be filed on a monthly basis (as well as a recapitulative annual return). Derogations may be obtained, to file quarterly or only annual VAT returns, subject to certain conditions (level of turnover or incoming transactions subject to VAT and level of purchases of goods and services on which Luxembourg VAT must be self-accounted for).

A Standard Audit File for Tax (SAF-T), containing reliable accounting data, has been implemented by the VAT authorities. This specific .xml file is used by taxable persons to make information available to Luxembourg VAT authorities during a VAT audit. Only specific taxable persons (subject to the Luxembourg Standard Chart of Accounts) having a certain minimum number of transactions (+/- 500) and registered under a 'normal filing regime' with a turnover exceeding EUR 112,000 are currently concerned. On the other hand, some entities (i.e. banks and insurance companies) are not yet subject to these SAF-T obligations, although they may be required to provide all VAT-relevant data to the authorities in a structured electronic file.

Managing directors, managers of companies (established and/or VAT registered in Luxembourg), as well as '*de jure*' and '*de facto*' managers in charge of the daily management of such companies, can be held jointly and personally liable in the event of breach of VAT compliance obligations and/or non-payment of the VAT due by the taxpayer they manage.

Furthermore, aggravated tax fraud (*fraude fiscale aggravée*) and tax swindle (*escroquerie fiscale*) can be punished with imprisonment.

The implementation of a VAT grouping regime is foreseen for the summer 2018. Such regime would allow any Luxembourg entities having financial, economic, and organisational links to be seen as a single VAT person if they choose to. Any transactions between group members would be disregarded for VAT purposes, and only one VAT return would have to be submitted by the group for all its members.

The implementation of Article 80 of the VAT Directive in the Luxembourg VAT legislation is also expected for summer 2018. Article 80 is a 'may' provision aiming at avoiding VAT loss for member states in specific situations where the selling or purchasing price of a supply has been overestimated or underestimated between related parties. This provision allows member states to disregard considerations agreed between related parties to retain the consideration that would be agreed upon in an arm's-length transaction between knowledgeable, willing parties who are under no compulsion to act.

Customs duties/import tariffs

Based on a European Regulation, goods entering within the territory of the European Union may be subject to customs duties/import tariffs. Applicable rates are based on the nature and on the quantity of the products.

Excise duties

In addition to VAT, some products are subject to specific excise duties. In Luxembourg, these products are electricity, mineral oils, manufactured tobacco, and alcohol.

Excise duties are not based on the sale price of the products but on the quantity. Excise duty becomes chargeable at the time, and in the EU member state, of release for consumption. Release for consumption occurs in any of the following instances:

- The departure of excise goods from a duty suspension arrangement.
- The holding of excise goods outside a duty suspension arrangement where excise duty has not been levied, pursuant to the applicable provisions of Community law and national legislation.
- The production of excise goods outside a duty suspension arrangement.
- The importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.

Stamp taxes

There is no stamp duty in Luxembourg.

Net wealth tax (NWT)

NWT regime

Both Luxembourg resident companies and Luxembourg branches of non-resident companies are subject to NWT on their net wealth, based on prescribed valuation methods. The following scale of rates applies for NWT:

- On a taxable base of up to EUR 500 million: 0.5%.
- On the taxable base exceeding EUR 500 million: NWT of EUR 2.5 million, plus 0.05% on the component of the NWT base above EUR 500 million. No cap is set.

In general, assets are to be taken into account at market value (except for real estate, which is subject to a special regime). Shareholdings qualifying for the participation exemption (*see Dividend income in the Income determination section*) generally are exempt from NWT.

Minimum NWT

A minimum NWT charge applies for all corporate entities having their statutory seat or central administration in Luxembourg.

Entities with aggregated fixed financial assets, transferable securities, inter-company receivables, and cash in excess of both 90% of their total gross assets and EUR 350,000 will be subject to a minimum NWT charge of EUR 4,815.

All other corporations with a statutory seat or central administration in Luxembourg (including securitisation vehicles, *Société d'Investissement en Capital à Risque* [SICARs], *Société d'Epargne-Pension à Capital Variable* [SEPCAVs], and *Association d'Epargne-Pension* [ASSEPs]) will be subject to a minimum NWT charge ranging from EUR 535 to EUR 32,100, depending on company's total gross assets, as follows:

Total gross assets (EUR)	Minimum NWT charge (EUR)
Up to 350,000	535
350,001 to 2,000,0000	1,605
2,000,001 to 10,000,000	5,350
10,000,001 to 15,000,000	10,700
15,000,001 to 20,000,000	16,050

Total gross assets (EUR)	Minimum NWT charge (EUR)
20,000,001 to 30,000,000	21,400
30,000,001 and above	32,100

The minimum NWT charge due by a tax unity (*see the Group taxation section*) is capped at EUR 32,100.

The legislation makes it clear that the balance sheet to be used for these purposes is the closing balance sheet for the tax year concerned that is in conformity with all CIT provisions (n.b. rather than the NWT provisions for computing the normal NWT basis). Consequently, all figures to be used are those as shown in the commercial balance sheet, subject only to any specific revaluations necessary to apply CIT provisions.

In particular, shareholdings that qualify for the participation exemption and Luxembourg-situs real estate must both be included in gross assets for these purposes. Conversely, foreign-situs real estate and other assets, such as those of a foreign branch, the income from which is excluded from the Luxembourg tax base under the provisions of a double tax treaty (DTT), are not to be included in gross assets.

NWT reduction

The CIT due in a given year N-1 (e.g. 2017) represents the limit for the NWT reduction for the following year N (e.g. 2018). The CIT to be taken into consideration for the limit of NWT reduction is the amount due, including the employment fund contribution, before any tax credits. As a second limit, the NWT reduction is limited by the minimum NWT as of 2016 (and to the minimum CIT until 2015). In other words, NWT cannot be reduced down to 0 by constituting a NWT special reserve. The minimum NWT remains due.

The NWT reduction for year N (e.g. 2018) has to be requested in the corporate tax returns of year N-1 (e.g. 2017). The NWT special reserve of year N (e.g. 2018) (for the NWT reduction of year N, i.e. 2018) should be kept during the five-year period following the NWT reduction request (i.e. years N, N+1, N+2, N+3, and N+4). After the five-year period (i.e. as from year N+5), the NWT reserve of year N is released and can be either distributed to the shareholders or used to constitute a new NWT reserve.

Subscription tax

Investment funds are subject to subscription tax (at various rates) on their total net assets valued at the last day of each quarter. Institutional funds and monetary funds are subject to an annual rate of 0.01% and the other funds to an annual rate of 0.05%. Funds of institutional funds and monetary institutional funds are exempt from subscription tax.

Exemptions from subscription tax are available for exchange traded funds, and an extension of exemption is available for funds dedicated to multi-employer pension vehicles or to several employers providing pension benefits to their employees.

Where a foreign Undertakings for Collective Investment (UCI) is managed by a Luxembourg-based management company (or where the foreign UCI's place of effective management is located in Luxembourg), the UCI will not be deemed to be domiciled in Luxembourg and therefore not be subject to subscription tax in Luxembourg.

General registration taxes

A fixed registration duty of EUR 75 is levied on certain transactions involving Luxembourg legal entities (i.e. incorporation, amendment to the articles of association, and transfer of seat to Luxembourg).

Real estate transactions

The sale or transfer of immovable property located in Luxembourg is subject to a proportional registration duty (inclusive of the transcription tax) of 7% (plus a city surtax of 3% if the building is located in Luxembourg City).

Contributions of immovable property located in Luxembourg in exchange for securities are subject to a proportional registration duty (inclusive of the transcription tax) of 1.1% (plus a city surtax of 0.3% if the building is located in Luxembourg City).

Contributions of immovable property located in Luxembourg in exchange for other than by shares are subject to a proportional registration duty (inclusive of the transcription tax) of 7% (plus a city surtax of 3% if the building is located in Luxembourg City).

The contribution of immovable property in the context of restructuring transactions are not subject to proportional registration duty if some conditions are met.

Rental agreements are not subject to any registration obligation, with the exception of long-term leasing agreements. Parties still have the possibility to register lease agreements voluntarily, notably to determine the date of an agreement for civil law purpose, or make them enforceable against third parties. If the rental agreement is voluntarily registered, registration duty at 0.6% would remain due, unless a valid VAT option has been duly approved by the Luxembourg VAT authorities. In that case, only the fixed registration of EUR 75 duty will apply.

Commune (municipalities) real estate tax

Communes (municipalities) levy an annual real estate tax, the basis of which is the unitary value of real estate, which represents its estimated value in 1941. The basic rate varies from 0.7% to 1% of the unitary value, according to the category of property, and is multiplied by a coefficient, which varies with communes and different types of property. For commercial property, the coefficient in Luxembourg City is 750%, which should be applied to 1% of the unitary value. The real estate tax is deductible for CIT purposes.

Payroll taxes

Payroll taxes have to be withheld by the employer. The top payroll tax withholding rate is 42%. A solidarity tax of a maximum of 9% of tax must also be applied.

Social security contributions

Compulsory social security contributions for employees are listed below:

- For sickness: 3.05% of gross periodic remuneration, which is limited to a monthly ceiling of EUR 9,992.93 (annual ceiling estimated at EUR 119,915.16 for 2018).
- For pension: 8% of gross remuneration, which is limited to a monthly ceiling of EUR 9,992.93 (annual ceiling estimated at EUR 119,915.16 for 2018).
- For dependency contributions: 1.4% of gross remuneration (reduced by EUR 499.65 per month [i.e. estimated at EUR 5,995.80 for 2018]) with no cap.

The social security contributions have to be withheld by the employer from the employee's gross salary.

Branch income

Income of a Luxembourg-based branch of a non-resident company is generally taxed at normal CIT rates. The municipal business tax generally only applies if the branch is carrying on commercial activity within Luxembourg.

Income determination

Inventory valuation

Inventories generally are valued at the lower of actual cost or market cost. There is no statutory specified method. In general, the first in first out (FIFO), the last in first out (LIFO), and the weighted-average costs methods of inventory valuation are acceptable for income tax purposes, provided the method is in accordance with the facts.

Dividend income

Dividends received by a Luxembourg resident company (or by a domestic PE of a non-resident company in certain cases) should, in principle, be subject to CIT.

Participation exemption regime

Dividends received may be tax exempt in Luxembourg, according to the so-called 'participation exemption' regime, if the conditions described below are satisfied:

- The distributing company is:
  - a collective entity falling within the scope of the EU Council 'Parent Subsidiary Directive'
  - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the LITL, or
  - a non-resident joint-stock company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg CIT (i.e. as a general rule, it is required that the foreign tax is compulsorily levied at a rate of at least 9%, on a basis similar to the Luxembourg one).
- The beneficiary company is:
  - a Luxembourg resident collective entity, which is fully taxable and takes one of the forms listed in the LITL
  - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the LITL
  - a domestic PE of a collective entity falling within the scope of the Parent Subsidiary Directive
  - a domestic PE of a joint-stock company that is resident in a country with which Luxembourg has concluded a DTT, or
  - a domestic PE of a joint-stock company or of a cooperative company, which is a resident of a European Economic Area (EEA) member state (other than an EU member state).
- At the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly (or through a tax transparent entity, *see Transparent entities below*), for an uninterrupted period of at least 12 months, a participation in

the share capital of the subsidiary of at least 10% or with an acquisition price of at least EUR 1.2 million.

Nevertheless, consistent with the general principle under the LITL, which denies the deductibility of expenses connected to exempt income, any expenses incurred during the year in which a dividend is received, and which have a direct economic connection to the exempt participation, may only be deducted insofar as they exceed the exempt dividend for the year in question.

General anti-avoidance regime (GAAR)

The Luxembourg participation exemption regime has been amended in order to introduce anti 'hybrid instruments' and GAAR rules derived from the amended EU Parent/Subsidiary Directive. These provisions apply to income distributed or received after 31 December 2015.

The GAAR rule precludes Directive-based benefits whenever there are any arrangements that, having been put into place with a main purpose of obtaining a tax advantage that defeats the object or purpose of the Directive, are 'not genuine'. A 'not genuine' determination should be based on all relevant facts and circumstances. For the GAAR rule, an arrangement should be considered 'not genuine' insofar as it was not structured for 'valid commercial reasons that reflect economic reality'.

The Luxembourg tax authorities have not provided any substantive guidance or interpretation of these EU-driven measures.

However, if the GAAR rule is determined to apply, the exemption from Luxembourg withholding tax (WHT) obligations provided by Article 147 2. (a) (or (d)) LITL will not apply to a distribution made to a corporate entity in another EU member state, even if the participation would otherwise be considered a qualifying participation to which this specific exemption should apply. Exemption under other sub-parts of article 147 2. remains available, notably for distributions to a corporate entity that is fully liable for a tax similar to the Luxembourg CIT and which resides in any country (including one within the European Union) that maintains a tax treaty with Luxembourg.

Dividends received from a corporate entity in another EU member state that normally would qualify for the participation exemption of article 166 LITL will be denied this exemption if the GAAR rule applies. However, if the corporate entity paying the dividend also is fully subject to a tax similar to the Luxembourg CIT, the participation exemption will remain available, since this alternative provision granting the exemption is not subject to the new anti-avoidance rule.

The Article 166 LITL exemption will not be available if the income flow creates a corresponding tax-deductible expense (i.e. a hybrid mismatch) at its source when the source is a corporate entity in another EU member state.

These measures do not affect capital gains or NWT components for Luxembourg corporate entities.

Capital gains

Capital gains (and losses) generally are taxed as ordinary income (or losses). It is possible to defer the taxation of gains on certain fixed assets where the proceeds are used to acquire replacement items. Under certain conditions, capital gains and hidden reserves may be deferred or exempted and remain untaxed in a merger or another form of reorganisation of resident companies or other EU companies.

In general, capital gains on the disposal of qualifying shareholdings held by entities eligible to the participation exemption regime are tax exempt, provided (i) the shareholding constitutes at least 10% of total ownership in the share capital or an acquisition price of at least EUR 6 million and (ii) the disposing company has held or intends to hold a qualifying shareholding for at least 12 months.

A recapture system exists wherein the capital gain realised will become taxable up to the amount of the aggregate expenses and write-downs in relation to the participation deducted during the year of realisation of the exempt capital gain and in previous years.

The purpose of the system is to avoid a taxation vacuum, which would be the result if the deductibility of expenses and write-downs connected to the participation was allowed, while the income arising from the participation is tax exempt. This system should, in principle, remain tax neutral, as the company should have available carryforward losses for an equivalent amount resulting from the aforementioned deductions (unless previously used to offset other taxable income).

Taxation of non-resident corporate investors on gains upon disposal of shares

In case a non-resident corporate investor (non-treaty protected) derives income from the disposal of an important participation (i.e. representing at least 10% of the share capital) in a Luxembourg company within six months of its acquisition, said capital gain will be subject to CIT in Luxembourg unless a tax treaty provides otherwise.

Non-resident investors are not subject to the aforementioned capital gains tax upon disposal of shares in a Luxembourg *Société d'Investissement à Capital Variable* (SICAV), *Société d'Investissement en Capital à Risque* (SICAR), and *Société de gestion de Patrimoine Familial* (SPF).

Interest income

Under Luxembourg accounting and tax principles, interest income is recognised on an accrual basis and is fully subject to CIT and municipal business tax.

Royalty income

As a matter of principle, royalty income and expenses derived from intellectual property (IP) assets acquired or developed after 30 June 2016 are subject to the standard tax regime (i.e. CIT and municipal business tax) and rates. *For additional details in this respect, see Intellectual property (IP) regime in the Tax credits and incentives section*.

Transparent entities

From a Luxembourg tax perspective, a transparent entity is seen as having no legal personality distinct from that of its partners (those transparent entities are commonly referred to as 'partnerships') for CIT and NWT purposes, although it may be regarded as a separate legal entity from a civil/corporate law point of view. Provided that the partnership carries out a commercial activity, however, it may be liable to municipal business tax on its own.

Foreign income

A Luxembourg tax resident company is liable for CIT on its worldwide income. Foreign-source income is therefore taxable in Luxembourg, unless a DTT provides for an exemption.

Dividends from foreign subsidiaries are taxed when received, except where exempt as mentioned above (under conditions, the exemption method applies in many DTTs of Luxembourg). Profits of a foreign branch that are not exempt by means of a DTT may benefit from a foreign tax credit. Any foreign taxes paid in excess of the tax credit are deductible as expenses. Luxembourg is using the exemption method in most of its DTTs.

Deductions

Depreciation

Depreciation rates must be consistent with economic reality. The depreciation must be calculated on the total acquisition cost, bearing in mind the normal life of the asset and the estimated residual value. As generally provided by the Luxembourg tax law, the accounting depreciation should be followed for tax purposes.

Depreciation normally is calculated using the straight-line method. However, the declining-balance method is permitted for fixed assets, other than buildings and intangible assets. The depreciation rate may not, however, exceed three times the rate applicable according to the straight-line method, or 30% (four times the applicable rate in the case of assets used exclusively for scientific and technical research, or 40%).

It is permissible to change from the declining-balance method to the straight-line method, but the opposite is not allowed.

In the event of a sale of a depreciated asset, the net book value at the moment of the disposal must be compared with the sales price of that asset. If this comparison indicates a profit, corresponding income tax may be due unless the sales price is reinvested in eligible assets. Capital losses are deductible.

Under certain conditions, fixed assets with a value of less than EUR 870 or an economic life that is not in excess of one year can be expensed fully in the year of acquisition. Special accelerated depreciation on 80% of the cost of fixed assets is available for assets that protect the national environment, save energy in Luxembourg, or permit the development of workplaces for handicapped workers, under certain conditions.

Deferred depreciation

The rules governing depreciation of fixed assets for tax purposes have been amended as of 2017 in order to offer the possibility for taxpayers to defer deductions related to depreciation for any given tax year. For this purpose, a specific request needs to be made when filing the tax return for the year concerned.

The deduction can be deferred until, at the latest, the end of the depreciation life of the asset (i.e. any depreciation amounts deferred from previous years have to be deducted at the latest for the last year for which depreciation is allowed).

The application of this measure could potentially result in a timing difference that would increase the CIT and municipal business tax to be paid by a taxpayer for any given year. However, this might allow the taxpayer to reduce its NWT base, assuming certain conditions apply and that the taxpayer decides to book a special NWT reserve to reduce its NWT liability for the year concerned. This measure might also allow taxpayers to use investment and other tax credits during a tax year, whereas the company might otherwise have been unable to do this because it was in a tax loss position.

Goodwill

Goodwill is generally amortised over its useful life. In cases where its lifespan cannot be reliably estimated, goodwill cannot be amortised for a period longer than ten years. The Luxembourg tax treatment will follow the applicable accounting treatment.

Start-up expenses

Formation expenses can either be directly charged to the profit and loss account of the year in which they are incurred or depreciated on a straight-line basis over a five-year maximum period. The accounting treatment is followed for Luxembourg tax purposes.

Interest payments

Interest payments are, in principle, deductible to the extent they comply with the arm's-length principle (*see Transfer pricing in the Group taxation section*).

Non-deductibility of the interest payments may arise in case they depend on the profits realised by the company or are derived from loans structured in the form of bonds or similar securities. Also, the deductibility will be limited in cases where the company is considered as being thinly capitalised (*see Thin capitalisation in the Group taxation section*).

Bad debt

Provisions for bad debts are generally tax deductible.

Charitable contributions

Gifts for scientific, charitable, or public purposes to institutions of general interest are deductible, subject to a maximum of 20% of the net income or up to an amount of EUR 1 million (the minimum being EUR 120), with a possibility to spread the deduction over two years in case of excess.

Shareholdings

Expenses connected to the business activity of a taxpayer are, in principle, tax deductible. However, expenses linked to a shareholding qualifying for the participation exemption, including write-downs in the value of the shareholding booked as a consequence of a dividend distribution, are not deductible, up to the amount of the exempt dividend.

In the event of disposal of a shareholding financed by debt, recapture rules may apply. Basically, the effect of this rule is that the proceeds will become taxable up to the amount of the aggregate expenses and write-downs in relation to the participation deducted during the year of disposal and the previous years.

Luxembourg resident companies are subject to the NWT based on their net wealth.

Severance payouts or 'golden handshakes'

Severance payouts or 'golden handshakes' are deductible for CIT and municipal business tax purposes, up to EUR 300,000.

Fines and penalties

Fines and penalties suffered by the taxpayer are not considered as operating expenses and are therefore not tax deductible.

Taxes

Several taxes are deductible in determining income subject to CIT, including the registration duties and real estate tax. Also, certain taxes are credited against the computed amount of income tax owed, including taxes withheld from Luxembourg dividend income received, tax withheld abroad from dividend and interest income received by a Luxembourg corporation (subject to limitations), and investment tax credits (*see the Tax credits and incentives section*). Foreign taxes are also deductible as expenses if not otherwise credited.

The main non-deductible taxes are CIT, municipal business tax, and NWT, as well as interest and penalties for late payment of said taxes.

Net operating losses

Losses generated as of 1 January 2017 will only be able to be carried forward for a maximum period of 17 years. Losses that arose before 1 January 2017 are not affected by this limitation. Losses cannot be carried back.

Payments to foreign affiliates

Royalties, management service fees, and interest charges paid to foreign affiliates by a Luxembourg company are deductible items, provided they are equal to what the company would pay an unrelated entity for comparable services (application of the arm's-length principle).

Group taxation

Luxembourg permits tax unity. Generally, the conditions to qualify for tax unity include that:

- each company that is part of the tax unity is a fully taxable company that is resident in Luxembourg (the top entity may be a Luxembourg PE of a fully taxable non-resident company)
- at least 95% of each subsidiary's capital is directly or indirectly held by the head of the fiscal unity
- each company's fiscal year starts and ends on the same date, and
- tax unity is requested jointly by the top company and each subsidiary that becomes a member of the group.

Tax unity lasts for a five-year period (minimum), and the taxable income/loss of the tax unity is computed as the sum of the taxable income/loss of each integrated entity. Tax losses incurred before the consolidation period may be offset only against tax profits of the company that incurred the loss. Tax losses that are sustained by a group member during the consolidation period are offset against the tax profits of the other group members. Tax losses arising during the consolidation period that remain after the consolidation remain attributed to the parent company.

The tax unity regime in Luxembourg has been extended since 1 January 2016 in accordance with case law from the European Court of Justice in particular to allow horizontal integration. Qualifying companies that are held by a common parent company established in any EEA country, the latter being subject to a tax comparable to Luxembourg's CIT in its country of residence, may now form a tax unity.

A tax unity also may include a Luxembourg PE of a company established in any country that is subject to a tax comparable to Luxembourg's CIT. The PE would be considered as the 'integrated' entity.

Transfer pricing

At arm's-length principle

Luxembourg transfer pricing legislation provides that transactions between related parties (cross border as well as domestic) have to be governed by the arm's-length principle endorsed by the OECD (restated Article 56 LITL as of 1 January 2015). In essence, this means when the two enterprises are, within their commercial or financial relations, subject to conditions made or imposed that differ from those that would be made between independent enterprises, the profits of these enterprises are to be determined under conditions prevailing between independent enterprises.

Luxembourg also introduced Article 56bis LITL, which explicitly brings into the law some of the key principles and methodologies set out in the OECD Guidelines. It implements the requirement for making an accurate delineation of controlled transactions and the OECD concept of comparability analysis. Article 56bis LITL further contains a GAAR measure that may disregard a transaction that has been made without any valid commercial rationality.

Luxembourg Transfer Pricing Guidelines

For intra-group financing on-lending transactions, specific guidelines are provided for in Circular LITL No. 56/1 - 56bis/1 (TP Circular). According to the TP Circular, the OECD arm's-length principle should be applied to determine the compensation of Luxembourg companies engaged in financial on-lending transactions. The remuneration of the Luxembourg companies should be determined based on a return-on-equity approach.

A written clearance (i.e. unilateral advance pricing agreement [APA]) from the Luxembourg tax authorities on the set of criteria for the determination of the transfer pricing for the financial on-lending transactions can be obtained, provided that the Luxembourg company meets certain substance and equity-at-risk requirements.

In respect of the equity-at-risk requirement, the former requirement that a Luxembourg company must be at risk for an amount equal to, at least, the lower of (i) 1% of the nominal value of the loan intermediated or (ii) EUR 2 million is no longer applicable.

Absence of meeting the substance and equity risk requirements may result in an exchange of information. In addition, the arm's-length remuneration has to be documented by way of a transfer pricing analysis.

For all other intra-group transactions, Luxembourg generally applies the OECD guidelines.

Documentation

As far as transfer pricing documentation is concerned, new Section 3 of Paragraph 171 of the General Tax Law of 22 May 1931 (*Abgabenordnung*) clarifies that taxpayers are required to:

- disclose their transactions with related parties and
- document their compliance with the arm's-length principle.

No specific guidelines are provided on the nature and extent of the documentation required, which should depend on the circumstances of the case under consideration. In practice, the OECD transfer pricing guidelines should be applied.

Further to the documentation obligation, new disclosure requirements have been introduced, with the purpose to enhance transparency of taxpayers towards the tax authorities.

In detail, starting from the 2017 tax return, taxpayers shall disclose whether during the year concerned they have been engaged in transactions with related parties and/or if they have opted for the simplification measure stated in Section 4 of the TP Circular (i.e. measure allowing taxpayers, pursuing a purely intermediation activity in the context of financing transactions, to opt for a fixed 'safe-harbour' compensation).

In addition to the above, in the context of anti-BEPS measures, the Luxembourg tax authorities issued a Circular on 7 May 2018 that requires taxpayers to indicate in their tax return whether they have performed any transaction with related parties located in the non-cooperative jurisdictions listed in the EU list. This new disclosure requirement will apply from the 2018 tax return.

Country-by-country (CbC) reporting

On 13 December 2016, the Luxembourg Parliament passed legislation implementing CbC reporting requirements for Luxembourg entities that are part of a multinational enterprise (MNE) group. The new CbC reporting legislation transposes into Luxembourg law part of the three-tiered standardised approach to transfer pricing documentation introduced in Action 13 of the OECD/G20 BEPS Project.

Under the Luxembourg CbC legislation, a Luxembourg tax resident entity that is the ultimate parent entity of an MNE group with consolidated group revenue of EUR 750 million or more in the preceding fiscal year and that prepares consolidated financial statements (or would be required to do so if its equity interests were traded on a public security exchange) is required to file a CbC report with the Luxembourg tax authorities. Other Luxembourg companies that are members of MNE groups may also have obligations to file CbC reports in Luxembourg under the so-called 'surrogate parent entity' regime or the 'secondary' mechanism. The filing is due 12 months after the last day of each fiscal year of an MNE group.

A Luxembourg resident entity affected by this legislation needs to notify the Luxembourg tax authorities of whether it is going to file a CbC report as the ultimate parent, under the secondary mechanism, or as a surrogate filer. Alternatively, if a Luxembourg entity is a constituent entity (this being defined as a Luxembourg tax resident entity forming part of an MNE group in scope of CbC reporting), each such entity must notify the Luxembourg tax authorities of which other entity in the MNE group is filing the CbC report and its residency. This notification is due by the last day of the fiscal year of the MNE group.

The Luxembourg tax authorities will exchange annually on an automatic basis the CbC report received from any Luxembourg reporting entity in an MNE group with all the authorities of other jurisdictions where that MNE group has activities. However, a CbC report can only be exchanged in cases where both tax authorities have agreed to automatic exchange, any mechanism for this is effective, and their respective jurisdictions have in place legislation that requires the filing of CbC reports with respect to that fiscal year to which the CbC report relates. A grand-ducal regulation (Mémorial A N° 136) lists the jurisdictions regarded by Luxembourg as satisfying the above requirements. As a consequence, in case the ultimate parent is resident in a jurisdiction that is not listed in the regulation, a CbC report will have to be filed either by a 'surrogate entity' resident in a jurisdiction listed in the grand-ducal regulation or by an affiliate in Luxembourg.

Luxembourg tax authorities may impose a penalty of up to EUR 250,000 in case of no filing, late filing, or incorrect filing of either the CbC report or notification(s).

Burden of proof, statute of limitation, and penalties

In terms of the burden of proof, taxpayers are required to provide the Luxembourg tax authorities with the documentation to demonstrate the application of the arm's-length principle. In the absence of such documentation, the Luxembourg tax authorities can challenge the correct application of the arm's-length principle and, without giving precise explanations, presume a reduction of the taxable income and apply corrections. In effect, this would result in an ultimate reversal of the burden of proof towards the taxpayer.

The statute of limitations is generally five years from the end of the year in which the tax liability arises. This period may be extended if a deferred payment is granted. In case of tax evasion or fraud, as well as in case of incomplete tax returns, the statute of limitations can be extended up to ten years.

There are no specific penalties in relation to transfer pricing in Luxembourg, but the penalty regime under the CIT will be applicable.

Advance pricing agreement (APA)

Taxpayers can file unilateral and bi- or multi-lateral APAs with the Luxembourg tax authorities. An administrative fee in the amount of EUR 10,000 is due to the Luxembourg tax authorities for the filing of the APAs under the new Paragraph 29a of the above-mentioned General Tax Law of 22 May 1931.

The TP Circular provides that any individual decision relating to the arm's-length principle that the Luxembourg tax authorities have made on the basis of the rules applicable before Article 56bis LITL entered into force is no longer binding. The TP Circular further details the requirements applicable to new APAs.

Thin capitalisation

No thin capitalisation ratio is specifically provided by the Luxembourg tax law.

In practice, the tax authorities apply an 85:15 debt-to-equity ratio for the intra-group financing of participations. Should the 85:15 ratio not be complied with by the taxpayer, the surplus of interest can be re-qualified by the tax authorities as a hidden distribution of profits that would be non-deductible and potentially subject to a 15% WHT.

Controlled foreign companies (CFCs)

Luxembourg tax law does not provide for CFC rules.

Tax credits and incentives

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Inbound and capital investment incentives

Luxembourg tax law provides for various incentives, with specific requirements, in the areas of risk capital, audio-visual activities, environmental protection, R&D, professional training, and recruitment of unemployed persons.

The most commonly used incentives are the investment tax credits. Luxembourg tax law provides for two types of investment tax credits.

First, a tax credit is available that amounts to 13% of the increase in investments in tangible depreciable assets made during the tax year. The increase in investment over a given tax year is computed as the difference between the current value of all qualifying assets and the reference value allocated to the same type of assets.

Independently, the company may benefit from a 8% tax credit on the first EUR 150,000 of qualifying new investments and a 2% tax credit on the amount of new investments exceeding EUR 150,000 in tangible depreciable assets as well as investments in sanitary and central heating installation in hotel buildings and investments in buildings used for social activities. The above 8% and 2% rates are increased to 9% and 4% for investments eligible for special depreciation (i.e. investments favouring the protection of the environment, the realisation of energy savings, or the creation of employment for handicapped workers). However, certain investments are excluded from the credit calculation, including investments in real property, intangible assets, and vehicles (unless specifically allowed by the law).

Domestic law requires that investments be physically operated in Luxembourg or in the European Economic Area in order to be eligible for the incentive, unless the investment consists of shipping vessels operating in international waters. In addition, the tax benefit of the tax credit is limited to investments that are made within a Luxembourg business establishment and that are intended to be used permanently in Luxembourg.

Further to the Court of Justice of the European Union (CJEU) decision dated 22 December 2010 (Tankredeerei, C-287/10), the Luxembourg tax authorities issued a Circular letter confirming that the investment tax credit must be granted to any investment used within the EU and EEA member states.

Intellectual property (IP) regime

The law enacting the new IP regime was approved by the Luxembourg Parliament on 22 March 2018. The new IP measures entered into force as of 1 January 2018.

Under the new regime, eligible net income from qualifying IP assets benefits from an 80% exemption from income taxes. Consequently, a corporate taxpayer based in Luxembourg City with eligible net income will be taxed on such income at an overall (i.e. corporate income taxes plus municipal business tax) effective tax rate of 5.202% in the 2018 tax year. IP assets qualifying for the new regime also benefit from a full exemption from Luxembourg's NWT.

The levels of these exemptions are consistent with those given under the previous regime. However, the scope of the new regime, and the way in which income that is to benefit from the exemption is to be computed, are both markedly different. The 'nexus approach' focuses on establishing a direct connection between expenditures, the IP assets, and the income that can benefit from the beneficial regime.

In applying the new regime, each IP asset must be looked at separately, and income and expenditure linked to each asset thus needs to be identified. The only exception to this approach is when a closely linked family of products or services are involved, and it would be so complex as to make it impossible to adopt an asset-by-asset approach.

Two main groups of IP assets are eligible to benefit from the new regime:

- Inventions protected under patents, utility models, and other IP rights that are functionally equivalent to patents. More specifically, these comprise supplementary protection certificates for patents on pharmaceutical or phyto-pharmaceutical products, extensions to supplementary protection certificates to paediatric medicines, plant variety certificates, and orphan drug designations.
- Software protected by copyright under national or international norms.

Market-related IP, such as a trademark, is not eligible.

The prior Luxembourg IP regime (Article 50 *bis* of the LITL) allowed a tax exemption on 80% of the net income and capital gains derived or deemed to be derived from a wide variety of IP. The regime began to phase out on 1 July 2016, in line with the recommendations of the EU's Code of Conduct for Business Taxation Group and the OECD/G20 BEPS Project Final Report on Countering Harmful Tax Practices.

The prior IP regime was repealed effective 1 July 2016 for CIT and municipal business tax purposes and 1 January 2017 for NWT purposes.

Taxpayers owning IP assets that currently benefit from the prior IP regime will continue benefitting during the transitional period through 30 June 2021.

IP assets acquired after 1 January 2016 also may benefit from the prior IP regime through 30 June 2021, provided that:

- they were developed or acquired from unrelated parties before 1 July 2016, or
- they were acquired from a related party before 1 July 2016 (including through a tax-neutral transaction) and were already eligible for the prior IP regime or benefited from a foreign country's IP regime that was similar to the prior IP regime in Luxembourg before the acquisition.

IP assets acquired from any related party between 31 December 2015 and 30 June 2016 that did not benefit from an IP regime before being acquired will only be eligible for the prior IP regime through 31 December 2016.

IP assets acquired or developed after 30 June 2016 cannot benefit from the prior IP regime. Those assets and related income and expenses will be subject to the standard tax regime and rates or may benefit from a future IP regime that could be based on the 'nexus approach' prescribed by the EU Code of Conduct Group and the OECD to counter harmful tax practices.

R&D incentives

Luxembourg entities involved in innovative and R&D activities can benefit from financial support in addition to the specific IP tax regime and general tax incentives.

Innovation loans may be granted by the *Société Nationale de Crédit et d'Investissement* and may carry a fixed interest rate lower than the market rate. Financial support may also be granted in the form of cash grants or interest subsidies.

R&D projects or programmes receive financial support up to a maximum eligibility (percentage of costs eligible for the incentives) depending on the size of the beneficiary (private research companies or organisations) as follows:

- Large (25% to 100% depending on the investment).
- Mid-size (35% to 100%).
- Small (45% to 100%).

These incentives are available for:

- experimental development
- experimental development and cooperation
- industrial research
- industrial research and cooperation, or
- fundamental research.

Innovation in process and organisation and investment in innovation pools can benefit from financial support of between 15% and 35% (50% for public research companies).

Promotion and development of innovation pools can benefit from financial support of up to 50% for private organisations or 75% for public research companies.

Research regarding technical feasibility can benefit from financial support of up to 40% or 50% if prior to experimental development and up to 65% or 75% if prior to experimental research.

Other incentives by entity

Investment funds

Investment funds resident in Luxembourg generally are exempt from CIT, municipal business tax, and WHT on dividends. These investment funds are subject to the subscription tax and to the general registration duty regime.

Financial participation company (Soparfi)

A Soparfi (*Société de Participation Financière*) is neither a specific type of company nor a special tax regime. It is, rather, a name used to refer to resident companies that hold and manage the shareholdings of subsidiaries. As any Luxembourg resident company, a Soparfi is subject to CIT, municipal business tax, and NWT; it benefits from Luxembourg's DTTs, EU Directives (e.g. Parent Subsidiary Directive), the domestic participation exemption on dividends received, and capital gains on qualifying participations.

Private wealth management company (Société de gestion du Patrimoine Familial or SPF)

The SPF has been tailored to enter the private sphere of individuals for the purpose of wealth management. Its corporate objective is restricted to the acquisition, holding, management, and disposal of financial assets, to the exclusion of any commercial activity. As a general rule, an SPF is exempt from Luxembourg taxation on income and NWT in Luxembourg. A yearly subscription tax of 0.25% is due on the basis of paid-up capital, share premium, and excessive debts. Subscription tax, however, is capped at EUR 125,000. No WHT applies on dividends distributed by an SPF. Non-resident investors are not taxed in Luxembourg on dividends paid by an SPF or on capital gains realised on shares in an SPF.

Securitisation companies (SCs)

An SC is a company that carries out securitisation activities or participates in securitisation transactions. SCs are subject to normal corporate taxation based on their net accounting profit (i.e. gross accounting profits minus expenses). However, the commitment to remunerate the holders of securities (both capital and debt) issued by the SC qualifies as interest on debt even if paid as return on equity. SCs are not subject to NWT in Luxembourg.

Venture capital vehicle (Société d'Investissement en Capital à Risques or SICAR)

The SICAR is an entity mainly used for private equity investments. Incorporated under a corporate form, the SICAR is subject to income tax at the normal rate with the benefit of an exemption on income and gains (e.g. dividends, capital gains, liquidation proceeds, interest) from transferable securities qualifying as investments in risk capital, as well as income arising from investments in liquid assets pending their investment in risk capital for a maximum of 12 months. In addition, it can benefit from the European directives and DTTs. SICARs are exempt from NWT. Under the form of a limited partnership, the SICAR is treated as a tax transparent entity, and investors are taxed according to the rules of their country of residence. SICARs treated as tax transparent entities do not benefit from the European directives and DTTs. The SICAR mainly targets qualified or informed investors (i.e. 'professional' investors).

Financial services companies

Banks, securities depositaries, insurance and reinsurance companies, as well as other financial service companies, may benefit from specific regulations when establishing their taxable basis for CIT (e.g. provision for the neutralisation of unrealised exchange gains, general banking risk provision, provision for guarantee of deposits, mathematical reserves, and/or catastrophe reserves).

Shipping companies

Luxembourg-resident shipping companies are not subject to municipal business tax and can benefit from investment tax credits and accelerated depreciation (even for used assets).

Farming businesses

Farming businesses may deduct 30% of the amount of any new investment of up to a total of EUR 250,000 made in the business. Investment above this amount is eligible for a deduction of 20% of the difference between the investment amount and the aforementioned EUR 250,000 limit.

Withholding taxes

Dividends paid by a Luxembourg fully taxable company to its 'corporate' shareholders resident in a treaty country, which hold or commit themselves to hold a participation of at least 10% in the Luxembourg company (or shares with an acquisition price of at least EUR 1.2 million) for an uninterrupted period of at least 12 months, may be exempt from WHT (*see Note 1 below for more details*).

The following taxes are withheld on payments made. The WHT due on dividends paid to residents of a treaty country cannot exceed the non-treaty rate.

	WHT (%)			
	Dividends			
Recipient	**Portfolio**	**Substantial holdings (1)**	**Interest (2)**	**Royalties (3)**
Resident corporations	15	0	0	0
Resident individuals	15	15	20 (4)	0
Non-resident corporations and individuals:				
Non-treaty	15	0/15	0	0
Treaty (1, 5):				
Andorra	15	0/5 (25)	0	0
Armenia	15	0/5 (6)	0	0
Austria	15	0/5 (7)	0	0
Azerbaijan	10	0/5 (8)	0	0
Bahrain	10	0 (6)	0	0
Barbados	15	0 (9)	0	0
Belgium	15	0/10 (10)	0	0
Brazil	25	0/15 (6)	0	0
Brunei (26)	10	0 (6)	0	0
Bulgaria	15	0/5 (7)	0	0
Canada	15	0/5 (6)	0	0
China, People's Republic of	10	0/5 (7)	0	0
Croatia	15	0/5 (6)	0	0
Cyprus (27)	5	0 (6)	0	0
Czech Republic	10	0 (11)	0	0
Denmark	15	0/5 (7)	0	0
Estonia	10	0 (6)	0	0
Finland	15	0/5 (7)	0	0

	WHT (%)			
	Dividends			
Recipient	Portfolio	Substantial holdings (1)	Interest (2)	Royalties (3)
France (28)	15	0/5 (7)	0	0
Georgia	10	0/5 (12)	0	0
Germany	15	0/5 (6)	0	0
Greece	7.5	0	0	0
Guernsey	15	0/5 (6)	0	0
Hong Kong	10	0 (13)	0	0
Hungary	15	0/5 (7)	0	0
Iceland	15	0/5 (7)	0	0
India	10	0	0	0
Indonesia	15	0/10 (7)	0	0
Ireland, Republic of	15	0/5 (7)	0	0
Isle of Man	15	0/5 (6)	0	0
Israel	15	0/5 (6)	0	0
Italy	15	0	0	0
Japan	15	0/5 (14)	0	0
Jersey	15	0/5 (6)	0	0
Kazakhstan	15	0/5 (15)	0	0
Korea, Republic of	15	0/10 (6)	0	0
Laos	15	0/5 (6)	0	0
Latvia	10	0/5 (7)	0	0
Liechtenstein	15	0/5 (16)	0	0
Lithuania	15	0/5 (7)	0	0
Macedonia	15	0/5 (7)	0	0
Malaysia	10	0/5 (6)	0	0
Malta	15	0/5 (7)	0	0
Mauritius	10	0/5 (6)	0	0
Mexico	15	0/5 (6)	0	0
Moldova	10	0/5 (17)	0	0
Monaco	15	0/5 (6)	0	0
Morocco	15	0/10 (7)	0	0
Netherlands	15	0/2.5 (7)	0	0
Norway	15	0/5 (7)	0	0
Panama, Republic of	15	0/5 (6)	0	0
Poland	15	0 (18)	0	0
Portugal	15	0	0	0
Qatar	10	0/5 (25)	0	0
Romania	15	0/5 (7)	0	0
Russia	15	0/5 (19)	0	0
San Marino	15	0 (9)	0	0
Saudi Arabia	5	0	0	0
Serbia	10	0/5 (7)	0	0
Seychelles	10	0 (6)	0	0
Singapore	15	0	0	0
Slovak Republic	15	0/5 (7)	0	0
Slovenia	15	0/5 (7)	0	0
South Africa	15	0/5 (7)	0	0
Spain	15	0/5 (20)	0	0

Recipient	WHT (%) Dividends Portfolio	Dividends Substantial holdings (1)	Interest (2)	Royalties (3)
Sri Lanka	10	0/7.5 (7)	0	0
Sweden	15	0 (9)	0	0
Switzerland	15	0/5 (21)	0	0
Tajikistan	15	0 (9)	0	0
Taiwan	10/15 (24)	0	0	0
Thailand	15	0/5 (7)	0	0
Trinidad and Tobago	10	0/5 (6)	0	0
Tunisia	10	0	0	0
Turkey	20	0/5 (7)	0	0
Ukraine (26)	15	0/5 (17)	0	0
United Arab Emirates	10	0/5 (6)	0	0
United Kingdom	15	0/5 (7)	0	0
United States	15	0/5 (22)	0	0
Uruguay (26)	15	0/5 (6)	0	0
Uzbekistan	15	0/5 (7)	0	0
Vietnam	15	0/5/10 (23)	0	0

Notes

These notes are not extensive. The full text of the DTT should be checked for a comprehensive view on the conditions of application of reduced rates.

1. Under Luxembourg domestic law, no WHT is levied on dividends paid by a Luxembourg qualifying subsidiary to an entity that is:
   a. a collective entity falling within the scope of the Parent Subsidiary Directive
   b. a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the LITL
   c. a PE of a collective entity falling under the previous categories
   d. a collective entity that is resident in a country with which Luxembourg has concluded a DTT and is fully liable to a tax corresponding to the Luxembourg CIT, or a domestic PE of such an entity
   e. a Swiss resident joint-stock company that is subject to Swiss CIT without benefiting from any exemption
   f. a joint-stock company or a cooperative company that is resident in an EEA member state (other than an EU member state) and is fully liable to a tax corresponding to the Luxembourg CIT, or
   g. a PE of a joint-stock company or of a cooperative company that is resident in an EEA member state (other than an EU member state), and
   h. at the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly, for an uninterrupted period of at least 12 months, a participation of at least 10%, or with an acquisition price of at least EUR 1.2 million in the share capital of the income debtor.

   Qualifying shareholders under (b) to (g) above need to be fully taxable collective entities subject in their country of residence to a tax similar to that imposed by Luxembourg. As a general rule, this requirement is met if the foreign tax is compulsorily levied at an effective rate of at least 9%, on a basis similar to the Luxembourg one.
2. Interest paid to non-residents generally is not subject to WHT in Luxembourg. However, interest that represents a right to profit participation on a bond may be assimilated to a dividend and subject to WHT. Further analysis should be made to determine the applicable reduced rate on the basis of the treaty (i.e. pursuant to dividend or interest clause).
3. Royalties paid to non-residents are not subject to WHT in Luxembourg, whether the companies are associated or not.
4. A WHT of 20% is withheld on defined interest income paid by a Luxembourg paying agent to resident individuals. Interest indirectly cashed through investment funds are out of the scope of this WHT.
5. DTTs have been concluded with Albania, Botswana, Cyprus, Kuwait, Kyrgyzstan, Oman, and Senegal, but are not yet in force. A new DTT with Hungary was signed, but domestic transposition procedures are still pending.
6. The recipient company (other than a partnership, as the case may be) holds (beneficially; for the DTT with Mauritius, directly) at least 10% of the Luxembourg company's capital (or at least 10% of the voting power in the Luxembourg company, as the case may be).

7. The recipient company (other than a partnership, as the case may be) holds (beneficially; for the DTT with Finland and the United Kingdom, directly or indirectly) at least 25% of the Luxembourg company's capital (or at least 25% of the voting power in the Luxembourg company, as the case may be).
8. The recipient company holds (beneficially), directly or indirectly, at least 30% of the Luxembourg company's capital and with an investment equivalent to at least 300,000 United States dollars (USD).
9. The recipient company (other than a partnership, as the case may be) directly holds (beneficially) at least 10% of the Luxembourg company's capital for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
10. The recipient is a company (with the exception of general partnerships, limited partnerships, and cooperative societies) whose direct participation, held since the beginning of its financial year, in the capital of the company (with the exception of general partnerships, limited partnerships, and cooperative societies) paying the dividends is at least 25% or has an acquisition price of at least 250 million francs. The provisions of paragraph 1 (a) shall also apply where the dividends are paid to two or more companies (with the exception of general partnerships, limited partnerships, and co-operative societies) the sum of whose participations, held since the beginning of their respective financial years, in the capital of the company (with the exception of general partnerships, limited partnerships, and co-operative societies) paying the dividends is at least 25% or has an acquisition price of at least 250 million francs and where one of the recipient companies owns more than 50% of the registered capital of each of the other recipient companies.
11. The recipient company (other than a partnership, as the case may be) has held (beneficially) a participation of at least 10% in the distributing company's capital for an uninterrupted period of at least 12 months.
12. The rate of WHT is 5% if the beneficial owner is a company that directly or indirectly owns at least 10% of the capital of the company paying the dividends and made an investment in the capital of the paying company of more than EUR 100,000, or the equivalent in Georgian currency. No WHT is levied when the beneficiary company directly or indirectly owns at least 50% of the capital of the company paying the dividends and made an investment in the capital of the paying company of more than EUR 2 million, or the equivalent in Georgian currency.
13. No WHT is levied if the recipient company (other than a partnership) holds (beneficially) at least 10% of the Luxembourg company's capital or a participation with an acquisition price of at least EUR 1.2 million.
14. The recipient company holds at least 25% of the Luxembourg company's voting shares during the period of six months immediately before the end of the accounting period in which the distribution of profits takes place.
15. The beneficial owner is a company (other than a partnership) that holds at least 15% of the Luxembourg company's capital.
16. No WHT is levied when the beneficiary of the dividend is a company (other than a partnership) that has directly held a participation of at least 10% (or with an acquisition price of at least EUR 1.2 million) of the distributing company's share capital for an uninterrupted period of at least 12 months. The rate of 5% of WHT applies if said participation has been held for less than 12 months.
17. The beneficial owner is a company (other than a partnership) that holds at least 20% of the Luxembourg company's capital.
18. The beneficial owner of the dividends is a company (other than a partnership) that has directly held a participation of at least 10% of the distributing company's capital for an uninterrupted period of at least 24 months preceding the payment date of the dividend.
19. The recipient company holds at least 10% of the Luxembourg company's capital and made an investment in the capital of the paying company of more than EUR 80,000, or the equivalent in roubles.
20. The recipient company (other than a partnership) holds at least 25% of the Luxembourg company's capital for an uninterrupted period of at least one year preceding the payment date of the dividend.
21. The 5% WHT applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the Luxembourg company's capital. No WHT is levied if the beneficial owner is a company that is a resident of the other contracting state and that directly holds, for an uninterrupted period of two years, at least 10% of the capital of the company paying the dividends, or if the beneficial owner is a pension fund.
22. A 5% WHT is levied on dividend distributions where the beneficial owner is a company that holds at least 10% of the voting power of the paying company. No WHT is levied when the US company has directly held, during an uninterrupted period of two years preceding the payment date of the dividend, at least 25% of the voting rights of the paying company and certain conditions regarding the nature of activities performed by the distributing company are met.
23. The rate of 5% of WHT applies where the recipient company directly or indirectly owns at least 50% of the share capital of the paying company or has contributed more than USD 10 million, or the equivalent in Luxembourg or in Vietnamese currency, in the capital of the company paying the dividends. The rate of 10% of WHT applies where the beneficial owner is a company that directly or indirectly holds at least 25% but less than 50% of the capital of the company paying the dividends and has contributed not more than USD 10 million, or the equivalent in Luxembourg or Vietnamese currency, in the capital of the company paying the dividends.
24. The 15% WHT applies if the beneficial owner is a collective investment vehicle treated as a body corporate in Taiwan. The 10% WHT applies in all other cases.
25. The 5% WHT applies if the beneficial owner is an individual who directly holds at least 10% of the Luxembourg company's capital and who has been resident in Qatar for a period of 48 months immediately preceding the year within which the dividends are paid. The 0% WHT applies if the beneficial owner is a company that directly holds at least 10% of the Luxembourg company's capital.

26. The DTT is applicable as of 1 January 2018.
27. The DTT will enter into force as of 1 January 2019, provided the exchange of the instruments of ratification between Luxembourg and Cyprus takes place during 2018.
28. On 20 March 2018, the Luxembourg and French governments signed a new DTT with France, together with an accompanying Protocol. Assuming that both the Luxembourg and French governments now complete, without any major delay, the necessary processes for ratification of the new DTT, the provisions of the new DTT could be applicable in many situations from as soon as 1 January 2019. The WHT on dividend distributions made by a company resident in a contracting state should be 0%, provided that the effective beneficiary of the dividends is a company resident in the other contracting state that holds at least 5% of the share capital in the distributing company for at least 365 days. The WHT rate on dividend distributions should be 15% in any other cases.

Tax administration

Taxable period

The taxable period for Luxembourg fully taxable resident entities follows the financial year (i.e. accounting year) of the company.

Companies generally use the calendar year for accounting purposes but may apply a different accounting year. The taxable period would, in such cases, correspond to this different accounting year. The tax year is the year in which the accounting year ends.

Tax returns

Companies must file their tax returns by 31 May of each year following the calendar year during which the income was earned. As of FY 2017, tax returns for companies liable to CIT have to be mandatorily filed electronically.

Assessments are issued after the end of the tax year and normally can be finalised within five years, although the delay may extend to ten years if the declaration is found to be incomplete or inexact, with or without the intention of fraud. Once issued, the tax assessment notice is, in principle, final (unless new facts come to light).

Tax assessments are issued by the tax authorities immediately upon receipt of the tax return, based on the taxable profit reported by the company. The tax authorities may then reassess or request more information on the return within the period of five years that follows the receipt of the tax return.

Luxembourg companies are free to choose the currency in which they wish to prepare their commercial accounts to the extent that it is freely tradable currency. Luxembourg companies that expect to conduct most of their business in a currency other than euros will therefore generally opt to use that 'foreign' functional currency to draw up their financial statements. In particular, this will save such companies from having to recognise, for accounting purposes, foreign exchange gains and losses that do not reflect the economic reality of their business.

Nevertheless, as a general rule, Luxembourg taxpayers in such a situation have until now been required to file their tax returns in euros, basing these returns on euro-denominated tax balance sheets. Luxembourg taxpayers are allowed, upon request, to determine their taxable basis solely in a 'foreign' functional currency, and then only having to convert the final basis figure into euros. This has averted the need to establish a euro-denominated tax balance sheet simply for tax filing purposes.

Circular L.G.-A n°60, issued by the Luxembourg tax authorities on 21 June 2016, formalises this well-established practice and provides a clear framework.

Payment of tax

Quarterly tax advances must be paid. These payments are fixed by the tax administration on the basis of the tax assessed for the preceding year or on the basis of the estimate for the first year. This estimate is given by the company pursuant to the request of the Luxembourg tax authorities.

Final payment of CIT must be paid by the end of the month that follows the month of reception by the company of its tax assessment.

Topics of focus for tax authorities

Further to the introduction of a comprehensive legal framework in this respect, Luxembourg tax authorities focus increasingly on transfer pricing matters, and the methods used to determine the arm's-length remuneration of Luxembourg-based companies are being closely assessed by the Luxembourg tax authorities.

Other issues

Implementation of the Foreign Account Tax Compliance Act (FATCA)

FATCA is a set of information reporting rules designed to prevent and detect tax evasion by United States (US) persons. It reflects and promotes a global trend towards greater tax transparency and increased worldwide efforts to combat tax fraud in many sectors of the financial world. It also builds the basis for other international developments in this respect, such as the Common Reporting Standard (CRS) initiated by the OECD.

Even though FATCA originated in the United States, it also affects non-US entities.

Luxembourg signed an Intergovernmental Agreement (IGA) Model 1 with the United States on 28 March 2014 under the terms of which FATCA will be applied in Luxembourg. The IGA was ratified on 24 July 2015 by the Luxembourg Parliament.

Based on the IGA, Luxembourg financial institutions (i.e. depositary and custodial institutions, certain insurance companies, and investment entities that do not benefit from an exemption) have to comply with some due diligence and registration duties. In addition, they have to report on FATCA to the Luxembourg tax authorities by 30 June each year (with respect to financial accounts existing in the previous year) even though they do not have any US reportable accounts (in this case, a nil report is required). The Luxembourg tax authorities will then automatically exchange this information with the US Internal Revenue Service (IRS) by 30 September.

Apart from Luxembourg banks, insurance companies, funds, or other entities that fall within the definition of investment entities (certain holding companies, securitisation vehicles, etc.) might be subject to full FATCA obligations despite the fact that they have neither US investments nor US investors. If the entity being an in-scope financial institution does not comply with its FATCA obligations as implemented under Luxembourg law, it risks being subject to local penalties (up to EUR 250,000 and 0.5% of the amount incorrectly reported) in addition to a 30% WHT in certain limited cases.

It is worth noting that the IGA provides in its Annex II some deemed-compliant categories (e.g. Collective Investment Vehicle, Sponsored Investment Entity, Luxembourg Investment Advisors and Investment Managers) under which Luxembourg financial institutions, should they qualify for one of these categories, would be subject to lighter FATCA obligations as Non-Reporting Foreign Financial Institutions.

In order to comply with their FATCA obligations, financial institutions need to know the FATCA status of their account holders, investors, policy holders, etc. Therefore, even entities that do not qualify as financial institutions should analyse their FATCA status, as they need to certify it to their financial counterparts.

Implementation of the Common Reporting Standard (CRS)

On 21 July 2014, the OECD released the Standard for Automatic Exchange of Financial Account Information in Tax Matters, including the Commentary on the CRS. CRS seeks to establish the automatic exchange of tax information as the new global standard. The automatic exchange of information involves the systematic and periodic transmission of extensive taxpayer information from the country in which a taxpayer’s financial accounts are located to that taxpayer’s country of residence.

Similar to the provisions of FATCA and the various IGAs between the US government and partner governments around the world, CRS imposes obligations on financial institutions, including some holdings companies, across the financial services market to review and collect information in an effort to identify an account holder’s country of residence and then, in turn, to provide certain specified account information to that home country’s tax administration.

The CRS has been incorporated in the amended Directive on Administrative Cooperation (DAC 2) officially adopted by the European Council on 9 December 2014. On 24 December 2015, the Luxembourg CRS law of 18 December 2015 was published, enacting the CRS into Luxembourg law with an entry into force as of 1 January 2016. Therefore, Luxembourg financial institutions had, as of this date, to on-board new clients/investors according to specific procedures and review high value individual clients/investors no later than 31 December 2016. The CRS due diligence of their other pre-existing clients/investors (including all entities) had to be finalised no later than 31 December 2017.

Based on the result of those on-boarding and due diligence procedures, the Luxembourg financial institutions have to file CRS reports to the Luxembourg tax authorities by 30 June each year (with respect to financial accounts maintained in the previous year). The Luxembourg tax authorities will then automatically exchange this information with the relevant other jurisdictions by 30 September.

The CRS report will have to comply with the specific format defined by the Luxembourg tax authorities’ Circular ECHA 4. The jurisdictions for which data must be exchanged are listed in a Grand-Ducal Decree, which is updated generally once a year.

FATCA and CRS common data protection treatment

According to the Luxembourg FATCA and CRS Law, as well as Luxembourg data protection rules, each individual concerned (including controlling persons of certain entities) shall be informed on the processing of one’s personal data before a Luxembourg financial institution processes the data for FATCA and CRS purposes. Furthermore, each individual concerned must be informed about the jurisdiction with which the data is exchanged.

Each individual subject to the FATCA and CRS reporting (including controlling persons of certain entities) will have a right to access and rectify one's personal data but is also required to respond to the financial institution's request for relevant information.

EU state aid

As at 1 January 2018, the EC has opened four formal state aid investigations involving Luxembourg companies to examine whether there was any breach of the EU rules on state aid.

Amongst these cases, the EC published two opening decisions, and two final decisions, which Luxembourg has appealed before the General Court of the European Union. These formal investigations relate in particular to tax rulings (including APAs) granted by Luxembourg.

Upon the publication by the EC of each of the opening/final decision(s), the Luxembourg government consistently stated that Luxembourg is confident that the allegations of state aid are unsubstantiated and that it will be able to convince the EC that no particular tax treatment or selective advantage was granted.

Additional information is available on the website of the PwC EU Direct Tax Group (*https://www.pwc.com/gx/en/services/tax/international-tax-services/eu-direct-tax-group.html*).

Macau

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Significant developments

Tax incentives for the tax year 2018

On 13 December 2017, the Legislative Assembly approved certain tax incentives proposed by the Chief Executive of Macau in the Budget for the financial year 2018. The key tax incentives include the following:

- The tax-free income threshold for complementary (corporate) tax has been increased from 32,000 Macanese patacas (MOP) to MOP 600,000 for income derived in the tax year 2017. Taxable income over MOP 600,000 is taxed at 12%.
- The standard MOP 3,500 reduction in property tax liabilities will continue to be available in the tax year 2018 for both self-use and rental properties. This incentive does not apply to corporate and Macau non-residents.
- Restaurants will continue to be exempt from tourism tax in the tax year 2018.
- Insurance policies written or renewed in the tax year 2018 and banking transactions in the tax year 2018 will continue to be exempt from stamp duty.
- Admission tickets for performances, exhibitions, and entertainment programs will continue to be exempt from stamp duty in the tax year 2018.
- Commercial and industrial operations will continue to be exempt from the annual industrial tax in the tax year 2018.

Taxes on corporate income

Complementary tax is imposed on the worldwide income earned by Macau-registered entities, irrespective of where their residence or headquarters are situated and irrespective of the nature of the income. The exception to the foregoing is rental income from leasing of immovable properties located in Macau, which is taxed separately under the property tax regime.

Generally, if a foreign entity is engaged in commercial/industrial activities and/or rendering services in Macau, the resultant gain from such commercial/industrial activities and/or services rendered will be subject to complementary tax.

According to the Macau Complementary Tax Law, complementary tax is imposed on a progressive rate scale ranging from 3% to 9% for taxable profits below or equal to MOP 300,000 and 12% for taxable profits over MOP 300,000. Taxable profits below MOP 32,000 are exempt from tax.

According to the Budget for the financial year 2018 approved by the Legislative Assembly (2018 Budget), the tax-free income threshold for complementary tax has been increased from MOP 32,000 to MOP 600,000 for income derived in the tax year 2017 (taxable income in excess of MOP 600,000 is taxed at 12%). The changes in the tax-free income threshold and the tax brackets are subject to approval by the Legislative Assembly on an annual basis unless such amendments are written into the relevant tax laws.

Types of taxpayers and associated tax bases

Group A taxpayers

Taxpayer entities whose registered capital reached MOP 1 million, or whose average taxable profits reached MOP 500,000 per year in three consecutive years, will automatically become Group A taxpayers in the tax year following the year in which the relevant notification is issued by the Macau Finance Bureau (MFB). A taxpayer entity can also elect to become a Group A taxpayer by filing a Group A declaration form. Profits of Group A taxpayers are assessed based on the actual accounting income after making necessary tax adjustments.

Group B taxpayers

Group B taxpayers refer to any individual or any other form of companies not mentioned above and those taxpayers that do not keep detailed accounting records. Profits of Group B taxpayers are assessed on a deemed basis if the reported income is below the internal parameters set by the MFB for taxpayers in similar industries.

Corporate residence

Corporate residence is generally determined by reference to the place of establishment.

Permanent establishment (PE)

There is no specific definition of PE in the Macau Complementary Tax Law. Technically speaking, there are two major criteria for determining whether a foreign entity should be subject to complementary tax, and the key phrases are ‘engaging in commercial/industrial activities’ and/or ‘rendering services in Macau’. These phrases are also not defined. Generally, if a foreign entity is engaged in commercial/industrial activities and/or rendering services in Macau, the resultant gain from such commercial/industrial activities and/or services rendered will be subject to complementary tax.

Other taxes

Value-added tax (VAT)

There is no VAT regime in Macau.

Customs duties/import tariffs

Apart from consumption tax imposed on tobacco and spirits entering into Macau, there are no customs duties/import tariffs in Macau.

Consumption tax (excise duty)

Consumption tax is imposed only on tobacco and spirits entering into Macau.

There are two methods for determining the amount of consumption tax payable, by quantity or by value. The former method of assessment is based on the weight or volume of goods and the latter is based on the price of the goods imported into Macau.

The rate of consumption tax varies depending on the classification of the imported goods.

Property tax

Property tax is imposed annually on the owner of buildings situated in Macau. This is first payable after acquiring a property or upon the expiry of the property tax exemption period, if applicable. Different exemption periods are granted, depending on the location of the property. Additional exemption periods may apply in special cases.

For leased properties, property tax is charged at 10% on the actual rental income, and, by application, a maximum deduction based on 10% of the rental income derived to cover repair and maintenance expenses incurred will be granted if approved by the MFB.

For self-use properties, property tax is charged at 6% on the official ratable value as established by the appointed committee of the MFB. A deduction of 10% of the official ratable value to cover repair and maintenance expenses will be automatically granted for self-use property. If the property is not occupied, the owner can apply for an exemption from property tax, the approval of which is entirely at the discretion of the MFB.

According to the 2018 Budget, there is a standard MOP 3,500 reduction in the property tax liabilities assessed in the tax year 2018 for both self-used and rental properties. This incentive does not apply to corporate and Macau non-residents.

Stamp duty

Stamp duty is payable on certain types of documents and stampable transactions at a small fixed amount or at rates ranging from 0.1% to 10% on the value represented by the documents and transactions.

The charge to stamp duty has been extended to property transfers and the irrevocable transfer of certain assets. Stamp duty at progressive rates ranging from 1% to 3% is payable on transfer of immovable property with a surcharge of 5% on the duty payable, resulting in effective stamp duty rates of 1.05% to 3.15%. The irrevocable transfer of certain assets without consideration is subject to a 5% stamp duty.

Insurance policies, written or renewed, and banking transactions have been exempt from stamp duty since 2005. This exemption has been approved by the Legislative Assembly and will continue to be available in the tax year 2018.

Admission tickets for performances, exhibitions, and any kind of entertainment programmes are exempt from stamp tax for the tax year 2018, as approved by the Legislative Assembly. This exemption, if extended, will be published by the Macau government on an annual basis.

Additional stamp duty for acquisition of second residential property and beyond

A transferee acquiring residential property will be subject to additional stamp duty if the transferee owns other residential property at the time of acquisition. Such additional stamp duty is applicable to individual, corporate, as well as a transferee acquiring more than 80% of a company that owns Macau residential property. The applicable rate is 5% on the transfer consideration for acquisition of the second residential property and 10% on the transfer consideration for acquisition of the third residential property and onward. A transferee holding only one residential property but wishing to dispose it and acquire another residential property as replacement can apply for refund of the additional stamp duty paid if the disposal takes place within one year from the date of acquisition.

Special Stamp Duty (SSD)

The transferor of a residential property, commercial property, office, car-parking space, or property under construction is subject to SSD at 20% on the value of the property if the property is resold within a year of its purchase. The SSD rate is reduced to 10% if the resale takes place between one and two years after the purchase. The SSD is also applicable to transfers of an 80% or more shareholding interest in a Macau company that has properties.

Buyer Stamp Duty (BSD)

A company, an entrepreneur, or a non-Macau resident acquiring a residential property in Macau is subject to BSD at a flat rate of 10%, on top of the existing Stamp Duty and SSD, if applicable.

Professional (Salaries) Tax

Professional Tax is payable by anyone receiving income from employment services performed in Macau or from a Macau employment. In Macau, the Professional Tax reporting, withholding, and remittance obligations rest with the employer.

Payroll taxes

There is a pay-as-you-earn (PAYE) system, similar to those used in other countries, which is applicable to salaried individuals only. The employing entity is obligated to report and collect the amount of professional tax payable from its employees each month and remit such payments to the MFB before the 15th day of the month following the quarter-end for local resident employees and foreign employees with valid work visas.

Social security fund contribution

Social security fund contribution in the total amount of MOP 90 per month is payable for resident employees. The employer contributes two-thirds of the amount (i.e. MOP 60) and the employee contributes one-third of the amount (i.e. MOP 30).

Annual industrial tax

The annual industrial tax has been exempted for the tax year 2018 and has been exempted on an annual basis by the Macau government since 2002.

Under the Industrial Tax Code, all commercial or industrial operations carried out in Macau are subject to industrial tax at the beginning of each year. The amount of the tax is dependent upon the nature of the business. The table below is an illustration of the tax amounts applicable to certain types of businesses in Macau.

Type of business	Tax (MOP)
Commercial banks	80,000
Construction companies	500
Hotels	500

Type of business	Tax (MOP)
Insurance companies	500
Textile companies	500

Special gaming tax

Special gaming tax is levied at 35% on the gross gaming revenue derived by gaming concessionaires authorised to carry on the operation of games of chance in Macau under Law 16/2001.

Tourism tax

Tourism tax is imposed at the rate of 5% on bills of services, excluding telecommunication and laundry services, and service charges of up to 10% rendered in Macau by establishments such as hotels, guest houses, dancing halls, night clubs, massage/sauna parlours, gymnasiums, karaoke, and the like. Such tax is generally borne by consumers.

Restaurants are exempt from tourism tax in the tax year 2018 and have been exempt, via an exemption published on an annual basis by the Macau government, since 2002.

Motor vehicle tax

Motor vehicle tax is imposed on the sale of new motor vehicles to consumers and the importation of new motor vehicles for self-use. Exemptions are available to certain persons and organisations and for certain specific usages. Generally, motor vehicle tax is levied based on the listed selling prices as registered with the MFB. The rate of motor vehicle tax varies depending on the type of motor vehicle and its value.

Land rent

Land rent is payable by lessees of leasehold land in Macau on an annual basis according to the amount specified in the relevant lease contract.

According to the 2018 Budget, land rent below MOP 100 shall not be collected by the MFB in the tax year 2018. However, any such amount already collected shall not be refunded.

Branch income

Branch income is subject to tax at the same rate as that for corporations. The taxable income is ascertained based on branch accounts.

Income determination

The paragraphs below describe the tax acceptable treatments under the prevailing Complementary Tax Law and are for reference only.

Inventory valuation

Inventory should be stated at actual cost, and conformity between book and tax reporting is required. Market selling price or replacement cost is allowed only in special circumstances, and prior approval of the Director of the MFB is required for adoption of such inventory valuation methods. The write-down of inventory values is not permitted.

Capital gains

Gains or losses from the realisation of capital assets of a corporate taxpayer are treated as current revenue or expense items for complementary tax purposes.

Dividend income

Dividends from all sources are subject to complementary tax in the hands of a recipient incorporated in Macau unless the dividends were paid out of profits that have been taxed at the corporate level in Macau. Where dividends to shareholders are paid out of profits of a Macau entity that have not been taxed in Macau, complementary tax will technically be charged on the dividend distribution to the shareholders.

Interest income

Interest income received by or accrued to a corporate taxpayer in Macau is subject to complementary tax.

Royalty income

Royalty income received by or accrued to a corporate taxpayer in Macau is subject to complementary tax. There is currently no withholding tax (WHT) imposed on royalties paid or accrued to a non-resident provided that such non-resident has not carried on commercial/industrial activities in Macau.

Foreign income

Companies incorporated in Macau are subject to complementary tax on worldwide income, wherever received or credited. There are no provisions in the Macau Complementary Tax Law that allow foreign income to be deferred for tax purposes. Currently, double taxation relief is available under the respective double taxation agreements (DTAs) that Macau has with Cabo Verde, the People's Republic of China, Mozambique, and Portugal.

Deductions

Please note that the assessor is empowered to disallow any business expenses (e.g. entertainment, travelling) where the amount incurred is considered to be excessive.

Depreciation

An initial allowance of 20% is granted on buildings. The rates of tax depreciation are detailed in Decree-Law No.4/90/M, dated 5 March 1990. The Decree-Law prescribes the maximum annual tax depreciation rates and the number of years of asset life for different asset classes under the straight-line method. For illustration, the maximum depreciation rates and the maximum useful life currently applicable to the general types of assets are set out below:

Assets	Maximum annual percentage rate (%)	Maximum number of years
Industrial buildings	4	50
Office and residential buildings	2	100

Assets	Maximum annual percentage rate (%)	Maximum number of years
Machinery and installations, air conditioning, elevators, equipment	10 to 20	20 to 10
Tools	20 to 33.3	10 to 6
Laboratory, telex and interior telephone equipment, furniture, filing systems, typewriters, and accounting machines	16.66 to 25	12 to 8
Computer hardware	25	8
Office installations	14.29	14
Trucks	14.29	14
Automobiles	20	10
Intangible assets, pre-operating expenses incurred prior to commencement of business	33.33	6
Deferred expenses arising in connection with increases in share capital, changes in form of business enterprises, issuance of debentures, marketing and other studies, and financial expenses incurred for the acquisition or own production of fixed assets prior to completion	33.33	6
Patents	10	20
Manufacturing licences, concessionary agreements, and similar rights	*	*
Trademark	*	*

** At the discretion of the authorities.*

In the case of commercial and industrial buildings, depreciation is not allowed for the value attributable to the cost of the freehold land. Where the value of the freehold land cannot be determined from the total cost of land and buildings, a portion equal to 20% is deemed to be attributable to the land value for the purpose of determining the value of buildings to be depreciated.

Depreciation can be claimed either on a prorated basis in accordance with the prescribed annual rates for assets that are not acquired at the beginning of the financial year or on an annual basis.

The cost of repairs and maintenance exceeding 10% of the acquisition cost of the asset in a given year is deemed to be an expense of a capital nature and should be capitalised and depreciated over the remaining life of the asset.

Goodwill

Cost of acquisition of goodwill/amortisation of goodwill is generally deductible to the extent it is incurred in the generation of assessable profits.

Interest expenses

There is no thin capitalisation rule in Macau. However, the MFB may assess the reasonableness of the interest rate charged for interest expense paid to related parties.

Bad debts

The amount provided against doubtful trade receivables is an allowable tax deduction, but the provision cannot exceed 2% of the total receivables, except in the case of banks, where the minimum provisions required under the local banking regulations are fully tax-deductible.

Debts considered uncollectible may be written off only when adequate proof can be shown, usually by way of bankruptcy court proceedings.

Charitable contributions

A deduction of up to 0.2% of the company's turnover is allowable for donations to charitable organisations recognised by the tax authority.

Pension expenses

The employer's contribution to the staff provident fund legally registered in Macau is fully tax-deductible, up to 15% of the employees' basic salary.

Fine and penalties

Tax fines are not deductible.

Taxes

Taxes, except for complementary tax and taxes paid on corporate profits, are generally deductible to the extent they are incurred in the generation of assessable profits.

Other significant items

- An amount provided against stock obsolescence of up to 3% of the total stock value at year-end is allowed as a tax deduction.
- Losses arising from insurable risks are not allowable as a tax deduction.
- Staff social welfare expenses paid for the benefit of employees (e.g. canteens, libraries) are fully tax-deductible.

Net operating losses

Agreed tax losses can be carried forward for three consecutive years for Group A taxpayers. Group B taxpayers are not allowed to carry their tax losses forward to future years. Tax losses cannot be carried back in Macau.

Payments to foreign affiliates

The regulations make no specific mention of royalties and service fees paid to foreign affiliates. The MFB generally monitors the deductibility of such payments. Payments to foreign service providers for consulting services or construction-related services are not deductible if such consulting contracts are not properly registered in Macau.

Group taxation

There is no provision for group taxation in Macau.

Transfer pricing

There is no transfer pricing provision in the Macau tax regime.

Thin capitalisation

There is no thin capitalisation provision in the Macau tax regime.

Controlled foreign companies (CFCs)

There are no CFC rules in the Macau tax regime.

Tax credits and incentives

Foreign tax credit

There is no foreign tax credit provision in the Macau Complementary Tax Law. Foreign tax credit is only available under the relevant provisions of the comprehensive tax arrangements/agreements that Macau has entered into with the People's Republic of China, Portugal, Mozambique, and Cabo Verde, respectively.

Capital investment incentives

A 50% reduction in complementary tax and stamp duty on certain transactions, as well as exemptions from annual industrial tax (currently exempt for all taxpayers) and property tax (up to periods prescribed by the MFB), are allowable for taxpayers in the manufacturing industry (as defined in the Decree-Law) whose capital investment is aimed at the introduction of new products or high technology, improvement of productivity, and increase in exports of goods to new markets.

Where profits are retained in reserves and reinvested in installation of new equipment within the following three financial years, the reinvested reserves can be deducted from taxable profits, provided that the reinvested reserves are attributable to profits earned from normal business operations and the investment is considered to be beneficial for the economic development of Macau.

Offshore services business incentives

Profits derived by approved offshore institutions from prescribed offshore service-related activities are exempt from all forms of taxes, such as complementary tax, annual industrial tax (currently exempt for all taxpayers), and stamp duties.

Incentives for owners of touristic facilities

Additional incentives, such as an extended property tax exemption period, exemption from annual industrial tax (currently exempt for all taxpayers), reduction in stamp duty, as well as acceleration of depreciation for complementary tax purposes, are available to owners of facilities that qualify as touristic facilities.

Withholding taxes

Currently, there is no provision in the Macau Complementary Tax Law for the withholding of taxes from payments made by domestic corporations to overseas companies.

Tax administration

Taxable period

The Macau tax year is on a calendar-year basis.

Tax returns

Assessments are made by the MFB upon review of the tax returns, which must be lodged before 31 March or 30 June of each year for Group B or Group A taxpayers, respectively.

Payment of tax

A provisional tax payment calculated based on the declared taxable profit for a Group A taxpayer or final assessed profit for a Group B taxpayer is payable in two equal instalments, in September and November. However, if the amount is not greater than MOP 3,000, payment will be requested in one lump sum amount in September. For Group A taxpayers, a final tax assessment will be issued upon completion of the tax assessment by the MFB and additional tax payment, if any, will be due around a month's time after issuance.

Tax audit process

There is no specific tax audit cycle in Macau. The MFB is empowered by the Macau Complementary Tax Law to carry out a tax audit whenever the information provided by a taxpayer in its tax return is considered unclear or insufficient, and subsequent replies to the MFB's queries, if any, are considered inadequate.

Statute of limitations

The statute of limitations period is five assessment years from the relevant year of assessment for both Group A and Group B taxpayers.

Topics of focus for tax authorities

The MFB generally focuses on the deductibility of expenses (e.g. staff costs, provisions, depreciation, management fees, payments made to overseas service providers, bad debts, donations).

Other issues

Choice of business entity

A foreign company conducting business (except for short-term projects) in Macau is obligated to set up a legal establishment, which can be in the form of a company or a branch.

There are two types of Macau companies: companies limited by shares and companies limited by quotas. The capital and corporate governance requirements for a company limited by shares are higher than a company limited by quotas, and, in general, a company limited by quotas is used by investors that are not in regulated industries.

Exchange of information

Law 20/2009 is the legislation that governs the exchange of information by Macau with other tax jurisdictions within the scope of bilateral tax treaties or arrangements. Its objective is to promote the transparency of the Macau tax administration and to demonstrate Macau's willingness to cooperate with treaty partners in combating tax avoidance or tax evasion activities.

The information to be exchanged under Law 20/2009 is strictly confined to information collected for tax purposes only, and includes the following:

- Information collected within the jurisdiction of the MFB.
- Information collected by the MFB from financial institutions that are governed by the Macau Financial System Act and offshore institutions that are governed by the Macau Offshore Law (the Institutions).

So far, Macau has concluded tax information exchange agreements (TIEAs) or DTAs that comply with the latest internationally agreed standards with 22 different tax jurisdictions. The following tables summarise the TIEAs and DTAs that Macau has signed, and the TIEAs and DTAs that are in negotiation:

TIEAs have been signed by Macau with the following countries:

- Argentina
- Australia
- Denmark
- Faroe Islands
- Finland
- Greenland
- Guernsey
- Iceland
- India
- Ireland
- Jamaica
- Japan
- Malta
- Norway
- Sweden
- United Kingdom of Great Britain and Northern Ireland

TIEAs are in negotiation with the following countries:

- Germany
- New Zealand

DTAs have been signed by Macau with the following countries:

Treaty partners	Effective date
Belgium	Not yet effective
Cabo Verde	11 January 2011
The Mainland of China	1 January 2004 (Note that the first protocol and the second protocol became effective on 15 September 2010 and 8 October 2011, respectively)
Mozambique	11 January 2011
Portugal	1 January 1999
Vietnam	Not yet effective

A DTA with Hong Kong is in negotiation.

It is believed that more comprehensive DTAs or TIEAs will be signed between Macau and other tax jurisdictions in the near future to demonstrate Macau's willingness to continue to cooperate with the Organisation for Economic Co-operation and Development (OECD) countries in combating tax avoidance or evasion activities.

As the information of a Macau taxpayer is becoming more transparent under comprehensive DTAs or TIEAs, it is important for Macau companies with cross-border transactions to perform periodic tax health checks to ensure that tax planning arrangements, if any, that have been put in place in the past, remain technically defensible. As Macau offshore companies continue to be a focus of investigations for many tax jurisdictions, it is important to ensure that such companies have adequate commercial substance in Macau and the companies' transfer pricing policies are supported by appropriate transfer pricing documentation and transfer pricing studies.

Foreign Account Tax Compliance Act (FATCA)

On 14 December 2016, Macau and the United States (US) signed an inter-governmental agreement (IGA) that will facilitate compliance with the US FATCA by financial institutions in Macau. FATCA is an anti-tax evasion regime enacted by the United States to detect US taxpayers who use accounts with non-US financial institutions to conceal income and assets from the US Internal Revenue Service (IRS). The IGA signed between Macau and the United States is Model 2, which requires financial institutions in Macau to report the relevant account information of US taxpayers to the US IRS directly, supplemented by group requests made by the US IRS, on a need basis, for exchange of information on relevant US taxpayers at a government level. Under the IGA, financial institutions in Macau need to register and conclude separate individual agreements with the US IRS. Under the agreements, these institutions shall seek the consent of their account holders who are US taxpayers for reporting their account information to the US IRS annually. The IGA covers exemptions for financial institutions or products that present low risks for tax evasion by US taxpayers.

Macedonia

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Significant developments

There have been no significant corporate tax developments in Macedonia during the past year.

Taxes on corporate income

Generally, all resident and non-resident legal entities operating through a permanent establishment (PE) are liable to pay corporate income tax (CIT) in Macedonia.

Macedonian resident entities are taxed on their worldwide income. Non-resident entities are taxed on the profit realised through their PE in Macedonia. Non-business organisations (including governmental bodies) are taxed on income from their business activities (if any).

The CIT rate is 10%.

The tax base for CIT is the profit realised for the current year, as determined according to the applicable accounting standards, adjusted for the amount of non-deductible expenses incurred during the fiscal year (FY).

Under the previous CIT legislation, there were two separate tax bases for CIT, which were subject to filing of two separate tax returns. In the period between FY 2009 and FY 2013, CIT was payable separately on non-deductible expenses (on an annual basis) and on financial profit (only if distributed). By means of the applicable CIT Law, the accumulated profit realised for the period FY 2009 to FY 2013 is subject to taxation at the moment of distribution. Taxpayers are obligated to cover the losses from previous years prior profit distribution.

CIT is not payable on received dividend income from domestic taxpayers, under condition that such income was taxed at the level of the payer.

Simplified tax regime for companies

Companies (except companies that provide banking, financial, and insurance services, as well as services in the field of games of chance and entertainment games) can choose to benefit from the simplified tax regime based on their overall annual income. Provided other criteria prescribed in the CIT Law are met, companies will qualify for the simplified tax regime if their overall annual income from all sources is between 3 million Macedonian denars (MKD) and MKD 6 million. These companies will pay 1% CIT on their overall income from all sources as stated in their income statement and financial statements for the respective calendar year.

Provided their overall annual income in the following three years is within the above range, companies under the simplified tax regime cannot request to be excluded from the simplified tax regime.

Under the simplified tax regime, exemption from CIT is available for companies with an overall annual income from all sources of up to MKD 3 million.

Local income taxes

There are no municipal or local government taxes levied on corporate income.

Corporate residence

A company is resident in Macedonia for tax purposes if it is established or maintains its headquarters in the territory of Macedonia. Foreign legal entities with headquarters abroad are non-residents for tax purposes, but their Macedonian branches are liable for tax on any profit generated in the territory of Macedonia if they are considered as a PE for the foreign legal entity in Macedonia.

Permanent establishment (PE)

Generally, a PE is a fixed place of business through which the business of an enterprise is wholly or partly carried on, either directly or through a dependent agent.

More specifically, the domestic law provides that a PE may include a place of management, a branch office, an office, a factory, a workshop, mining activities, or any other place of extraction of natural resources.

A building site or construction or installation project, as well as related supervision activities, may constitute a PE if it lasts longer than six months.

Furthermore, the provision of services, including consulting services with regard to one or several related projects, is deemed to give rise to a PE if such activities last longer than 90 continuous days within any 12-month period. If one or several persons establish a PE as per above, any other non-related project on which they are working on becomes part of the PE, irrespective of its duration.

The PE should be registered as a corporate taxpayer at the beginning of its activity in the country for the purposes of obtaining a tax number.

Other taxes

Value-added tax (VAT)

In general, the VAT regulations are in line with the provisions of the sixth European Union (EU) VAT directive.

The standard VAT rate is 18%. This rate applies to overall turnover and imports of goods and services. A lower rate of 5% applies to supplies of certain goods and services, such as supply of food for human consumption; food for livestock; drinking water from public supply systems; computers and software; agricultural material and equipment; wood pellets, pellet stoves, and pellet boilers; baby products; school supplies (e.g. school backpacks, notebooks, pencils); pharmaceutics and medical equipment; publications, such as books, pamphlets, newspapers, and other printed material, except for publications mainly used for advertising purposes; transport of passengers; and accommodation services, bed and breakfast services, as well as half-board and full-board services provided by hotelkeepers in the country, etc.

All taxpayers whose total annual turnover exceeds MKD 1 million or whose total supplies, as projected at the beginning of the business activity, will exceed this amount are liable to register for VAT purposes.

Residents that do not meet the criteria above may voluntarily register for VAT purposes at the beginning of each calendar year.

The standard VAT period is one calendar month. However, if the total turnover in the previous calendar year did not exceed MKD 25 million, the tax period is the calendar quarter. The VAT period for voluntary VAT registered taxpayers is the calendar quarter.

The taxpayer is obligated to submit a VAT return for each tax period within 25 days following the end of the relevant tax period.

Customs duties

Customs duties generally apply to most products imported into Macedonia. The customs rates under the most favoured nation treatment for agricultural products are up to 31%, whereas the customs rates for industrial products are below 23%.

Macedonia has signed trade agreements with Turkey, Ukraine, and European Free Trade Association (EFTA) member states. The country is a member state to the Central European Free Trade Agreement (CEFTA) and has signed a Stabilisation and Association Agreement with the European Community.

The import of industrial products with preferential origin and certain raw precious metals is exempt from customs duties.

According to the Stabilisation and Association Agreement 2001 signed between Macedonia and the European Union, products with Macedonian origin can generally be exported into EU countries free of customs duties.

Excise duties

Excise duties are levied with respect to a limited number of goods produced or imported in Macedonia. Petroleum products, alcohol and alcoholic beverages, tobacco products, and passenger motor vehicles are subject to an excise duty at a flat or percentage rate. The excise period is one calendar month, and excise duty is payable within 15 days as of the end of the calendar month. The excise duty for alcohol beverages and tobacco goods is levied by way of purchasing excise stamps.

The amount of excise duty for petroleum products depends on the type of petroleum product and is payable per kilo/litre.

Alcohol and alcoholic beverages are taxable per litre/percentage of alcohol. Some categories of alcoholic beverages (e.g. wine) are not subject to excise duty. Maximum excise duty payable is up to MKD 340 per litre on pure alcohol.

The excise duty for tobacco products is combined and is calculated both per unit/kilo and as a percentage from the retail price. As of July 2014 up to July 2023, the rate of the specific and minimum excise duty on cigars/smoking tobacco will increase gradually every year.

The excise duty for passenger motor vehicles is calculated as a percentage of the market value or the custom value of the vehicle. It ranges from 0% for vehicles valued up to 3,000 euros (EUR) to 18% for vehicles valued above EUR 30,000.

Property tax

Property tax is paid annually on the ownership of real estate, including land (agricultural, construction, forest, and pastures) and buildings (residential buildings or flats, business buildings and business premises, administrative buildings and administrative premises, buildings and flats for rest and recreation, and other construction facilities, as well as installations constructed on the buildings or below and permanently attached to the buildings).

The person liable for property tax is the legal entity or the individual owner of the property. If the owner is not known or cannot be reached, the person liable for property tax is the user of the property. A property taxpayer may also be the taxpayer who usufructs the property; and, if the property is owned by several persons, each of them is a property taxpayer proportionately for the portion owned. A property taxpayer is also the person who uses real estate owned by the state and the municipality.

The property tax base is the market value of the real estate. The market value of the real estate is determined in accordance with the methodology prescribed by the government.

Property tax rates are proportional and range from 0.10% to 0.20%. The rates may be determined on the basis of the type of the property. As an exception, property tax rates on agricultural land not used for agricultural production may be increased outside the above range (i.e. from three to five times in relation to the basic rates).

The amount of the rates is decided by the Municipal Councils.

Transfer tax

The transfer of the right to ownership of real estate for or without compensation, as well as other means of acquiring real estate for or without compensation, between legal entities or natural persons is subject to transfer tax.

The person liable for transfer tax is the seller of the real estate. As an exception, a taxpayer may also be the buyer of the real estate if agreed in the sale and purchase agreement. When replacing real estate, the taxpayer is the party that replaces the real estate of greater value.

When selling real estate in bankruptcy and law-enforcement procedure, as well as when realising agreements on mortgage, the taxpayer may be the buyer of the real estate.

In the case of transfer of ownership of an ideal share in real estate, taxpayers are each of the owners separately.

The tax base is the market value of the real estate at the moment the tax liability arises.

When replacing real estate, the tax base is the difference between the market values of the real estate being replaced.

When selling real estate in bankruptcy and law-enforcement procedure, the tax base is the attained selling price.

The market value is determined by a special municipal commission in accordance with the methodology prescribed by the government.

Tax rates are proportional and range from 2% to 4%. The tax rates are determined by the municipal councils by way of decision.

There are certain exemptions from transfer taxes available for specifically determined cases (i.e. transfer of shares, sale of securities, the first sale of residential premises for the first five years from the end of their construction, etc.).

Stamp taxes

Stamp taxes are not payable in Macedonia.

Social security contributions and payroll taxes

Employers are obligated to calculate and withhold from employees' gross salary and pay into the accounts of respective funds the compulsory social security contributions and personal income tax (PIT). The current level of the compulsory social security contributions is as follows:

- Pension and disability insurance: 18%.
- Health insurance: 7.3%.
- Employment insurance: 1.2%.
- Additional health insurance: 0.5%.

The legislation prescribes the minimum and the maximum base for calculation of the social security contributions.

The Public Revenue Office (PRO) is the authorised body to control the calculation and the payment of the compulsory social security contributions and PIT on salaries. All employers send their calculations to the PRO that controls them and, if correct, issues a declaration of acceptance that is used by the banks to perform the payment of the social security contribution, PIT, and net salaries.

Garbage collection fee

A garbage collection fee is payable for immovable property, depending on the type of property and on the surface area used. It is calculated on the basis of a tariff and is collected together with the bills for water usage.

Communal taxes

Companies and individuals are liable for paying communal taxes for usage of certain rights and services (mainly for usage of the urban space in the municipalities, posting commercials, etc.).

Branch income

Branch offices are registered in the Trade Registry. Branches are subject to CIT in accordance with the general statutory provisions. The foreign parent company is fully liable for the obligations of its established branch office in Macedonia.

A foreign company that is entitled to carry out commercial activities pursuant to its national legislation may establish a commercial representative office in Macedonia. Representative offices are not legal entities and may not carry out any commercial activities. Representative offices are not subject to CIT.

Income determination

Capital gains, as well as income from dividends, interest, rent, and royalties are treated as ordinary income of the taxpayer and are included in its general taxable base in accordance with accounting rules and standards. Dividend income received from domestic taxpayers is excluded from the tax base under condition that such income was taxed at the level of the payer.

Inventory valuation

There are no provisions in the tax legislation regarding inventory valuation.

Deductions

The CIT Law exhaustively lists the expenses that are not recognised for CIT purposes and are part of the CIT base.

Hidden profit distribution

The following transactions with shareholders or their related parties are considered as hidden profit distribution subject to CIT:

- Sales of goods/services on terms below the market price.
- Purchase of goods/services on terms above the market price.
- Providing loans with an interest lower than the market one.
- Arrangements under which gains are realised by the shareholders or their related parties.

Unjustified shortages are also taxed as hidden profit distribution if not reimbursed from the salary of the responsible person.

Some of the transactions above may be regulated under the transfer pricing provisions in the CIT Law as well. It seems that the purpose of these provisions is to tax the non-fair transactions with shareholders and their related parties that do not fall under the 'related-party' definition as per the CIT Law.

Non-business-related expenses

Expenses that are not related to the business activity of the taxpayer are taxable.

Depreciation

Corporate taxpayers can apply depreciation methods and rates as well as perform impairment of their fixed assets under applicable accounting standards without any tax consequences.

Goodwill

There are no specific provisions in the tax legislation with regard to goodwill.

Start-up expenses

There are no specific provisions in the tax legislation with regard to start-up expenses.

Interest expenses

Interest paid on non-business related credits of the taxpayer, as well as interest on credits for purchase of passenger vehicles, furniture, carpets, works of art, and decorative objects, is a taxable expense. Interest on business-related credit is also taxable, provided it falls under the thin capitalisation or transfer pricing rules (*see Thin capitalisation or Transfer pricing in the Group taxation section for more information*).

Uncollected receivables from loans

Uncollected receivables arising from loans (or transactions that are considered loans in their economic substance) that are not repaid in the year of granting are considered as taxable expenses. On the other hand, taxpayers are allowed to reduce their tax base in the tax period when such receivable is partially or fully collected.

Impairment and write-off of receivables

Impairment of receivables is not taxable for banks, saving institutions, and insurance companies if impaired in accordance to the methods prescribed by law. As to other corporate taxpayers, impairment of receivables is a taxable expense if not based on an effective court decision or reported and confirmed as debts in liquidation or bankruptcy procedure.

Write-off of receivables is a taxable expense for all corporate taxpayers.

Taxpayers are entitled to a tax credit for the tax paid on collected impaired receivables in the year of collection.

Charitable contributions

Donations and sponsorships expenses are taxable if not pursuant to the manner, the conditions, and the procedure set forth in the Law on Donations and Sponsorships in Public Activities. If compliant with the law requirements as per above, donations are taxable if the annual amount borne by the taxpayer exceeds 5% of its overall revenue, whereas sponsorship expenses are taxable if above 3% of the overall revenue of the taxpayer.

Subject to fulfilment of certain conditions, donations towards sport federations, organisations, clubs, and individuals could decrease the CIT liability for the year, up to prescribed percentages in the CIT Law.

Compensation expenses

Employees' related expenditures (e.g. organised transportation to/from work, organised food [cantina], business trip allowance, field allowance, family separation allowance, one-off severance payment, retirement allowance, annual holiday allowance, anniversary awards) are taxable if paid over the amount prescribed by law and collective agreement.

Voluntary pension insurance contributions are taxable if their annual amount per employee exceeds four average monthly gross salaries paid out in the previous calendar year.

The monthly allowances and expenses to the managing board members are tax-deductible, up to 50% of the average gross monthly salary paid out in the country in the previous year.

Expenses made for accommodation and transport of non-payroll employees engaged at the taxpayer for the purposes of its business activities are CIT deductible, provided that they are properly documented.

Insurance expenses

Personal insurance premiums paid for members of the management board and the employees (if not paid out from their salary) are taxable expenses. Only the collective insurance of the employees for work-related injuries is a non-taxable expense for corporate taxpayers.

Entertainment expenses

Expenses for gifts, business dinners, recreation, and entertainment are taxable, up to 90% of the annual amount borne by the taxpayer.

Scrapping

Expenses for scrapping exceeding the standards for the particular industry set forth in the rulebook on the standardised amounts of debris, scrap, waste, wreckage, and scattering of goods and specific products are taxable. Scrapping expenses caused by *vis major* or an uncontrollable event are not taxable.

Fines, penalties, and taxes

Fines and tax penalties, penalty interest on unpaid public duties, and expenses for enforced payments, as well as withholding tax (WHT) borne by the taxpayer on behalf of third parties, are taxable.

Net operating losses

The CIT Law stipulates that the loss realised in the income statement for the year, adjusted for the amount of non-deductible expenses, can be carried forward against future profits for a maximum period of three years as of the year when the profit has been realised.

The financial loss can be carried forward for tax purposes only in cases where the accumulated losses have been offset by the taxpayer according to the provisions from the Macedonian Companies Law and if approval by the tax authorities has been obtained.

Loss carrybacks are not allowed under the Macedonian tax legislation.

Payments to foreign affiliates

There are no specific provisions in the tax legislation with regard to payments towards foreign affiliates.

Group taxation

There are no tax consolidation provisions in Macedonia.

Transfer pricing

The transfer pricing provisions cover not only the expenses but also the revenues resulting from related party transactions. If the taxpayer incurs expenses/realises revenues from transactions with related parties that are higher/lower than the market level, the difference between the market price and the transfer price shall be considered as a taxable expense or understated revenue. Consequently, this difference would be subject to CIT.

The cost plus method, in addition to the comparable uncontrolled price method, are applicable. No reference is made to other methods accepted by the Organisation for Economic Co-operation and Development (OECD).

The part of the interest paid on loans to related parties that exceeds or is below the interest payable between unrelated parties is considered taxable unless there is reasonable justification for such differences.

Penalty interest imposed between related parties shall be considered as a taxable expense.

Transfer pricing rules do not apply on expenses for interest under credits and penalty interest paid to related parties that are banks or financial institutions.

Upon request by the Macedonian tax authorities, companies should provide enough documentation as evidence that the transactions with related parties were in line with the 'arm's-length principle'.

Thin capitalisation

A proportional part of the interest related to a loan received from a non-resident shareholder, who directly holds at least 25% of the capital in the company, that exceeds three times its share in the equity in the company will be taxable during a tax period. Thin capitalisation rules do not apply to loans received from banks or other financial organisations. Also, thin capitalisation rules do not apply for newly established companies within the first three years of operation.

Controlled foreign companies (CFCs)

There are no CFC rules in Macedonia.

Tax credits and incentives

Foreign tax credit

The taxpayer is allowed a tax credit for the tax paid on foreign income abroad, up to the amount of tax payable for that income in Macedonia. However, a tax credit for the

WHT paid abroad is allowed only if a double tax treaty (DTT) is in place and in case the Macedonian company obtains proof for the amount of tax paid in the foreign country.

Reinvested profit

The CIT Law introduces a possibility for decreasing the tax base for the year for the amount of profit reinvested for development purposes of the local taxpayer. The amounts from the reinvested profit that would be recognised for the purposes of the above tax relief cover investments both in tangible and intangible assets, except for some explicitly listed types of assets intended for administrative purposes.

In order to be able to utilise the above tax relief, the taxpayers must maintain ownership over the assets purchased with the reinvested profit for a period of five years as of the day of their purchase.

Technological industrial development zones

A taxpayer that is a registered user within a technological industrial development zone is exempt from CIT payment for a period of ten years from the commencement of the performance of the activity in the zone or until the state aid amount is fully exhausted under terms and conditions and according to a procedure determined with the Law on Technological Industrial Development Zones.

Withholding taxes

All domestic legal entities and domestic physical persons that are registered for carrying out an activity, as well as foreign legal entities or physical persons that are non-residents but have a PE in Macedonia, are obligated to withhold tax when paying certain types of income to a foreign legal person and to pay the tax withheld to a respective suspense account simultaneously with the payment of the income.

The WHT rate is 10% and is applied on the following forms of incomes payable abroad:

- Dividends.
- Interest.
- Royalties.
- Income from entertainment or sporting activities in Macedonia.
- Income from management, consulting, financial services, or services related to research and development.
- Income from insurance or reinsurance premiums.
- Income from telecommunications services between Macedonia and a foreign country.
- Income from the lease of immovable property in Macedonia.

As an exception, WHT is not applicable to the following forms of income:

- The after-tax profit of a PE transferred to its foreign headquarters.
- Interest from bonds issued or guaranteed by the government.
- Interest on deposits in banks located in Macedonia.
- Income from transactions in state securities on the international financial markets.

If a DTT is in place, WHT shall be payable in accordance with the provisions from the DTT. Taxpayers are obligated to obtain approval from the Macedonian tax authorities prior to applying the tax rates from the DTT.

Macedonia has signed DTTs with the 49 countries listed in the chart below:

	WHT (%)			
Recipient	**Dividend**	**Interest**	**Royalties**	**Other income**
Non-treaty	10	10	10	10
Treaty:				
Albania (1)	10	10	10	0
Austria (1)	0/15	0	0	0
Azerbaijan	8	8	8	0
Belarus (2)	5/15	10	10	0
Belgium (1)	5/15	10	10	0
Bosnia and Herzegovina (2)	5/15	10	10	0
Bulgaria (2)	5/15	10	10	0
China	5	10	10	0
Croatia (2)	5/15	10	10	0
Czech Republic (2)	5/15	0	10	0
Denmark (2, 3)	0/5/15	0	10	0
Egypt (4)	10	10	10	0
Estonia (2)	0/5	5	5	0
Federal Republic of Yugoslavia (2, 5)	5/15	10	10	0
Finland (1)	0/15	10	0	0
France (1)	0/15	0	0	0
Germany (1)	5/15	5	5	0
Hungary (2)	5/15	0	0	0
India (11, 12, 13)	10	0/10	10	0
Iran	10	10	10	0
Ireland (6)	0/5/10	0	0	0
Israel (4, 14)	5/15	10	5	0
Italy (2)	5/15	10	0	0
Kazakhstan (2)	5/15	10	10	0
Kosovo (2)	0/5	10	10	0
Kuwait	0	0	15	0
Latvia (1, 7)	5/10	5	5/10	0
Lithuania (1)	0/10	10	10	0
Luxembourg (2)	5/15	0	5	0
Moldova (2)	5/10	5	10	0
Morocco	10	10	10	0
Netherlands (1)	0/15	0	0	0
Norway (2)	10/15	5	5	0
Poland (2)	5/15	10	10	0
Qatar	0	0	5	0
Romania	5	10	10	0
Russia	10	10	10	0
Saudi Arabia (16)	5	0/5	10	0
Slovakia	5	10	10	0
Slovenia (2)	5/15	10	10	0
Spain (1)	5/15	5	5	0
Sweden (2)	0/15	10	0	0
Switzerland (2)	5/15	10	0	0
Taiwan	10	10	10	0
Turkey (2)	5/10	10	10	0

Recipient	WHT (%) Dividend	Interest	Royalties	Other income
Ukraine (2)	5/15	10	10	0
United Arab Emirates (15)	0/5	0/5	0/5	0
United Kingdom (9, 10)	0/5/15	0/10	0	0
Vietnam (4, 14)	5/10/15	10	10	0

Notes

1. The lower rate applies to dividends paid out to a foreign company that controls at least 10% of the share capital of the payer of the dividends.
2. The lower rate applies to dividends paid out to a foreign company that controls at least 25% of the share capital of the payer of the dividends.
3. The zero rate applies to dividends paid out to pension funds.
4. These DTTs are still not in force.
5. The DTT with Federal Republic of Yugoslavia now applies both to Serbia and Montenegro.
6. The zero rate applies to dividends paid out to recognised pension funds and to foreign companies that continuously control at least 25% of the share capital of the payer of the dividends for 12 months before the dividends payment. The 5% rate applies to dividends paid out to foreign company that controls at least 10% of the share capital of the payer of the dividends. The 10% rate applies to dividends paid out in all other cases.
7. The tax rate of 10% for royalties payments applies only for utilisation or right to utilise cinematographic films and films or tapes for radio and television transmission. The 5% rate applies on all other cases.
8. The DTT concluded by the Socialist Federal Republic of Yugoslavia (SFRY) is still applicable for Macedonia.
9. The zero rate applies to dividends paid out to pension schemes and to foreign companies that continuously control at least 25% of the share capital of the payer of the dividends for 12 months before the dividends payment. The 5% rate applies to dividends paid out to foreign company that controls at least 10% of the share capital of the payer of the dividends. The 15% rate applies to dividends paid out in all other cases.
10. The zero rate applies on interest paid on loans or prolonged credit paid from one enterprise to another enterprise and, on interest paid to the other contracting state, to one of its political divisions or municipalities or public entities of that state.
11. The zero rate applies in case the beneficial owner of the interest is the government, political or municipality subdivision; the Indian Reserve Bank, the Indian Export-Import Bank, and National Housing Bank; or any other institution based on additional agreement via exchange of letters by the authorised institutions.
12. The 10% rate applies on gross income from royalty or income from technical services (compensation for managerial, technical, and consulting services, income from services of technical and consulting personnel that is different from the income derived under article 14 and article 15 of the DTT).
13. The zero rate does not apply to income from lottery, races and horse races, card games, and other games of chance.
14. The 5% of the gross amount of dividends applies if the beneficial owner directly holds at least 70% of the share capital of the company paying the dividend. 10% applies if the beneficial owner directly holds at least 25% but less than 70% of the share capital of the company paying the dividend. 15% applies in all other cases.
15. Interest, royalties, and dividends paid to a resident of the other contracting state shall be taxable only in the other contracting state if the beneficial owner of the income is that other state itself, local government, local authority or the Central Bank thereof, Abu Dhabi Investment Authority, Abu Dhabi Office, International Petroleum Investment Company, Abu Dhabi Investment Council, Dubai Investment Company, Mubadala Development Company, United Arab Emirates (UAE) Investment Authority, Al Dafra Holding Company, or any other institution created by the government, a local authority, or a local government of that other state.
16. The interest tax rate under the DTT would be 0% in case the payer or the beneficial owner of the income is the government, an administrative subdivision, a local authority, the Central Bank, or any other financial institution wholly owned by the government.

Tax administration

Taxable period

The taxable period for which CIT is determined covers one calendar year.

Tax returns

Taxpayers are obligated to calculate and pay CIT on the basis of a CIT return, which must be submitted to the Public Revenue Office by the end of February of the following year or, if filed electronically, by 15 March of the following year.

Taxpayers who distribute profit arising from FY 2009 to FY 2013 are obligated to calculate and pay CIT on the basis of a tax return on profit distribution, which should be submitted to the tax authorities up to the date of profit distribution.

Small taxpayers who fall under the simplified tax regime are obligated to calculate and pay the tax due on the basis of a tax return on overall income, which should be submitted to the tax authorities by the end of February of the following year or, if filed electronically, by 15 March of the following year.

Payment of tax

Corporate taxpayers are obligated to pay monthly CIT advance payments during the year within 15 days of the end of each month.

Monthly CIT advance payments are calculated as one-twelfth of the CIT obligation for the previous calendar year, increased by the index of cumulative retail price growth as determined by the State Statistical Bureau.

The difference between the advance payments and the final CIT liability as determined in the CIT return should be paid within 30 days as of the deadline for submission of the CIT return. Daily penalty interest of 0.03% is due on late tax payments.

In case the sum of monthly advance payments exceeds the final tax liability in the CIT return, the taxpayer may request for a refund of overpaid tax. The tax should be refunded within 60 days as of the date of submitting the request. If the taxpayer does not ask for a tax refund, the overpaid amounts will be considered as advance payment for the following period.

Tax audit process

The tax audit may include one or more taxes, one or more fiscal periods, or only certain tax issues. The extent of the tax audit is determined solely by the tax authorities and is based on their estimation of risk in respect of the specific taxpayer. VAT audits are commonly conducted when VAT refund is requested by the taxpayer, and, in this case, the tax audit is usually limited in the area of VAT. The advance notice for tax audit for large taxpayers and concerns is four weeks, whereas the advance notice for all other taxpayers is two weeks. In cases where the tax authorities find that it would represent an obstacle for the tax audit, an advanced notice will not be given to the taxpayer.

Statute of limitations

The statute of limitations is five years as of the end of the calendar year in which the tax event occurred. In case of tax evasion, the statute of limitations is ten years as of the end of the calendar year in which the tax event occurred.

Topics of focus for tax authorities

There are currently no topics of particular focus for the tax authorities.

Other issues

Choice of business entity

The Macedonian Trade Companies Law provides for the following types of entities:

- General partnerships.
- Limited partnerships.
- Limited liability companies.
- Joint stock companies.
- Limited partnerships by shares.
- Foreign business entities may register a branch office or a representative office in Macedonia.

Madagascar

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Significant developments

Change of threshold for impôt synthetic

The threshold to determine whether an entity is subject to impôt synthetic of 5% on revenue or to income tax of 20% on profit is changed from 20 million Malagasy ariary (MGA) to MGA 100 million. Companies having annual revenue of more than MGA 100 million are subject to corporate income tax (CIT) of 20%.

Change of threshold for value-added tax (VAT) vendor status

The threshold to determine whether an entity is a VAT vendor or not is changed from MGA 200 million to MGA 100 million.

Tax deductibility of benefit in kind

50% of the difference between the total benefits in kind and the value of benefits in kind included in the tax base of salary income tax are not deductible expenses.

Taxes on corporate income

Taxation of residents

Resident corporate entities are subject to CIT based on realised worldwide income.

A corporate entity having an annual turnover of less than MGA 100 million is subject to CIT at a rate of 5% of 70% of turnover, with a minimum tax of MGA 16,000.

A tax reduction of 2% of the amount of purchases of goods and equipment subject to regular invoices is applicable. However, tax due cannot be less than 3% of the turnover.

A corporate entity registered in Madagascar and having an annual turnover exceeding MGA 100 million is subject to CIT at a rate of 20%.

The tax payable cannot be less than 5/1,000 of turnover plus a fixed amount of MGA 100,000 for taxable persons carrying on agricultural, artisan, transportation, industrial, hotel, or mining activities. The minimum tax cannot be less than 5/1,000 of turnover plus MGA 320,000 for other activities.

Taxation of non-residents

Only Madagascar-source income is taxable for non-residents.

Revenue of foreign businesses providing services to a Madagascar taxpayer that do not have a permanent establishment (PE) in Madagascar is subject to withholding tax (WHT) at a rate of 10% of any income realised in Madagascar. However, dividend income is exempt and financial loan interest is subject to WHT of 20%. *See the Withholding taxes section for more information*.

Local income taxes

No regional or local income taxes are applicable in Madagascar.

Corporate residence

Companies are considered resident in Madagascar if they are registered in Madagascar or have a legal existence in Madagascar.

Permanent establishment (PE)

PE refers to a fixed place of business through which a company carries out the whole or part of its activities, including:

- Management offices.
- Branches.
- Offices.
- Factories.
- Workshops.
- Mining sites, oil or gas wells, quarries, or any other places for the extraction of natural resources.
- Building sites, construction or installation projects, or supervising activities lasting for more than six months in relation to those projects.
- Provision of services by a company, including advisory services, via employees or other staff hired by the company to this end, only if such activities are carried out in Madagascar for a total period of 183 days for a 12-month period either starting or ending during the fiscal year involved, for the given or a related project.

PE does not include:

- The use of facilities for the storage or display of goods or merchandise belonging to the company.
- Exploiting a stock of goods or merchandise belonging to the company for the sole purpose of either storage or display or of being processed by another company.
- Exploiting a fixed place of business for the sole purpose of:
  - either purchasing merchandise or collecting information for the company
  - carrying out any other activity of preparatory or auxiliary character for the company, or
  - pursuing any combination of the activities mentioned above, conditional on the overall activity of the fixed place of business, as resulting from this combination, remaining of preparatory or auxiliary character.

Other taxes

Value-added tax (VAT)

The VAT rate is 20%, and the VAT rate on export is 0%. VAT input is recoverable under certain conditions.

VAT is applicable to all transactions realised in Madagascar by a VAT vendor. Services are considered to be performed in Madagascar if such services are used in Madagascar or invoiced to a taxpayer established in Madagascar.

Business engaged in e-commerce is subject to VAT.

Transport companies are allowed to claim VAT input on gasoline used for land transportation. The objective is to reduce the impact of cost of oil and gas on transportation fees.

Any corporate entity or individual person who realises an annual turnover exceeding MGA 100 million is a VAT vendor. For a business realising annual revenue less than MGA 100 million, VAT vendor registration is an option.

A foreign company that has no PE in Madagascar but renders services to a Madagascar taxpayer must appoint a tax representative to collect and pay VAT on its behalf. Otherwise, the beneficiary of the services must collect and pay VAT on behalf of the foreign supplier.

All transactions made by a VAT vendor with a non-VAT vendor must be done via the banking system when the value of the transaction exceeds a threshold fixed by Decree.

Any suppliers not registered as VAT vendors engaged in public market transactions are subject to VAT at a rate of 8%, which is representative of income tax. VAT is withheld by the public treasury and paid directly to the tax authorities.

Customs and import tax

The importation of goods is subject to payment of customs and import tax payable to the customs office.

In addition, Gasynet fee, corresponding to 0.5% of the cost, insurance, and freight (CIF) value of goods, is applicable on importation of goods.

Excise duty

Excise duty applies on a range of goods and services, such as tobacco, alcohol, lighters, and communication by mobile phones. Excise duty rates range from 5% to 325% or are a fixed amount per litre or per unit.

Real estate ownership tax

Real estate ownership tax is imposed annually at the rate of 5% to 10% on the rental value of the property. Land ownership is also taxable at a rate depending on the nature of the land.

Registration fees

Registration fees are applicable to transfers of title ownership (e.g. sales, donations) of movable and immovable assets, to transfers of interests, to share capital increases, and to lease agreements.

Registration fee rates are 0.5% to 5%, depending on the nature of the transaction. The rate of 5% is applicable mainly on transfers of assets and transfers of business.

Payroll tax

Salary income taxes, called *Impôt sur les Revenus Salariaux et Assimilés* (IRSA), are levied at a rate of 20% on the total taxable remuneration of employees, including salaries, allowances, and benefits in kind. Employers are responsible for withholding and paying salary income taxes on behalf of employees.

Social security contributions

Employers must contribute to *Caisse Nationale de Prévoyance Sociale*, Madagascar's national social security fund, which includes pensions and accident insurance. The contribution is capped at 13% of eight times the legal minimum salary per employee.

Health contributions

Employers must contribute to the health system assessment at a rate of 5% of the total amount of taxable remuneration of its employees. The contribution may or may not be capped at 5% of eight times the legal minimum salary per employee, depending on the health system organisation where the company is affiliated.

Tax on insurance contracts

All insurance or life annuity conventions concluded with a company, insurance firm, or with any other Madagascan or other insurer are subject to an annual tax on insurance contracts at a rate of 3% to 20% levied on the insurance premiums.

Para-fiscal taxes

Concerning local tax, generally called 'para-fiscal taxes', the following are introduced in the tax code applicable from January 2017. These local taxes are not new since they already existed; however, their introduction to the tax code results from the principle that only a financial act can introduce tax. The following are the maximum rates/amounts:

- Civil protection tax: MGA 5,000 per domestic animal or bladed weapon (*arme blanche*).
- Residence tax for development: MGA 5,000.
- Tourist tax (or stay tax): MGA 500 to MGA 2,000 per night/room.
- Tax on mineral waters: MGA 5 per litre.
- Advertising tax: MGA 30 to MGA 30,000 per square metre.
- Tax on water and/or electricity: 10%.
- Tax on entering parties, shows, and various events: 3% to 5%.
- Tax on pylons, antennas, relays, or masts: MGA 600,000.
- Tax on radio and television games: MGA 10/sms; MGA 20/call.

Branch income

The tax on branch income is the same as for corporate income. The branch income tax base is the income realised by the branch in Madagascar.

Income determination

Inventory valuation

There are no provisions for valuing inventories or determining inventory flows in Madagascar. The tax treatment will follow the accounting treatment.

Capital gains

Capital gains realised from the sale of shares held in a company of which the entire or partial value is derived, either directly or indirectly, from goods located in Madagascar, or from rights thereof, are subject to income tax at a rate of 20%.

Capital gains made by a company on the sale of assets and interests are considered as normal business income that is subject to CIT.

Dividend income

Dividends received by a company are considered as business income subject to CIT.

Certain dividends from a subsidiary may be excluded from CIT (*see Dividends exclusion in the Group taxation section*).

Stock dividends

Stock dividends are unusual, but they are considered as business income that is subject to CIT.

Interest income

Interest income received by a resident taxpayer from another entity established in Madagascar is subject to WHT at a rate of 20%. Revenue already subject to WHT is no longer taxable to CIT.

Royalty income

Royalty income received by a resident taxpayer is considered as normal business income subject to CIT.

Foreign income

Foreign income earned by corporate bodies situated in Madagascar is considered as normal business income subject to CIT unless a tax treaty is established and indicates otherwise. There is no provision for tax deferral in Madagascar.

Deductions

Depreciation

The amount of deductible depreciation should not exceed the amount that is calculated according to the following rates of depreciation provided by the law:

Asset	Depreciation rate (%)
Industrial buildings	5
Plant and machinery	10
Mining exploration and development (licence)	33
Transportation (car)	20
Transportation (utility cars, vans, trucks)	25
Computers	25
Electricity generators	10

With the exception of buildings, it is also possible to practise a graduated depreciation. In this case, the annual depreciation corresponds to 30% of the net book value of the asset.

In case of loss, depreciation of assets can be deferred and carried forward to the next financial years until absorption.

Goodwill

There is no provision concerning deductibility of goodwill in the Madagascar tax code.

Start-up expenses

There is no specific tax provision on start-up expenses. Accounting rules are applicable for the profit and loss recognition.

Start-up and prospecting expenses for the installation of an overseas establishment, as well as the costs of running such a foreign establishment, for the first three years are tax deductible. However, the amounts deducted must be reported, in equal amounts, to the taxable income of the five consecutive years from the fifth year following the creation of the foreign establishment.

Interest expenses

Interest expenses are deductible. However, interests on inter-company loans are subject to thin capitalisation rules (*see Thin capitalisation in the Group taxation section for more information*). In addition, interest on inter-company loans is not deductible if the loan agreement is not documented by a written agreement submitted according to registration procedures.

Bad debt

To be tax-deductible, provisions for doubtful debt must be subject to justification of existence of amicable or judicial settlement. The claims must be individualised.

Charitable contributions

Payments made for the benefit of educational, social, or cultural recognised public associations; accredited bodies for scientific research; or for the promotion and creation of businesses for achievement of planned economic and social development are deductible within the limits of 0.5% of annual turnover.

Gifts in kind or in cash granted in case of natural calamities and donations in cash granted to a corporation established by decree for the interest of the nation are also deductible.

Any other charitable contributions are not deductible.

Deductible social expenses for mining companies

Donations and expenses related to the social responsibility of mining companies are deductible if they are mandatory or provided in the *Cahier des charges*.

Expenditures for site security and high intensity of manpower (haute intensité de main d'oeuvre or HIMO), provided that expenses were subject to WHT at a rate of 5%, are also deductible.

Deductible wages

Salaries and wages that are not included in salary income taxes or not declared to *Caisse Nationale de Prévoyance Sociale* are not deductible.

Only 50% of the difference between the total benefits in kind and the value of benefits in kind included in the tax base of salary income tax are deductible expenses.

Fines and penalties

Fines and penalties are not deductible for CIT purposes.

Taxes

Except for CIT, taxes in relation to business in Madagascar are deductible.

Third-party taxes borne by the company are not tax-deductible.

Net operating losses

Accumulated loss can be carried forward for the next five financial years following the period in which the loss occurs. Carryback of losses is not permitted in Madagascar.

Payments to foreign affiliates

For branches, the deductible amount of overhead that the head office can charge to the branch is limited to 1% of the turnover of the branch.

For interest on inter-company loans, see Thin capitalisation in the Group taxation section.

Payments to foreign companies established in a country having a very favourable fiscal regime

Payments made to a foreign company established in a country having a very favourable fiscal regime are not tax deductible unless there is proof of effectiveness of the services and reasonability of the amount.

Group taxation

There is no provision regarding group taxation in Madagascar, except for the following:

For entities subject to the actual tax regime, a parent-subsidiary regime option is established by which the net dividends received by the parent company from its subsidiary are excluded from the tax base of the parent company. However, a share of fees and expenses, uniformly fixed at 5% of the amount of dividends paid, must be reintroduced into the tax base.

Transfer pricing

There is a provision in the tax law allowing the tax authority to claim a tax adjustment in cases where the transactions between a Madagascar entity and a foreign entity controlling or controlled by the Madagascar entity are not concluded at fair market value.

The following transfer pricing methodologies are acceptable:

- Methods of comparable prices on the free market.
- Resale price method.
- Cost plus method.
- Transactional method on net margin.
- Transactional method on profit split.

Effectiveness of services and fair market value must be justified by appropriate documentation.

Thin capitalisation

Under Malagasy tax law, deductible inter-company financial interest cannot exceed the interest calculated on twice the share capital at the rate of the Central Bank of Madagascar plus two points (the rate of the Central Bank of Madagascar is 9.5%).

Inter-company loan agreements must be submitted according to registration formalities within two months from the execution date. Failure of submission of an inter-company loan agreement according to registration formalities implies non-deductibility of interest on the inter-company loan.

Dividends exclusion

Dividends received by a shareholder holding more than 75% share capital from its subsidiary are excluded from business revenue subject to income tax.

Controlled foreign companies (CFCs)

There is no special provision in relation to CFCs in Madagascar.

Tax credits and incentives

The following activities benefit from a special tax and/or customs regime:

Microfinance activity

Microfinance benefits are available for entities specialising in lending money on the basis of small or medium scale value. Entities duly licensed to practise microfinance activities are exempt from CIT during the first five years. After this period, the microfinance company is subject to CIT at a rate of 20%.

Free zone (free trade zone)

Free zone law is available for industrial and other service providers that export all of their products. If eligible under the free zone law, a CIT exemption is provided during the first two to five years and a reduced CIT of 10% is levied thereafter. Exemption from customs duties on importation is also provided.

Companies investing in renewable energy, tourism, industrial, civil work and construction, and transformation

Companies investing in renewable energy, tourism, industrial, civil work and construction, and transformation can benefit from a tax reduction equal to the tax calculated on 50% of the amount of investment that they realised during the related tax year. The right to reduction that can be used for the tax year cannot exceed 50% of tax actually due. The balance is carried forward with the same limitation to subsequent years, until clearance.

Big investment mining

A mining company committing to invest more than 50 million United States dollars (USD) is considered a big investment mining company. The big investment mining law provides a minimum income tax exemption, a reduced CIT rate for the transformation entity (i.e. the entity in charge of processing the extracted minerals), exemption from custom and importation duties, and VAT reimbursement on locally purchased equipment and investments.

Petroleum code

The petroleum code provides a custom and importation duties exemption for hydrocarbon research, exploration, and exploitation activities.

Leasing law

The leasing law provides that leasing activities can benefit from CIT exemption and reduction of tax rate during the first four years.

Foreign tax credit

Except under a tax treaty, there is no foreign tax credit rule under Malagasy tax law.

Withholding taxes

WHTs are levied as follows:

- Purchases of goods and services from non-registered suppliers by a registered supplier are subject to WHT at a rate of 5% payable to the tax authorities within 15 days following the month of payment of the supplier.
- *Impôt sur les revenus des capitaux mobiliers* (IRCM): WHT on interest of 20% is applicable on financial loan interest. However, interest paid to banks, financial institutions, and foreign financial organisations is exempt.
- WHT of 20% is applicable on remuneration of a member of a board of directors or a single director.
- Income tax for non-resident entity: Management fees, royalties, technical and assistance fees, licence fees, equipment rental fees, and any income realised by foreign suppliers is subject to WHT at a rate of 10%.

Madagascar has signed two tax treaties.

	WHT (%)		
Recipient	**Dividends**	**Loan interest**	**Royalties, management fees, services fees**
Non-treaty	0	20	10
Treaty:			

Madagascar

	WHT (%)		
Recipient	**Dividends**	**Loan interest**	**Royalties, management fees, services fees**
France	25 (max)	15	15 (max)
Mauritius	10 (max)	10	5 (max)

Tax administration

Taxable period

The financial year may be spread over any period of 12 months. There is no need to obtain prior authorisation in order to close the financial year on a date other than 31 December or 30 June.

Tax returns

CIT returns are due before 15 May each year for companies whose financial year ends at 31 December, before 15 November each year for companies whose financial year ends at 30 June, and no later than the 15th day of the fourth month from the date of closing of the financial year for all other year-ends.

Payment of tax

CIT is payable bimonthly in provisional instalments. The balance is payable before 15 May each year for companies whose financial year ends at 31 December, before 15 November each year for companies whose financial year ends at 30 June, and within four months from the date of closing of the financial year for all other year-ends.

Taxpayers can decide to suspend the payment of bimonthly income tax instalments, but they must pay a penalty of 80% if the final tax due is more than the previous year's income tax.

WHT on foreign services is payable to the tax authorities within one month of the date of payment.

WHT on interest and on payments to members of boards of directors are payable before 15 May each year for companies whose financial year ends at 31 December, before 15 November each year for companies whose financial year ends at 30 June, and no later than the 15th day of the fourth month from the date of closing of the financial year for all other year-ends.

Tax audit process

The tax authority carries out audits of a selection of tax returns, usually at the taxpayer's place of business. Audits may be carried out at any time prior to the expiration of the statute of limitations.

During tax audit, tax authorities can access all the taxpayer data available on servers, terminals, and any supporting systems.

After examination of available information, the tax authority issues a primary notice, and the taxpayer has 30 days after the date of reception of the primary notice to answer and submit its written objection to the tax authority.

The tax authority then issues the notice of assessment. 15 days from the notice of assessment, the taxpayer may request the opinion of the Tax Commission (CoFi). After obtaining the CoFi's opinion, the tax authority issues the final notification accompanied with the perception title.

30 days from the final notification, the taxpayer can file a claim to the Tax Director in Charge of Legislation and Dispute. The Tax Director in Charge of Legislation and Dispute has 60 days to issue its decision. The decision of that body may be further appealed to the Court (State Council) within 30 days.

Statute of limitations

The tax limitation period is three years.

Topics of focus for tax authorities

Areas where tax authorities usually claim adjustment are:

- VAT reverse on foreign services.
- Completeness of VAT output on revenue.
- Sales without invoices.
- Expenses without invoices.
- Employees' remuneration not subject to salary tax.
- Payment to non-registered suppliers.

Malawi

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Significant developments

Effective 1 July 2017:

- Introduction of a 20% penalty on any overdue tax liability plus interest at the prevailing bank lending rate plus 5% *per annum* for each month or part of the month that the tax remains unpaid.
- Increasing penalties for offences to 200,000 Malawian kwachas (MWK) for the first month plus an additional MWK 50,000 for each month or part thereof where a person:
  - fails to comply with any notice served by the Commissioner General under the Taxation Act
  - gives incorrect information or omits any relevant information from any statement required to be made to the Commissioner General
  - fails to keep records, books, or accounts required to be kept
  - fails to comply with provisions requiring the appointment of a public officer of the company, or
  - fails to furnish any other person with a certificate of the extent of the examination of the records in preparing the schedules supporting any return.
- Increasing the penalties for failure to or defaulting to file prescribed returns. The penalties are now MWK 300,000 for the first month and MWK 50,000 for each month or part thereof that the failure continues.
- Increasing penalties for omissions, wrongful deductions, and claims, as well as failure to withhold and remit tax on income due to persons not resident in Malawi, to 20% in the first month or part thereof and interest at the prevailing bank lending rate plus 5% *per annum* for each month or part of the month that the tax remains unpaid.
- Any intent to defraud is now subject to a penalty of the greater of MWK 200,000 and twice the difference between the tax charged and what would have been charged.
- Assisting in making an incorrect return is subject to a penalty of MWK 200,000 in the first month or part thereof and an additional MWK 10,000 for each month or part thereof that the penalty remains unpaid.
- There are MWK 1 million penalties for obstructing officers, forceful rescue of seized property, physical assault of officers, and inciting a person to refuse to pay tax.
- The transfer pricing legislation has been refined, related parties have been defined, and documentation regulations, as well as general transfer pricing regulations, have been introduced. Maintenance of contemporaneous documentation is now a mandatory requirement.
- There are now penalties for failure to complete documentation in compliance with withholding tax (WHT) regulations.
- There are also penalties and interest for failure to remit the WHT and pay-as-you-earn (PAYE), as well as fringe benefits tax.

Taxes on corporate income

Malawi does not have separate legislation for the determination of taxable income of different types of legal persons. Taxation of all income is included in the Taxation Act.

Section 11 of the Taxation Act defines income as the total amount in cash or otherwise, including any capital gain, received by or accrued to a person in any year or period of assessment from a source within or deemed to be within Malawi. The taxpayer's assessable income excludes any amount exempt from tax under this Act.

Income deemed to arise in Malawi

The liability for Malawi tax is based on whether the income is sourced from Malawi, irrespective of the residence of the recipient of such income. Certain transactions may be deemed to be from a source within Malawi even if carried out outside Malawi. Section 27 of the Taxation Act limits the income that may be deemed to have arisen in Malawi to the following:

- Remuneration for services rendered or work performed in Malawi.
- Remuneration for services rendered or work performed in or out of Malawi where the amount may be claimed as a tax-deductible expense by a permanent establishment (PE) in Malawi.
- Amounts incurred, claimed, or claimable in connection with a PE in Malawi.
- Realised exchange gains and losses arising in connection with a PE in Malawi or foreign exchange assets and liabilities held in Malawi.
- Capital gains and losses realised with respect to tangible property located in Malawi and interests in companies incorporated in Malawi.
- Interest not charged on a loan by a lender to another person is deemed to be income accruing to the lender.

Summary of tax rates

Entity	Income tax rate (%)
Locally incorporated companies (1)	30
Branches of companies not incorporated in Malawi	35
Companies in Export Processing Zones	30
Companies in priority industries (2):	
For a period not exceeding ten years	0
In all other cases for companies incorporated in Malawi	15
In all other cases for Malawi branches of external companies	20

Notes

1. In the case of a mining company, there is a mineral royalty, as prescribed in the regulations, as a separate tax. The mineral royalty is a tax-deductible expense.
2. Agricultural produce processing and power generation are designated as priority industries.

Non-resident tax

Non-resident tax is payable on income sourced from Malawi at the rate of 15% of the gross income and 10% for income derived from a mining project by way of interest, royalty, payment for independent personal services, or dividend.

Any income payable to a person who is not resident in Malawi (i.e. who has not been in Malawi for an aggregate period of 183 days) arising from a source within Malawi is liable to a final WHT of 15% of the gross of such income. Non-resident tax is applicable where the recipient of the income does not have a PE in Malawi from which the income emanated.

Non-resident tax may not be withheld on income of residents of countries that have a standing double tax agreement (DTA) with Malawi, subject to the provisions of the specific DTAs. *For details of applicable WHT rates, see the Withholding taxes section*. Currently, the following countries have a DTA with Malawi: Denmark, France, Norway, South Africa, Sweden, Switzerland, and the United Kingdom.

Local income taxes

There are no district or local income taxes in Malawi.

Corporate residence

A corporate entity is considered a resident for tax purposes in Malawi if it has a PE in Malawi.

Permanent establishment (PE)

The Taxation Act defines a PE as 'an office or other fixed place of business through which business activity is carried on'. This short definition is wide in scope. Care must be exercised when considering this definition in situations that may be affected by a DTA. Each DTA contains a specific and far more detailed definition of what constitutes a PE.

Other taxes

Value-added tax (VAT)

VAT is applicable on taxable goods and services. There are three classes of supplies for VAT: taxable supplies (at the rate of 16.5%), zero-rated supplies, and exempt supplies.

A taxable person can claim input VAT on inputs used in making taxable supplies.

A taxable person should complete VAT returns and make VAT payment, where applicable, on a monthly basis within 25 days after the end of the month.

Zero-rated supplies include exercise books, fertilisers, motor vehicles for the transport of goods, and salt.

The following supplies are tax exempt: machinery and financial services.

Customs duties

Customs duty is applicable on goods imported into Malawi. The basis for calculating duty is cost, insurance, and freight (CIF). There are three types of import duties: customs duty, import excise, and import VAT. The rate of custom duty varies from product to product.

The following are the customs and excise measures that are effective in Malawi:

- Returning residents will have to clear, duty free, a motor vehicle owned for more than 12 months under CPC 430.

- Duty free on importation of diagnostic and laboratory reagent under CPC 405 by Health Institutions.
- Removal of VAT on imported goods on water supply.
- Removal of duty on imported electronic fiscal devices.
- Removal of taxes applicable on large buses with seating capacity of more than 45 passengers (including the driver).
- Reintroduction of the Industrial Rebate System. This is a major relief to the manufacturing sector; however, given the abuse of the scheme in the past and the Minister's intimation, it will be subject to serious monitoring by the Malawi Revenue Authority (MRA). Taxpayers will be required to register with the MRA.
- Other measures are in alignment with the Common Market for Eastern and South Africa (COMESA) and South African Development Community (SADC) tariff structures.

Excise duties

Domestic excise is chargeable on certain goods manufactured in Malawi and on certain services, such as alcoholic drinks, tobacco, and cell phone airtime. The rate of excise varies depending on the goods and services.

Tobacco levy

Buyers of tobacco must pay a levy of 0.2% for every kilogram of tobacco bought.

Property taxes

There are no property taxes in Malawi.

Transfer taxes

There are no transfer taxes in Malawi.

Stamp duties

Stamp duties apply on certain documentation.

Turnover tax

Turnover tax is applicable for businesses with a turnover between MWK 2 million and MWK 6 million. The turnover tax rate is 2% of turnover.

Resource rent tax (RRT) for miners

Miners pay RRT of 15% on after-tax profits, determined by using a prescribed formula. The prescribed formula is:

$$r = (40.5 - t) / (100 - t) \times 100$$

Where:

- r is the rate of RRT expressed as a percentage, and
- t is the rate applicable for income tax on companies.

Payroll taxes

Under pay-as-you-earn (PAYE) regulations, the employer is required to withhold tax from employees' salaries and remit to the tax authority on their behalf. There are penalties for non-compliance with the regulatory requirements.

Social security contributions

Under the National Pension Scheme (NPS), an employee contributes a minimum of 5% of the pensionable emoluments while the employer contributes at least 10% of the employee's pensionable emoluments. Contributions by the employer are tax deductible up to a maximum of 15% of the employee's pensionable emoluments while those made by the employee are not.

Fringe benefits tax (FBT)

A fringe benefit is defined as any asset, service, or other benefit in kind provided by or on behalf of an employer to an employee if such benefit includes an element of personal benefit to the employee. The employer providing such benefits is liable for payment of FBT. FBT is charged at the rate of 30% of the taxable figure.

Take note that a benefit need not be wholly for personal use in order to be considered for FBT.

Note as well that no benefit in cash, no matter what it is termed as, can be treated as a fringe benefit. All monies paid in cash (rather than in kind) should be considered for PAYE deduction.

However, subsistence allowances, given to employees working out of their duty station for instance, presumably to cater wholly, exclusively, and necessarily for their needs, such as accommodation, meals, transport, etc., ought not be taxed. This applies also for reimbursement of expenses incurred in business.

Every employer shall register for FBT within the month in which one begins to provide fringe benefits.

The sums due as FBT shall be remitted to the MRA in quarterly instalments not later than 14 days after the end of each quarter of a period of 12 months ending 30 June, and remittance should be accompanied with a duly completed FBT return in Form FBT 2.

Note that the value for FBT should not be included in the employee's certificate of gross emoluments.

Assessment of housing fringe benefits

The taxable value of a housing fringe benefit is the greatest of (i) 10% of salary where the house is unfurnished, (ii) 12% of salary if furnished, or (iii) the rental value.

Where the house occupied by the employee is owned by the employer, the taxable value is reduced by 50%.

Motor vehicles

FBT is applicable on motor vehicles allocated for use by members of staff and does not include pool cars or cars that are strictly commercial in nature.

The taxable value is 15% of the original cost of the vehicle.

School fees (for children/dependants)

50% of the cost to the employer for school fees is a taxable benefit, where payment is made directly to the educational institution. Education allowances payable to employees are not subject to FBT as the allowance is considered part of normal salary and taxable as such.

Utilities, household items, vacations, travel, and domestic services

The taxable value of utilities (e.g. electricity, water, and telephone expenses), household items, vacations, travel, and domestic services (e.g. gardener, cook, house boy, guard, nanny) is the entire cost to the employer. Except that for a house owned by the employer, the cost of a gardener, security guard, and watchman shall not constitute a taxable benefit.

Interest-free loans and loans given at interest lower than the commercial rate

Where an employer gives a loan to an employee that is interest-free or bears interest that is lower than the predetermined commercial rate, the difference between the interest offered and the commercial rate is a taxable benefit.

Branch income

There is a 35% tax on taxable income of a branch of a foreign company.

No dividend WHT is applicable on repatriation of profits.

Income determination

Inventory valuation

Inventory is stated at cost or net realisable value (i.e. market price) for tax purposes. There is no specific requirement for the valuation of cost. The only legal emphasis is consistency in the application of the selected method. This means that one cannot change from one valuation method to another over different tax periods.

Capital gains

The tax basis for capital gains is the cost of the asset adjusted by the applicable consumer price index (inflation index). Once determined, the taxable gain is subject to corporate tax at the rate applicable to the particular entity.

Capital gains arising from the disposal of personal and domestic assets not used in connection with trade are exempt from corporate tax.

Capital gains arising from the sale of shares held for more than one year traded on the Malawi Stock Exchange are not taxable.

Rollover relief

If a business asset is sold and the taxpayer acquires a qualifying replacement asset, the taxpayer may claim rollover relief. This means that the taxpayer does not immediately pay the tax on the gain. Instead, the cost of the replacement asset is reduced by the amount of the gain. The taxpayer must declare this in the tax return.

A qualifying replacement asset is an asset similar to, or related in service or use to, the asset disposed of. The replacement asset must be acquired within 18 months of the disposal giving rise to the gain.

Dividend income

Dividend income is exempt from corporate tax; however, dividends received from Malawi sources are subject to a 10% dividend WHT, which is a final tax. Note that although the word 'final' has not been defined, it is applied as meaning that dividend WHT suffered may not be offset against an income tax liability.

Interest income

Interest is added to the other income categories and taxed at a rate applicable to the person that earns the income. There is a mandatory WHT on interest earned from financial institutions unless the earner is exempted.

There is deemed interest on any interest-free loans and balances. The deemed interest is taxable income to the lender.

Royalty income

Except for mineral royalties, royalty income is added to other income and taxed at a rate applicable to the person that earns it. Royalties earned from a mining project are taxable at 10% where the recipient in a non-resident.

Foreign exchange gains and losses

Foreign exchange gains realised on foreign currency assets or liabilities are taxable.

Foreign exchange losses realised on foreign currency assets or liabilities are tax deductible to the extent of any unrealised foreign exchange gains; otherwise, they are carried forward until there is no limitation.

Unrealised gains and losses are carried forward until realised and then included in income or allowable expenditures. The maintenance of records that accurately track unrealised exchange rate adjustments from year to year is necessary to ensure correct tax computations.

Tax-exempt income

The following are common examples of other tax-exempt income:

- The income of agricultural, mining, and commercial institutions or societies not operating for private pecuniary profit or gain of the members.
- The income of clubs, societies, and associations formed, organised, and operated solely or principally for social welfare or civic improvement or other similar purpose, provided that the income of such bodies may not be divided among or used for the benefit of the members or shareholders.
- The income of ecclesiastical, charitable, and educational institutions of a public character.

Foreign income

Generally, income whose source is not Malawi is not taxable in Malawi.

Deductions

Taxable income is calculated by deducting allowable items from assessable income. Section 28 of the Taxation Act defines tax-allowable deductions as any expenditures and losses (not being of a capital nature) wholly, exclusively, and necessarily incurred by the taxpayer for the purpose of trade or in the production of income.

Capital allowances

Capital allowances (i.e. depreciation allowances) are applicable as stipulated in the Taxation Act at various rates.

Capital allowances, which are available to companies and individuals in business, are allowed as follows:

	Allowances (%)		
Asset	**Initial**	**Investment**	**Annual**
Industrial and farm buildings, hotels, and docks (1, 2, 3)	10	40/100	5
Staff housing (3)	10	-	5
Plant, machinery, and equipment (1, 2, 3, 4)	20	40/100	10/20
Furniture and fittings (3)	20	-	10
Motor vehicles (3, 4, 5, 6)	20	-	20
Commercial buildings (7)	-	-	2.5
Computers	20	-	40

Notes

1. The 100% investment allowance is available only on new and unused qualifying assets, *as indicated above*, belonging to and used by a manufacturer or farmer. The rate for used qualifying assets is 40%. The investment allowance is claimable only in the first year of use.
2. Where an investment allowance is claimed, the initial allowance is not allowed to be claimed on the same asset. The initial allowance is claimable only in the first year of use.
3. Annual allowances at the above rates are based on cost less investment and initial and annual allowances previously granted.
4. Investment allowance on plant and machinery excludes motor vehicles intended or adapted for use on roads.
5. A 20% annual allowance is standard, but the Commissioner General may vary the amount.
6. No initial allowance is granted on private motor vehicles. These include saloons, sedans, station wagons, and double cabin pickups. However, the restriction does not apply where the motor vehicle is used for hiring purposes.
7. The building must be newly constructed at a cost of no less than MWK 100 million.

On disposal, assets are subject to balancing charges (capital gains) or balancing allowances.

If an asset is subject to extensive use, such as machinery working double shifts, so that its expected economic life is reduced, the Commissioner General may agree to increase the rates of annual allowances.

Lease, patent, trademark, and copyright premium

The tax-deductible amount of a premium paid for the right of use or occupation of land or buildings, plant or machinery, patent design, trademark, copyright, or any other property of a similar nature is one of the following:

- The amount of premium or consideration divided by the number of years for which the right of occupation or use is granted.
- Where the period for which the right of occupation or use is granted exceeds 25 years, the deduction is one-twenty-fifth of the premium or consideration.

The premium is tax deductible only where the asset or right with respect to which the premium or consideration is paid is used for the generation of income. If a taxpayer acquires ownership of the asset or right, no further deduction of the premium or consideration is allowed from the date ownership is acquired.

Goodwill

The legislation does not prescribe treatment for goodwill. It has been the practice that goodwill is not deductible for tax purposes.

Pre-operating expenditures

A manufacturer may claim as a deduction any expenditure incurred in the course of establishing the business, provided that the following are true:

- The expenditure was incurred not more than 18 months before commencing business.
- The expenditure would have been allowed as a deduction if it had been incurred after commencing business.

Interest expenses

Interest that arises out of financing operations is allowable, while interest due to late payment of a debt is not allowable.

Bad debt

Specific bad debts are tax deductible and taxable in the following year. Bad debts written off are allowable and taxable upon eventual recovery.

Charitable contributions

Donations to approved charities and approved non-profit institutions formed for the purpose of social welfare, civic improvement, educational development, or other similar purposes are deductible. The minimum individual donation allowable is MWK 500. The minimum donation for other approved charities is MWK 250. In both cases, there is no maximum donation.

Social contributions

50% of social contributions towards construction of hospitals and schools, and sponsorship of school sports activities, are tax deductible.

Research and development (R&D) expenditures

Research expenditures are fully allowable as a deduction if they are for 'experiments and research relating to trade'.

Pension contributions

The tax-allowable amount of ordinary pension contributions made by an employer to an approved pension fund is subject to limitations. The limit with respect to each employee is the lowest of one of the following *per annum*:

- The actual contribution.
- Up to 15% of employee's annual salary.

Fines and penalties

Fines and penalties are not tax deductible in any way.

Taxes
Taxes are not allowed as deductible expenses, except where they are local taxes.

Net operating losses
Current taxable income may be offset against net operating losses brought forward, and current operating losses may be increased by net unexhausted trading losses brought forward. Losses may be carried forward for six years. Net operating losses may not be carried back.

Payments to foreign affiliates
A deduction is allowed for payments to foreign affiliates if such payments are expended wholly, exclusively, and necessarily for the production of income or for the purposes of trade, and it can be demonstrated that the transaction is at arm's length.

Group taxation

Group taxation is not permitted in Malawi.

Transfer pricing
There are transfer pricing regulations in Malawi. The legislation requires taxpayers to have mandatory contemporaneous transfer pricing documentation. Malawi transfer pricing regulations follow the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines.

The transfer pricing legislation further provides for the definition of related parties, as well as general transfer pricing regulations.

There is also a tax anti-avoidance provision that is used to check transactions between related parties. If transactions between related parties result in profits that are lower than what would be expected if the company was trading with an independent party, then the tax authorities can challenge the transaction.

Thin capitalisation
Thin capitalisation has been introduced in Malawi. However, the rules and regulations governing thin capitalisation have not been enacted. The acceptable level of gearing is therefore not yet provided.

Consequently, there are no restrictions on the level of external borrowings. If a Malawi company wants to borrow money from a foreign entity (whether or not a bank), it will require exchange control approval. In such instances, the Reserve Bank does not consider the debt-to-equity ratio. It looks at the terms and conditions to see that they are what would be commonly available on the open market between unrelated parties. As you can see, this is an anti-transfer pricing measure.

If a new application is made for exchange control approval of foreign ownership (normally this is when there is a new business/investment into Malawi), the Reserve Bank will look at the external-debt-to-local-equity ratio. There are no fixed rules, but the Reserve Bank does not normally like external debt to be more than twice equity (i.e. 1:2 equity to external debt). It does give approval for external ownership where the proportion of external debt is higher than this as it looks at each proposal on its own merit. The applicant would have to justify the higher level of external debt in such a case.

Controlled foreign companies (CFCs)

There is no CFC regime in Malawi.

Tax credits and incentives

Foreign tax credit

Malawi does not have a provision for recognition of a foreign tax credit because the taxation regime is based on source.

Export allowances

Exporters, including those manufacturing in bond, are entitled to claim additional tax allowances for non-traditional exports:

- On the export of non-traditional products, there is a 25% tax allowance on taxable income derived from exports.
- There is a 25% transport tax allowance on international transport costs for non-traditional exports. Traditional exports are tea, coffee, cane sugar, and unmanufactured tobacco and tobacco refuse.

Export allowances may not be claimed in respect of exports from mining operations.

Investment allowance

There is a 100% investment allowance on new and unused industrial buildings, plant, and machinery for taxpayers in the manufacturing industry. A 40% investment allowance for used versions of the same items is also applicable.

Farming operations

Farming operations receive a 100% allowance with respect to expenditures incurred during any year of assessment on the following:

- Stumping, levelling, and clearing of land.
- Work in connection with the prevention of soil erosion.
- Boreholes.
- Wells.
- Aerial and geophysical surveys.
- Water control work, including any canal, channel, dyke, furrow, and any flood control structure, whether or not of a permanent nature.
- Water conservation work, meaning any reservoir, water dam, or embankment constructed for the impounding of water. In the case of water conservation work, the Taxation Act limits the amount deductible to amounts actually paid, where the farmer incurs a liability in terms of any law relating to natural resources.

Where a farmer derives taxable income from growing timber, the farmer may elect that the taxable income is determined in accordance with the following rules:

- Carryforward the cost of planting the timber until the timber reaches maturity.
- Add annually to the cost of planting the timber an amount calculated as 5% of the cost of planting the timber until the timber reaches maturity.

- When the timber is sold, a proportionate amount of the total of the carryforward cost and annual added cost is deducted from the proceeds.
- In each year of assessment, the annual added cost is treated as taxable income in the hands of the farmer.

A farmer may not deduct any expenditure that has been recovered through a subsidy or claim a capital allowance on any assets where the expenditure has been recovered through a subsidy.

Mining operations

Mining operations receive a 100% allowance with respect to mining expenditures incurred during any year of assessment. Mining expenditures are defined as capital expenditures incurred in Malawi by a person carrying on or about to carry on mining operations in Malawi:

- In searching for or in discovering and testing or in winning access to deposits of minerals.
- In the acquisition of or of rights in or over such deposits, other than the acquisition from a person who has carried on mining operations in relation to such deposits.
- In the provision of plant and machinery and industrial buildings that would have little or no value to such person if the mine ceased to work.
- On the construction of any buildings or works that would have little or no value if the mine ceased to be worked.
- On development, general administration, and management prior to the commencement of mining operations.

Persons engaged in mining operations are not entitled to claim the export tax allowance on non-traditional exports or the 15% transport tax allowance on international transport costs for non-traditional exports.

Withholding taxes

Dividend WHT

Dividend WHT is a final tax and is charged at 10%. The dividend is not included in the taxpayer's taxable income, and the WHT is not deducted from the taxpayer's tax liability.

Resident WHT rates

Nature of payment	**WHT rate (%)**
Royalties	20
Rents	15
Payment of more than MWK 60,000 *per annum* for any supplies to traders and institutions	3
Commission	20
Payment for carriage and haulage	10
Payment to contractors and subcontractors in the building and construction industries	4
Payment for public entertainment	20
Payment of more than MWK 15,000 for casual labour	20
Services	20
Bank interest	20

Nature of payment	WHT rate (%)
Fees	10

Non-resident tax (WHT on income due to non-residence)

Income sourced from Malawi but not attributable to a PE in Malawi is subject to a final WHT as follows:

- 10% on income derived from a mining project as interest, royalty, payment for independent personal services, or dividend.
- 15% on all other income.

Non-resident WHT treatment under tax treaties

	WHT (%)				
Recipient	Dividends	Interest	Royalties	Rent	Management fees
Non-resident (1)	15	15	15	15	15
Treaty:					
France	0	0	0	15	0
Norway	5	10	5	15	0
South Africa	10	15	0	0	15
Sweden	0	0	0	15	0
Switzerland	0	0	0	15	0
United Kingdom	0	0	0	15	15

Notes

1. *See Non-resident tax in the Taxes on corporate income section.*

WHT exemption

There is WHT exemption on local supplies for compliant resident taxpayers. A ‘compliant taxpayer’ is defined as one that has settled all their tax liabilities with the tax authorities, including customs and excise.

Tax administration

Taxable period

The taxable period for income tax is a 12-month period ending on 30 June of each year. For businesses whose year-end is 31 July and 31 August, the applicable tax year-end is the preceding 30 June, while all the years ending in the subsequent months have the following 30 June as a year-end.

Tax returns

Income tax returns are due within 180 days after the end of the financial year. There is now legislation that provides for electronic filing of tax returns.

Payment of tax

Tax is payable in quarterly instalments within 25 days of the month following the end of the quarter, with the balance of the tax being paid upon submission of the return.

Penalties and interest

- There is a 20% penalty on any overdue tax liability plus interest at the prevailing bank lending rate plus 5% *per annum* for each month or part of the month that the tax remains unpaid.
- Penalties for offences are MWK 200,000 for the first month plus an additional MWK 50,000 for each month or part thereof where a person:
  - fails to comply with any notice served by the Commissioner General under the Taxation Act
  - gives incorrect information or omits any relevant information from any statement required to be made to the Commissioner General
  - fails to keep records, books, or accounts required to be kept
  - fails to comply with provisions requiring the appointment of a public officer of the company, or
  - fails to furnish any other person with a certificate of the extent of the examination of the records in preparing the schedules supporting any return.
- Penalties for failure to or defaulting to file prescribed returns are MWK 300,000 for the first month and MWK 50,000 for each month or part thereof that the failure continues.
- Penalties for omissions, wrongful deductions, and claims, as well as failure to withhold and remit tax on income due to persons not resident in Malawi, to 20% in the first month or part thereof and interest at the prevailing bank lending rate plus 5% *per annum* for each month or part of the month that the tax remains unpaid.
- Any intent to defraud is subject to a penalty of the greater of MWK 200,000 and twice the difference between the tax charged and what would have been charged.
- Assisting in making an incorrect return is subject to a penalty of MWK 200,000 in the first month or part thereof and an additional MWK 10,000 for each month or part thereof that the penalty remains unpaid.
- There are MWK 1 million penalties for obstructing officers, forceful rescue of seized property, physical assault of officers, and inciting a person to refuse to pay tax.
- There are penalties for failure to complete documentation in compliance with WHT regulations.
- There are also penalties and interest for failure to remit the WHT and PAYE, as well as fringe benefits tax.

Interest on outstanding tax liability is charged at the commercial lending rate plus 5% *per annum*.

Tax audit process

The target for the tax authorities is to audit 30% of the taxpayers in any fiscal year. This translates to approximately three years per audit cycle.

Statute of limitations

There is no statute of limitations in Malawi, except for the mandatory seven-year period for keeping records.

Topics of focus for tax authorities

The tax authorities have recently focussed on transfer pricing and have consequently established a unit responsible for this. All multinationals are under scrutiny to check if they are dealing at arm's length with related entities.

Commissioner General's power to increase taxable income

The Commissioner General is empowered to increase the taxable income and liability of a taxpayer when of the opinion that the main purpose or one of the main purposes of a transaction was the avoidance or reduction of tax or where the main benefit that might have been expected to accrue from a transaction was the avoidance or reduction of tax.

Malaysia

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Significant developments

Goods and services tax (GST)

The new government has reduced the GST standard tax rate of 6% to 0%, effective from 1 June 2018. The new government has also announced that the sales and services tax will be reintroduced in place of GST, which is to be abolished. These changes are expected to take place in September 2018.

Digital advertising

The Malaysian tax authorities recently issued a practice note to state their position that payments for use of applications (Apps) to create advertising campaigns constitute royalty under the domestic law.

Taxes on corporate income

For both resident and non-resident companies, corporate income tax (CIT) is imposed on income accruing in or derived from Malaysia. The current CIT rates are provided in the following table:

Type of company	Chargeable income (MYR)	CIT rate for year of assessment 2018 (%)
Resident company (other than company described below)		24*
Resident company: • with paid-up capital of 2.5 million Malaysian ringgit (MYR) or less • that does not control, directly or indirectly, another company that has paid-up capital of more than MYR 2.5 million, and • is not controlled, directly or indirectly, by another company that has paid-up capital of more than MYR 2.5 million.	On the first 500,000	18
	In excess of 500,000	24*
Non-resident company		24

* For years of assessment 2017 and 2018, CIT is reduced based on the incremental chargeable income for companies, limited liability partnerships, trust bodies, executor of estate of an individual domiciled outside Malaysia at the time of death, and receiver appointed by the court. The rates as follows are applicable:

% of increase in chargeable income compared to immediate preceding year of assessment	% point reduction	Income tax rate applicable for incremental portion of chargeable income (%)
Less than 5.00	Nil	24

% of increase in chargeable income compared to immediate preceding year of assessment	% point reduction	Income tax rate applicable for incremental portion of chargeable income (%)
5.00 to 9.99	1	23
10.00 to 14.99	2	22
15.00 to 19.99	3	21
20.00 and above	4	20

Petroleum income tax

Petroleum income tax is imposed at the rate of 38% on income from petroleum operations in Malaysia. An effective petroleum income tax rate of 25% applies on income from petroleum operations in marginal fields. No other taxes are imposed on income from petroleum operations.

Local income taxes

There are no other local, state, or provincial government taxes on income in Malaysia.

Corporate residence

A company is tax resident in Malaysia in a basis year (normally the financial year) if, at any time during the basis year, the management and control of its affairs are exercised in Malaysia. Generally, a company is regarded as resident in Malaysia if, at any time during the basis period for a year of assessment, at least one meeting of the Board of Directors is held in Malaysia concerning the management and control of the company.

Permanent establishment (PE)

Generally, a non-resident entity is regarded as having a PE in Malaysia if it has a fixed place of business in Malaysia, where the business of the entity is wholly or partly carried on. A non-resident company may also be deemed to have a PE in Malaysia under certain circumstances, such as the following:

- It is represented by a dependent agent in Malaysia who has the authority to conclude contracts on its behalf and who has repeatedly exercised that authority.
- It carries on supervisory activities in Malaysia for six/nine months in connection with a construction, installation, or assembly project.

Other taxes

Goods and services tax (GST)

GST was introduced on 1 April 2015 at the standard rate of 6%. Businesses making taxable supplies where the annual sales turnover exceeds MYR 500,000 must register for GST, which is administered by the Royal Malaysian Customs Department. Effective from 1 June 2018, the GST rate has been reduced to 0%. The GST will be replaced by the sales and services tax in September 2018.

Import duties

Import duties are levied on goods that are subject to import duties and imported into the country. Import duties are generally levied on an *ad valorem* basis but may also be imposed on a specific basis. The *ad valorem* rates of import duties range from 2% to

60%. Raw materials, machinery, essential foodstuffs, and pharmaceutical products are generally non-dutiable or subject to duties at lower rates.

Excise duties

Excise duties are imposed on a selected range of goods manufactured and imported into Malaysia. Goods that are subject to excise duty include beer/stout, cider and perry, rice wine, mead, un-denatured ethyl alcohol, brandy, whisky, rum and tafia, gin, cigarettes containing tobacco, motor vehicles, motorcycles, playing cards, and mahjong tiles.

The rate of excise duties vary from a composite rate of MYR 0.1 per litre and 15% of the value for certain types of spirituous beverages, to as much as 105% of the value of motorcars (depending on engine capacity).

Property tax

Property tax is levied on the gross annual value of property as determined by the local state authorities.

Real property gains tax (RPGT)

RPGT is charged upon gains from disposals of real property, which is defined as:

- any land situated in Malaysia, as well as any interest, option, or other right in or over such land, or
- shares in a real property company (RPC), which is a controlled company holding real property or shares in another RPC or a combination of both, where the total defined value is not less than 75% of its total tangible assets.

RPGT is imposed on companies as follows:

Holding period from date of acquisition	RPGT rate (%)
Up to three years	30
In the fourth year	20
In the fifth year	15
Exceeding five years	5

Stamp duty

Malaysia imposes stamp duty, which is payable by the buyer/transferee, on chargeable instruments. Some examples are provided as follows:

Transaction type	Value chargeable	Stamp duty rate (%)
Sale/transfer of properties (excluding stock, shares, or marketable securities)	Market value	1 to 3
Sale/transfer of stock, shares, or marketable securities	Consideration paid or market value, whichever is higher	0.3
Service/loan agreements	Value of services/loans	0.5

Payroll taxes

Under the Monthly Tax Deduction scheme, employers are required to deduct the prescribed amount of tax from employees' salaries each month, to be remitted to the tax authorities not later than the 15th day of each calendar month.

Social security contributions

Employees' Provident Fund (EPF)

The Malaysian EPF is a compulsory pension scheme for all Malaysians. The EPF provides for compulsory retirement savings and contributions for all Malaysian citizens and Malaysian permanent residents who are working in Malaysia. It is not compulsory for non-Malaysian citizens and non-Malaysian permanent residents to contribute to the EPF, but they may elect to do so.

	Malaysian citizens and permanent residents (mandatory)		Expatriates and foreign workers (voluntary)	
	% of contribution of employee's wages (minimum)			
Contribution by	Employer	Employee	Employer	Employee
Up to age 60:				
Income > MYR 5,000	12.0%	11.0%	MYR 5 per person	11.0%
Income ≤ MYR 5,000	13.0%			
Age 60 and above, up to 75:				
Income > MYR 5,000	6.0%	5.5%	MYR 5 per person	5.5%
Income ≤ MYR 5,000	6.5%			

Social Security Organisation

Malaysia also has a Social Security Organisation (SOCSO) who administers the Employment Injury Insurance Scheme (EIIS) and the Invalidity Pension Scheme (IPS). All employees with monthly wages below MYR 4,000 are covered by the schemes, and employees who qualify for the schemes will continue to remain within the schemes notwithstanding that their monthly wages may subsequently exceed MYR 4,000. A monthly contribution must be made and may fall under one of two categories:

- Both the employer and employee make monthly contributions to EIIS and IPS. The sum is based on the employee's monthly wages and is restricted to a maximum of MYR 69.05 for the employer and MYR 19.75 for the employee.
- The employer makes a contribution to EIIS only for employees who are not eligible to be covered under the IPS, with the amount restricted to a monthly maximum of MYR 49.90.

Human resource development levy

Employers engaged in the manufacturing and services sectors that employ more than a specified number of employees must contribute to the Human Resource Development Fund (HRDF). The levy required to be paid is at the rate of 1% of the employees' monthly wages on a monthly basis.

Windfall profit levy

A levy is imposed on crude palm oil and crude palm kernel oil where the price exceeds MYR 2,500 per ton in Peninsula Malaysia, and MYR 3,000 per ton in the states of Sabah and Sarawak.

Contract levy

A levy of 0.125% on contract works having a contract sum above MYR 500,000 is imposed on every registered contractor by the Construction Industry Development Board.

Branch income

Tax rates on branch profits of a company are the same as CIT rates. No tax is withheld on transfer of profits to a foreign head office.

Income determination

Inventory valuation

Inventories are generally stated at lower of cost or net realisable value. Cost may be determined using one of several methods (e.g. unit cost, average cost, or first in first out [FIFO]), as long as the basis used is consistent for each year.

Capital gains

Generally, gains on capital assets are not subject to tax, except for gains arising from the disposal of real property situated in Malaysia, which is subject to RPGT (*see the Other taxes section for more information*).

Dividend income

Malaysia is under the single-tier tax system. Dividends are exempt in the hands of shareholders. Companies are not required to deduct tax from dividends paid to shareholders, and no tax credits will be available for offset against the recipient's tax liability. Corporate shareholders receiving exempt single-tier dividends can, in turn, distribute such dividends to their own shareholders, who are also exempt on such receipts.

Stock dividends

A Malaysian corporation may distribute bonus shares tax-free to shareholders.

Interest income

Interest income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia is subject to CIT. However, exemption is provided on interest income received in Malaysia from outside Malaysia. Other exemptions granted include interest income earned by a non-resident person from deposits placed in designated financial institutions in Malaysia.

Royalty income

Royalty income accruing in or derived from Malaysia or received in Malaysia from outside Malaysia is subject to CIT. Malaysia has a wide definition of royalty that also includes software, visual images or sounds transmitted via satellite, cable, or fibre optic, and radio frequency spectrum. Payments to non-residents falling within the definition of royalty will be subject to withholding tax (WHT) requirements. However, certain royalty income earned by a non-resident person may be exempted from tax.

Foreign income

Under the Income Tax Act 1967, a Malaysian tax-resident company and a unit trust are not taxed on their foreign-sourced income, regardless of whether such income is received in Malaysia. However, income of a resident company from the business of air/sea transport, banking, or insurance is assessable on a worldwide basis.

Taxation on a worldwide basis does not apply when income attributable to a Labuan business activity of a Labuan branch or subsidiary of a Malaysian bank is subject to tax under the Labuan Business Activity Tax Act 1990. This exception will not apply if the Labuan entity has made an irrevocable election to be taxed under the Income Tax Act 1967 in respect of its Labuan business activity.

Relief from double taxation is available by means of a bilateral credit if there is a governing tax treaty or unilateral relief where there is no treaty. The relief is restricted to the lower of Malaysian tax payable or foreign tax paid if there is a treaty, or one-half of the foreign tax paid if there is no treaty.

Undistributed income of foreign subsidiaries is not taxable.

Deductions

Capital allowance

Capital allowance (tax depreciation) on industrial buildings, plant, and machinery is available at prescribed rates for all types of businesses. Initial allowance is granted in the year the expenditure is incurred and the asset is in use for the purpose of the business. Annual allowance at the prescribed rates calculated on cost is given for every year during which the asset is in use at the end of the basis year for the purposes of the business. The following are examples of capital allowance rates currently available:

Qualifying asset	Initial allowance (%)	Annual allowance (%)
Industrial building, whether constructed or purchased	10	3
Heavy machinery	20	20
General plant and machinery	20	14
Furniture and fixtures	20	10
Office equipment	20	10
Motor vehicles*	20	20*
Small value assets of less than MYR 1,300 (subject to a maximum total cost of MYR 13,000)	-	100

* Restrictions apply on maximum qualifying capital expenditure.

Accelerated capital allowance is available for certain types of industrial building, plant, and machinery, some of which includes buildings used as a warehouse, buildings used as a school or an educational institution, computers, information technology equipment, environmental protection equipment, waste recycling equipment, and plant and machinery used in specific industries.

Goodwill

Cost of acquisition of goodwill/amortisation of goodwill is not deductible, as these expenses are capital in nature.

Start-up expenses

In general, start-up expenses incurred before the commencement of a trade, profession, or business are capital in nature, as they were expended to put the person in a position to earn income. However, there are specific deductions allowed, such as incorporation expenses and recruitment expenses (conditions apply).

Interest expenses

Interest expense is allowed as a deduction if the expense was incurred on any money borrowed and employed in the production of gross income or laid out on assets used or held for the production of gross income. Where a borrowing is partly used to finance non-business operations, the proportion of interest expense will be allowed against the non-business income.

Bad debt

Debts must be specifically identified and reasonably estimated to be irrecoverable to qualify for a tax deduction.

Donations to charitable institutions

A deduction is allowed for cash donations to approved institutions (defined) made in the basis period for a year of assessment. The deduction is limited to 10% of the aggregate income of that company for a year of assessment.

Fines and penalties

Fines and penalties are generally not deductible.

Taxes

Taxes on income are generally not deductible, whereas indirect taxes are deductible.

Net operating losses

The carryforward of business losses and capital allowances is not available for deduction in subsequent years of assessment if the company does not meet the conditions of a shareholders' continuity test. However, per policy issued by the Ministry of Finance, these conditions currently apply only to dormant companies. Carryforward of business losses and capital allowances is unlimited in time for non-dormant companies.

Current-year business losses may be utilised against all sources of income. Utilisation of carried-forward losses is restricted to income from business sources only. Utilisation of capital allowance is also restricted to income from the same underlying business source.

Currently, there are no provisions to carry back losses to prior years of assessment.

Payments to foreign affiliates

A Malaysian company can claim a deduction for royalties, management service fees, and interest charges paid to foreign affiliates, provided that these are made at arm's length and the relevant WHTs, where applicable, have been paid.

Group taxation

A company that qualifies for group relief may surrender a maximum of 70% of its adjusted loss for a year of assessment to one or more related companies if the following conditions are met by both the claimant and surrendering companies:

- Both must be resident and incorporated in Malaysia.

- Each has paid-up capital of ordinary shares exceeding MYR 2.5 million at the beginning of the basis period.
- Both have the same (12-month) accounting period.
- They are 'related' throughout the basis period for a particular year of assessment as well as the 12 months preceding that basis period.
- Both are not currently enjoying specific stipulated incentives, such as pioneer status, investment tax allowance, reinvestment allowance, etc.

'Related company' is defined by the Income Tax Act 1967 and involves the application of a two-tier test. The companies are regarded as 'related' if:

- either company owns at least 70% of the ordinary share capital of the other company or a third company owns at least 70% of each of the companies, and
- the holders of ordinary shares are entitled to at least 70% of the distributable profits and assets of the company on winding up.

Companies that wish to avail themselves of group relief must make an irrevocable election to surrender or claim the tax loss in the return to be filed with the Inland Revenue Board for that year of assessment.

Transfer pricing

The Director General of Inland Revenue (DGIR) is empowered to make adjustments on transactions of goods and services if the DGIR is of the opinion that the transactions were not entered into on an arm's-length basis.

The transfer pricing rules that apply to controlled transactions (defined, including financial assistance) specify the methods to determine the arm's-length price and the circumstances under which the DGIR may re-characterise transactions. The advance pricing arrangement (APA) rules that apply only to cross-border transactions outline the application procedures for unilateral, bilateral, or multilateral APAs.

Country-by-country (CbC) reporting

The CbC Rules require that Malaysian multinational corporation (MNC) groups with total consolidated group revenues of MYR 3 billion to prepare and submit CbC reports to the tax authorities no later than 12 months after the close of each financial year. Malaysian entities of foreign MNC groups will generally not be required to prepare and file CbC reports as the obligation to file will be with the ultimate holding company in the jurisdiction it is tax resident in. However, the Malaysian entities of the foreign MNC group will have an obligation to inform/notify the tax authorities, by the end of its financial year, if it is the holding company or has been appointed as the surrogate holding company. If it is neither the holding company nor surrogate holding company, the Malaysian entities must notify the tax authorities of the identity and tax residence of the entity responsible for preparing the CbC report.

Earning stripping rules

The thin capitalisation provision is to be replaced with the implementation of the earning stripping rules with effect from 1 January 2019. Under the rules, interest deductions will be limited to a fixed percentage (within the range of 10% to 30%) of profit, measured using earnings before interest, taxes, depreciation, and amortisation (EBITDA). The rules have yet to be issued or gazetted.

Controlled foreign companies (CFCs)

There are no CFC rules in Malaysia.

Tax credits and incentives

Malaysia has a wide variety of incentives covering the major industry sectors. Tax incentives can be granted through income exemption or by way of allowances. Generally, when income is exempted, any dividends paid out of such exempt income are not taxable in the hands of the shareholders. Where incentives are given by way of allowances, any unutilised allowances generally may be carried forward indefinitely to be utilised against future statutory income. The following are the major types of incentives available in Malaysia.

Pioneer status (PS) and investment tax allowance (ITA)

Companies in the manufacturing, agricultural, hotel, and tourism sectors, or any other industrial or commercial sector, that participate in a promoted activity or produce a promoted product may be eligible for either PS or an ITA.

PS is given by way of exemption from CIT on 70% of the statutory income for five years and the remaining 30% is taxed at the prevailing CIT rate. An ITA is granted on 60% qualifying capital expenditure incurred for a period of five years to be utilised against 70% of the statutory income, while the 30% balance is taxed at the prevailing CIT rate.

A company that intends to undertake reinvestment before expiration of its PS or ITA status may opt for reinvestment allowance, provided it surrenders its PS or ITA status.

The PS and ITA incentives are enhanced for the following types of projects:

	Pioneer status		Investment tax allowance	
Qualifying industry	**Incentive**	**TRP (1)**	**Incentive**	**TRP (1)**
Projects of national and strategic importance involving heavy capital investment and high technology.	100% of SI (2)	5 + 5	100% QCE (3) against 100% SI	5
High-technology companies engaged in areas of new and emerging technologies.	100% of SI	5	60% QCE against 100% SI	5
Companies manufacturing specialised machinery and equipment.	100% of SI	10	100% QCE against 100% SI	5
Existing locally owned companies reinvesting in production of heavy machinery, specialised machinery, and equipment.	70% of increased SI	5	60% new QCE against 70% SI	5
Companies providing technical and vocational training, and private higher education institution providing qualifying science courses.	-	-	100% QCE against 70% SI	10
New companies investing and existing companies reinvesting in utilising oil palm biomass to produce value-added products.	100% of SI	10	100% QCE against 100% SI	5
Small scale companies (defined) that meet with specified conditions.	100% of SI	5	60% QCE against 100% SI	5

	Pioneer status		Investment tax allowance	
Qualifying industry	Incentive	TRP (1)	Incentive	TRP (1)
Hotel operators undertaking new investments in 4 and 5 star hotels in Sabah/Sarawak (for applications until 31 December 2020).	100% of SI	5	100% QCE against 100% SI	5
Hotel operators undertaking new investments in 4 and 5 star hotels in Peninsular Malaysia (for applications until 31 December 2020).	70% of SI	5	60% QCE against 70% SI	5

Notes

1. Tax relief period (in terms of years).
2. Statutory income.
3. Qualifying capital expenditure.

Special incentive schemes

Reinvestment allowance

A resident company in operation for not less than 36 months that incurs capital expenditure to expand, modernise, automate, or diversify its existing manufacturing business or approved agricultural project is entitled to reinvestment allowance as follows:

- The allowance is given for 15 years from the first year of claim.
- An allowance of 60% of QCE incurred to be utilised against 70% of statutory income. The remaining 30% is taxed as the prevailing CIT rate.
- The 70% restriction does not apply to projects that achieved the level of productivity as prescribed by the Minister of Finance.
- The allowance will be withdrawn if the asset for which the allowance is granted is disposed of within five years.

A special reinvestment allowance is provided by extending the existing incentive period for up to three years, from year of assessment 2016 to 2018.

Approved service projects

A resident company undertaking a project approved by the Minister of Finance in the transportation, communications, utilities, and services subsectors may enjoy the following incentives:

- Investment allowance of 60% of QCE incurred within five years to be utilised against 70% statutory income.
- Alternatively, income tax exemption of 70% of statutory income for a period of five years.
- Buildings used solely for the purposes of such projects qualify for an industrial building allowance.

Export incentives

A resident company engaged in manufacturing or agriculture that exports manufactured products, agricultural produce, or services is entitled to allowances between 10% and 100% of increased exports (subject to satisfying prescribed conditions), which is deductible at up to 70% of statutory income.

Regional operations

Principal hub

A principal hub is a locally incorporated company that uses Malaysia as a base for conducting its regional and global businesses and operations through management, control, and support of key functions, such as management of risk, strategic decisions, finance, and human resources. CIT at tiered rates (0%, 5%, or 10%) is given for a period of up to ten years, subject to conditions being met (for applications from 1 May 2015 to 31 December 2020).

Other available non-fiscal incentives available include:

- No equity/ownership conditions.
- Foreign exchange administration flexibilities and expatriate positions.
- Customs duty exemption for raw materials, components, or finished products brought into free zones, licensed and bonded warehouses for production or repackaging, cargo consolidation, and integration before distribution to its final customers for goods-based companies.

International trading company

International trading companies are exempt for five years on income equivalent to 20% of increased export value, up to a maximum of 70% of statutory income. To qualify for the incentive, the company must meet the following three conditions:

- Be incorporated in Malaysia, with 60% Malaysian ownership.
- Achieve minimum annual sales of MYR 10 million, not more than 20% of which may be derived from the trading of commodities.
- Use local services (banking, finance, and insurance) and infrastructure (local ports and airports) in its operations.

Financial services sector

Islamic banking and takaful business

Effective from year of assessment 2007 until year of assessment 2016, full income tax exemption for ten years is granted to:

- Islamic banks licensed under the Islamic Financial Services Act 2013, on income from Islamic banking business conducted in international currencies.
- *Takaful* (Islamic insurance) companies licensed under the Islamic Financial Services Act 2013, on income from *takaful* business conducted in international currencies.

The above incentive will be extended until year of assessment 2020 when the gazette order is issued.

Stamp duty exemption is also provided on instruments executed (from 1 January 2017 to 31 December 2020) pertaining to Islamic banking and *takaful* business transacted in international currencies.

Islamic fund management

Full income tax exemption is available on statutory income on management fees received by resident fund management companies for managing funds of foreign and local investors established under Syariah principles (until year of assessment 2020). Such funds must be approved by the Securities Commission.

Special purpose vehicle (SPV) for Islamic financing

An SPV established solely for the purpose of issuance of Islamic securities under the Syariah principles (approved by the Securities Commission or established under the Labuan Companies Act 1990) is not subject to income tax and is not required to comply with administrative procedures under the income tax law. The company that establishes the approved SPV is deemed to be the recipient of the SPV's income and will be taxed accordingly, but that company will be allowed a deduction for the cost of issuance of Islamic securities.

Tun Razak Exchange (TRX) (formerly known as Kuala Lumpur International Financial District)

The TRX is a joint property development comprising office towers for finance and banking, residences, and retail spaces in Kuala Lumpur. To accelerate the development of the TRX, the following incentives have been given:

- Stamp duty exemption on loan and service agreements for TRX Marquee status companies.
- Industrial building allowance and accelerated capital allowance for TRX Marquee status companies.
- Income tax exemption of 70% of statutory income for five years for property developers in TRX.
- Additional 50% tax deduction of rental payment incurred by TRX Marquee status companies for buildings used for business in TRX.
- Deduction of relocation cost incurred by TRX Marquee status companies to relocate to TRX.

Real estate investment trusts (REIT)/Property trust fund (PTF)

REIT/PTFs are vehicles that mobilise funds from unit holders comprising individuals and companies for investments in the property sector and related assets. REIT/PTFs are exempted from tax on all income, provided that at least 90% of their total income is distributed to unit holders. With effect from year of assessment 2017, this exemption only applies to REIT/PTFs that are listed on the Bursa Malaysia. If the 90% distribution condition is not complied with, all income will be taxed at the prevailing income tax rate at the REIT/PTF level and tax credit will be claimed by the unit holders on distributions received from the REIT/PTF.

Unit holders are taxed as follows:

Unit holders	WHT rate
Individuals (whether resident or non-resident), body of persons, or other unincorporated persons	10% (until 31 December 2019)
Non-resident company	24%
Resident company	None (income to be included in annual tax return)
Institutional investor (pension fund, collective investment scheme, or other person approved by the Minister of Finance)	10% (until 31 December 2019)

Other incentives available are:

- RPGT and stamp duty exemptions on disposal/transfer of real property to an REIT/PTF.

- Tax deduction given for consultancy, legal, and valuation service fees incurred on the establishment of an REIT.

Foreign fund management company

A foreign fund management company providing fund management services to foreign clients is taxed at a concessionary rate of 10% in respect of income derived from the management of foreign funds, while income arising from services rendered to clients in Malaysia is taxed at the prevailing CIT rate.

A foreign fund management company is a Malaysian incorporated company licensed under the Capital Markets and Services Act 2007. Its activities are regulated by the Securities Commission.

Venture capital company (VCC)

A VCC investing in a venture company (VC), which is not the VCC's related company at the point of first investment, will be given a deduction on the value of investment made in a VC. Where the deduction is not claimed, the VCC is eligible for the following income tax exemption on income from all sources, other than interest income from savings or fixed deposits, and profits from Syariah-based deposits:

Conditions	Exemption period
• At least 70% of invested funds is invested in VC, or • At least 50% of invested funds is invested in VC in the form of seed capital.	10 years

Budget 2018 proposes to reduce the investment limit in a VC at the seed, start-up capital, or early stage financing to 50%, allow the balance of 50% for other investments, and make the exemption period for five years from year of assessment 2018 to 2022, when gazetted.

Petroleum sector

The following incentives are provided for petroleum operations:

- Accelerated capital allowance on qualifying capital expenditure incurred from year of assessment 2010 to 2024 for petroleum operations in marginal fields.
- Investment allowance of 60% of qualifying capital expenditure to be utilised against 70% statutory income for a period of ten years.
- Exemption for a portion of chargeable income from marginal fields resulting in a reduction of the effective tax rate from 38% to 25% for petroleum operations in marginal fields.

Special economic regions

The following special economic regions were launched as part of the Malaysian government's plan for regional growth and development:

Economic region	Location
Iskandar Malaysia (formerly known as Iskandar Development Region [IDR]): *www.iskandarmalaysia.com.my*	Southern Johor
Northern Corridor Economic Region: *www.koridorutara.com.my*	States of Perlis, Kedah, Penang, and northern Perak
East Coast Economic Region: *www.ecerdc.com.my*	States of Kelantan, Terengganu, Pahang, and district of Mersing in Johor

Economic region	Location
Sabah Development Corridor: *www.sedia.com.my*	Western, central, and eastern regions of Sabah
Sarawak Corridor of Renewable Energy: *www.sarawakscore.com.my*	Central Sarawak

Special incentives, on top of the existing incentives given by the Malaysian government, will be customised for the purpose of each economic region. At present, special legislation has been enacted only in respect of Iskandar Malaysia (IM) and East Coast Economic Region (ECER).

Iskandar Malaysia

Entity	Incentive
IDR-status company	10 years income tax exemption on statutory income from the provision of qualifying services to a person situated within designated nodes in the IDR or outside Malaysia. Operations commenced before 31 December 2015.
Developer	Income tax exemption on rental or disposal of buildings in designated nodes (until year of assessment 2020).
Development manager	Income tax exemption on statutory income from the provision of management, supervisory, and marketing services to an approved developer (until year of assessment 2020).
Non-resident service provider	Income tax and WHT exemptions on income from technical fees or royalties received from IDR-status companies.
Individuals working in IDR	A qualified knowledge worker is taxed at the rate of 15% on chargeable income from employment with a designated company engaged in a qualified activity (e.g. green technology, educational services, healthcare services, creative industries, financial advisory and consulting services, logistics services, tourism) in that specified region. Employment must have commenced between 24 October 2009 and 31 December 2015.

East Coast Economic Region

Entity	Incentive
Qualifying person undertaking qualifying activity	Income tax exemption on SI for 10 years or income tax exemption equivalent to 100% of QCE incurred for 5 years (applications received from 13 June 2008 to 31 December 2020). WHT exemption on fees for technical advice, assistance, or services, or royalty paid to non-residents (until 31 December 2020). Stamp duty exemption on instruments of transfer of real property, or lease of land, or building used for the purpose of carrying on a qualifying activity (executed on or after 13 June 2008 but not later than 31 December 2020).
Qualifying person undertaking special qualifying activity	Income tax exemption at a rate of 70% to 100%, for a period as determined by the Minister (applications received from 13 June 2008 to 31 December 2020). Income tax exemption equivalent to a rate of 60% to 100% of QCE incurred and within a period as determined by the Minister (applications received from 13 June 2008 to 31 December 2020). WHT exemption on fees for technical advice, assistance, or services, or royalty paid to non-residents (until 31 December 2020).

Entity	Incentive
Approved developer undertaking development in industrial park or free zone	Income tax exemption for 10 years in respect of income derived from: • disposal of any right over any land, or disposal of a building, or rights over building, or part of building, or • rental of building or part of building. Applications received from 13 June 2008 to 31 December 2020.
Approved park managers	Income tax exemption, for 10 years, of SI derived from the provision of park management services in the industrial park or free zones (applications received from 13 June 2008 to 31 December 2020).
Approved development manager	Income tax exemption, for 10 years, of SI derived from the provision of management, supervisory, or marketing services relating to the development of an industrial park or free zone (applications received from 13 June 2008 to 31 December 2020).
Investor investing in related company	A deduction equivalent to the value of investment made into a related company carrying out qualifying activity or special qualifying activity (applications received from 13 June 2008 to 31 December 2020).
Qualifying person who sponsors a hallmark event	A deduction for an amount not exceeding MYR 1 million per year of assessment in respect of cash contribution or contribution in kind for a hallmark event carried on in ECER from 13 June 2008 to 31 December 2020 (applications received from 13 June 2008 to 31 December 2020).

Incentive for less-developed areas

To enhance the special incentive package available in the economic corridors to include more less-developed areas, the following incentives are given to existing companies expanding to less-developed areas or newly established companies (for applications from 1 January 2015 to 31 December 2020):

- 100% income tax exemption for up to 15 years of assessment (5+5+5) commencing from the first year of assessment statutory income is derived, or
- income tax exemption of 100% of qualifying capital expenditure (ITA) that can be offset against 100% statutory income for ten years.

The company must undertake manufacturing or services activities in less-developed areas that create employment and rural development.

The other incentives available for less-developed areas are:

- Stamp duty exemption on transfer or lease of land or building.
- WHT exemption on fees for technical advice, assistance, or services, or royalty relating to manufacturing and services activities, up to 31 December 2020.
- Import duty exemption on raw materials and components, machinery, and equipment that are not produced locally and used directly in the manufacturing or services activity.

Information and communication technology (ICT)

MSC Malaysia

MSC Malaysia is Malaysia's initiative for the global information technology (IT) industry and is designed to be the research and development (R&D) centre for industries based on IT. It is an ICT hub equipped with high-capacity global telecommunications and logistics networks. MSC Malaysia is also supported by secure cyber laws, strategic policies, and a range of financial and non-financial incentives for investors. It is managed by the Multimedia Development Corporation (MDeC), a 'one-stop shop' that acts as the approving authority for companies applying for MSC Malaysia status.

MSC Malaysia status is awarded to both local and foreign companies that develop or use multimedia technologies to produce or enhance their products and services as well as for process development. MSC Malaysia companies are eligible for incentives, which include the following:

- PS (five + extendable by five years) of 100% on statutory income or ITA of 100% for five years for a new company or existing company on its additional income.
- Eligibility for R&D grants (for majority Malaysian-owned MSC Malaysia company).
- Exemption from indirect taxes on multimedia equipment.
- Unrestricted employment of local and foreign knowledge workers.
- Freedom to source funds globally for investments.
- Protection of intellectual property and cyber laws.
- No censorship of the Internet.
- Globally competitive telecommunication tariffs and services guarantees, world-class physical and IT infrastructure, and excellent R&D facilities.

Green incentives

Green technology projects

Companies that undertake any of the following green technology projects will be eligible for an ITA of 100% of QCE against 70% statutory income for QCE incurred from 25 October 2013 to year of assessment 2020 (applications to be received by 31 December 2020):

- Renewable energy.
- Energy efficiency.
- Green building.
- Green data centre.
- Waste management.

Green technology services

Companies that provides services, such as advisory, design, feasibility study, testing, and commission, in the following areas will be eligible for income tax exemption of 100% of statutory income from year of assessment 2013 to 2020 (applications to be received by 31 December 2020):

- Renewable energy.
- Energy efficiency.
- Electric vehicle.
- Green building.
- Green data centre.
- Green certification and verification.
- Green township.

Green technology assets

Companies that purchase green technology assets listed on the MyHijau directory will be eligible for an ITA of 100% of QCE incurred from 25 October 2013 to year of assessment 2020 (applications to be received by 31 December 2020).

Waste eco parks (WEPs)

The following industry players in WEPs will be eligible for incentives for applications received from 1 January 2016 until 31 December 2020. The WEP incentive is to promote waste management in an integrated manner.

Entity	Incentive	Incentive period
Developer	70% income tax exemption of statutory income derived from rentals of buildings, fees from usage of waste collection and separation facilities, and fees from waste water treatment facilities located in the WEP.	Year of assessment 2016 to 2025
Manager	70% income tax exemption of statutory income derived from services related to management, maintenance, supervision, and marketing of the WEP.	Year of assessment 2016 to 2025
Operator	• 100% income tax exemption for five years on statutory income derived from qualifying activities undertaken in the WEP, or • ITA of 100% of QCE incurred within five years, against 70% of statutory income.	Five years

Biotechnology industry

Companies undertaking biotechnology activity with approved bionexus status from Malaysian Biotechnology Corporation Sdn Bhd will be eligible for the following incentives:

- Full income tax exemption on statutory income for ten years from the first year in which the company derives statutory income or ITA of 100% on QCE incurred for a period of five years.
- Concessionary tax rate of 20% on statutory income from qualifying activities for ten years upon expiry of the tax exempt period.
- Accelerated industrial building allowance (over ten years) for buildings used solely for the purpose of its new business or expansion project.
- Exemption of import duty and sales tax on import of raw materials and machinery.

Research and development (R&D)

Contract R&D company

Companies that provide R&D services to third parties are eligible for:

- full exemption of their statutory income for a period of five years (extendable by five years), or
- ITA of 100% of QCE incurred within a period of ten (extendable by ten years) to be utilised against 70% of statutory income.

R&D company

The ITA incentive is also available to companies undertaking R&D services for their group and third parties.

In-house R&D

Companies undertaking in-house R&D projects are eligible for ITA at the rate of 50% of QCE incurred within a period of ten years (extendable by ten years) to be utilised against 70% of statutory income.

Commercialisation of resource-based R&D findings

A company that invests for the sole purpose of financing a project on commercialisation of resource-based R&D findings (which is wholly owned by a public research institute or public institute of higher learning in Malaysia) is given a deduction equivalent to the value of that investment.

The subsidiary undertaking the commercialisation of R&D findings is granted 100% tax exemption on statutory income for ten years.

Other incentives

Shipping

A tax-resident person (including a partnership) carrying on shipping business using Malaysian ships is given income tax exemption of 70% of statutory income, determined on a per ship basis. The balance of 30% of statutory income is deemed to be total income chargeable to tax.

Incentives for Mines Wellness City (MWC)

The Malaysian Investment Development Authority has issued guidelines on incentives for MWC:

	Incentive	Application period
Operator	• PS of 70% of statutory income for five years for income from qualifying activities in MWC. • ITA of 60% on QCE incurred within five years, against 70% of statutory income.	Applications received on or after 1 January 2013 to 31 December 2026.
Development manager	PS of 100% exemption on statutory income from management, consultancy, supervisory, or marketing services to MWC developer in MWC from the first year of assessment statutory income is derived until year of assessment 2023.	Applications received on or after 1 January 2013.
Developer	1. 100% exemption on statutory income from disposal of rights over land/building from the first year of assessment statutory income is derived until year of assessment 2023, or 2. Income tax exemption on rental income from the first year of assessment statutory income is derived until year of assessment 2026, and 3. Stamp duty exemption of 50% on instrument of transfer/lease of land/building.	1 and 2: Applications received on or after 1 January 2013. 3: Instruments executed from 1 January 2013 to 31 December 2023.

Capital allowance for increased automation

Manufacturing companies that have been in operation for at least 36 months are eligible for the following incentives, where they have incurred expenditure in automation equipment used directly in the manufacturing activities and resulting in reduced man hours and increased productivity:

- For high labour intensive industries (rubber products, plastics, wood, furniture, and textiles industries): 200% automation capital allowance on first MYR 4 million QCE (years of assessment 2015 to 2017, proposed extension to 31 December 2020).
- Other industries: 200% automation capital allowance on first MYR 2 million QCE (years of assessment 2015 to 2020).

Foreign tax credit

See Foreign income in the Income determination section for a discussion of the foreign tax credit regime.

Withholding taxes

Corporations making payments of the following types of income are required to withhold tax at the rates shown in the table below. *See Note 5 for other sources of income subject to WHT.*

	WHT (%)			
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (3a, 3b)**	**Special classes of income/ Rentals (4, 5)**
Resident corporations	0	0	0	
Resident individuals	0	0/5	0	
Non-resident corporations and individuals:				
Non-treaty	0	0/15	10	10
Treaty:				
Albania	0	0/10	10	10
Australia	0	0/15	0/10	0
Austria	0	0/15	10	10
Bahrain	0	0/5	8 (3c)	10
Bangladesh	0	0/15	0/10	10
Belgium	0	0/10/15	10	10
Bosnia and Herzegovina *	0	0/10	8	10
Brunei	0	0/10	10	10
Canada	0	0/15	0/10 (3d)	10
Chile	0	15	10	5
China, People's Republic of	0	0/10	10	10
Croatia	0	0/10	10	10
Czech Republic	0	0/12	10	10
Denmark	0	0/15	0/10	10
Egypt	0	0/15	10	10
Fiji	0	0/15	10	10
Finland	0	0/15	0/10	10
France	0	0/15	0/10	10
Germany	0	0/10	7	7
Hong Kong	0	0/10	8	5
Hungary	0	0/15	10	10
India	0	0/10	10	10
Indonesia	0	0/10	10	10
Iran	0	0/15	10	10
Ireland, Republic of	0	0/10	8	10
Italy	0	0/15	0/10 (3d)	10
Japan	0	0/10	10	10
Jordan	0	0/15	10	10
Kazakhstan	0	0/10	10	10
Korea, Republic of	0	0/15	0/10	10

Malaysia

	WHT (%)			
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (3a, 3b)**	**Special classes of income/ Rentals (4, 5)**
Kuwait	0	0/10	10	10
Kyrgyzstan	0	0/10	10	10
Laos	0	0/10	10	10
Lebanese Republic	0	0/10	8	10
Luxembourg	0	0/10	8	8
Malta	0	0/15	10	10
Mauritius	0	0/15	10	10
Mongolia	0	0/10	10	10
Morocco	0	0/10	10	10
Myanmar	0	0/10	10	10
Namibia	0	0/10	5	5
Netherlands	0	0/10	0/8	8
New Zealand	0	0/15	0/10 (3e)	10
Norway	0	0/15	0/10 (3f)	10
Pakistan	0	0/15	0/10	10
Papua New Guinea	0	0/15	10	10
Philippines	0	0/15	0/10	10
Poland	0	0/15	0/10	10
Poland (new) *	0	0/10	8	8
Qatar	0	0/5	8	8
Romania	0	0/15	0/10	10
Russian Federation	0	0/15	10	10
San Marino	0	0/10	10	10
Saudi Arabia	0	0/5	8	8
Senegal *	0	0/10	10	10
Seychelles Republic	0	0/10	10	10
Singapore	0	0/10	8	5
Slovakia	0	0/10	10	5
South Africa	0	0/10	5	5
Spain	0	0/10	7	5
Sri Lanka	0	0/10	10	10
Sudan	0	0/10	10	10
Sweden	0	0/10	8	8
Switzerland	0	0/10	0/10	10
Syria	0	0/10	10	10
Thailand	0	0/15	0/10 (3f)	10
Turkey	0	0/15	10	10
Turkmenistan	0	0/10	10	0
United Arab Emirates	0	0/5	10	10
United Kingdom	0	0/10	8	8
Uzbekistan	0	0/10	10	10
Venezuela	0	0/15	10	10
Vietnam	0	0/10	10	10
Zimbabwe	0	0/10	10	10

Notes

* Treaties pending ratification

Restricted tax treaties dealing with taxation of specific transport operations in international traffic have also been signed with Argentina and the United States (US).

1. Dividends:
   - Malaysia has no WHT on dividends in addition to tax on the profits out of which the dividends are declared. Some treaties provide for a maximum WHT on dividends should Malaysia impose such a WHT in the future.
2. Interest:
   - Interest on loans given to or guaranteed by the Malaysian government is exempt from tax.
   - Interest paid to a non-resident by a commercial or merchant bank operating in Malaysia is also exempt from tax.
3. Royalty:
   a. Approved royalty payments under certain treaty provisions are exempt from WHT.
   b. Royalty income received by non-resident franchisors under franchised education scheme programmes by the Ministry of Education is exempted from tax.
   c. Royalty does not include payments in respect of the operation of oil or gas wells, or the extraction of mineral deposits or other natural resources.
   d. Royalty does not include amount paid in respect of motion picture films or of tapes for radio or television broadcasting.
   e. Royalty does not include natural resource royalties.
   f. Royalty does not include royalty paid in respect of (literary or artistic copyrights - Norway only) or of motion picture films or of tapes for television (or radio - Thailand only) broadcasting, or of the operation of a mine, oil well, quarry, or any other place of extraction of natural resources or of timber or other forest produce.
4. Special classes of income:
   - Contract payments to non-resident contractors in respect of services under a contract project are subject to a 13% deduction of tax (10% on account of the contractors' tax liability and 3% on account of their employees' tax liability). This deduction of tax at source does not represent a final tax, which is determined upon the filing of the tax return.
   - Payments made to non-residents in respect of the provision of technical services performed in Malaysia and rental of movable properties are subject to a 10% WHT (unless exempted under statutory provisions for purpose of granting incentives).
5. Other income:
   - WHT is also applied in respect of income of a non-resident from sources other than the following:
     - Sources shown in the preceding table.
     - A business source.
     - An employment source.
   - The rate of WHT on such income is 10%. This is applicable on payments made to residents of all the treaty partners listed, except for certain countries (including Germany, Turkmenistan, Bosnia and Herzegovina, Senegal, and Jordan) where the respective tax treaties have provided for such type of income to be taxed only in the contracting state in which the recipient is resident.

Tax administration

Taxable period

Assessment of income is on a current-year basis. A company is taxed on income from all sources (whether business or non-business) arising in its financial year ending in the calendar year that coincides with that particular year of assessment. For example, a company that closes its accounts on 30 June of each year is taxed on income earned during the financial year ending on 30 June 2018 for year of assessment 2018.

Tax returns

Under the self-assessment system, companies are required to submit a return of income within seven months from the date of closing of accounts. Particulars required to be specified in the return include the amount of chargeable income and tax payable by the company. The tax return is deemed to be a notice of assessment and is deemed served on the company upon the date the tax return is submitted.

'E-filing' or online filing of tax returns via the Internet is available. E-filing is encouraged by the Inland Revenue Board.

Payment of tax

Tax payable under an assessment upon submission of a tax return is due and payable by the last day of the seventh month from the date of closing of accounts.

Companies are required to furnish estimates of their tax payable for a year of assessment no later than 30 days before the beginning of the basis period (normally the financial year). However, a newly established company with paid-up capital of MYR 2.5 million or less that meets with certain specified conditions is exempted from this requirement for two years, beginning from the year of assessment in which the company commences operation. A revised estimate can be submitted in the sixth and ninth months of the basis period for a year of assessment.

Companies are then required to pay tax by monthly instalments (based on the estimates submitted) commencing from the second month of the company's basis period.

A company commencing operations in a year of assessment is not required to furnish estimates of tax payable or to make instalment payments if the basis period for the year of assessment in which the company commences operations is less than six months.

Tax audit process

Following the issuance of the general tax audit framework, tax audit frameworks for the financial and insurance industry and for WHTs were issued. These tax audit frameworks outline the rights and responsibilities of audit officers, taxpayers, and tax agents in respect of a tax audit. A tax audit may cover a period of one to three years of assessment determined in accordance with the audit focus. The years of assessment to be covered in a tax audit may, however, be extended depending on the issues identified during an audit.

Statute of limitations

Additional assessments can be made within five years after the expiration of the relevant year of assessment. This time limit is not applicable where fraud, wilful default, or negligence has been committed.

Topics of focus for tax authorities

Some issues that the tax authorities have focused on recently include:

- Deductibility of certain expenses (e.g. entertainment, provisions, management service fees, allocated expenses from foreign related counterparts).
- The correctness of tax incentive claims.

Other issues

Intergovernmental agreements (IGAs)

Malaysia and the United States had, on 30 June 2014, reached an agreement in substance on a Model 1 IGA to implement the Foreign Account Tax Compliance Act (FATCA). Although not signed, Malaysia has, however, been included in the US Treasury's list of jurisdictions that are treated as having an IGA in effect with the United States.

Under the IGA, reporting Malaysia-based financial institutions will provide the Malaysian Inland Revenue Board with the required information of accounts of US persons. The information of which will then be exchanged between the Malaysian and US tax authorities. The IGA is currently being finalised and will be signed on a date to be announced.

Common Reporting Standard (CRS)

Malaysia is committed to exchanging CRS information from 2018. Under the CRS, Malaysian financial institutions (MYFIs) are required to collect and report financial account information on non-residents.

The reporting financial Institution is defined to mean any financial institution (FI):

- that is resident in Malaysia (excluding branches located outside Malaysia), and
- any branch of an FI that is not resident in Malaysia if it is located in Malaysia.

Once an MYFI has applied the due diligence procedures in respect of the accounts it holds and has identified reportable accounts, it must report certain information regarding those accounts to the tax authorities. A reporting MYFI with no reportable accounts is required to make a nil return annually to the Malaysian Inland Revenue Board.

Malta

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Significant developments

The following are some of the more significant developments that were introduced in Maltese tax law during 2017 and the first few months of 2018:

- The minimum shareholding requirement of a 'participating holding' under the Maltese Income Tax Act has been reduced from 10% to 5%. Such update will enable Maltese companies holding at least 5% of the equity shares, rather than 10%, to claim a participation exemption (subject to the satisfaction of other conditions) on dividend income and gains derived by a Maltese company from a qualifying 'participating holding' or from the disposal of such holding.
- A notional interest deduction (NID) system has been introduced, aiming to approximate the tax treatment of equity with that of debt.
- The reduced rate of 1.5% stamp duty with respect to certain gratuitous transfers by individuals of marketable securities/certain commercial tenements has been extended to 30 September 2018.
- An Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income has entered into force between Malta and Azerbaijan with effect from 27 December 2016, while a similar double tax treaty (DTT) between Malta and Vietnam entered into force with effect from 25 November 2016.
- DTTs between Malta and Andorra and between Malta and Ukraine entered into force as of 1 January 2018.
- Malta ratified the Organisation for Economic Co-operation and Development (OECD) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (MLI).
- By virtue of the Tax Credits Supporting the Refurbishment of Hotels and Restaurants Regulations, Certify Scheme Regulations, as well as Investment Aid for Energy Efficiency Projects Regulations, an undertaking may be assisted by the Malta Enterprise. Moreover, various amendments were made to the Malta Enterprise Act *as outlined in the Tax credits and incentives section.*
- A tax exemption in terms of the income generated from shipping activities or the sale or transfer of a ship or vessel, which qualifies as a tonnage tax vessel, has been introduced, subject to certain conditions being satisfied.
- A Convention on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income was signed (yet to enter into force) between the Republic of Malta and Ethiopia.

Taxes on corporate income

A company incorporated in Malta is considered as both domiciled and resident in Malta and is consequently taxable on a worldwide basis. A non-Maltese incorporated company that is resident in Malta through management and control is subject to Maltese tax on income arising in Malta and on income received in/remitted to Malta.

Companies are subject to income tax at a flat rate of 35%. There is no corporate tax structure separate from income tax.

Petroleum profits tax

Petroleum profits tax is levied as income tax with similar deductions being allowed in respect of incurred expenditure. In the case of a Production Sharing Contract signed after 1 January 1996, any petroleum profits are taxed at the standard corporate tax rate of 35%. However, all other petroleum profits are subject to a 50% tax rate.

Insurance profits tax

Insurance profits tax is levied as income tax and subject to the normal standard tax rate of 35% as other corporate profits; however, the manner in which such profits are ascertained is subject to a number of detailed rules that take into account the special nature of the insurance industry. In the case of non-resident companies, the computation is applied with reference only to business carried on in or from Malta.

Shipping profits tax

A tonnage tax system is applicable under Maltese law. Such regime covers profits from shipping activities as defined under the applicable regulations that are derived by qualifying Maltese-flagged and European Union (EU)/European Economic Area (EEA) vessels as well as non-EU/EEA vessels satisfying certain additional rules. Furthermore, qualifying ship management activities are also entitled to the tonnage tax system.

Recent amendments to the Maltese tonnage tax regulations allow the exemption of certain shipping income from being charged under income tax. These amendments provide that, subject to the fulfilment of certain conditions, which conditions are modelled on the EU Community Guidelines on state aid to maritime transport, and the full payment of all relevant tonnage taxes by a shipping organisation, a shipping organisation shall not be charged further income tax on the income derived from shipping activities. Income derived from ship management activities may also qualify for the tonnage tax exemption. Furthermore, any further tax derived from income or profit gained from the sale or other transfer of a tonnage tax ship, which ship had been acquired and sold whilst under the tonnage tax system, or from the disposal of any rights to acquire a ship, which when delivered or completed would qualify as a tonnage tax ship, would be exempt.

Corporate residence

All companies incorporated in Malta are considered to be both domiciled and resident in Malta. Other bodies of persons (including companies incorporated overseas) are considered to be resident in Malta when the control and management of their business are exercised in the country.

Permanent establishment (PE)

Although Maltese tax legislation contains a number of references to the term ‘permanent establishment’, the term is not defined by Maltese legislation. Indeed, in terms of Maltese domestic tax law, a non-resident is, in principle, subject to Maltese tax on income arising in Malta, irrespective of the existence or otherwise of a PE in Malta (subject to any DTT provisions that would apply if in conflict with Maltese tax law).

In the event the Maltese Inland Revenue is required to interpret such a term, reference would typically be made to the definition contained in the OECD Model Convention.

Other taxes

Value-added tax (VAT)

Supplies of goods and services in Malta are subject to VAT at the standard rate of 18% (7% on accommodation in hotels and licensed premises; 5% on supply of electricity, the importation of works of art, collector's items and antiques, certain confectionery, medical accessories, printed matter, and items for exclusive use by the disabled). Exports to countries outside the European Union, food, and certain other goods and services are exempt from VAT and provide a right to credit of VAT remitted.

Customs duties

Goods imported from outside the European Union may be subject to customs duties. A Customs Code provides for customs procedures and concepts, which are based on European Community requirements.

Excise duties

Excise duties are chargeable on certain energy products, certain alcoholic drinks, certain manufactured tobacco products, and mobile telephony services.

Property taxes

Maltese tax legislation does not contain any wealth taxes or other similar taxes on property, save for the property transfers tax outlined below.

Property transfer taxes

Transfers of immovable property situated in Malta are generally subject to a final withholding tax (WHT), which, in most cases, is charged on the transfer value of the property. In the case of transfers of Maltese immovable property made on or after 1 January 2015, the WHT on such transfer should, in general, be 8% or 10% (the latter rate applying in the case where the property was acquired before 1 January 2004). Certain other rates of WHT may apply in specific circumstances.

The final tax rate on transfers of regenerated immovable property situated in urban conservation areas is set at 5% of the transfer value, subject to the satisfaction of a number of conditions.

Stamp duty

Stamp duty is charged on, among other transactions, transfers of immovable property (5% for both residents and non-residents; a reduced rate of 2% in respect of transfers of immovable property situated in Gozo) and marketable securities (2%; 5% in the case of transfers of shares in property companies).

In the case of the transfer by gratuitous title of (i) marketable securities owned by individuals and of (ii) commercial tenements (i.e. business property) that had been used in a family business for a minimum period of three years preceding the transfer, to the transferor's spouse, descendants, and ascendants in the direct line and their spouses, or in the absence of descendants to such transferor's brothers or sisters and their descendants, stamp duty chargeable is at a reduced rate of 1.5%.

This reduced rate applies to transfers by gratuitous title made on or after 1 April 2017 but prior to 1 October 2018. Once this reduced rate is applied, no other exemption or duty relief will apply to such transfers.

In addition, in the case of a transfer of immovable property situated within an urban conservation area or scheduled by the Malta Environment and Planning Authority, and where such transfer occurs before 1 January 2019 to a person who does not require a permit by the Minister for the purposes of the Immovable Property Act, the stamp duty chargeable is at a reduced rate of 2.5%. Such reduced rate is subject to the satisfaction of a number of conditions.

In the event that the market value of shares held by a person is reduced following a change in the company's issued share capital or voting rights and the value shifts onto the other shareholders, the transferor would be deemed to have transferred the said value to the transferee(s) and such value shifting may be subject to a stamp duty liability (although certain exceptions/exemptions may apply).

Maltese legislation also provides for the possibility of a stamp duty exemption in a number of instances, subject to the satisfaction of certain conditions. Some of the more commonly availed of exemptions include the acquisition or disposal of marketable securities by or in the following: (i) licensed collective investment schemes; (ii) licensed persons providing management, administration, safekeeping, or investment advice to collective investment schemes; (iii) companies being owned more than 50% by non-Maltese residents and satisfying certain other conditions; and (iv) a company being owned more than 50% by non-Maltese residents and that carries on or intends to carry on more than 90% of its business outside of Malta.

Payroll taxes

In terms of the Final Settlement System (FSS) rules, an employer is required to withhold income tax and social security contributions (*see below*) at source from the employees' salaries. Such deductions of tax/social security should be forwarded by the employer to the Maltese Inland Revenue within specific timeframes.

Employer's social security contributions

Employers are required to pay social security contributions at the rate of 10% of the individual employee's salary and at fixed rates, for calendar year 2018, of 45.58 euros (EUR) per week for annual salaries exceeding EUR 23,702, in the case where the employee is born on or after 1 January 1962 (note that the employee is also required to pay an equivalent weekly amount).

The rates of social security generally increase annually and take effect from the commencement of the calendar year in question. These rates are generally published at the beginning of the year.

Branch income

The tax rate on branch income for branches set up in Malta is the same as that for Maltese resident companies. Other than the tax charged on a branch's income, no tax is withheld on transfers of profits to the head office.

Income determination

Inventory valuation

Inventory valuations are generally made at the lower of cost or market value. In general, the book and tax methods of inventory valuation will conform. However, the last in first out (LIFO) method is not accepted for taxation purposes. Obsolescence is accepted where proven, but there are no provisions to take into account the effects of monetary inflation on the inventory valuation.

Capital gains

Tax is chargeable on capital gains realised on the transfer of immovable property (real estate), shares and other securities, business, goodwill, business permits, copyrights, patents, trade names, trademarks, any other intellectual property (IP), interests in a partnership, and beneficial interests in a trust.

In respect of transfer of Maltese immovable property, a WHT system applies (*see Property transfer taxes in the Other taxes section*).

Furthermore, *similarly to the stamp duty situation set out in the Other taxes section*, in the event that the market value of shares held by a person is reduced following a change in the company's issued share capital or voting rights and the value shifts onto the other shareholders, the transferor will be deemed to have transferred the said value to the transferee(s) and such value shifting may be subject to a tax on capital gains (although certain exceptions/exemptions may apply).

No tax is levied on investments that yield a fixed rate of return. A tax exemption applies in certain instances and subject to the satisfaction of certain conditions on the capital gain arising on the transfer of shares in a company listed on a recognised stock exchange other than shares held in certain collective investment schemes.

Subject to the satisfaction of certain conditions, if the asset is transferred between group companies, no loss or gain is deemed to arise from the transfer. Note that a provision exists that brings to charge the transfer of shares in property companies (as specifically defined) that were originally subject to intra-group tax deferral when the transferee ceases to be a member of the original group within six years from the date of such intra-group transfer.

Gains realised from the transfer of other assets fall outside the scope of the tax. Gains arising outside Malta and derived by a company that is either not domiciled or not ordinarily resident in Malta are not subject to tax. There are also a number of exemptions provided in the law. For example, gains realised by non-residents on transfers of units in Maltese collective investment schemes, similar investments relating to linked long-term insurance business and shares, or securities in Maltese companies (except for companies holding certain Maltese immovable property) are exempt from tax.

Rollover relief

Rollover relief is granted with respect to capital assets used in a business for a period of at least three years and transferred and replaced within one year by an asset used solely for similar business purposes (i.e. no tax is chargeable on the capital gain). In such instances, the cost of acquisition of the new asset is reduced by the gain on the transfer of the previous asset that would otherwise have been taxable.

Maltese tax law also provides for the surrendering and claiming of allowable losses between companies that form part of the same group (*see the Group taxation section for more information*) as well as for reorganisation relief, subject to certain specific conditions.

Dividend income

Dividends received by one resident company from another, whether or not a subsidiary, are taxable on the gross amount in the recipient's hands. If the distributed profits have been taxed, no further tax should be chargeable to the recipient company. However, for resident shareholders, if the corporate rate of tax in the year in which the profits are earned is lower than that in the year in which they are distributed, an amount equivalent to the difference in rates (topping up) is payable. If the distribution is made from untaxed income, the dividend will be tax-free in the hands of the recipient company.

Dividends and gains on disposal of shares received by a corporate investor from a non-resident company (or from a non-resident partnership, subject to certain conditions), as well as profits from a PE, including a foreign branch, may qualify for a participation exemption in Malta, subject to the satisfaction of certain statutory conditions. Instead of claiming the participation exemption, the relevant Maltese tax may be paid and then, upon a distribution of such taxed profits, the shareholder may claim a full refund of the tax suffered on such profits in terms of Malta's system of taxation of dividends.

The participation exemption may also apply to gains upon the disposal of equity holdings in Maltese-resident entities. Distributions of taxed income by Maltese-resident companies are not subject to further tax under the full imputation system.

Stock dividends

A Maltese company may distribute bonus shares from profits, whether of an income or capital nature, and from share premium and capital redemption reserves. When bonus shares represent a capitalisation of profits, they are deemed to be dividends for tax purposes. Such bonus shares are subject to tax in the recipients' hands, gross of any tax paid at the corporate level on the relative profits, but tax credits equivalent to the gross-up of tax are available to stockholders.

Interest income

Interest is chargeable to tax under the provisions of Article 4(1)(c) of the Income Tax Act and subject to the standard corporate tax rate. Nevertheless, in the event the receipt of interest falls within the definition of 'investment income' as established by Maltese tax legislation, a WHT of 15% may be generally applicable. Furthermore, in the case of interest income payable to non-Maltese residents, such interest should be exempt from Maltese tax, subject to the satisfaction of certain statutory conditions.

Royalty income

Similar to interest income, royalty income is chargeable to tax under the provisions of Article (4)(1)(e) of the Income Tax Act (*see Intellectual property in the Deductions section for a description of the possibility of a tax deduction for expenditure of a capital nature on IP or any IP rights*). In the case of royalty income payable to non-Maltese residents, such royalty should be exempt from Maltese tax, subject to the satisfaction of certain statutory conditions.

Rental income

Corporates and individuals in receipt of income from the letting of urban and/or rural property and of commercial tenements and clubs, provided that such properties are not being rented to or from a related body of persons (as defined), have the option to apply a final 15% tax on the gross rental income (other tax rates may apply in specific circumstances).

Otherwise, the rental income is subject to normal rates of tax, but special tax deduction rules apply.

Foreign income

A company is taxable on its worldwide income when it is ordinarily resident and domiciled in Malta. A company that is either not ordinarily resident or not domiciled in Malta is taxable on its foreign income only insofar as such income is remitted to/received in Malta. Foreign tax is relieved by way of tax credits. This may occur under the terms of a DTT. Where no treaty exists, the foreign tax can be relieved through a system of unilateral relief. Relief for underlying tax is also granted with respect to dividend income, either in terms of a DTT or as unilateral relief. Such relief may be available if, among other things, evidence of tax paid abroad is produced.

Profits of Malta resident companies are subdivided for Maltese tax purposes into five accounts: the Immovable Property Account, the Final Tax Account, the Maltese Taxed Account, the Untaxed Account, and the Foreign Income Account. The last of these includes, among other things, taxable profits of Maltese-resident companies resulting from foreign investments; profits of a foreign PE; and profits resulting from foreign investments, assets, or liabilities of an onshore bank licensed in Malta. Income allocated to the Foreign Income Account for which no evidence of tax paid abroad is available can qualify for a flat-rate foreign tax credit of 25%.

The Immovable Property Account includes profits and income derived directly or indirectly from immovable property situated in Malta. The Final Tax Account includes, among other items, profits that have been subject to a final tax at source or were exempt from tax and such exemption is extended to shareholders upon a distribution of such profits. The Maltese Taxed Account includes any other taxed profits while the Untaxed Account represents the difference between the distributable profits and the profits allocated to the other taxed accounts.

Under Malta's system of taxation of dividends, shareholders receiving distributions from the Maltese Taxed Account and/or the Foreign Income Account may be entitled to a tax refund of part of the tax suffered by the distributing Maltese company on such profits being distributed. The tax refund may be either a six-sevenths refund, a five-sevenths refund, or a two-thirds refund of the tax suffered by the Maltese distributing company on the distributed profits. The type of the tax refund depends on the nature of the income to be distributed.

Deductions

The basic condition for deductibility of expenses is that deductions are allowable only with respect to expenditures that are wholly and exclusively incurred in the production of income.

In order to be in a position to claim a tax deduction, a valid tax invoice/other equivalent document sustaining the expense may have to be provided if requested by the Maltese Inland Revenue.

Apart from the general tax deductibility rule stated above, the Maltese Income Tax Act also provides a number of exceptions whereby specific expenses of a capital nature may also be tax deductible, subject to the satisfaction of the statutory conditions applicable thereto. The following are some further comments on specific items of expenditure.

Depreciation and depletion

Tax depreciation is computed on the straight-line method. The rate of depreciation on plant and machinery varies according to the category of the plant and machinery in question.

Maltese tax law prescribes the minimum number of years over which items of plant and machinery are to be depreciated as follows:

Category	Years
Computers and electronic equipment	4
Computer software	4
Motor vehicles	5
Furniture, fixtures, fittings, and soft furnishings	10
Equipment used for constructions of buildings and excavation	6
Catering equipment	6
Aircraft - aircraft airframe	6
Aircraft - engines	6
Aircraft - engine or airframe overhaul	6
Aircraft - interiors and other parts	4
Ships and vessels	10
Electrical and plumbing installations and sanitary fittings	15
Cable infrastructure	20
Pipeline infrastructure	20
Communications and broadcasting equipment	6
Medical equipment	6
Lifts and escalators	10
Air conditioners	6
Equipment mainly designed or used for the production of water or electricity	6
Other machinery	5
Other plant	10

The wear and tear rate on industrial buildings and structures (including hotels, car parks, and offices) may not exceed 2% *per annum*. New acquisitions of industrial buildings and structures are entitled to a concurrent extra 10% allowance in the year of acquisition. Tax depreciation is not required to conform to book depreciation.

The total allowances over the asset's useful life may not exceed 100% of its cost. If a surplus arises on disposal of a tax-depreciated asset, it is either added to the year's income or utilised to reduce the cost of any replacement. If the asset has been under-depreciated, a balancing allowance is granted.

No deduction is available for the depletion of natural resources.

The rules on tax deductions for wear and tear of plant and machinery provide for certain specific treatment in particular situations, including, among other things, the following:

- To establish the cost of an asset when it is transferred between related companies, the lower of the actual cost of the asset or the tax written-down value adjusted by any balancing charge or allowance incurred by the transferring company should be applied.
- Deductions for wear and tear are allowed only where proper records and documentation have been kept that support the cost of the respective assets.
- A proportional deduction is allowed where an asset is used partly in the production of income and partly for other purposes.

Intellectual property (IP)

Maltese tax law provides for a tax deduction for expenditure of a capital nature on IP or any IP rights incurred in the production of income. Such expenditure should be tax deductible over the life of the relevant IP but, in any case, over a minimum period of three consecutive years.

Goodwill

In the event that goodwill were to fall within the purport of IP for the purposes of the tax deductibility rules under Maltese tax law, then it may possibly be argued that an expenditure on goodwill may be tax deductible. However, this would need to be analysed on a case-by-case basis.

Start-up expenses

Certain pre-trading expenses (i.e. staff training, advertising, salaries/wages) are also allowed as a deduction, subject to the satisfaction of the following conditions:

i. The expenditure is incurred not more than 18 months before the commencement of the trade or business.
ii. The expenditure is not deductible in ascertaining the trading or business income of the person carrying on such trade or business but would have been so deductible under (i) above had it been incurred after that time.

In the event the above conditions are satisfied, such expenditure is treated as incurred on the day on which the trade or business is first carried on by the person.

Interest expenses

Interest on any borrowed money is an allowable deduction if it is paid on capital employed in acquiring income. The expense is allowable even though the borrowing would have been made for a capital purpose, but it is deductible only against the income derived in the same year from the employment of that capital. This special rule is in addition to the deduction for interest paid on money due on revenue account (such interest should be deductible under the general rule of deductibility), such as interest on trade debts or charged on normal business overdraft facilities. There is a restriction in respect of interest deductibility where the relevant advance is in connection with the financing of Maltese immovable property and subject to certain other conditions.

Bad debt

Bad debts incurred in any trade, business, profession, or vocation are allowed in the year they become bad if proved to the satisfaction of the tax authorities. No deduction is given for provisions for bad debts and for bad debts incurred in activities other than a trade, business, profession, or vocation. Any bad debt that is later recovered is deemed as income for the year in which it is received.

Charitable contributions

The general rule is that charitable contributions are not deductible for Maltese tax purposes unless expressly provided for by law.

Fines and penalties

The general rule is that fines and penalties are not deductible for Maltese tax purposes. Nevertheless, there is an exception to this general rule that provides that interest paid or payable by any person in terms of the Maltese VAT Act will be treated as expenses incurred in the production of the income of that person for income tax purposes.

Taxes

Technically, taxes suffered should not be deductible for Maltese tax purposes. However, the typical interpretation of the Maltese Inland Revenue is that as long as no relief of double taxation is claimed for the tax, then such tax should be available as a tax deduction.

Other significant items

Capital expenditures on scientific research and patents are written off over a number of years. In the case of scientific research, a deduction may be granted at 150% of the expenditure.

The Income Tax (Deductions) Rules of 2001 provide for specific conditions on deductions with respect to the use of cars and the payment of employee compensation. The cost on which capital allowances on certain motor vehicles may be claimed is restricted to EUR 14,000. Deductions for lease payments on cars are restricted in a manner that corresponds with the stated restriction of EUR 14,000 that applies to capital allowances on owned cars. With respect to payment of employee compensation, the Deduction Rules require that in order for employee compensation to be allowed as a deduction for tax purposes in the hands of the employing company, it must have been duly accounted for. In particular, the employee compensation must have been reported on the appropriate forms and within the statutory time limit to the Maltese Inland Revenue. The rules also provide for restrictions on deductibility of emoluments with respect to the payment of certain fringe benefits to employees.

A new tax deduction in respect of transportation costs of employees to and from the place of work using means of transport capable of carrying more than eight persons has been introduced. Under the applicable rules, undertakings may claim a deduction against its income equivalent to 150% of the employee transportation costs incurred in the relative year, subject to certain conditions being satisfied.

Net operating losses

Net operating losses may be carried forward indefinitely until absorbed. There is no carryback of losses, not even in terminal years. Unabsorbed capital allowances may be carried forward only against the same underlying source of income. Where the source ceases to exist, any remaining balance of unabsorbed capital allowances is lost.

Certain rules apply in relation to the discretion of the Commissioner for Revenue to allow tax losses/capital allowances to be taken over by the surviving company following a merger/division.

Payments to foreign affiliates

There are no restrictions on the deductibility of royalties, interest (except for interest, discount, or premium that are in any manner connected to Maltese immovable property and subject to the satisfaction of certain other statutory conditions, in which case, the interest/discount/premium should not be tax deductible in Malta), and service fees paid to foreign affiliates as long as the particular expenses are considered to be incurred in the production of the particular income and satisfy the applicable statutory conditions. Interest, discount, premium, or royalties derived by non-residents are exempt from tax, subject to the applicable statutory requirements.

Notional interest deduction (NID)

The NID is optional and is calculated by multiplying the deemed notional interest rate by the balance of risk capital that the undertaking has at year-end. The undertaking shall be entitled to a deduction for sums that are deemed to be payable by way of interest on risk capital or such part thereof as may be determined by the undertaking for the particular year. The notional interest rate is the risk-free rate set on Malta Government Stocks with a remaining term of approximately 20 years plus a premium of 5%. The risk capital of the undertaking includes mainly share capital, share premium, reserves, and interest-free loans as at year-end. The NID may also be claimed by a Maltese PE of a non-Maltese resident undertaking. In that case, the risk capital is taken to be the capital attributable to the PE.

The maximum deduction in any given year cannot exceed 90% of chargeable income, and any excess can then be carried forward to the following year. Certain anti-avoidance rules apply to prevent abuses of the NID.

Group taxation

Two companies that for tax purposes are resident exclusively in Malta, where one company is a 50% plus subsidiary of the other or both are 50% plus subsidiaries of a third Malta-resident company, qualify as members of a group of companies. Allowable losses may be surrendered by a company to another company within the group where both companies have concurrent accounting periods and form part of such group throughout the entire basis year for which this relief is claimed. The possibility of income tax consolidation is contemplated in Maltese tax law; however, rules covering the precise terms and conditions of such tax consolidation are still to be issued.

Transfer pricing

Malta does not operate a sophisticated transfer pricing regime. There are some general anti-avoidance provisions and brief references to transactions at arm's length. However, the Maltese tax authorities will typically still consider it desirable that transactions between residents and non-residents broadly adhere to the arm's-length principle, that is, prices that would have been concluded between independent enterprises. However, no specific rules are available on the manner in which an arm's-length price is to be established.

Country-by-country (CbC) reporting

The CbC reporting requirement applies to Multinational Enterprise Groups (MNE Groups), being any group that includes two or more enterprises (including any PEs) the tax residence of which falls in two different jurisdictions, in respect of fiscal years starting on or after 1 January 2016. The Regulations apply for MNE Groups having a total consolidated group revenue of at least EUR 750 million (or an equivalent amount in local currency) during the fiscal year immediately preceding the reporting year.

Thin capitalisation

The Maltese tax regime does not contain thin capitalisation rules.

Controlled foreign companies (CFCs)

No anti-CFC rules or legislation are applicable in Malta.

Tax credits and incentives

Foreign tax credit

A credit for foreign taxes may be applied against the Maltese tax charge (*see Foreign income in the Income determination section for more information*).

Inbound investment

Investments by foreigners may be readily repatriated together with profits.

The Malta Enterprise Act and other related legislation provide a comprehensive package of incentives for inbound investment. These incentives are reserved for enterprises carrying on certain activities in Malta, mainly manufacturing activities. The focus is on high-value-added activities, and approval of a project's eligibility for benefits by the Malta Enterprise may be required. In general, eligibility does not depend on whether the company produces for the local or for export markets. The main tax incentives include the following:

- Enterprises carrying out qualifying activities, which mainly include manufacturing activities, qualify for investment tax credits whereby a percentage of qualifying expenditures are off-set against the tax charge (not against taxable income). The Investment Aid (July 2014) Regulations, 2014 (the 'Regulations') were issued on 24 October 2014, and guidelines in this regard have been published by Malta Enterprise. Such guidelines form the basis of the investment aid scheme that is in force until 31 December 2020. The Regulations apply to qualifying undertakings, which may benefit from investment tax credits in respect of certain qualifying activities, which are quantified as a percentage of qualifying expenditure incurred in terms of the guidelines. The tax credits range between 15% and 35% of the qualifying expenditure for projects commencing before 31 December 2017 and between 10% and 30% for projects commencing between 1 January 2018 and 31 December 2020, depending on the undertaking's size.
- Certain tax credits and special incentives may be available, subject to certain conditions. These tax credits are calculated on the basis of specific expenditures incurred by a company, while the special incentives grant tax exemptions on all or part of the chargeable income in specified circumstances.
- No further tax is charged on distributions from profits that had previously been taxed at a reduced rate. This benefit is also extended to amounts that were not

subject to tax on account of the investment allowance, investment tax credits, and specific tax credits/special incentives.

The combination of certain tax treaties and Maltese domestic law lowers the Maltese tax rate on certain companies receiving certain industrial assistance (i.e. mainly assistance in terms of the Malta Enterprise Act, Business Promotion Act, and Business Promotion Regulations) to 15%.

In addition, the Seed Investment Scheme (Income Tax) rules have been introduced with the aim of encouraging access to finance to small and medium-sized enterprises (SMEs). In terms of these rules, 'qualifying investors' should be entitled to a tax credit amounting to 35% of the aggregate value of their investment in qualifying companies (total tax credit not exceeding EUR 250,000 *per annum*). Such tax credit would be set off against the tax due by the qualifying investor in respect of any income or gains brought to charge to tax in the year of assessment following the basis year when the investments are made. The tax credit may be carried forward until it is fully absorbed. In addition, qualifying investors may be entitled to an exemption from tax in respect of any gains or profits derived from the disposal of their qualifying investments, where such investments are disposed of after the lapse of three years from the date of subscription to the equity shares.

International business profits

Other Maltese tax considerations that may be relevant in an international business context include the following:

- Maltese tax law provides for a beneficial tax treatment in respect of securitisation vehicles and similarly to re-insurance special purpose vehicles.
- A beneficial tax regime is available in respect of collective investment schemes.
- The Maltese fiscal implications relative to trusts and private foundations vary, depending on a number of circumstances, including: (i) the particulars of the parties involved (e.g. domicile or residence of the trustees/administrator or beneficiaries), (ii) the act or event under review (e.g. the settlement of property, transfers of beneficial interests, distributions of trust/foundation assets), and (iii) the nature of the trust/foundation assets. Furthermore, in certain circumstances, tax transparency provisions are set out in the law, particularly so as to allow, among other things, the application of tax exemptions that would have applied to beneficiaries if there was no trust relationship or foundation.
- An option exists for a step-up in the cost of acquisition of assets situated outside Malta (including companies) effecting a change in domicile or residence or becoming Maltese companies as a result of cross-border mergers.

Other tax credits

A tax credit for micro enterprises is provided under the Micro Invest Scheme. The credit amounts to 45% (or 65% for undertakings operating in Gozo) of eligible capital expenditure incurred, which tax credit would then be utilised against the tax incurred on income derived from the qualifying trade or business activity for that financial year, subject to certain maximum limits applied over three consecutive fiscal years. For capital expenditure incurred as of calendar year 2017, the applicant undertaking cannot employ more than 50 full-time employees (previously, the maximum was set at 30 full-time employees). Also as of calendar year 2017, the maximum eligible tax credits per single undertaking has been increased to EUR 50,000 (from EUR 30,000) over any period of three consecutive fiscal years. This maximum credit is further increased to EUR 70,000 in respect of undertakings operating in Gozo, family businesses, and female-owned undertakings.

Withholding taxes

Domestic corporations paying certain types of income are subject to deduction of tax-at-source obligations as follows:

	WHT (%)		
Recipient	**Dividends (1)**	**Interest**	**Royalties**
Resident corporations	0	35	0
Resident individuals	0/15 (4)	25	0
Non-resident corporations and individuals:			
Non-treaty	0	0 (2)	0 (2)
Treaty:	(3)	0 (2)	0 (2)
Albania	0		
Andorra	0		
Australia	0		
Austria	Possible imputation refund of 2.5% of the tax suffered at company level (3)		
Azerbaijan	0		
Bahrain	0		
Barbados	0		
Belgium	0		
Bulgaria	Possible imputation refund of 5% of the tax suffered at company level (3)		
Canada	0		
China, People's Republic of	0		
Croatia	0		
Cyprus	0		
Czech Republic	0		
Denmark	0		
Egypt	0		
Estonia	0		
Finland	0		
France	0		
Georgia	0		
Germany	0		
Greece	0		
Guernsey	0		
Hong Kong	0		
Hungary	0		
Iceland	0		
India	0		
Ireland	0		
Isle of Man	0		
Israel	0		
Italy	0		
Jersey	0		

Recipient	WHT (%) Dividends (1)	Interest	Royalties
Jordan	0		
Korea, Republic of	0		
Kuwait	Possible imputation refund of 20% to 25% of the tax suffered at company level (3)		
Latvia	0		
Lebanon	0		
Libya	Possible imputation refund of 20% of the tax suffered at company level (3)		
Liechtenstein	0		
Lithuania	0		
Luxembourg	0		
Malaysia	0		
Mauritius	0		
Mexico	0		
Moldova	0		
Montenegro	0		
Morocco	0		
Netherlands	0		
Norway	0		
Pakistan	0		
Poland	0		
Portugal	0		
Qatar	0		
Romania	Possible imputation refund of 30% of the tax suffered at company level (3)		
Russia	0		
San Marino	0		
Saudi Arabia	0		
Serbia	0		
Singapore	0		
Slovakia	0		
Slovenia	0		
South Africa	0		
Spain	0		
Sweden	0		
Switzerland	0		
Syria	0		
Tunisia	0		
Turkey	0		
Ukraine	0		
United Arab Emirates	0		
United Kingdom	0		
United States	0		
Uruguay	0		
Vietnam	0		

Notes

Treaties relating to international air and shipping traffic are in force with Switzerland and the United States (US).

The numbers in parentheses refer to the following notes:

1. No WHT is imposed on dividends distributed by Maltese companies (except for distributions of untaxed income to resident persons other than companies, *refer to Note 5*) because no additional tax is imposed on distributions other than the tax charged on the company with respect to the distributed profits. Malta makes no distinction between portfolio and substantial holdings. Under Maltese law, the dividend is grossed up by a figure representing the tax imposed on the company's profits when these were originally earned thereby. Under Malta's full-imputation system of taxation of dividends, the corporate tax is assimilated with the shareholder's personal income tax with respect to the dividend. In the shareholder's hands, the dividend is taxed at the gross amount, and the relevant amount of corporate tax offsets the shareholder's tax liability on income from all taxable sources with no further tax liability being imposed on the shareholder in respect of such dividends.
2. Interest and royalty income derived by non-residents is exempt from tax in Malta as long as certain conditions are complied with (e.g. they are not effectively connected to a PE of the recipient situated in Malta).
3. On the basis that Malta operates the full-imputation system of dividends, dividends are not subject to further tax when distributed by a company registered in Malta to a non-Maltese resident. Furthermore, if the rate provided under the Dividends Article in the respective treaty provides for a lower rate than the Maltese corporate tax rate incurred by the company on the respective profits (standard corporate tax rate of 35%), then this may result in a refund of Maltese tax in terms of Malta's full imputation system (such a refund situation may arise in the treaties with Austria, Bulgaria, Kuwait, Libya, and Romania). In a number of treaties, the rate of deduction and of tax is reduced to 15% in the case of companies enjoying certain tax incentives. *See also Note 1 with respect to Malta's full-imputation system of taxation of dividends.*
4. Distributions of dividends by a Maltese company where the dividend represents a distribution of untaxed income attracts a 15% WHT where the shareholder is (i) a Maltese resident other than a company, (ii) a non-resident person who is directly or indirectly owned and controlled by, or acts on behalf of, a Maltese domiciled and ordinarily-resident individual, or (iii) an EU/ EEA individual who has declared that at least 90% of worldwide income is derived from Malta.

Tax administration

Taxable period

The year of assessment is a calendar year, but a company may obtain authorisation from the Maltese Inland Revenue to have a different year-end (i.e. other than 31 December).

Tax returns

An income tax return for income earned during the previous year must be filed for every year of assessment. The tax return for a company must be submitted by the later of nine months following the end of the financial year or by 31 March following the year of assessment (however, in recent years, the Commissioner for Revenue has provided concessionary extensions to such statutory deadlines in the case where the tax return is submitted electronically). Penalties are incurred on late filing of returns. The tax return submitted by the company is a self-assessment, and the Commissioner for Revenue will not raise an assessment unless the Commissioner is not in agreement with the self-assessment.

Payment of tax

Companies pay tax in the currency in which their share capital is denominated.

During the basis tax year, a company is generally required to make provisional tax (PT) payments every four months. In general, the PT payments are based on the last self-assessment filed by the company, and payments are divided into three instalments of 20%, 30%, and 50%, respectively. Any tax liability that is still due at the tax return date after deducting all tax credits must be settled immediately with the submission of the return. Interest at 0.54% per month is charged on any unpaid tax.

In certain instances, especially for companies with mostly international operations, PT may not be payable, and the tax payment is normally paid on the earlier of the date profits are distributed or 18 months after the end of the relative accounting period.

Tax audit process

The Maltese Inland Revenue is entitled to raise an investigation and notify the taxpayer in writing that the department is initiating a tax enquiry. In such investigations, the taxpayer will typically be required to provide information and supporting documentation in respect of queries raised by the Revenue. The taxpayer has a right to appoint a representative on their behalf.

Statute of limitations

An assessment may be issued by the Maltese Inland Revenue no later than six years from the end of the respective tax year. In the event of non-full disclosure or wilful incorrect/misleading information, the aforesaid prescription period will not apply.

In respect of the payment of tax, additional tax, interest, or any penalty, an action may be taken during any time from the date on which it becomes due and payable up to eight years from that date or, where an assessment in respect thereof has been made, from the date on which that assessment becomes final and conclusive.

Topics of focus for tax authorities

The Maltese Inland Revenue is following closely international tax developments, such as the OECD BEPS initiative and the Anti-Tax Avoidance Package, and is also involved in discussions/representations on such matters in various fora.

Other issues

US Foreign Account Tax Compliance Act (FATCA)

The agreement concluded between the Republic of Malta and the United States to improve international tax compliance and to implement the FATCA (the 'Agreement') entered into force on 26 June 2014. On 18 November 2014, the FATCA Regulations were accordingly issued implementing the said intergovernmental agreement (IGA). Guidelines on the implementation and interpretation of the FATCA Regulations and the said Agreement have been issued by the Maltese Inland Revenue.

Furthermore, the Exchange of Information (United States of America) (FATCA) (Amendment) Order was enacted in 2015.

During 2017, the Maltese Inland Revenue Department received all the required information for FATCA on all account holders that were United States Reportable Accounts from the financial institutions that were classified as Reporting Financial Institutions in Malta.

The Common Reporting Standard (CRS) and EU Council Directive 2014/107/EU

By virtue of LN 384 of 2015 entitled the 'Cooperation with Other Jurisdiction on Tax Matters (Amendment) Regulations, 2015', the EU Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC2) and the CRS have been accordingly implemented into Maltese legislation, with effect from 1 January 2016.

Guidelines on the implementation and interpretation of the DAC2 and CRS have also been issued by the Maltese Inland Revenue.

For the year 2017, Reporting Malta Financial Institutions were required to submit information on 'new' account holders or high-value, pre-existing individual account holders.

During 2017, the Maltese Inland Revenue Department updated the online reporting tool available to Maltese Financial Institutions that were classified as Reporting Malta Financial Institutions for DAC2 and CRS purposes. The reporting tool now includes both the report to be submitted relating to the FATCA as well as DAC2/CRS.

Mauritius

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Significant developments

In the Finance (Miscellaneous Provisions) Act 2017, several new income tax incentives were introduced.

An income tax exemption is available for companies set up on or after 1 July 2017 that are involved in innovation-driven activities for intellectual property (IP) assets developed in Mauritius. The exemption will apply for eight tax years, starting from the tax year in which the company starts its innovation-driven activities. Similar tax exemptions have been introduced for income derived from the manufacture of pharmaceutical products, medical devices, and high-tech products by companies incorporated after 8 June 2017; these will be available from eight years from the tax year in which the company starts operation.

Income derived from the exploitation and use of deep ocean water for air conditioning installations, facilities, and services will be exempted for eight tax years. Additionally, a company incurring expenditure on deep ocean water air conditioning may deduct from its gross income twice the amount of the expenditure incurred in that tax year. That deduction will be allowed for five consecutive tax years, starting from the year in which the expenditure is incurred.

During the period from 1 July 2017 to 30 June 2022, if a person has incurred any qualifying expenditure on research and development (R&D) as described below that is directly related to one's existing trade or business, one may, in the tax year in which the qualifying expenditure was incurred, deduct twice the amount of the expenditure, provided that the R&D is carried out in Mauritius and no annual allowances have been claimed on the same. The term 'qualifying expenditure' means any expenditure relating to R&D, including expenditure on innovation, improvement, or development of a process, product, or service as well as staff costs, consumable items, computer software directly used in R&D, and development and subcontracted R&D.

A company involved in the export of goods will be liable to income tax at the reduced rate of 3% on the chargeable income attributable to that export, as computed on the basis of the following formula:

Chargeable income attributable to that export = (A x C/B), in which:

- A is the gross income derived from the export of goods in that income year.
- B is the gross income derived from all the activities of the company for that income year.
- C is the chargeable income of the company for that income year.

Mauritius

Taxes on corporate income

A corporation resident in Mauritius is subject to tax on its worldwide income. A non-resident corporation is liable to tax on any Mauritius-source income, subject to any applicable tax treaty provisions.

Corporations are liable to income tax on their net income, currently at a flat rate of 15%. Companies engaged in the export of goods are liable to be taxed at the rate of 3% on the chargeable income attributable to that export based on a prescribed formula.

Mauritius has a credit system of taxation whereby foreign tax credit is given on any foreign-source income declared in Mauritius on which foreign tax of similar character to Mauritian tax has been imposed.

All corporate bodies incorporated in Mauritius (except companies holding a Category 2 Global Business Licence and certain approved funds and associations) are subject to income tax. This applies to all associations and other registered bodies. Income derived by local partnerships is shared and taxed in the hands of the partners. Foreign corporations carrying on business, or having a place of business, in Mauritius are also liable to income tax on income derived from Mauritius. Resident *sociétés* are not liable to corporate tax.

Société means a *société* formed under any enactment in Mauritius and includes:

- a *société de fait* or a *société en participation*
- a limited partnership
- a joint venture, and
- a *société* or partnership formed under the law of a foreign country.

Income tax is payable on total net income before distribution at the following rates:

Entity	Rate (%)
Global Business Category 1 (GBC1) companies and offshore trusts (*see below*)	15
Freeport operators or Private Freeport Developers carrying on Freeport activities other than providing goods and services on local markets	Exempt
Global Business Category 2 (GBC2) companies (*see below*)	Exempt
All other companies	15

Global Business Category 1 (GBC1) companies are liable to tax at the rate of 15%. However, they are entitled to a foreign tax credit equivalent to the higher of 80% of the Mauritius tax chargeable or the actual tax suffered abroad in respect of foreign-source income. The maximum effective tax rate is therefore 3%.

Global Business Category 2 (GBC2) companies incorporated under the laws of Mauritius are exempt from income tax and are not tax residents for treaty purposes. *For more information, see the Tax credits and incentives section*.

Special levies

Banks

All banks are required to pay a special levy calculated according to their book profit and their operating income derived during, or its chargeable income in respect of, the preceding year. 'Operating income' means the sum of net interest income and other income before deducting non-interest expense.

The rates of the special levy on banks are as follows:

Year of assessment commencing	Rates
1 July 2017	Global Business/Non-residents: 3.4% on book profit and 1% on operating income; Local transactions: 10% of chargeable income
1 July 2018 and in respect of every subsequent year of assessment	1.7% on book profit; 0.5% on operating income

Except where the levy is computed on chargeable income, no levy shall be paid in a year where in the preceding year:

- the bank incurred a loss, or
- the book profit of the bank did not exceed 5% of its operating income.

Corporate Social Responsibility (CSR) Fund

Every year, a company has to set up a CSR Fund equivalent to 2% of its chargeable income of the preceding year.

At least 50% of the CSR Fund set up on or after 1 January 2017 up to 31 December 2017 should be remitted to the Mauritius Revenue Authority (MRA), and at least 75% of the CSR Fund set up on or after 1 January 2018 should be remitted to the MRA.

In respect of the CSR Fund set up before 1 January 2019, the remaining amount of the CSR Fund shall be used to implement a CSR Programme in accordance with the company's own CSR Framework. For the CSR Fund set up on or after 1 January 2019, the remaining amount shall be used to implement a CSR Programme or finance a non-governmental organisation implementing a CSR Programme in the following priority areas of intervention:

- Dealing with health problems resulting from substance abuse and poor sanitation.
- Educational support targeting families in the Social Register of Mauritius.
- Family protection; protection to victims of domestic violence.
- Poverty alleviation targeting families listed in the Social Register of Mauritius.
- Social housing targeting families in the Social Register of Mauritius.
- Supporting persons with severe disabilities.

Any amount unspent (to a CSR Programme) shall be remitted to the MRA together with the company's annual return. The amount to be remitted to the MRA could be reduced upon prior written approval from the National CSR Foundation. This is where the company intends to spend the unremitted amount within the priority areas of intervention.

No CSR money shall be spent by a company on the following activities:

- Activities discriminating on the basis of race, place of origin, political opinion, colour, or creed.
- Activities targeting shareholders, senior staff, or their family members.

- Activities that are against public safety and national interest.
- Religious, political, trade union, self-financing, staff welfare, and marketing activities.

Where the amount paid out of the CSR Fund is in excess to the amount provided for under that CSR Fund, such excess may be carried forward and offset in equal instalments against any amount to be remitted to the MRA in respect of five succeeding years starting from year of assessment 2016/17.

Where a company is required to submit an Advance Payment System (APS) statement, it should remit 25% of the CSR amount to be remitted to the MRA together with the APS statements, and the final 25% is to be remitted on the submission of the final return.

Note that the following entities are not subject to the CSR regulations:

- A company holding a GBC1 Licence under the Financial Services Act.
- A bank holding a banking licence under the Banking Act, in respect of its income derived from its banking transactions with non-residents or with corporations holding a Global Business Licence under the Financial Services Act.
- An Integrated Resort Scheme (IRS) company referred to in the Investment Promotion (Real Estate Development Scheme) Regulations 2007.
- A non-resident *société*, a foundation, a trust, or a trustee of a unit trust scheme.

Also note the following:

- The CSR Fund shall apply in all respects to a resident *société*, other than a resident *société* holding a Global Business Licence under the Financial Services Act, its net income shall be deemed to be its chargeable income, and any distribution of its net income shall, for the purposes of the CSR Fund, be deemed to be dividends.

Local income taxes

Local income taxes levied by local administration, such as urban councils, do not exist in Mauritius.

Corporate residence

Under domestic law, a company is resident in Mauritius for tax purposes if it is incorporated in Mauritius or centrally managed or controlled in Mauritius.

A company not incorporated in Mauritius is resident in Mauritius only if it is centrally managed and controlled in Mauritius.

In the absence of a tax treaty, any income derived from the following is taxed in Mauritius:

- Any business carried on wholly or partly in Mauritius.
- Any contract wholly or partly performed in Mauritius.

A GBC2 company is not considered a resident in Mauritius for the purposes of double taxation treaties (DTTs).

Under a tax treaty, a company is considered a resident in Mauritius if it is incorporated in Mauritius or if its effective management is in Mauritius.

Permanent establishment (PE)

Generally, a PE is created under a tax treaty if one of the following criteria is met:

- Branch, office, factory, workshop, or installation used for extraction of natural resources.
- Building site, construction, installation, assembly, or supervisory services where the activity on the site lasts for a minimum of six months or 12 months, depending on the tax treaty.

Other taxes

Value-added tax (VAT)

VAT is charged by VAT-registered entities at the standard rate of 15% on all goods and services supplied by them in Mauritius (except those taxed at 0%), other than the following exempt supplies (not an exhaustive list):

- Bread, wheat, and cereal flours (excluding wheat flour).
- Medical, hospital, and dental services, including clinical laboratory services, services provided in a health institution, and veterinary services.
- Educational and training services provided by institutions approved by the Mauritius Qualification Authority.
- Construction of building for residential purpose, provided letter of intent relating to an IRS was issued prior to 1 October 2006.
- Sale or transfer of an immovable property, a building or part of a building, apartment, flat, or tenement.
- Banking services, except:
  - services provided to merchants accepting credit/debit card
  - services in respect of safe deposit locker, and issue and renewal of credit/debit cards
  - services for keeping and maintaining customer's accounts, and
  - services supplied by a bank holding a banking licence under Banking Act 2004 in respect of its banking transactions with non-residents and corporations holding a Global Business Licence.

An entity should register for VAT if turnover exceeds 6 million Mauritian rupees (MUR) a year. However, certain service providers (e.g. accountants and auditors, attorneys and solicitors, consultants, surveyors, valuers) should register for VAT irrespective of their turnover.

VAT-registered persons with annual taxable turnover exceeding MUR 10 million should submit their VAT return monthly and electronically by the end of the month following the end of the taxable month. Otherwise, VAT return filing is completed quarterly (i.e. within 20 days following the end of a taxable quarter). The taxable quarter is a period of three months ending at the end of March, June, September, or December. Also, where the VAT-registered persons are filing pay-as-you-earn (PAYE) returns electronically under the Income Tax Act (ITA), they are required to file the VAT returns electronically by the end of the month following the taxable period.

Customs duties

Customs duty is levied on commodities imported into Mauritius. The rate of duty applicable is the rate in force under the Customs Tariff Act at the time the bill of entry is validated at the Customs.

A number of exemptions and concessions are available to industries, organisations, and persons under the Customs Tariff Act.

Excise taxes

An excise duty is levied at the time of importation on selected commodities, which includes spirits, vehicles, and petroleum products at corresponding prescribed rates. A levy is also chargeable on some specified excisable goods, whether the goods are for home consumption or not, at corresponding prescribed rates.

Campement site tax

Per the Land (Duties and Taxes) Act, every owner of a campement site situated in a specified zone is subject to an annual tax known as the campement site tax, varying between MUR 2 to MUR 6 per square metre.

The tax shall be payable to the authorised officer on or before 31 July in every year.

Land transfer tax

Per the Land (Duties and Taxes) Act, land transfer tax is levied on the transfer of land and is payable by the transferor at the rate of 5%.

Land transfer tax is also payable at the above rates by the transferor upon transfer of the shares of a company owning immovable properties, based on the value of shares or property, whichever is the lower.

The following transactions are not subject to land transfer duty (non-exhaustive list):

- A transfer of immovable property from ascendant to descendant (or vice versa).
- A transfer of immovable property or shares between companies forming part of a group of companies, as defined in the Companies Act 2001.
- A transfer of immovable property where such transfer takes place between companies having the same shareholders for the sole purpose of merging.

Leasehold tax

Per the Land (Duties and Taxes) Act, leasehold tax is levied on the registration of a deed of transfer of leasehold rights in state land. The leasehold tax is levied on the open market value of the leasehold right at the time of transfer at the rate of 20% and is payable by the transferor and transferee in equal proportion (i.e. 10% each).

Registration duty

The Registration Duty Act provides, among others, for a duty at an effective rate of 5% of the sum of money paid as a condition of an exchange of immovable property, or a division in kind of immovable property, where such sum does not exceed MUR 100,000.

The transfer of shares of a company other than those listed on the Stock Exchange of Mauritius or traded on the secondary market is subject to registration duty if the company holds immovable property.

Stamp duty

Stamp duty is levied and paid to the Registrar General on every document at the time of registration, transcription, inscription, or erasure of inscription. Stamp duty varies from MUR 25 to MUR 1,000.

Payroll taxes

Every employer has to register with the MRA as an employer and has to withhold income tax from the emolument of the employee at the time the emolument is made available to the employee.

The employer has to remit the amount withheld within 20 days from the end of the month in which the tax was withheld. Where the employer has 25 or more employees, the PAYE return and tax withheld should be remitted electronically. In cases where the employer has less than 25 employees, the PAYE return and tax withheld may be remitted electronically.

Failure to comply with the above entails a penalty of 5% of the unpaid tax and an interest of 1% per month or part of the month during which the tax remained unpaid.

Social security contributions

National Pensions Fund (NPF)

Contributions to the NPF are payable by the employer at 6% of cash remuneration, up to a maximum remuneration of MUR 16,995 per month. Employees contribute to the NPF at 3%, subject to a maximum amount of MUR 510 per month.

National Savings Fund (NSF)

Employers are required to contribute 2.5% of remuneration to the NSF, subject to a maximum of MUR 425 per month per employee, and to pay a monthly levy of 1.5% of basic salaries and wages of every employee. Employees are required to pay a 1% levy, subject to a maximum amount of MUR 170 per month.

Branch income

Tax rates on branch income are the same as on corporate profits. No tax is withheld on the remittance of profits by way of dividend to a head office.

Income determination

Inventory valuation

Inventories should be valued at the lower of historical cost or net realisable value. The last in first out (LIFO) basis of valuation is not allowed for tax purposes.

Conformity is required between book and tax reporting. Where the MRA is not satisfied that the basis of valuation is acceptable (e.g. where the LIFO basis has been applied), it will make such adjustment as it believes is appropriate to determine the profits arising from the business carried on.

Capital gains

There is no tax on capital gains in Mauritius. However, certain transactions are taxed as ordinary business profit instead of capital gains. Where a transaction is in the nature of trade, the MRA may take the view that it is an ordinary trading transaction and assess the gains derived as income.

Any gains derived from the sale of shares held for less than six months are classified as trading income and are therefore taxed as ordinary income.

Gains realised from the sale of any property or interest in property acquired in the course of a business, as part of a profit-making undertaking or scheme, are taxable as ordinary income.

Dividend income

Companies, whether resident or not, are exempt from tax on dividends received from resident companies.

Dividend income received from abroad by a company resident in Mauritius (non-GBC1 company) is subject to tax at the rate of 15%. Credit for any foreign tax withheld is given, subject to documentary evidence provided to the MRA.

Dividend income received from abroad by a GBC1 company is subject to tax at an effective rate of 3%.

Stock dividends

A resident company can distribute stock dividends (bonus shares) proportionately to all of its shareholders. Stock dividends *per se* or convertible into cash are not taxable in the hands of the recipient. Dividends in kind (i.e. other than cash or shares) are treated as taxable benefits.

Interest income

Interest income received by resident companies (non-GBC1 companies) is liable to tax at the rate of 15%.

A GBC1 company receiving interest income from abroad is liable to tax at the effective rate of 3%.

Interest income paid by any person, other than by banks or non-bank deposit-taking institutions under the Banking Act, to individuals and non-residents is liable to withholding tax (WHT) at the rate of 15% (final tax).

Royalty income

Royalty income received locally is subject to tax at the rate of 15%.

Royalty income received from abroad is subject to tax at the rate of 15%. Any tax withheld from abroad will be allowed as a foreign tax credit. However, a company holding a GBC1 Licence receiving royalty income from abroad on which no foreign tax is suffered will be entitled to a deemed foreign tax credit of 80% of the Mauritian tax payable.

Foreign income

Resident corporations are taxed on their worldwide income, but tax credit and treaty relief is generally available in order to avoid double taxation (*see Foreign tax credits in the Tax credits and incentives section for more information*).

Undistributed income of foreign subsidiaries is not subject to any special taxation as long as the income of the foreign subsidiary before distribution is not included in the accounts of the local parent company. Dividends paid by the foreign subsidiary to the local parent company will, however, be taxable to the latter, whether or not such dividends are actually received in Mauritius.

Deductions

Depreciation

Annual allowance rates vary between 5% and 100% of base value (unless stated otherwise), as per the following table:

	Rate of annual allowance	
	Percentage of	
Capital expenditure incurred on	**Base value**	**Cost**
Industrial premises, excluding hotels		5
Industrial premises dedicated to manufacturing	30	
Commercial premises		5
Hotels	30	
Plant or machinery:		
Costing MUR 50,000 or less		100
Costing more than MUR 50,000:		
Ships or aircraft	20	
Aircraft and aircraft simulators leased by a company engaged in aircraft leasing		100
Motor vehicles	25	
Electronic and high precision machinery or equipment, computer hardware and peripherals, and computer software	50	
Plant and machinery (excluding passenger car) by a manufacturing company		50
Furniture and fittings	20	
Other	35	
Improvement on agricultural land for agricultural purposes	25	
Scientific research	25	
Golf courses	15	
Acquisition of patent	25	
Green technology equipment		50
Landscaping and other earth works for embellishment		50
Acquisition or improvement of any other item of a capital nature that is subject to depreciation under the normal accounting principles		5

Tax depreciation need not conform to book depreciation. Depreciation is generally recaptured on disposal or sale when balancing charges or allowances are computed.

Goodwill

Goodwill amortised under normal accounting principles is not allowed as an expense for tax purposes. However, the cost amount can be capitalised, and an annual allowance of 5% of cost can be claimed.

Leasing agreements

There has been a substantial increase in leasing activity over the last decade. Where an asset is transferred under a financial lease agreement, the lessee is entitled to capital allowances on the value of the asset, including finance charges, as if it was an outright sale by the lessor.

On the other hand, the lessor cannot capitalise the leased assets in its books, and no capital allowance is claimed on the assets leased. However, the lessor is taxable on the interest income derived from the assets leased.

There are no special rules for operating leases.

Set-up costs

Set-up costs are not deductible for tax purposes, as they are considered pre-operational expenses.

Interest expenses

Expenditure incurred on interest is deductible, provided it is incurred in respect of capital employed exclusively in the production of income.

A request can be made by the tax authorities to support any claim made in respect of interest expense by a certificate from a qualified auditor certifying that the amount of interest claimed has been incurred on capital employed exclusively in the production of gross income.

Interest paid by a GBC1 company to a non-resident is exempt from corporate tax.

The tax authorities may refuse to allow a deduction on expenditure incurred as interest where it is found that:

- the interest is payable to a non-resident who is not chargeable to tax on the amount of the interest, or
- the interest is not likely to be paid in cash within a reasonable time.

Bad debt

A provision for bad or doubtful debt is generally not deductible unless a court ruling has been obtained against the debtor.

Charitable contributions

Donations/gifts, whether to charitable institutions or not, are not deductible for tax purposes.

Fines and penalties

Fines and penalties are not deductible for tax purposes as they are expenses not exclusively incurred for the production of gross income.

Taxes

Income taxes and foreign taxes paid are not normally deductible; however, some taxes (e.g. municipal taxes relating to buildings, land transfer tax, irrecoverable input VAT) are deductible.

Other significant items

A bank or an approved financial institution may claim as deductions any irrecoverable loans due by a company in liquidation in respect of which winding-up procedures have started or by a company in receivership.

Net operating losses

Losses made in an accounting year are carried forward for a maximum of five years.

A company may claim to carry forward to an income year any loss it incurred in any former income year, provided the company can demonstrate a 50% continuity of shareholding at the end of those income years. Losses resulting from capital allowances can be carried forward indefinitely. Loss carrybacks are not permitted.

Where a company takes over another company engaged in manufacturing activities, or two or more companies engaged in manufacturing activities merge into one company, any unrelieved loss of the acquiree may be transferred to the acquirer in the income year in which the takeover takes place, on such conditions relating to safeguard of employment as may be approved by the Minister of Finance.

Payments to foreign affiliates

Royalties, interest, and service fees payable to foreign affiliates are allowed as expenses, provided they correspond to actual expenses incurred, are reasonable, and do not exceed what would be paid under an arm's-length agreement. There are certain limitations if the recipient of the interest is not liable to Mauritius tax. Royalties paid to non-residents by GBC1 companies, banks out of their foreign-source income as defined in the ITA, and trusts are tax-exempt.

Group taxation

There are no group taxation provisions in the Mauritius tax legislation other than the transfer of losses by tax incentive companies, sugar factory operators, subsidiaries located in the Island of Rodrigues, and manufacturing companies upon their take-over (*see Net operating losses in the Deductions section for more information*).

Transfer pricing

Mauritius does not have any specific transfer pricing legislation. However, it does contain an arm's-length provision requiring transactions between related parties to reflect a commercially objective value, which would be the amount charged for the services were the parties not connected.

Country-by-country (CbC) reporting

The government of Mauritius enacted the Income Tax (Country-by-Country Reporting) Regulations 2018 on 19 February 2018. These regulations will be effective for the reporting fiscal years of multinational enterprise (MNE) groups beginning on or after 1 July 2018.

The Director General shall use the CbC report for the purpose of:

- assessing high-level transfer pricing risks and other base erosion and profit shifting (BEPS) related risks in Mauritius and the risk of non-compliance by members of an MNE group with applicable transfer pricing rules, and
- economic and statistical analysis, where appropriate.

Any person who fails to comply with any provision of CbC reporting regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding MUR 5,000 and to imprisonment for a term not exceeding six months.

Thin capitalisation

Mauritius does not have specific thin capitalisation legislation; however, it does have other anti-avoidance provisions as described below:

If a company has issued debentures to each of its shareholders, subject to the number, the nominal value, or paid-up value of the shares in that company, any interest paid on debentures and claimed as a deductible expense may be disallowed and treated as a dividend.

Controlled foreign companies (CFCs)

There are no CFC rules under Mauritius tax legislation.

Tax credits and incentives

Global Business Category 1 and 2 companies

A GBC1 company can trade with a Mauritian resident as well as non-residents.

However, any trading with residents should be only incidental to the main operations with non-residents and should be subject to the Financial Services Commission's (FSC's) approval.

Transactions made with a Mauritian resident are taxed at the rate of 15%, whereas transactions with non-residents are taxed at an effective tax rate of 3%.

The registration and application of GBC1 companies should be submitted to the FSC through a duly licensed Management Company on a prescribed form accompanied by the following:

- The certified supporting documents.
- The applicable processing fees and relevant fees.

A GBC1 company is tax resident in Mauritius and may apply for a Tax Residence Certificate (TRC) from the Director General of the MRA should this be required by the tax authorities in the jurisdiction in which the company is conducting its business.

Investors may benefit from an extensive network of DTTs. Entities holding a GBC1 Licence wishing to avail to the benefits of a DTT must obtain a TRC issued by the MRA.

A GBC1 company is encouraged to have more substance in Mauritius by ascertaining the following:

- It has at least two directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgment.
- It maintains, at all times, its principal bank account in Mauritius.
- It keeps and maintains, at all times, its accounting records at its registered office in Mauritius.
- It prepares, or proposes to prepare, its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius.

In addition to the requirements mentioned above, when determining whether a corporation is managed and controlled from Mauritius, the Commission shall also consider whether a corporation meets at least one of the following criteria:

- The corporation has or shall have office premises in Mauritius.
- The corporation employs or shall employ on a full-time basis, at the administrative/technical level, at least one person who shall be resident in Mauritius.
- The corporation's constitution contains a clause whereby all disputes arising out of the constitution shall be resolved by way of arbitration in Mauritius.
- The corporation holds, or is expected to hold, within the next 12 months, assets (excluding cash held in a bank account or shares/interests in another corporation holding a Global Business Licence) that are worth at least 100,000 United States dollars (USD) in Mauritius.
- The corporation's shares are listed on a securities exchange licensed by the Commission.
- The corporation has, or is expected to have, a yearly expenditure in Mauritius that can be reasonably expected from any similar corporation that is controlled and managed from Mauritius.

A GBC1 company can apply for a TRC to show substance in Mauritius. The TRC is generally issued within a period of seven days from the date of application, provided that the person has submitted the return required under the ITA 1995.

A GBC2 company is required to have, at all times, a registered agent in Mauritius. Only a management company shall act as the registered agent of a company holding a GBC2 Licence. A GBC2 company is defined as a resident corporation conducting business outside Mauritius and can engage in activities other than the following:

- Banking.
- Financial services.
- Holding, managing, or otherwise dealing with a collective investment fund or scheme as a professional functionary.
- Providing registered office facilities, nominee services, directorship services, secretarial services, or other services for corporations.
- Providing trusteeship services by way of business.

An applicant for a GBC2 Licence must submit the following forms/documents to the FSC through a management company:

- The application form, duly filled in and signed.
- The certified supporting documents.
- The applicable processing fees and relevant fees.

The fees payable to the FSC for registering a GBC1 and a GBC2 company are as follows:

Fee	GBC1 (USD)	GBC2 (USD)
Processing	500	100
Annual Licensing	1,750	235*

* This amount excludes the annual registration fee of USD 65, or such other fee as the Registrar of Companies may determine, payable to the Registrar of Companies.

The TRC is renewable on an annual basis and issued in two formats, one specific to India and one general for any other country.

A GBC2 company is a limited liability company incorporated in Mauritius. However, GBC2 companies are exempt from Mauritius tax and are not required to file tax returns. GBC2 companies are therefore not able to access the tax treaty network of Mauritius.

Companies in the Freeport zone

The income of a Freeport operator derived from Freeport activities is exempt from income tax, except for income that is derived from goods or services provided on the local market.

Income tax exemption for vessel owners

Owners of foreign vessels registered in Mauritius are exempt from income tax on income derived from the operation of such vessels, including any income derived from the chartering of such vessels. Owners of local vessels registered in Mauritius are also exempt to the extent that the income is derived from deep-sea international trade only.

Innovation-driven activities

An income tax exemption is available for companies set up on or after 1 July 2017 that are involved in innovation-driven activities for IP assets developed in Mauritius. The exemption will apply for eight tax years, starting from the tax year in which the company starts its innovation-driven activities.

Manufacture of pharmaceutical products, medical devices

An income tax exemption is available for companies set up on or after 8 June 2017 for the manufacture of pharmaceutical products, medical devices, and high-tech products by companies incorporated after 8 June 2017. This exemption also applies for eight tax years, starting from the tax year in which the company starts its operations.

Green economy

Income derived from the exploitation and use of deep ocean water for air conditioning installations, facilities, and services will be exempted for eight tax years. Further, a company incurring expenditure on deep ocean water air conditioning may deduct from its gross income twice the amount of the expenditure incurred in that tax year. That deduction will be allowed for five consecutive tax years, starting from the year in which the expenditure is incurred.

Another tax exemption has been granted for interest derived by individuals and companies from debentures or bonds issued by a company to finance renewable energy projects (the issue must be approved by the Director General of the MRA).

If a company incurs expenditure in a tax year for the acquisition and setting up of a water desalination plant, it may deduct from its gross income twice the amount of the expenditure incurred in that tax year.

R&D expenditure

During a period from 1 July 2017 to 30 June 2022, if a person has incurred any qualifying expenditure on R&D as described below that is directly related to one's existing trade or business, one may, in the tax year in which the qualifying expenditure was incurred, deduct twice the amount of the expenditure, provided that the R&D is carried out in Mauritius and no annual allowances have been claimed on the same.

The term 'qualifying expenditure' means any expenditure relating to R&D, including expenditure on innovation, improvement, or development of a process, product, or service as well as staff costs, consumable items, computer software directly used in R&D, and development and subcontracted R&D.

Export of goods

A reduced corporate tax rate has been introduced for exports of goods so that if, in a tax year, a company is engaged in the export of goods, it will be liable to income tax at the reduced rate of 3% on the chargeable income attributable to that export, as computed on the basis of the following formula:

Chargeable income attributable to that export = (A x C/B), in which:

- A is the gross income derived from the export of goods in that income year.
- B is the gross income derived from all the activities of the company for that income year.
- C is the chargeable income of the company for that income year.

Foreign tax credits

Generally, double taxation is avoided by means of unilateral credit relief for foreign tax paid. The net amount of foreign income that has borne tax is grossed up at the foreign rate of tax, and the foreign tax paid is allowed as a credit against the Mauritius tax payable. However, the tax credit cannot exceed the Mauritius tax referable to the relevant foreign income. Unused credit is not refunded.

Regarding foreign income derived from countries with which Mauritius has DTTs, a tax credit is given for foreign tax in accordance with the treaties. There are clauses in the DTTs that provide that income arising from certain specified foreign sources is to be exempt from Mauritius tax.

Mauritius has signed DTTs with 43 countries (*see the Withholding taxes section for a listing*).

The following treaties await ratification: Cabo Verde, Gabon, Ghana, Jersey, Kenya, Morocco, Nigeria, and Russia.

The following treaties await signature: Cote d'Ivoire, Gibraltar, Malawi, and The Gambia.

The following treaties are being negotiated: Algeria, Burkina Faso, Canada, Czech Republic, Greece, Hong Kong, Lesotho, Mali, Montenegro, North Sudan, Portugal, Republic of Iran, Saudi Arabia, Spain, St. Kitts and Nevis, Tanzania, Vietnam, Yemen, and Zambia.

A GBC1 company may, in the absence of evidence of payment of foreign tax, claim as tax credit (presumed tax credit) an amount equal to 80% of the Mauritius tax chargeable on the foreign-source income. The presumed tax credit may also be claimed by a bank against the tax payable on income derived from banking transactions with non-residents and with GBC1 and GBC2 companies.

In the case of foreign dividends, the general tax credit includes foreign tax imposed on the profits out of which the dividends are paid (underlying tax), provided that the shareholding in the foreign company is at least 5%.

Mauritius also allows a tax-sparing credit under its local tax legislation.

Withholding taxes

There is no WHT in Mauritius for payments made by GBC companies to non-residents not carrying out any business in Mauritius. There is no WHT on dividends received from resident companies and on payments made by a company having an annual turnover of less than MUR 6 million. The table below shows the rates of WHT applicable for the following payments:

Payment	WHT (%)
Interest payable by any persons (other than banks or non-bank deposit-taking institutions operating under the Banking Act) to individuals and non-resident companies	15
Royalties payable to:	
Residents	10
Non-residents	15
Rent	5
Payments to contractors and sub-contractors	0.75
Payments to providers of services (accountant/accounting firm, architect, attorney/solicitor, barrister, dentist, doctor, engineer, land surveyor, legal consultant, project manager in the construction industry, quantity surveyor, property valuer, and tax adviser or representative)	3
Payments made by ministry, government department, local authority, statutory body, or the Rodrigues Regional Assembly on contracts, other than payments to contractors and sub-contractors and payments to providers of services as specified above:	
For the procurement of goods and services under a single contract, where the payment exceeds MUR 300,000	1
For the procurement of goods under a contract, where the payment exceeds MUR 100,000	1
For the procurement of services under a contract, where the payment exceeds MUR 30,000	3
Payments made to the owner of an immovable property or one's agent	5
Payments made to a non-resident for any services rendered in Mauritius	10
Payment of management fees to an individual by any person, other than an individual, to a:	
Resident	5
Non-resident	10
Payment made by a person in connection with activities performed in Mauritius by a non-resident entertainer or sportsperson	10

Reduced WHT rates with treaty countries are provided below.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	0	15	15
Treaty:	(1)		
Bangladesh, People's Republic of	10	(2)	(2)
Barbados	5	5	5
Belgium	5/10	10	0
Botswana	5/10	12	12.5
China	5	10	10
Congo, Republic of	0/5	5	0
Croatia	0	0	0
Cyprus	0	0	0
Egypt	5/10	10	12
France	5/15	(2)	15
Germany	5/15	0	10
Guernsey	0	0	0
India	5/15	7.5	15
Italy	5/15	(2)	15
Kuwait	0	0	10
Lesotho	10	10	10
Luxembourg	5/10	0	0
Madagascar	5/10	10	5
Malaysia	5/15	15	15
Malta	Exempt	Exempt	Exempt
Monaco	0	0	0
Mozambique	8/10/15	8	5
Namibia	5/10	10	5
Nepal	5/10/15	10/15 (3)	15
Oman	0	0	0
Pakistan	10	10	12.5
Qatar	0	0	5
Rwanda	10	10	10
Senegal	0	0	0
Seychelles	0	0	0
Singapore	0	0	0
South Africa	5/15	10	5
Sri Lanka	10/15	10	10
Swaziland	7.5	5	7.5
Sweden	0/15	0	0
Thailand	10	10/15 (4)	5/15 (5)
Tunisia	0	2.5	2.5
Uganda	10	10	10
United Arab Emirates	0	0	0
United Kingdom	10/15	(2)	15
Zambia	5/15	10	5
Zimbabwe	10/20	10	15

Notes

1. The domestic rate of WHT on dividends is 0%. For completeness, the treaty rates that would apply if the domestic rate was higher are provided.
2. Same rate as under domestic law.
3. 10% of the gross amount of the interest if the beneficial owner is a financial institution, an insurance company, or an investment company receiving income from financial investments; 15% in all other cases.
4. 10% of the gross amount of the interest if it is received by any financial institution (including an insurance company); 15% in all other cases.
5. 5% of the gross amount of the royalties received as consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, excluding cinematograph films, tapes, or discs for radio or television broadcasting. 15% is applicable on the gross amount of the royalties in any other case.

Tax administration

Taxable period

Companies are assessed for a year beginning 1 July and ending 30 June on their income for the preceding year ending 30 June. Where a company closes its accounts at a date other than 30 June, it may elect to adopt as a basis year the accounting year ending in the 12-month period preceding the year of assessment.

Tax returns

Every company, both taxpayer and non-taxpayer, must file a return of its income on the basis of the income year preceding the year of assessment. The return must be filed within six months of the financial year-end.

Payment of tax

Any tax due should be paid when the return is filed and within the six months deadline.

Advance Payment System (APS)

Every company (except non-resident trusts and non-resident partnerships) having gross income exceeding MUR 10 million or that has taxable income is required to submit an APS statement and pay any tax for the quarter immediately following the end of the accounting year.

Tax under APS can be calculated based on the following:

- 25% of taxable income for the accounting year immediately preceding the commencement of that quarter or
- the actual taxable income of the current quarter.

The APS statement shall be filed and tax (if any) shall be payable within three months from the end of the quarter.

Companies that are required to contribute to the CSR Fund should, while submitting their APS statement, remit 25% of the CSR amount to be remitted to the MRA.

Penalties

If timely payment is not made, a penalty representing 5% of the amount of tax due is payable. In addition, interest at the rate of 0.5% of the tax unpaid for each month or part of a month is payable until the tax is paid. A penalty of MUR 2,000 for each month or part of a month is also prescribed for failure to file a return, subject to a maximum of MUR 20,000.

Tax audit process

Tax audits are carried out on a sample basis throughout the year. Generally, the audits are fairly detailed, but more protracted enquiries are carried out into cases where fraud is suspected.

Statute of limitations

While there is no statutory time limit for recovering tax already assessed, the Director General is barred from making an assessment for a period beyond three years preceding the current tax year.

Topics of focus for tax authorities

The MRA pays special attention to the arm's-length nature of any transactions between related parties and evidence of foreign tax suffered predominantly for GBC1 companies in respect of their claim for actual foreign tax credit.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 27 December 2013, the government of the Republic of Mauritius and the government of the United States of America signed an Agreement for the Exchange of Information Relating to Taxes (the Agreement) to set the legal framework to enable exchange of tax information between the two countries. This was followed by the signing of another agreement known as the Inter-Governmental Agreement (Model 1 IGA) to improve international tax compliance and to implement FATCA. Both agreements have been published in the Government Gazette No. 61 of 5 July 2014 as GN 135 of 2014. Both the Agreement and the IGA entered into force on 29 August 2014.

The Agreement provides for exchange of tax information (upon request, spontaneous and automatic) between Mauritius and the United States. The IGA provides for the automatic reporting and exchange of information in relation to accounts held with Mauritius financial institutions by US persons and the reciprocal exchange of information regarding financial accounts held by Mauritius residents in the United States.

The MRA has issued guidance notes (available on MRA's website) to provide practical assistance to financial institutions, businesses, their advisers, and officials dealing with the application of FATCA.

Corporate Reporting Standards (CRS)

Mauritius signed the Organisation for Economic Co-operation and Development (OECD) Convention on Mutual Administrative Assistance in Tax Matters in June 2015 and, as a member of the Early Adopters Group, the country had initially planned to implement the CRS early. The effective date of 1 January 2016 was subsequently deferred to 1 January 2017, and the first reporting will now start from 31 July 2018.

The Mauritius ITA was amended to enact the CRS, and the MRA is the competent authority to administer the process. Under the CRS, financial institutions (FIs) will need to report accounts held by non-residents to the MRA, which will be used for eventual exchange with other jurisdictions. In line with the OECD commentaries and handbook on the CRS, the MRA published a set of guidance notes in April 2016 (MRA Guidance Notes) to help identify which FIs have reporting obligations as well as set out the type of financial information and accounts that will need to be reported.

Base Erosion and Profit Shifting (BEPS)

As a member of the all-inclusive framework, Mauritius has pledged commitments to implement the BEPS Actions. At an initial stage, all participating countries have to adopt the minimum standards, namely Action 5: Harmful tax practices, Action 6: Treaty abuse, Action 13: CbC reporting, and Action 15: Multilateral instrument (MLI) to implement the treaty measures in the BEPS framework.

Mauritius has already signed off to the MLI on 5 July 2017 by adopting the principal purpose test as a measure to address treaty abuse. As far as Action 5 is concerned, Mauritius has recently been reviewed by the OECD's Forum of Harmful Tax Practices (FHTP) and the European Union (EU) on its different regimes. Global Business regimes, Freeport, and captive insurance were regarded as being harmful by both the OECD and European Union. Mauritius has already given commitment to address the concerns by 2018.

Mauritius enacted the Income Tax (Country-by-Country Reporting) Regulations 2018 on 19 February 2018. These regulations will be effective for the reporting fiscal years of MNE groups beginning on or after 1 July 2018. *See Country-by-country (CbC) reporting in the Group taxation section*.

Mexico

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Significant developments

On 1 July 2018, general elections will be celebrated through which a new President and Federal Congress representatives will be elected. The new administration will take over on 1 December 2018.

The above also implies that the Tax Certainty Agreement, executed by the current President, would end on 30 November 2018. The agreement, in broad terms, represents a commitment of the executive branch to maintain the Mexican tax framework without significant changes affecting taxpayers after the 2014 Tax Reform. At this point of time, no significant changes are expected to the Mexican Tax Laws; however, such assumption may change once the new administration takes over.

On 22 March 2018, the Organisation for Economic Co-operation and Development (OECD) announced the fifth jurisdiction has deposited its instrument of ratification, acceptance, or approval of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (the MLI). That means that the MLI will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance, or approval (i.e. on 1 July 2018). In this regard, it is important to note that the majority of the Double Tax Treaties (DTTs) entered into by Mexico are covered by the MLI (except for several exceptions, among others, Indonesia and Switzerland, which chose not to correspond with Mexico in marking the tax conventions as covered under the MLI, and the United States of America, which decided not to join the MLI). Regardless of the above, the modifications on the precise date the conventions covered by the MLI will be effective for Mexican tax purposes is yet unknown, as the Mexican Congress must conclude the approval process of the MLI.

On 24 April 2018, Mexico became the first country to ratify the Trans-Pacific Partnership (TPP) trade deal. The TTP includes Australia, Canada, Chile, Japan, New Zealand, Singapore, and Vietnam, among others, creating new opportunities that are expected to boost Mexico's trade and investment with such jurisdictions.

Taxes on corporate income

Federal corporate income tax (CIT)

CIT applies to Mexican resident taxpayers' income from worldwide sources, as well as to foreign residents on the income attributed to their permanent establishments (PEs) located in Mexico.

The federal CIT rate is 30%.

All corporate entities, including associations of a civil nature, branches, etc., are subject to the tax rules applicable to Mexican corporations (unless specifically ruled out, such as not-for-profit organisations).

Taxpayers engaged exclusively in agriculture, livestock, fishing, and forestry activities are subject to a reduction of 30% of their tax liability.

Provisions to recognise the effects of inflation for tax purposes in the areas of monetary assets and liabilities (annual monetary adjustment) and depreciable assets are provided in the Mexican Income Tax Law, even though recent inflation rates have been stable at low levels.

Once a corporation has paid its CIT, after-tax earnings (i.e. earnings arising from the after-tax earnings account, *Cuenta de Utilidad Fiscal Neta* or CUFIN) may be distributed to the shareholders with no tax charge at the corporate level. A withholding tax (WHT) on dividend payments to individuals or foreign residents (including foreign corporations) applies at the rate of 10%; this WHT does not apply to distributions of profits subject to corporate-level tax prior to 2014. If a corporation makes a distribution out of earnings that for any reason have not been subject to CIT, such as distributions of book earnings (i.e. not yet recognised for tax purposes in Mexico), the corporation will also be subject to CIT on the grossed-up distributed earnings (gross-up factor is 1.4286).

Tax paid on dividends distributed in excess of CUFIN can be credited against the CIT of the year or in the two fiscal years following the year in which the tax on the non-CUFIN distributions was paid. The CUFIN of the tax years in which the credit is applied must be reduced by an amount equal to the grossed-up dividend distribution.

Local income tax

There are no state taxes on corporate net income.

Corporate residence

The Mexican Federal Tax Code provides that corporations are deemed residents in Mexico if the principal centre of administration or the effective place of management is located in Mexico. A specific definition of 'tax resident' in any tax treaty overrides domestic law definitions, provided the taxpayer is eligible to apply the treaty.

When a company ceases to be a Mexican resident in terms of the Mexican Federal Tax Code or any tax treaty, it is deemed to be liquidated for tax purposes. In such cases, a notification is required at least 15 days before the change, and the CIT return must be filed with the Mexican tax authorities within 15 working days following the date on which the change of tax residency takes place.

Permanent establishment (PE)

The Mexican Income Tax Law considers a PE to be any place in Mexico where business activities or services are carried out or rendered by non-residents, such as agencies, offices, mining exploration sites, or any other place of exploration, extraction, or exploitation of natural resources, regardless of the length of time involved.

A foreign insurance company could also be considered as having a PE when it engages in activities consisting of insuring risk or collecting premiums (with the exception of reinsurance activities) in Mexico through a party other than an independent agent.

Sites used for display, storage, or purchasing facilities; inventories imported in-bond to be processed by a third party; short-term construction services; and offices to carry out auxiliary or preliminary activities and information gathering or scientific research are not considered to create a PE in Mexico. Non-residents may also keep merchandise in bonded warehouses (including merchandise delivered for importation into Mexico) without being considered as having a PE.

Based on the Hydrocarbons Law, foreign residents are deemed to have a PE when conducting certain oil and gas activities in Mexico for more than 30 days. This implies that the foreigner would need to satisfy all enrolment, compliance, documentation, withholding, and tax filing and payment obligations applicable to Mexican branches of foreign residents.

A non-resident is not considered to have a PE in Mexico as a result of the legal or economic relationships maintained with companies carrying out certain inventory processing activities (i.e. *Maquiladoras*) that process goods or merchandise maintained in Mexico by the non-resident by using assets provided by the non-resident or any related party, as long as certain requirements are met. The requirements include the conditions that the non-resident be resident in a tax treaty country and that the *Maquiladora* complies with the transfer pricing provisions ('safe harbour') to determine its tax profit, as provided in the Mexican Income Tax Law, or secure an advance pricing agreement (APA) negotiated with the Mexican tax authorities.

Maquila operations are generally defined as those with the following characteristics:

- Raw materials are supplied by a foreign resident (with which a *Maquila* contract is in place) and are temporarily imported to be processed, transformed, or repaired and are subsequently exported, including, for these purposes, virtual import-export operations.
- The *Maquila* is also permitted to import goods in accordance with the permanent importation regime. Additionally, local purchases are allowed, as long as such goods are consumed in production and/or exported with the temporarily-imported inventory.
- The processing, transformation, or repair of goods must be performed with temporarily-imported machinery and equipment (M&E) that is the property of the foreign principal. In this regard, the foreign principal must own at least 30% of such M&E. It is important to mention that this M&E may not have been previously owned by the *Maquila* or by any other Mexican-related party.

Parties resident abroad and engaged in *Maquila* operations through shelter *Maquila* companies may not be considered as creating a PE in Mexico when certain requirements are met and certain information is provided to the Mexican Tax Administration in relation to the gross revenues earned and income taxes paid by its non-Mexican-related party. This PE protection is limited to four years, but non-Mexican residents may opt to comply with their tax obligations through the shelter *Maquiladora* for an additional four-year period without triggering a PE, subject to the compliance of certain requirements. However, the eligible non-Mexican residents would be taxed under safe harbour provisions at a 30% CIT rate to determine their tax liability, which, under this scenario, would be determined by the Mexican shelter *Maquila*.

A definition of PE in any tax treaty overrides domestic law definitions where the taxpayer is eligible to apply the corresponding tax treaty.

Other taxes

Value-added tax (VAT)

VAT is payable at the general rate of 16% on sales of goods and services, as well as on lease payments and imports of goods and services. The sale of medicines, as well as the sale of most food products, is zero-rated. The principal VAT-exempt transactions are the sale of land, credit instruments (including equity shares), residential construction, interest paid by banks, medical services, education, salaries and wages, rentals of residential property, and the sale of non-amortisable participation certificates on real estate investment trusts (REITs), provided specific requirements are satisfied.

Temporary imports under IMMEX and similar programs are subject to the general 16% VAT rate. Such imports may qualify for VAT relief when obtaining special certification from the tax authorities related to the adequate control of such imports. The relief is applied in the form of an immediate VAT credit when clearing customs, which means that the temporary import is done on a cashless basis for VAT. Companies not covered by the certification may apply the same cashless treatment if they post a bond as payment guarantee.

The VAT law also taxes sales in Mexico of temporarily imported goods by non-residents to (i) other non-residents, (ii) *Maquiladoras*, or (iii) companies in the automotive industry.

The 0% VAT rate, which generally means that no VAT is payable, is applicable to a substantial number of transactions, including the sale of books, magazines, and newspapers published by the taxpayer, the exportation of goods and certain services (including some *Maquiladora* activities intended for exportation), the sale of certain basic foodstuffs, agricultural goods and services, sales and rentals of farm M&E, and other specified transactions.

VAT paid by business enterprises on their purchases and expenses related to VATable activities (including activities subject to the 0% VAT rate) may usually be credited against their liability for VAT they collect from customers on their own sales, services rendered, etc. The input VAT credit on goods or services of a general nature, or those not specially identified with either taxable or exempt activities for VAT purposes, is computed based on a VAT ratio proportional to the VATable versus VAT activities (taxable and exempt) carried out by the taxpayer. Creditable VAT paid on purchases and expenses in excess of VAT collected from customers is recoverable via either a refund, offset against other Federal taxes, or a credit against subsequent VAT liabilities.

VAT is a ‘cash basis’ tax, with few exceptions (e.g. VAT on some types of interest must be paid on an accrued basis); consequently, only the receipt of payment for goods or services triggers the output VAT liability, and an input VAT credit may be claimed only when the taxpayer pays VAT to its providers of goods and services. VAT is calculated for each calendar month as a final tax. In addition, VAT overpayments may be used to offset the tax liabilities arising from other federal taxes.

VAT must generally be withheld by Mexican residents acquiring or leasing tangible goods from non-residents if such foreign residents do not have a PE in the country to which income is attributed. Mexican business entities are required to withhold VAT on payments to individuals or entities for services consisting of ground transportation of goods. Mexican corporations must also withhold VAT on commissions paid to individuals, as well as on independent services rendered by Mexican individuals, and on tangible goods leased from individuals.

An information return related to the VATable activities carried out by the taxpayer must be filed on a monthly basis. Definitive monthly VAT payments are required by the 17th day of the immediately following month.

Subcontracting

VAT paid for subcontracted labour will be creditable to the extent that the contractor obtains from the subcontractor (i) a copy of the VAT return showing VAT was remitted to the Mexican tax authorities, (ii) a copy of the acknowledgement of receipt issued by the tax authorities, and (iii) copies of any other information submitted to the tax authorities related to the VAT payment.

Pre-operating expenses

Under current VAT law, a VAT credit is granted in the pre-operating period (i.e. the period prior to the start of the taxable activities) based on an estimate of expected future activities subject to VAT. However, there is no adjustment mechanism if the actual activities subject to VAT differ from the estimated activities.

The provision provides that VAT credits from expenses and certain investments in the pre-operating period can be used on the first VAT return for the month in which the company actually carries out activities subject to VAT, or in the month in which the company incurs the expense or makes the disbursement (in which case it can request a refund), provided that, in the latter case, the taxpayer provides information related to the VATable activities to be performed. In both cases, there will be a mandatory adjustment to the VAT credited once a 12-month period has elapsed from the date on which the credit was applied.

In addition, if the taxpayer does not perform taxable activities once the pre-operating period has ended, a reimbursement of any refund should be remitted to the tax authorities. This rule will not apply to taxpayers engaged in extraction activities, such as mining and oil.

Customs duties/import tariffs

Mexico's commercial conditions provide an excellent business and investment opportunity. Mexico is a member of the World Trade Organization (WTO), the Asia-Pacific Economic Cooperation Mechanism (APEC), and the OECD.

Mexico lies in a strategic geographical location for international trade, sharing borders with the United States (US) and representing an easy entry to the rest of Latin America, while also facing Europe and Asia.

Mexico has signed multiple Free Trade Agreements (FTAs), which provide for preferential duty rates on foreign trade operations with many more countries. FTAs signed by Mexico include the North American Free Trade Agreement (NAFTA) and agreements with the European Union (EU), the European Free Trade Association (EFTA), and Japan, among many other countries. Most FTAs provide 0% duty rates for almost 90% of the goods to be imported into Mexico.

General Import Duty rates range from 0% to 35%, but most imports fall within the range of 3% to 20% (exceptionally, certain food products, shoes, and textiles pay higher duties).

In general, temporary imports are exempt from customs duties (except for fixed assets in certain transactions). *For VAT payments on temporary imports, see above.*

Excise tax

The excise tax law (*Impuesto Especial Sobre Producción y Servicios* or IEPS) levies substantial federal excise rates on the importation and/or sale of certain taxable items, such as gasoline (% variable), beer (26.5%), wine (26.5% to 53%), spirits (53%), and cigarettes and other tobacco products (160% plus an additional quota), and on certain services related to these activities, such as commission, mediation, and distribution of excise taxable items, as well as services for raffles and gambling (30%). Excise tax is also applicable to certain telecommunications services (3%).

The excise tax law applies to soft drinks at 1 Mexican peso (MXN) per litre and to 'junk' food at an 8% rate. In both cases, the excise tax is payable by the producer or importer.

In general terms, goods are exempt from IEPS when exported. The input IEPS paid by exporters on their purchases is not creditable, and that tax becomes an additional cost.

IEPS is payable (output tax) and creditable (input tax) on a cash basis. It is payable on the date that the charge invoiced is collected from the client and can be credited when the respective payment is made to the supplier. On imports, IEPS is creditable when paid at the customs offices.

In certain cases, the IEPS legislation allows taxpayers that are not subject to this tax to credit IEPS paid on the acquisition and/or the importation of certain goods.

There is a specific procedure to calculate the tax for beer producers, bottlers, and importers; however, the tax can never be lower than 26.5%.

Among other obligations, IEPS taxpayers must file information returns before the Mexican Tax Administration periodically.

Property taxes

Annual taxes on real property are levied by Mexico City and all the states at widely varying rates applied to values shown in the property tax records. Assessed values have increased substantially recently in Mexico City and some other areas.

Title transfer taxes

The transfer of real estate is, almost without exception, subject to a variable transfer tax at rates averaging 2% to 5% on the highest of the value of the transaction, fair market value, or registered municipality value. The tax is levied by most states and Mexico City.

Stamp taxes

There are no stamp taxes in Mexico.

Payroll taxes

Most Mexican states levy a relatively low tax on salaries and other income earned by employees, which is payable by the employer (e.g. Mexico City imposes a 3% payroll tax payable by the employer).

Social security contributions

Employers and employees are required to make contributions to the social security system. These contributions are based on the daily salary plus any other compensation paid to the employee. There are various different rates that the employers are compelled to pay to the Mexican Social Security Ministry and or Housing Ministry that may vary in proportion of the so-called base salary of their Mexican employees and the type of concepts for which the compensation is given to the employee. For example, 2% on the base salary of the employee is paid by the employer for the concept of retirement, 5% on the employee base housing contribution salary for the concept of housing must be paid by the employer, among others.

Compulsory profit sharing

Although not a tax, every business unit with employees (irrespective of the type of organisation) is required to distribute a portion of its annual profits among all employees, except general directors and managers. The amount distributable to the employees is 10% of an adjusted taxable income. The main difference between the taxable income and the profit sharing base is that the tax losses cannot be applied against the profit sharing base.

No profit sharing is paid during the first year of operations. Also, special rules apply for personal service entities and for entities deriving their income from rental activities, both of which can limit their profit sharing payment to the equivalent of one month of regular salary.

The profit sharing amount paid out is a deductible item for CIT purposes, provided certain requirements are met.

Vehicle taxes

There is no federal tax on the ownership of vehicles; however, the states may impose a similar tax.

Tax is still levied on the acquisition of new vehicles. This tax is payable in addition to the VAT on the purchase. Note that some vehicles considered as ‘hybrid’ (e.g. battery assisted vehicles) are not subject to the new vehicle acquisition tax.

Branch income

Mexican branches of foreign corporations (i.e. PEs) are generally subject to the same tax rules as Mexican corporations, with some exceptions. Such exceptions include that branches may deduct *pro rata* allocations of head office expenses, provided certain requirements are satisfied (such as the existence of an applicable tax treaty and a comprehensive agreement for the exchange of tax information between the relevant territory and Mexico), but may not deduct remittances to their head offices, even when such remittances are classified as royalties, fees, commissions, services, or interest.

In general terms, profit distributions to the head office (other than those regarded as a return to the head office of the capital invested into the branch, which are reflected in their 'remittances accounts') either in cash or in kind from branches or other PEs are subject to the statutory CIT rate on the grossed-up distribution, unless the remittance is made from the CUFIN account balance (i.e. the after-tax earnings account).

Branches are also subject to the 10% WHT on profit distributions, which can be reduced or eliminated based on any applicable tax treaty provision.

Income determination

Recognition of income

Income is generally recognised on an accrual basis. However, the service revenues of civil entities that render professional services (e.g. law and accounting firms) and low-income entities (as defined in the Mexican Income Tax Law) are reported on a cash basis.

Inventory valuation

The costing system to be used will be the incurred cost system, based on historic costs or pre-determined costs. If the requirements provided in the regulations of the Mexican Income Tax Law are met, the direct cost system (based on historical costs) may be used.

Inventory may be determined by any of the following methods:

- First in first out (FIFO).
- Identifiable costs.
- Average cost.
- Retail.

The FIFO method must be applied to each type of merchandise and each movement. The monetary FIFO method may not be used. Taxpayers selling goods that are identifiable by serial numbers, at a cost exceeding MXN 50,000, must determine their inventory by the identifiable cost method.

Once elected, a method is compulsory for five years and can be changed only if the requirements established in the regulations of the Mexican Income Tax Law are fulfilled. The monetary results of the change in method are amortised over the following five years.

For accounting purposes, different methods and certain variations can be adopted. However, a record of the differences must be maintained, and such difference will not be taxable or deductible.

The cost of imported goods may be deducted (and included in the cost of goods sold) only if it can be supported that the goods were legally imported into the country.

Capital gains

Capital gains are taxed as follows.

Securities

Gains on securities are included in regular taxable income.

The tax basis of shares of Mexican corporations sold may be increased by the inflation adjustment applicable for the holding period.

When computing the tax basis of the shares, there are certain items to be considered, such as: (i) the movement in the after-tax earnings account (CUFIN) of the issuing company (including the possible negative CUFIN effects), as adjusted for inflation, (ii) the unamortised prior years' tax losses at the date of the sale, (iii) tax losses arising prior to the date on which the shares were acquired and amortised during the holding period, and (iv) any capital reductions of the issuing company.

When the sum of: (i) the CUFIN balance at the date of acquisition of the shares, (ii) the capital reductions paid, (iii) the unamortised prior years' tax losses at the date of the sale, and (iv) the negative CUFIN balance of the issuing corporation is higher than the sum of: (i) the CUFIN balance at the date of the sale and (ii) the tax losses arising prior to the date on which the shares were acquired, and amortised during the shares' holding period, the difference must be subtracted from the tax basis of the shares to be disposed of (potentially resulting in the shares' tax basis being equal to zero).

When the aforementioned difference exceeds the tax basis of the shares disposed of, this excess (restated by inflation) must be subtracted from the tax basis of the shares in any subsequent share sale by the same taxpayer, even if the shares are issued by a different company.

The aforementioned procedure allows the average cost (tax basis) of the shares to be determined, which is then updated and considered as the acquisition cost for future sales.

A different but simpler procedure is available (optionally) for computing the tax basis of shares held during a period of 12 months or less.

Deduction of losses arising from the sale of shares is limited to the value of gains from similar transactions in the same or the following ten fiscal years. Losses may not be deducted by non-residents selling shares.

A gain from the sale of shares is considered Mexican-source income when the transferred shares are issued by a Mexican resident or when more than 50% of their book value arises directly or indirectly from immovable property located in Mexico, including cases where the shareholding is structured in different levels.

In general terms, the sale by non-residents of shares issued by a Mexican company is subject to a 25% WHT applicable to the gross amount of the transaction (i.e. without deductions). However, there may be the option for gains realised by non-residents on the sale of shares issued by a Mexican company to be taxed by applying the 35% rate to the net gain. The tax rate for these purposes is generally the same as the top bracket rate for individuals (currently 35%), unless a lower tax treaty rate is applicable.

This net income election is available only if the foreign shareholder income is not deemed to be subject to a regime considered as a 'preferred tax regime jurisdiction' (i.e. tax haven, which is deemed to exist when the non-Mexican resident income is not subject to taxation or taxed at a rate lower than 75% of the tax that would be paid in Mexico) or resides in a country with a territorial tax system. The non-resident seller must have previously appointed a representative in Mexico and have a public accountant assigned to issue a statutory tax audit report on the transfer of shares. The public accountant issuing the respective report must specify the accounting value of the shares sold and explain the factors used in determining the sales price and the market value of the shares if shares are sold between related parties.

The representative is jointly liable for the tax on the sale of shares, even when the statutory report is issued by a public accountant.

The tax authorities may authorise the deferral of taxes that would otherwise be triggered by the transfer of shares in a group reorganisation to the extent it is a share-for-share type of deal (the authorisation must be obtained prior to the share transfer). The price used on the transaction must be at arm's length. The tax deferred, adjusted for inflation, is due upon the sale of the originally transferred shares outside the same interest group. An interest group consists of shareholders that have over 50% common voting stock of the companies.

In principle, authorisations for tax deferral are not granted if the party acquiring or selling the shares is resident in a tax haven or is a resident of a country that has not signed a comprehensive exchange of information agreement with Mexico. However, in the latter case, an authorisation may still be granted if the taxpayer provides documentation to the Mexican tax authorities stating that the taxpayer has authorised the foreign tax authorities to provide information to the Mexican authorities regarding the operation in question.

If the share sale qualifies as an exempt reorganisation under tax treaty rules, the non-resident must appoint a legal representative in Mexico prior to the sale and file a notice with the Mexican Tax Administration informing them of such appointment and the details of the reorganisation process intended to be carried out. Additionally, certain formal requirements are established in the regulations of the Mexican Income Tax Law that must be satisfied when carrying out this type of transaction.

Tax treaty rules (optionally) override domestic law rules when the seller resides in a tax treaty country.

Shares sold through the stock market

Capital gains realised on (i) the sale of shares issued by Mexican companies, (ii) securities exclusively representing such shares, (iii) shares issued by foreign companies quoted in the Mexican stock market, and (iv) derivative financial operations referenced to stock indexes and/or to the aforementioned shares, when the sale is conducted in stock markets or in derivative markets recognised under the Securities Market Law, are subject to a 10% income tax rate.

The applicable income tax on the gain obtained must be withheld by the broker/intermediary; however, there is no obligation to make this withholding if the investor is a resident in a country with which Mexico has signed a tax treaty to avoid double taxation and provides the broker with a sworn statement explaining said situation and providing their registration number or tax ID issued by the proper authorities in their country. If this is not provided, the income tax must be withheld.

When a non-Mexican resident sells shares that do not satisfy the above requirements to be taxed at a 10% income tax rate, they must pay their tax by applying either 25% of the sale price or 35% of the net gain, complying with the requirements established for these purposes in the domestic law.

Real estate

In determining the taxable gain of real estate, the cost basis of land and buildings may be adjusted (i.e. increased) for tax purposes on the basis of the period of time for which the assets have been held. This adjustment is performed by applying inflation adjustment factors to the net undepreciated balance. Similar rules apply to non-residents electing to pay tax on net income by appointing a legal representative in Mexico. The rate of tax on the net gain is 35% (or lower treaty rate). Otherwise, the 25% final WHT on gross income applies to non-residents.

Machinery and equipment (M&E)

Gains or losses from the disposal of machinery, equipment, and other fixed assets are also calculated after adjusting the basis in these assets, by applying inflation factors to the net undepreciated balance.

Inflationary gain or loss

Taxpayers are required to calculate an adjustment for inflation (resulting in additional taxable income or deductible expense) on an annual basis by applying the percentage increases in the National Consumer Price Index (NCPI) to the value of essentially all liabilities, reduced by monetary assets, including bank balances, investments (except in shares), and some debt and receivables.

Dividend income

Dividends received by Mexican corporations from other Mexican corporations need not be included in gross income. Dividend income must be included within the recipient corporation's CUFIN.

No further corporate-level taxes apply on dividends distributed out of the CUFIN. However, non-CUFIN distributions (i.e. distributions that for any reason have not been subject to CIT) are subject to tax at the level of the distributing company at the general income tax rate on the grossed-up distribution at the effective rate of 42.86%. This tax is creditable in the year of payment or two subsequent years.

Interest income

Interest received by Mexican corporations is generally subject to tax on an accrual basis and included in gross income (*see also Inflationary gain or loss above*).

Royalty income

Royalties received by Mexican taxpayers are taxable income at the general corporate rate (i.e. 30%). Such revenue shall be accrued for tax purposes at the earliest of the due date for the royalty payment collection or the issuance of the corresponding invoice.

Governmental assistance

When the government grants economic or financial assistance to taxpayers through governmental budgetary programs, the cash received will not be treated as taxable revenue to the extent that (i) there is a public list of beneficiaries, (ii) the funds are wire-transferred to the beneficiaries' accounts, (iii) if applicable, the tax authorities issue a certificate of good tax standing to the beneficiary, and (iv) the assets or services the taxpayer acquires with the grant are not deducted.

Foreign income

A Mexican corporation is taxed on foreign-source income when earned. Double taxation is reduced, or possibly eliminated, by means of foreign tax credits. However, the undistributed profits of a foreign subsidiary are not subject to Mexican tax until dividends are paid, with the exception of companies with investments in entities with income subject to a preferred tax regime (tax haven or PTR) (*discussed below*), in which case income is generally taxable even if no distributions are received from those entities.

Investments in tax havens (income subject to PTRs)

Investments in tax havens include those made directly or indirectly in entities, branches, real property, shares, bank accounts, or investment accounts, and any kind of participation in entities, trusts, joint ventures, or investment funds, as well as in any other similar legal entities created or incorporated in accordance with foreign law and located in a tax haven, and including those that are carried out through an intermediary.

A business, entity, trust, or joint venture is considered to be located in a tax haven when it has a physical presence, an address, a post office box, or effective management in a tax haven, or when its bank account is held in or through financing entities located in a tax haven.

Unless it can be demonstrated that the taxpayer does not have management control of the foreign investments, the taxpayer must include the income generated through such entities or foreign vehicles in the proportion that corresponds to their direct or indirect participation in the capital of the entity or vehicle.

Income and profits subject to PTRs are taxed separately. This income cannot be combined with other taxable income or losses and it is not considered for purposes of making advance income tax payments. Tax applicable to this type of income is payable together with the annual CIT return.

The classification of a PTR is not based on the location of the investment but on the tax effectively paid on the income generated abroad. An investment is considered subject to a PTR if the income is not subject to tax or tax paid abroad is less than 75% of the income tax that would have been incurred and paid in Mexico if the income had been taxed under Mexican rules.

In general, interest income and the annual inflationary adjustment made to liabilities of the investment in the tax haven are included in taxable income without subtracting the annual inflationary adjustment on receivables. However, the annual inflationary adjustment on receivables may be subtracted from interest income earned, provided an information return is filed.

Tax on investments in a PTR is determined by applying the general CIT rate to taxable income (currently 30%). Additionally, net operating loss carryforwards associated with an investment in a PTR may be amortised against the tax profit of the following tax years arising from investments in a PTR, and tax deductions related to the investment may also be applied, as long as accounting records pertaining to those investments are available and the annual information return on the investments is filed on time.

Undistributed income from investments in entities located in a PTR need not be immediately included in taxable income (under the provisions discussed above) in certain particular cases (e.g. income arising from qualified active business activities in accordance with the applicable legislation and in the case of passive income from indirect investments in a tax haven when certain strict conditions are met).

Income earned in a PTR will be taxed until its distribution where the PTR income arises from a business activity. This treatment will not be applicable, however, if income such as interest, dividends, royalties, certain capital gains, and rents (i.e. passive income) represent more than 20% of the total income generated.

Other specific cases of income on which the tax may apply until distribution include the case of share transfers within the same group and for income derived from royalties and interest that do not represent a tax deduction for Mexican tax residents, to the extent that certain specific requirements are satisfied.

Maquiladoras

As discussed in the Corporate residence section, companies operating under an IMMEX program (*Maquiladoras*/in-bond processing companies) are considered to not have a PE in Mexico. This is the case for the non-resident principal that owns the M&E and inventory, to the extent it is a resident of a country that has a tax treaty in force with Mexico, complies with all the terms and requirements of the treaty, satisfies any mutual agreements between Mexico and its treaty partner, and complies with the transfer pricing provisions provided in the law.

Revenues associated with productive activities must be derived solely from *Maquila* activities. Additionally, the rules on M&E ownership are consistent with the IMMEX Decree definition (i.e. 30% or more of the M&E used in the *Maquila* operation must be owned by the foreign principal).

The effective income tax rate on *Maquila* profits is 30%.

In terms of transfer pricing, only the safe harbour and advance pricing agreement (APA) alternatives are applicable to *Maquilas*.

Under a Presidential Decree published in Mexico's Official Gazette, the following benefits are also granted to the *Maquiladora* industry:

- An additional deduction for 47% of tax-exempt benefits paid to employees involved in the relevant *Maquila* operation (since 2014, the Mexican tax law limits this deduction to 53% of tax-exempt benefits). *Maquiladoras* applying this benefit should inform the Mexican tax authorities of the amount of the benefit granted, and how it was determined, in a report due March of each taxable year.
- For sales of goods that are located in Mexico between a foreign resident and a *Maquiladora* that are taxed at the 16% VAT rate, the *Maquiladora* may credit the VAT in the same month of the sale if certain certification requirements are met. This benefit applies if a certification is secured.

Additionally, among other rules, the Miscellaneous Tax Regulations (MTRs) include further guidance in connection with the *Maquiladora* industry, as follows:

- Revenues associated with productive activities must derive solely from *Maquila* activities. In this regard, this rule provides that such revenues may also include those obtained for other *Maquila* services rendered to related parties resident abroad and other miscellaneous income, provided that the *Maquila's* books clearly identify every type of income and related expenses.

- Income relating to the manufacture and distribution of finished goods for resale cannot be considered as 'solely derived from *Maquila* manufacturing activities'.
- The MTRs also provided that a foreign principal may still apply safe harbour protection relating to PE immunity contemplated in the 2013 Income Tax Law, provided that the foreign principal is resident in a country with which Mexico has a DTT and the principal is fully compliant with any treaty requirements applicable to its Mexican activities.

Deductions

The applicable deduction requirements must be complied with no later than the last day of the tax year to which the deduction applies, although the invoice supporting the expense may be provided up to the date on which the tax return for the period in question is filed (or comes due). An expense invoice must contain a date within the year for which the deduction is claimed.

Deductions for certain business expenses are limited (e.g. business meals, use of company-owned cars).

Depreciation and amortisation

Straight-line depreciation is permitted at the rates specified in the law (i.e. estimated lives for assets are 20 years for buildings, 3.3 years for computers, 4 years for cars [the deductibility threshold for cars has been raised from MXN 130,000 to MXN 175,000, for electric cars the limit is MXN 250,000 starting from 2017], 10 years for certain M&E, etc.), and the deduction may be increased by applying the percentage increases in the NCPI from the month in which the asset was originally acquired. When an asset is disposed of or becomes useless, the remaining undepreciated historical cost may also be deducted, after application of the appropriate inflation adjustment factor to the undepreciated historical cost.

Starting from 2016, companies, including those dedicated to transportation infrastructure and those that invest in hydrocarbon-related activities and the generation of electricity, who have obtained revenues in the prior tax year up to MXN 100 million, can apply an accelerated depreciation (i.e. lump-sum deduction) for investments in new fixed assets that were acquired in the last quarter of the 2015 tax year, or in 2016 or 2017. The accelerated depreciation rate varies from around 60% to 90% depending on the type of assets and the year of acquisition (i.e. 2016 or 2017).

Intangible assets for the exploitation of goods that are in the public domain, or for rendering public services under concession, are considered deferred assets (i.e. not deducted as incurred). Therefore, these assets are subject to amortisation for income tax purposes.

Specific annual depreciation rates are established for goods used in certain industries.

Goodwill

Goodwill is a non-deductible item for Mexican tax purposes, and the corresponding input VAT (if any) will not be creditable.

Start-up expenses

Start-up expenses incurred prior to the commencement of operations may be amortised at the rate of 10% per year, after applying the adjustment factors.

Interest expenses

In general terms, interest expenses are deductible items if, among others, the principal is invested in the main activity of the Mexican taxpayer, withholding obligations are complied with, informative returns disclosing information related to the loan and transactions carried out with related parties are filed, thin capitalisation rules (3:1 debt-to-equity ratio) are satisfied, the transaction is at arm's length, and the interest does not fall into the deemed dividend criteria (*see the rules for the deductibility of interest payments at the end of this section*).

Bad debts

Bad debts may be deducted on the earlier of the date on which the debt prescribes or the date on which the taxpayer substantiates the practical impossibility of collection, as defined by the law, among other detailed rules.

Charitable contributions

The maximum amount for deductible donations is limited to 7% of the taxable income of the previous year.

Fines and penalties

In general terms, fines and penalties are non-deductible items for income tax purposes, except interest for underpayment of taxes.

Taxes

In general, all federal, state, and local taxes levied on a company (not including those required to be withheld from other parties) represent deductible expenses for CIT purposes, with the following exceptions:

- CIT.
- Federal VAT and excise tax when the company is entitled to credit the tax.
- Taxes on acquisitions of fixed assets and real estate, which must be capitalised and deducted as part of the total cost of such assets to be depreciated.

Subcontracting

Payments derived from labour subcontracting will be deductible when, among other requirements, the contractor obtains from the subcontractor (i) copies of the tax receipts for salary payments made to the employees performing the outsourced services, (ii) a copy of the acknowledgement of receipt, and (iii) a copy of the tax return showing that the income tax withholding and contributions to the Mexican Social Security Institute were paid.

Net operating losses

Subject to certain limitations, losses incurred in prior years by a business may be carried forward and deducted from income earned over a subsequent ten-year period. Net operating loss carrybacks are not allowed.

Losses carried forward may be increased by the percentage increase in the NCPI between the seventh and 12th months of the fiscal year in which they are incurred and thereafter up to the sixth month of the fiscal year in which they are applied.

In the case of entities engaged in activities related to the exploration and production of hydrocarbons in maritime waters at depths of 500 metres or more, net operating losses (following the same adjustment rules mentioned above) may be used to reduce their taxable income within the following 15 years.

Tax loss carryforwards are non-transferable, not even by virtue of a merger. However, the tax losses the surviving entity had prior to the merger may continue to be used to offset the income derived from the same business activities that originated them and, with certain restrictions, may also be used to offset income that derives from new business activities. In the case of a spin-off, tax loss carryforwards should be divided between the surviving entity and the spun-off entities in accordance with their main business activity, prior to the spin-off, as follows:

- Commercial main business activity: In proportion to inventory and accounts receivable.
- Other non-commercial entrepreneurial activities: In proportion to fixed assets.

Current tax legislation may limit the offsetting of tax loss carryforwards upon direct or indirect changes in ownership that imply a change in control of the Mexican entity in certain situations (i.e. whenever the revenue of the last three years is less than the tax loss carryforwards updated for inflation balance of the year prior to the change in control, among other situations). The limitation, if applicable, would limit the netting of tax loss carryforwards available prior to the change in control against the income derived from the same business activities that originated them.

Payments to foreign affiliates

Taxable income and authorised deductions must be determined on the basis of prices that would be agreed with independent parties in comparable transactions (arm's-length values).

For this purpose, taxpayers must secure and maintain contemporaneous documentation supporting transactions with related parties residing abroad, supporting that income and deductions are based on fair market values in accordance with Mexican transfer pricing principles. The documentation must be prepared per type of transaction and must include all operations carried out with related parties.

Domestic transactions with affiliates must also be supported by the application of a recognised transfer pricing method selected in accordance with the Mexican tax legislation in connection with the particularities of the transactions.

Payments made to entities whose income is deemed to be subject to a PTR are considered non-deductible unless it is possible to support that the price of the transaction is substantially the same to the one that would have been used among non-related parties in comparable transactions. Unless otherwise supported, it is assumed that operations with companies, entities, or trusts whose income is subject to a PTR are carried out between or among related parties and that the transactions are not at arm's length.

The sale price of shares (other than publicly traded shares) sold to a related party must be set at market value in accordance with Mexican transfer pricing provisions, and the transaction must be supported by the corresponding contemporaneous transfer pricing documentation.

Payments to non-residents of a prorated portion of expenses (i.e. allocations of expenses) are, in principle, not deductible for Mexican corporations. However, per current administrative tax rules, they may be deductible if a comprehensive set of requirements is complied with.

Payments made by Mexican residents to domestic or foreign related parties, which are in the hands of such related parties also deductible, are not deductible for the Mexican resident unless the corresponding income is included in the related party taxable income in the same or in a subsequent tax year.

Technical assistance, royalties, and interest payments

In order to be deductible, payments related to technical assistance, the transfer of technology, or royalties must be made directly to companies with the required technical capabilities to provide the corresponding service and should correspond to services actually received. In some situations, the payments may be made to a third party to the extent the relevant agreement expressly includes it.

A deduction for technical assistance, interest, or royalty payments (including those treated as royalties related to industrial M&E leases) is disallowed when paid to a foreign related party entity that controls or is controlled by the Mexican taxpayer and at least one of the following scenarios is applicable:

- The recipient of the income item is a fiscally transparent entity in its residency jurisdiction, unless its shareholders or members are subject to tax for income received by such transparent entity and the payment made by the Mexican resident to the foreign entity is at arm's length.
- The recipient entity considers the payment to be disregarded for tax purposes in its residency jurisdiction.
- The recipient does not include the payment as part of its taxable income in its residency jurisdiction.

Group taxation

The Mexican Income Tax Law previously included a chapter that allowed certain holding companies to file a consolidated income tax return with their majority-owned subsidiaries. Tax consolidation was applicable for CIT purposes but not for other taxes (e.g. VAT) or compulsory employee profit sharing.

Companies that, until 2013, consolidated with their subsidiaries for tax purposes were entitled to reduce their deferred tax by crediting against the consolidated tax the tax on dividends paid between members of the group, and to reduce by up to 50% the consolidated tax by applying losses (valued at 15%) incurred by the controlled entities.

The tax consolidation regime was repealed starting in 2014, and a simplified tax consolidation (deferral) regime was introduced.

Mexico

Due to the repeal of the former tax consolidation regime, the Mexican Income Tax Law provides three options for computing the deferred consolidated income tax benefit, which will be payable over a five-year period.

The main requirements for applying the current tax consolidation (deferral) regime are as follows:

- That the Mexican tax resident holding entity holds, directly or indirectly (through other Mexican entities), 80% or more of the shares of the entities that would form part of the consolidation regime.
- That the Mexican holding entity is not held in more than 80% of other entities, unless such other entities are resident of a jurisdiction having an in-force broad exchange information agreement with Mexico.

Shares that qualify as placed among the general investing public and non-voting shares are not considered for the purposes of determining the proportions described above.

As of May 2018, Albania, Andorra, Anguilla, Argentina, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Bulgaria, Caicos Islands, Cameroon, Canada, Cayman Islands, Chile, China, Colombia, Cook Islands, Costa Rica, Croatia, Curaçao, Cyprus, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guatemala, Guernsey, Hong Kong, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, the Republic of Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands, the Netherlands Antilles, New Zealand, Nigeria, Niue, Northern Ireland, Norway, Pakistan, Panama, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, San Martin, Saudi Arabia, Senegal, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, St. Lucia, Sweden, Switzerland, Tunisia, Turkey, Turks Islands, Uganda, Ukraine, United Arab Emirates, the United Kingdom, the United States, and Uruguay are considered to have broad exchange information agreements on tax matters with Mexico; other agreements or tax treaties that might include an information exchange agreement on tax matters are awaiting ratification or being negotiated.

The Mexican Tax Administration must authorise the application of the consolidation regime, and written consent of the legal representative of each of the companies that would be participating must be filed before 15 August of the year prior to the first year of consolidation to request the proper authorisation. Special tax accounts should be kept by each of the companies of the group.

There are some types of entities that would not qualify for the consolidation regime, among others, non-profit entities, credit institutions, insurance corporations, trusts, auxiliary credit institutions, stock exchange entities, foreign exchange houses and capital investment companies, non-resident companies, companies in liquidation, civil or social associations, cooperatives, and *maquiladoras*.

In general terms, the current consolidation regime allows an individual company to offset losses against profits of other companies in the same group during a three-year deferral period.

The deferred income tax must be paid by each of the entities of the group on the same date on which they are required to file their annual income tax return for the year following that in which the three-year deferral period concludes. The deferred income tax will be paid updated with the accumulated inflation adjustment from the month in which the tax was deferred to the month in which the tax is paid.

The deferral benefit must be paid before the three-year deferral period if:

- a member leaves the consolidated group
- the ownership percentage is reduced, or
- the group is deconsolidated.

Transfer pricing

Mexican transfer pricing legislation is based on the OECD principles. This has resulted in the implementation of transfer pricing guidelines that are in line with the global economy and trade.

In general terms, from a Mexican transfer pricing perspective, all related-party transactions (including certain joint-venture relationships) must be performed at arm's length.

Those taxpayers who are required to present an informative return with respect to their tax status (a DISIF for its acronym in Spanish) are required to present information relating to transactions carried out with related parties and foreign related parties for each tax year. The DISIF must be filed, when applicable, as part of the annual corporate tax return of Mexican legal entities.

Local legislation allows the selection of both traditional methods and profit-based methods consistent with the OECD guidelines. However, the legislation provides a strict ordering criteria for the application of a method, starting with the comparable uncontrolled price (CUP) method. Other methods different from the CUP may only be applied if the CUP method is justifiably not applicable based on the specific facts and circumstances of each transaction.

Mexican legislation is generally 'form over substance' oriented; consequently, contractual terms remain relevant when defining the economic substance of the transactions subject to the transfer pricing analysis.

Reliable financial information is not always publicly available for Mexican entities. Hence, reliance is often placed on foreign information, which is then adjusted to properly reflect local market conditions and render the transactions in question more comparable.

Country-by-country (CbC) reporting

In 2016, the Mexican government enacted the requirement to file a master information return (Master file), local information return (Local file), and CbC report on a calendar-year basis, starting in FY 2016 and due by 31 December 2017. The provisions of the Mexican Income Tax Law on this obligation are consistent with the OECD's Base Erosion and Profit Shifting (BEPS) with respect to Action Plan 13: Guidance on the Implementation of Transfer Pricing Documentation and Country by Country Reporting. Note that the filing of Master and Local files is required by Mexican taxpayers exceeding the established threshold, while the CbC report is required only for Mexican multinational groups meeting certain group revenue thresholds. However, Mexican tax authorities may also request a CbC report concerning foreign multinational groups. In both cases, specific thresholds for presenting documentation is established.

Failure to file the reports is subject to fines and disqualification of the taxpayer from entering into contracts with the Mexican public sector.

Thin capitalisation

Interest generated by excess debt lent by a foreign related party to a Mexican resident is non-deductible for CIT purposes. Excess debt is defined as that exceeding three times the value of shareholders' equity (i.e. a 3:1 debt-to-equity ratio) as per the taxpayer's Mexican Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS) balance sheet.

In principle, all interest-bearing debts are considered in determining the annual average debt for purposes of calculating the ratio and thereby the disallowed interest expense amount. However, certain debts incurred for construction, operation, or maintenance of productive infrastructure associated with Mexico's strategic areas or to generate electricity may be excluded from the computation.

Taxpayers may also be able to obtain a ruling from the Mexican Tax Administration in order to apply a higher financial leverage (i.e. not the 3:1 debt-to-equity ratio) if they support with the Mexican tax authorities that the particularities of their business activities required a higher leverage. Also, the thin capitalisation rules do not apply to entities that are part of the Mexican financial sector for the realisation of their business activities.

In addition, taxpayers may be entitled to use the sum of the average balances of their capital contributions account (CUCA) and their (CUFIN) to determine the 3:1 debt-to-equity ratio instead of shareholders' equity. Taxpayers that opt to apply this alternative for the thin capitalisation computation must continue to use it for at least five years. Note that the alternative computation is mandatory for those taxpayers that do not apply Mexican GAAP.

Specific provisions dealing with the disallowance of interest expenses for debt financing structured though back-to-back loans should also be closely observed.

Controlled foreign companies (CFCs)

See Foreign income in the Income determination section for a description of the taxation of undistributed profits of foreign subsidiaries.

Tax credits and incentives

Foreign tax credit

The Mexican Income Tax law allows Mexican corporations and individuals to credit for Mexican income tax purposes the income tax paid abroad in connection with non-Mexican source income. The tax credit would only be applicable if the relevant income item from non-Mexican source is deemed as taxable for Mexican tax purposes in respect to the full amount (i.e. including the income tax paid abroad).

In general, creditability is available in respect of foreign income taxes withheld from foreign-source income or paid with a tax return filed in the foreign country in the name of the Mexican resident or by a foreign branch of a Mexican corporation. However, in the case of profit or dividend distributions by non-Mexican resident legal entities to Mexican resident legal entities, the proportional income tax paid by the non-Mexican resident distributors would be creditable in Mexico. Note that the Mexican Income Tax Law provides a specific computation to determine the proportional income tax paid abroad.

Furthermore, the creditability of the proportional income tax paid abroad in respect of dividend or profit distributions mentioned in the preceding paragraph would only be applicable if the Mexican resident entity receiving the dividend or profits holds at least 10% of the equity of the foreign distributing entity during a six-month period prior to the distribution.

In the case of dividend or profit distributions from a foreign legal entity that are in turn distributed to another foreign legal entity that then distributes the dividend to the Mexican legal entity, Mexican income tax credit for the proportional income taxes paid by both foreign legal entities may be allowed, in accordance with a specific computation provided by the Mexican Income Tax Law. Note that the creditability is strictly limited to two foreign corporate levels. In addition, the creditability in such cases would only be applicable if the entity distributing the dividends on the second corporate level resides in a jurisdiction having an in-force broad exchange of information agreement with Mexico and the Mexican entity holds an indirect 5% participation in such non-Mexican resident entity equity during the six-month period prior to the dividend distribution.

The foreign tax credit will be allowed up to the effective Mexican rate of tax on the taxable income (tax result) shown by the annual return on a country-by-country basis and per income type limitation. Taxpayers who are not in a position to take full credit for the taxes paid to a foreign country on foreign-source income are allowed a ten-year carryforward of such excess foreign taxes, provided certain compliance requirements are met and the credit would be limited to the corporate tax rate in Mexico of 30%.

The Mexican tax authorities have published internal criterion to determine whether or not a foreign tax should be considered as an income tax for purposes of applying the aforementioned creditability provisions. Such criteria provides, among other situations, that the main qualifying feature to be met is that the relevant tax is levied on income (i.e. revenue subtracted by authorised deductions in similar moments to those established by the Mexican Income Tax Law). Note that such criterion is not binding to taxpayers and refers to a law that was amended in 2014; however, it is still consulted in practice as it provides insight on the Mexican tax authorities view on such topic.

Duty-deferral programs

A deferral program is an authorisation provided by the Mexican Ministry of Economy to those companies importing raw materials or fixed assets to manufacture finished products within Mexico for export.

In addition to the benefits described for CIT purposes in the *Income determination section, Maquiladoras under the IMMEX program are entitled to the following customs benefits:*

- No payment of import duties for temporarily imported raw materials, as long as they are exported.
- Temporarily imported raw materials and fixed assets will not be subject to VAT when the Mexican entity importing the goods obtains a VAT certification (*see VAT in the Other taxes section*) from the tax authorities related to the adequate control of such imports or posts a bond guaranteeing the VAT payment until the goods are exported.

Another program allowing preferential duty rates is the Sectorial Relief Program (known as PROSEC), which allows manufacturers to apply lower duty rates on the import of raw materials and machinery required for their productive processes, regardless of their country of origin and regardless of if they are for the Mexican market or for export. These programs were created by the federal government in order to establish competitive tariff conditions for Mexican manufacturers needing to import raw materials and fixed assets from non-NAFTA or trade partner countries.

Companies in Mexico that carry out import operations with values of MXN 300 million per semester, or IMMEX companies, can take advantage of significant customs and administrative benefits if registered into the 'Certified Company Registry' (authorised by the Ministry of Finance). In addition, companies that comply with certain requirements regarding controls and security within their supply chain, regardless of the MXN 300 million obligation, can also obtain the 'Certified Company Registry'; this specific type of registry is known as New Scheme of Certified Companies (NEEC for its acronym in Spanish), which is different from the newer VAT certification for IMMEX companies mentioned before.

In general terms, the main benefits provided by the Certified Company Registry allows simplified procedures to process imports and exports, including the reduction in time and number of reviews when clearing goods at customs facilities.

Research and development (R&D) incentives

The Mexican Income Tax Law provides a 30% tax credit for R&D expenses, including investments in R&D. The tax credit will be equal to current-year R&D expenses in excess of the average R&D expenses incurred in the previous three years. This incentive cannot be combined with other tax incentives. The government will set up a committee to analyse and approve R&D credits. Further, taxpayers will have to file an information return each February with details of the R&D expenses to be validated by the authorities. Additional rules for the R&D tax credit were published in the Mexican Official Gazette in February 2017 and are in force since 17 March 2017. The given rules provide clarity on the procedural requirements to apply for such tax incentive, some limitations, and a list of expenses that are deemed as qualifying for purposes of obtaining the tax incentive benefits (e.g. fees paid to third party investigators, expenses incurred in testing, tools for testing, specialised equipment necessary for the development of the project, laboratory equipment, among others).

Employment incentives

An incentive offers a credit equivalent to 100% of the income tax corresponding to the salary paid to workers/employees with certain types of disabilities.

An additional deduction, equivalent to 25% of the salary paid to such workers/employees, is also available.

Both benefits cannot be applied in the same fiscal year.

Incentives for investments in movie production

A limited credit is applicable for investments in movie production activities through an immediate tax credit, which is capped at 10% of the total income tax of the prior year, provided certain requirements are met.

Incentives for investments in theatre production

A limited credit is applicable for investments in theatre production activities through an immediate tax credit, which is capped at 10% of the total income tax of the prior year, provided certain requirements are met.

Real estate investment incentives

Some tax benefits exist for qualifying real estate investment trusts (i.e. REITs or the so-called FIBRAS for its acronym in Spanish) in Mexico.

Capital investment

There are certain incentives to encourage risk capital investments in Mexico.

Special Economic Zones (ZEE)

The ZEE were introduced by the Mexican government with the aim of promoting economic growth and investment in certain estates of the country that have fallen behind with respect to others parts of Mexico in industrial and economic development (e.g. Chiapas, Guerrero, Michoacán, among others).

In this regard, from a tax perspective, the Mexican government provided tax incentives to investors in the ZEE which projects should be aimed at encouraging the creation of jobs and infrastructure to promote the economic development of the region.

The specific tax incentives for the ZEE were introduced via decrees in the later part of 2017 and are effective from 30 September 2017. The main tax incentives from an income tax perspective and VAT perspectives are the following:

- From an income tax perspective, taxpayers obtaining income generated within the ZEE will be granted an income tax reduction of 100% during the first ten fiscal years and a 50% income tax reduction for the following five fiscal years, subject to the compliance of certain requirements.
- From a VAT perspective, 0% VAT rate will be applicable to goods acquired by investors in the ZEE to the extent certain documentation requirements are satisfied. Furthermore, investors in the ZEE may be able to obtain accelerated VAT refunds for goods acquired by Mexican residents located outside the ZEE. Further, Mexican residents outside the ZEE may apply a 0% VAT rate to services or the leasing of goods provided to investors in the ZEE, subject to the compliance of certain requirements. In addition, no VAT is applicable to transaction among taxpayers within the ZEE.

Note that additional tax incentives may be available at a state level; however, those are typically negotiated with the local tax authorities on a case-by-case basis and depend on the nature of each specific investment project.

Other incentives

Certain other specific and limited tax incentives are available for taxpayers engaged in certain activities (e.g. those engaged in air or sea transportation of goods or passengers with respect to aircraft and ships with a federal government commercial concession or permit; in the agricultural and forestry sectors; and in-bond warehouses with respect to real property used for the storage, safeguarding, or conservation of goods or merchandise).

Taxpayers dedicated exclusively to the generation of energy from renewable sources or efficient energy through co-generation systems and that have fully deducted their investments shall establish an account designated as a 'Tax Profit Account for Investments in Renewable Energy', which will allow for the distribution of dividends without payment of CIT.

Individual shareholders of companies that reinvest profits generated from 2014 to 2016 are entitled to a reduction in tax on dividends of up to 5% to the extent such profits are distributed beginning in 2019.

Withholding taxes

Payments to Mexican residents

Payments to resident corporations and PEs in Mexico are generally not subject to WHT.

Payments by resident corporations to resident individuals are subject to WHT as follows:

Payment	WHT (%)
Wages, salaries, and other remuneration	0 to 35
Fees:	
Members of boards of directors and advisory boards	35.0
Other professional fees	10.0
Lease payments on real property	10.0
Interest on securities (1)	0.6
Interest on non-qualified securities	20.0
Dividends	10.0
Miscellaneous types of income of individuals, usually sporadic payments	20.0

Note

1. WHT on interest paid by financial institutions to Mexican resident investors is generally set at 0.6% of the invested capital.

Payments to non-residents

Income tax must usually be withheld from payments to non-resident corporations and individuals. In the case of non-tax treaty countries, the statutory withholding rates are as noted below.

Income tax of 40%, with no deductions, must be withheld on most payments made to foreign-related parties whose income is deemed to be subject to a PTR, in lieu of the tax provided in the domestic law for non-PTR foreign resident entities. This is not applicable in certain cases, such as on income not subject to Mexican taxation in accordance with the regular provisions for income earned by non-residents from a source of wealth located in Mexico, income from dividends, and certain types of interest, including interest payments made to foreign banks. In these cases, the regular provisions of the domestic law should be applied to determine the income tax withholding.

Additionally, revenues for intermediation services, including commissions for brokerage, agents, distribution, and assignment, and generally all income from the negotiation of third-party interests, are also subject to 40% WHT when paid to residents whose income is subject to a PTR. The 40% may be reduced if the foreign related party beneficiary resides in a country with which Mexico has signed a comprehensive exchange of information agreement.

Non-residents' wages and salaries are taxed on the basis of a 12-month earnings period at the following income tax withholding rates:

Taxable income (MXN)		
From	To	WHT (%)
0	125,900	0
125,901	1,000,000	15
1,000,001	and above	30

The above mentioned rates are also applicable to retirement fund payouts.

However, no tax arises on compensation (wages, salaries, or fees other than board fees) paid by a non-resident with no establishment in Mexico (even if not subject to tax) to which the services relate, provided the individual remains in Mexico for fewer than 183 days (consecutive or not) in any 12-month period.

The tax, when applicable, is withheld if the income is paid by a resident (or a non-resident PE located in Mexico). Otherwise, the tax is generally payable within 15 working days of the associated payment, by the foreign party earning the Mexican-sourced income.

Statutory withholding rates (not mentioned above) under local legislation are as follows:

Payment	WHT (%)
Professional fees for services rendered in Mexico	25
Lease payments:	
Lease of real property	25
Lease of containers imported on a temporary basis, airplanes, and ships authorised by the Mexican Government to be commercially exploited in the transportation of goods or persons	5
Lease of personal property	25
Time-sharing services (1)	25
Charter agreements	10
Sales:	
Real property located in Mexico (1)	25
Shares of Mexican companies (1, 2)	25
Transfers of ownership of Mexican public debt by other than the original creditors (intended to cover debt-for-equity swaps) (1)	25
Derivative transactions:	
On capital (1)	25

Mexico

Payment	WHT (%)
On debt (3)	Same rates applicable to interest
Interest (4):	
Paid to foreign government financing entities, to duly registered foreign banks and other entities that provide financing with funds obtained by issuing publicly traded debt instruments abroad, registered with the Ministry of Finance (5)	10
Interest on debt instruments placed abroad (6)	4.9
Interest payments to specific foreign financial institutions (7)	4.9
Other interest payments (not otherwise included above) paid by Mexican financial institutions to residents abroad	21
Paid to foreign suppliers of M&E, to others to finance purchases of such assets or inventory or working capital loans if the lender is duly registered	21
Paid to reinsurance entities	15
Other interest payments	35
Financial leases (on the portion deemed to qualify as interest or finance charge)	15
Dividends (12)	10
Royalties (8):	
For the use of railroad cars	5
For the use of copyrights on scientific, literary, or art works, including motion pictures and radio and television recordings, as well as software and payments for the transmission of video and audio signals via satellite, cable, optic fibre, and similar media	25
On patents, invention or improvement certificates, trademarks, brand names, and advertising	35
For the use of drawings or models, plans, formulas, or procedures, and of scientific, commercial, and industrial equipment; on amounts paid for information regarding scientific, commercial, and industrial experience; and for technical assistance	25
Short-term construction and the respective installation, maintenance, technical direction, or supervision (9)	25
Reinsurance premiums	2
Income obtained by athletes and artists (1)	25
Income derived from prizes (e.g. lottery tickets or raffles) (10)	1/21
Other income (forgiven debts, indemnifications, rights to participate in business, investments, etc.)	35

Notes

1. The non-resident may elect to pay tax at a rate of 35% (*see Note 11 below for the rate applicable thereafter*) on the net taxable profit in the case of (i) time-sharing services, (ii) share sales, (iii) sales of real property, (iv) activities of sportsmen/artists, and (v) derivative stock and debt transactions, provided that the non-resident recipient of the income has a legal representative resident in Mexico and to the extent that the following specific requirements are met:
   - For time-sharing services, the resident legal representative must keep the audited financial statements of the foreign resident, or the financial statements included in the foreign resident taxpayer's informative return on their tax status, available for inspection by the Mexican tax authorities.
   - For share sales, a tax opinion issued by a registered public accountant is required (not applicable to foreign residents whose income is subject to a PTR or resides in a territorial tax regime).
   - For shares and debt-for-equity swap transactions, this election is available only where the foreign taxpayer whose income is not subject to a PTR or resides in a country with a territorial tax system. It should be noted that there is an option to defer Mexican income tax arising from the sale of shares on a share-for-share basis within the same group due to a corporate reorganisation, provided certain conditions are met.
2. The sale of shares through the Mexican Stock Exchange is subject to a 10% WHT. When the investor is a resident in a country with which Mexico has signed a tax treaty, such withholding will not apply if certain requirements are satisfied.

3. The applicable WHT rate (based on the WHT rates for interest) for debt-derivative transactions is applied on a net basis. However, if the transaction is liquidated in kind, the applicable WHT rate (on the same net basis) is 10%.
4. Interest payments to non-residents are exempt from Mexican income tax when they are paid on the following:
   - Loans to the federal government or to the Bank of Mexico (Central Bank) or bonds issued by the latter organisation to be acquired and paid abroad.
   - Loans for three or more years granted or guaranteed by duly registered financial entities that promote exports through special financing.
   - Preferential loans granted or guaranteed by foreign financial entities to institutions authorised to receive tax-deductible donations in Mexico, provided these institutions are properly registered and use the funds for purposes consistent with their status.
   - Loans derived from bonds issued by the federal government or the Bank of Mexico placed on a recognised national stock exchange, to the extent the beneficial owner is a foreign resident.
5. A 4.9% WHT rate is applicable when the interest is paid to banks resident in countries with which Mexico has signed a tax treaty.
6. The 4.9% WHT rate applies, provided the placement is handled through banks or brokerage firms resident in a country with which Mexico has signed a tax treaty if there is compliance with the information requirements established in the general rules issued by the Ministry of Finance. If there is failure to comply with these requirements, the 10% WHT rate applies. The 4.9% and 10% WHT rates mentioned in the preceding paragraphs do not apply, and instead a 35% WHT rate is applicable to interest, when the direct or indirect beneficiaries of the interest, either individually or jointly with related parties, receive more than 5% of the interest arising from the instrument in question, and are either (i) holders of more than 10% of the voting shares of the issuing company, either directly or indirectly, either individually or jointly with related parties, or (ii) business entities holding more than 20% of their shares, either directly or indirectly, either individually or jointly with parties related to the issuer.
7. The 4.9% WHT rate is applicable to interest payments made to foreign financial institutions in which the Mexican federal government or the Mexican Central Bank has equity participation.
8. The WHT rate is applied to the gross amount of the payment.
9. The non-resident taxpayer may elect to pay 35% tax on the net profit if the taxpayer has a resident legal representative and so informs the customer, who then makes no withholding. When business activities last for more than 183 days, the foreign taxpayer is deemed to have a PE in Mexico for tax purposes and is taxed in the same manner and subject to the same rules as a local resident corporation or branch.
10. The 21% federal rate is applied only in the case of non-qualifying prizes (i.e. income derived from prizes that is subject to a state tax that exceeds a rate of 6%).
11. The statutory WHT rates mentioned above may be reduced by applying tax treaty provisions. During the last two decades, Mexico has embarked on a policy of negotiating a network of tax treaties with its main trading and investment partners (*see table below*).
12. The 10% WHT on dividend payments to foreign residents does not apply to distributions of profits subject to corporate-level tax prior to 2014. If a corporation makes a distribution out of earnings that for any reason have not been subject to CIT, such as distributions of book earnings (i.e. not yet recognised for tax purposes in Mexico), the corporation will also be subject to CIT on the grossed-up distributed earnings (gross-up factor is 1.4286).

As of March 2018, the treaties with the following countries are pending ratification while waiting for the completion of specific formalities by the respective governments in order to become effective, have not been published yet in the Official Gazette, or are under negotiation: Costa Rica, Egypt, Guatemala, Iran, Lebanon, Malaysia, Morocco, Nicaragua, Oman, Pakistan, Philippines, Slovenia, Thailand, and Venezuela.

Tax treaties with the countries listed in the following table have been published in the Official Gazette and are in force.

The WHT rates negotiated under the tax treaties are as follows:

	WHT (%)			
	Dividends			
Recipient	Portfolio	Substantial holdings	Interest	Royalties
Argentina	15	10 (2)	12	10/15 (42)
Australia	15	0 (1)	10/15 (25)	10
Austria	10	5 (4)	10	10
Bahrain	0	0	4.9/10 (20)	10

Mexico

	WHT (%)			
	Dividends			
Recipient	Portfolio	Substantial holdings	Interest	Royalties
Barbados	10	5 (1)	10	10
Belgium (37)	10	0/10 (2)	10/15 (16)	10
Brazil	15	10 (6)	15	10/15 (27, 29)
Canada	15	5 (4)	10	10
Chile	10	5 (6)	5/15 (26)	5/10 (29, 30)
China	5 (7)	5 (7)	10	10
Colombia	0	0	5/10 (17)	10
Czech Republic	10 (7)	10 (7)	10	10
Denmark	15	0 (3)	5/15 (17)	10
Ecuador	5 (7)	5 (7)	10/15 (16)	10
Estonia	0	0	4.9/10 (38)	10
Finland	0	0	10/15 (24)	10
France	0/5 (9)	0/5 (9)	5/10 (17, 29)	10 (29)
Germany	15	5 (1)	5/10 (18)	10
Greece	10 (7)	10 (7)	10	10
Hong Kong	0	0	4.9/10 (20)	10
Hungary	15	5 (1)	10	10
Iceland	15	5 (1)	10	10
India	10 (7)	10 (7)	10	10 (31)
Indonesia	10 (7)	10 (7)	10	10
Ireland, Republic of (36)	10	5 (4)	5/10 (17, 29)	10
Israel	10	5 (10)	10	10
Italy (37)	15 (7)	15 (7)	10 (29)	15
Jamaica (43)	10	5 (3)	10	10
Japan	15	5 (8)	10/15 (25)	10
Korea, Republic of	15	0 (1)	5/15 (17)	10
Kuwait	0	0	4.9/10 (20)	10
Latvia	10	5	5/10 (39)	10
Lithuania	15	0	10	10
Luxembourg	15	8 (11)	10	10
Malta	0	0	5/10 (17)	10
Netherlands	15	0 (12)	5/10 (21)	10 (28)
New Zealand	15 (7, 13)	15 (7, 13)	10	10
Norway	15	0 (3)	10/15 (16)	10
Panama	7.5	5 (32)	5/10 (17)	10 (33)
Peru	15	10 (2)	15	15
Poland	15	5 (3)	10/15 (19)	10
Portugal	10 (7)	10 (7)	10	10
Qatar	0	0	5/10 (40)	10
Romania	10 (7)	10 (7)	15	15
Russia	10 (7)	10 (7)	10	10
Saudi Arabia (43)	5 (7)	5 (7)	5/10 (18)	10
Singapore	0	0	5/15 (17)	10
Slovak Republic	0 (14)	0 (14)	10	10
South Africa	10	5 (1)	10	10
Spain (22)	10	0/10 (36)	4.9/10 (21)	10
Sweden	15	0 (3)/5 (5)	10/15 (16)	10

	WHT (%)			
	Dividends			
Recipient	Portfolio	Substantial holdings	Interest	Royalties
Switzerland	15	0 (34)	5/10 (35)	10
Turkey	15	5	10/15 (41)	10
Ukraine	15	5	10	10
United Arab Emirates	0	0	4.9/10 (20)	10
United Kingdom	0	0	5/10/15 (21, 23)	10
United States	10	5 (4, 15)	4.9/10/15 (20, 23)	10
Uruguay	5 (7)	5 (7)	10	10

Notes

The applicable tax rates on dividends paid abroad in accordance with the tax treaties executed by Mexico are detailed below; however, under domestic law, no withholding is applied on distributions of profits subject to corporate-level tax generated prior to 2014, when the 10% dividend WHT started applying.

There are certain specific cases of interest paid to parties resident abroad that might be exempted by certain tax treaties (e.g. interest paid to a pension fund or paid by a bank, interest paid on certain loans granted or guaranteed by certain entities for exports under preferable conditions), which are not detailed in the information below.

The Tax Reform gives the Mexican tax authorities the ability to require that the foreign-related party provide a sworn statement through its legal representative confirming that the item of income for which a treaty benefit is claimed would otherwise be subject to double taxation.

1. This rate applies when the recipient corporation that is the beneficial owner of the dividend (except for civil partnerships) directly owns at least 10% of the capital of the distributing corporation. In the case of Barbados, Hungary, and South Africa, the specific exclusion of civil partnerships is not included.
2. This rate applies where the company that is the beneficial owner of the dividends directly or indirectly owns at least 25% of the capital of the distributing company. In the case of Argentina specifically, there must be a direct ownership of 25% of the capital of the distributing company. In the case of Belgium, no WHT would apply if the beneficial owner holds for an uninterrupted period of at least 12 months shares representing directly at least 10% of the capital of the company paying the dividends or to pension funds if certain requirements are met.
3. This rate applies where the company that is the beneficial owner of the dividends (except for civil partnerships) directly owns at least 25% of the capital of the company distributing the dividends.
4. This rate applies where the recipient corporation that is the beneficial owner of the dividend owns at least 10% of the voting shares of the paying corporation. The Mexico-US tax treaty contains a most-favoured nation clause.
5. This rate applies where a company that is the beneficial owner of the dividends (except for civil partnerships, although limited liability partnerships are included) directly owns at least 10% of the voting shares of the company distributing the dividends.
6. This rate applies where a company that is the beneficial owner of the dividends owns at least 20% of the voting shares of the company paying the dividends.
7. This is the maximum WHT rate for dividends, with no distinction for substantial holdings. In the case of Ecuador and India, the tax payable on dividends paid to residents in Mexico must not exceed a limit established in the treaty.
8. The 5% rate applies when a company that is the beneficial owner of the dividends owns at least 25% of the voting shares of the company paying dividends during the six months prior to the end of the tax period in which dividends are paid. Under certain particular rules and provided this ownership requirement is satisfied, dividend payments are only subject to tax in the country of residence of the recipient of the dividends.
9. No withholding applies when more than 50% of the shares of the recipient corporation are owned by residents of France or Mexico or when the beneficial owner of the dividend is a resident individual. Accordingly, the WHT applies to dividends when more than 50% of the recipient corporation's shares are owned by residents of other countries. However, the WHT must not exceed 5% when the party receiving the dividend is the effective beneficiary of said dividend. Dividends paid by a company resident in France to a resident of Mexico, other than a company that directly or indirectly holds at least 10% of the capital stock of the first-mentioned company, may also be taxed in France, in accordance with the law of France, but if the recipient of the dividends is the beneficial owner, the tax thus charged must not exceed 15% of the gross amount of the dividends.
10. The 5% rate applies where the company that is the beneficial owner of dividends directly or indirectly owns at least 10% of the capital of the company distributing the dividends. There is a 10% tax rate that applies when these same ownership requirements are satisfied, but the company paying dividends

is a resident of Israel (provided dividends are paid from earnings taxed in Israel at a tax rate lower than the regular corporate tax rate in Israel).

11. The applicable tax rate on the gross amount of the dividends when the recipient company (beneficial owner) (except for civil partnerships) directly holds at least 10% of the capital of the corporation paying the dividend must not exceed 5% in the case of Luxembourg and 8% in the case of Mexico. The protocol of the Mexico-Luxembourg tax treaty states that this rate might be reviewed in the future by the contracting states if the WHT is not fully creditable, and can be adjusted under the principle of avoiding double taxation, provided the adjusted WHT rate is not lower than 5%.
12. Dividends paid by a company resident in Mexico to a company resident in the Netherlands (which is the beneficiary of said dividends) are subject to a maximum tax of 5% on the gross amount of the dividends if the beneficial owner is a company that directly or indirectly owns at least 10% of the capital of the company paying said dividends. However, as long as a company resident in the Netherlands is not subject to Dutch income tax on dividends received from a company resident in Mexico under the terms of the Dutch income tax law and any future amendments thereto, the dividends mentioned in the preceding paragraph may only be taxed in the Netherlands (not in Mexico).
13. The Mexico-New Zealand tax treaty contains a most-favoured nation clause that may be applicable in the future.
14. The exemption on dividend WHT is not applicable in the case of deemed dividends.
15. To the extent certain requirements provided in the Protocol are met, the WHT may be reduced to 0%.
16. The 10% rate applies to loans from banks. In the case of Belgium, the 5% rate is available for loans from banks and on interest paid from bonds that are regularly and substantially traded on a recognised securities market, and the 10% rate applies in all other cases.
17. The 5% WHT rate is applicable to interest paid to banks.
18. The 5% rate applies to interest on loans from banks, insurance companies, and retirement and pension plans. However, in the case of Saudi Arabia, interest income on loans from insurance companies is excluded for the reduced 5% WHT rate.
19. The 10% rate applies to interest on loans from banks, insurance companies, and securities regularly and substantially traded on a recognised national stock exchange.
20. The 4.9% rate applies to interest on loans from banks and insurance companies and to interest on securities regularly and substantially traded on a recognised national stock exchange.
21. In the case of the Netherlands, the 5% rate applies to interest on loans from banks and to interest on securities regularly and substantially traded on a recognised national stock exchange. In the case of the United Kingdom, the 5% rate extends to interest paid to insurance companies. In the case of Spain, the 4.9% rate applies to interest on loans from banks, interest on securities regularly and substantially traded on a recognised national stock exchange, and interest paid to insurance companies.
22. The updated WHT rates of the Tax Convention are effective as of 27 September 2017.
23. The 10% rate on interest applies in the case of interest paid to the original seller of M&E and interest paid by banks.
24. The 10% rate applies to interest on loans from banks and to interest derived from bonds or securities that are regularly and substantially traded on a recognised securities market, as well as to interest paid by the purchaser of M&E to a beneficial owner that is the seller of the M&E.
25. The 10% rate applies to interest on loans from banks and insurance companies, to interest on securities regularly and substantially traded on a recognised national stock exchange, to interest paid to the original seller of M&E in a sale on credit, and to interest paid by banks.
26. The 5% rate is applicable to interest on loans granted by banks and insurance companies, securities traded on a recognised securities market, and the sale on credit of M&E.
27. It is understood that the definition of royalties applies to any type of payment received for the provision of technical assistance services. The 15% rate applies to royalties arising from the use of, or the right to use, trademarks.
28. The original rate is 15% but has been reduced to 10% as long as the Netherlands does not impose a WHT.
29. The reduced WHT rate results from the application of the most-favoured nation clause.
30. The 5% rate applies to industrial, commercial, and scientific equipment.
31. The 10% rate also applies to fees for technical assistance, which are payments of any kind, other than those mentioned in Articles 14 and 15 of the treaty as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.
32. This rate applies where the company that is the beneficial owner of the dividends directly owns at least 25% of the capital of the distributing company.
33. The treaty broadly defines royalties and includes payments related to certain software.
34. This rate applies where the company that is the beneficial owner of the dividends directly or indirectly owns at least 10% of the capital of the distributing company.
35. The 5% rate applies on the gross amount of the interest paid to, among others, banks and insurance institutions.
36. No withholding applies where the company that is the beneficial owner of the dividends (except for civil partnerships) directly owns at least 10% of the capital of the company distributing the dividends or when the dividends are distributed to a pension fund.
37. The updated protocol of the Italy Tax Convention is applicable since 16 April 2015. In the case of Belgium, the new protocol entered into force in general as of 1 January 2018.
38. The 4.9% rate applies on the gross amount of the interest paid to banks and pension funds or pension schemes; the 10% rate applies on the gross amount of the interest paid in any other case.

39. The 5% rate applies on the gross amount of the interest paid to and by banks; the 10% rate applies on the gross amount of the interest in all other cases.
40. The 5% rate applies on the gross amount of the interest if the beneficial owner of the interest is a bank; the 10% rate applies on the gross amount of the interest in all other cases.
41. The 10% rate applies on the gross amount of the interest if it is paid to a bank; the 15% rate applies on the gross amount of the interest in all other cases.
42. The 10% rate applies on the gross amount of royalties derived from the use of intellectual property over literary, theatre, musical, artistic, or scientific works; the use of patents, designs, models, plans, formulas or secret procedures, computer programs, commercial equipment, industrial equipment, scientific equipment, or for information related to industrial, commercial, or scientific experiences or the rendering of technical assistance services; the 15% rate applies on the gross amount of the royalty in all other cases.
43. Even though the tax conventions are currently in force, the withholding reduced rates and provisions related to other taxes would be applicable until 1 January 2019, per articles 30 and 29 of the Jamaica and Saudi Arabia Tax Conventions, accordingly.

Tax administration

Taxable period

In general terms, the taxable period in Mexico is the calendar year.

Tax returns

Corporate taxpayers are required to file annual CIT returns for the preceding calendar year by 31 March of the following year.

Thereafter, taxpayers meeting certain size criteria or belonging to a group that, as a whole, meets these criteria must submit a tax-compliance informative return along with the preceding calendar year annual CIT return (i.e. 31 March of the following year).

In lieu of submitting the tax-compliance informative return, business taxpayers meeting certain size criteria may elect to file a tax-compliance audit report on an annual basis with the Mexican Audit Administration. This audit report covers all federal taxes other than customs duties and consists of audited financial statements and detailed schedules, together with a report by the auditor stating that no irregularities were observed in respect of the taxpayer's compliance with its federal tax liabilities. This report must be filled electronically, and the auditor must be an independent certified public accountant (CPA) registered with the Mexican Audit Administration. The amount of detailed information required to be filed, and the auditor's responsibility in connection therewith, is significant.

Employees' profit sharing payments are generally due by 31 May of the year following that in which the corresponding profit was obtained.

Information returns must also be filed not later than 15 February each year, reporting on, amongst others, the following activities performed in the immediately preceding year:

- Payments made to parties resident abroad.
- Loans received from or guaranteed by non-residents.
- Transactions conducted through a business trust.
- Parties to which the taxpayer makes payments and withholds income tax.
- Parties to which the taxpayer has made donations.
- Parties to which the taxpayer has paid dividends, and the value of such payments.
- Transactions carried out with suppliers and clients, either local or overseas.

Taxpayers making salary payments are also required to file information returns reporting salaries paid and salary credit paid in the immediately preceding calendar year.

An annual information return must be filed on investments made or held in a tax haven. This must be filed in February of the immediately following year.

An information return on transactions carried out with non-resident-related parties must be filed together with the annual CIT return (no later than March of the following year).

The informative tax status return corresponding to fiscal year 2018 must be filed in 2019 on the same date the annual corporate tax return is filed. However, an exception is provided for Mexican residents, which are only required to file the informative tax status return for transactions with non-Mexican residents if the amount of such transactions is less than a MXN 100 million.

Taxpayers allowed to elect to file the tax report will not be obligated to file the information return stating their tax status.

Payment of tax

Corporate taxpayers are required to make estimated payments of CIT by the 17th day of each month based on their estimated taxable income at the end of the previous month and calculated principally by applying the profit factor to the cumulative monthly gross income. The profit factor is determined by dividing the taxable profit by gross income shown in the annual return for the preceding year, or, if no profit factor is to be found in that annual return, the factor appearing in the year preceding that and so on, up to five years, with certain adjustments. For this purpose, gross income includes nominal income, excluding inflationary adjustments. The balance of CIT for the year is due at the same time as the annual return.

Special procedures are provided for computing advance CIT payments and for obtaining authorisation to reduce the amounts of monthly advances after the sixth month of the year. No advance payments or adjustments thereto are required in the first year of operations.

Tax audit process

In general terms, for taxpayers that elected to file a tax-compliance audit report, the tax audit (tax inspection) may start with a review of the audit report prepared by the independent CPA. At this point, the tax authorities may finish the audit if they are satisfied with the information provided by the CPA; otherwise, tax authorities may initiate a direct review on the taxpayer either at the tax authority's offices or at the taxpayer's facilities. Tax authorities may request several documents from the taxpayer and third parties that carried out transactions with the audited taxpayer.

Tax audits should be concluded within the following 12 months after the audit was initiated. The period to conclude tax audits for taxpayers that are either part of the financial system or consolidated for tax purposes is 18 months. In cases where the Mexican tax authorities request information to tax authorities from foreign jurisdictions, the period to conclude the audit is two years. The above periods might be suspended under certain circumstances (e.g. a judicial recourse or appeal initiated by the taxpayer against the tax authorities). Upon conclusion of the audit, the tax authorities should issue either a notification explaining tax underpayments observed during the audit process or a notification of conclusion if no issues remain open at the end of the inspection.

Finally, tax authorities should issue a notification of assessment within the six months after the conclusion of the tax audit. At this point, all underpayments claimed by the tax authorities become due.

Concluding Agreements

The Prodecon is a decentralised Mexican government organisation that acts as the Ombudsman of Mexican taxpayers, providing advice and issuing recommendations to the tax authorities. In recent years, Prodecon's Concluding Agreements have become more common and have had a positive impact for taxpayers when it comes to reconciling differences with the tax authority in regards to an audit and controversial assessments.

The agreement applies when a taxpayer is dissatisfied with the authority's tax assessment as a result of an audit. The taxpayer then should file a petition to the Prodecon, noting the facts, omissions, and support elements to expose its defending arguments. The Prodecon then notifies the authority and proposes an agreement to settle the difference and conclude the audit without further procedures. The authority has 20 days to indicate whether or not it accepts the terms that arise in the Conclusive Agreement.

Statute of limitations

In general, the right of the tax authorities to collect taxes, review tax returns, or claim additional tax expires five years after the date the respective return is filed. However, in cases where the taxpayer has not secured a federal tax registration number, has no accounting records, has failed to keep accounting records for the required five-year period, or has not filed a tax return, the statute of limitations expires in ten years. Similarly, the period for claiming a refund of overpaid tax expires after five years.

Topics of focus for tax authorities

Although there are no formal written communications from the tax authorities dealing with their topics of focus, in recent years the tax authorities have focused audits on transactions with non-residents, inter-company transactions, transfer pricing, social security contributions, and customs duties, among other areas.

Other issues

Relevant transactions disclosure

The Mexican Supreme Court, for years prior to 2018, ruled against the tax provision that established that taxpayers are subject to report relevant transactions on a quarterly basis, concluding such reporting obligation did not comply with the legal certainty principle, as the reporting scenarios were not included in the text of the law. As a consequence of the aforementioned ruling, the Mexican tax authorities incorporated the tax provision into the text of the 2018 Federal Revenue Law.

In line with the above, the relevant transactions reporting includes share acquisitions or dispositions, extraordinary transactions with related parties, and corporate reorganisations, among others.

Cash deposits reporting

Financial institutions are required to report, by 15 February of each year, to the Revenue Administration Service (*Servicio de Administracion Tributaria* or SAT) the information on customers making monthly cash deposits in excess of MXN 15,000.

International Financial Reporting Standards (IFRS) adoption

All companies listed on the Mexican Stock Exchange are required to submit annual consolidated financial statements accompanied by the opinion of a Mexican independent CPA. These financial statements must be prepared in conformity with IFRS and cover three years. Financial institutions and insurance companies must also file audited financial statements with the appropriate regulatory agency.

The elective adoption of IFRS in Mexico for other companies presents great challenges and opportunities. Changing from Mexican Financial Reporting Standards (MFRS) to IFRS requires companies to review their financial reporting procedures and criteria. Major changes in the requirements often have a ripple effect, impacting many aspects of a company's information reporting organisation.

Nevertheless, the benefits to Mexican companies in reporting under IFRS are numerous. Among the greatest of these is the opening up of the Mexican Stock Market to overseas investors. By adopting IFRS, investors are able to compare two companies on different sides of the world with greater ease, and thus it is hoped that the change will encourage investment in Mexican companies.

Adoption of IFRS is not a straightforward process, and it will require time and effort on the part of the adopting entities to be able to ensure a smooth transition from MFRS to IFRS and ensure that the changes and benefits from this transition are duly implemented.

Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA)

FATCA was enacted in 2010 by the US Congress to target non-compliance by US taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the US Internal Revenue Service (IRS) information about financial accounts held by US taxpayers or by foreign entities in which US taxpayers hold a substantial ownership interest.

Mexico signed an IGA with the US Treasury on 19 November 2012 under which Mexican financial institutions are required to report US-owned account information directly to the Mexican tax authority, rather than to the US IRS. The Mexican tax authority will then share that information with the US IRS.

The IGA provides that the United States will reciprocate with the sharing of information.

Mexican tax authorities have issued a set of administrative rules for banks and other financial and related entities to comply with the FATCA IGA.

Common Reporting Standard (CRS)

Mexican legal entities and legal figures that are financial institutions resident in Mexico or abroad with Mexican branches are required to report financial information of their clients since 2016 in line with the CRS, which was introduced at the OECD level on 15 July 2014.

The CRS obligation to financial institutions in Mexico was included in the 2016 Tax Reform to the Mexican Federal Tax Code, which broadly implies identifying the residency of their clients and the reportable accounts and filing such information to the Mexican tax authorities. In this regard, the Mexican tax authorities will exchange that information automatically with the respective jurisdictions participating in the multilateral exchange of information agreement signed on October 2014 by more than 50 countries. Depending on the particular jurisdiction, the exchange of information was set to start with 2016 data; however, with some jurisdictions, the exchange of information was agreed to start with 2017 and 2018 data.

In line with the above, Mexico started exchanging information in 2017 with respect to fiscal year 2016 and effectively received in the latter part of 2017 information of Spain, Germany, Malta, and the Netherlands, among others jurisdictions, as expressly mentioned by the Mexican tax authorities press releases.

Moldova

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Significant developments

Corporate income tax (CIT)

As of 1 January 2018, expenses from financial allocations for the benefit of trade unions are deductible up to 0.15% of the payroll fund if used in accordance with the collective labour agreement. This amendment applies starting with 1 January 2017.

At the same time, starting with 1 January 2018, expenses for granting meal tickets are deductible within the limits provided by law.

Starting with 1 January 2018, taxpayers may opt for the new methodology for calculating fixed assets' depreciation for tax purposes. Thus, fixed assets' evidence may be held for each asset in part by applying the straight-line method of depreciation. Starting with 2019, the new methodology shall be mandatory.

The tax rate on income from operational activity of small and medium enterprises that are not registered as value-added tax (VAT) payers has been increased to 4%. The conditions for applying this regime have also been modified.

Payroll taxes

As of 1 January 2018, all payroll taxes are reported through a unified tax return by the 25th day of the month following the reporting one.

Health insurance contributions are to be paid by 25th day of the month following the one in which salary and other compensations were paid.

In addition, as of 1 January 2018, the taxable income for health insurance contributions purposes has been mostly aligned to that of personal income tax (PIT).

Value-added tax (VAT)

Starting with 1 January 2018, the list of VAT-related terms has been amended and extended in line with European Union (EU) Directives.

The 8% VAT rate applies to thermal energy produced from solid biofuels and delivered to public institutions.

The ceiling for registering as a VAT payer has been increased to 1.2 million Moldovan lei (MDL).

Additional specifications have been provided for the place of goods and services delivery.

Excise duties

The list of excise duties terms has been amended and extended in line with EU Directives. Articles of jewellery made from precious metals have been excluded from the list of excisable goods.

Tax administration

Starting from 1 January 2018, the 50% fine reduction for tax infringements is also to be applied for social security and health insurance contributions.

Law on information technology (IT) parks

Starting from 1 January 2017, a new law on IT parks entered into force. Following it, the first IT park started its activity in January 2018. The law provides for certain tax incentives for the IT parks' residents.

Under this law, each park resident is subject to a single tax of 7% of sales income, but not less than the minimum amount due per employee. The minimum amount of single tax per employee is set at 30% of the national average forecasted salary for that year.

Taxes on corporate income

Resident companies generally must calculate their taxable base for CIT purposes on their worldwide income. Permanent establishments (PEs), unlike resident companies, are only required to calculate their taxable base for CIT purposes on income sourced in Moldova.

The CIT rate is 12%. If the Moldovan Tax Authority (MTA), applying indirect methods, re-assesses the income amount compared to the declared gross income, a 15% CIT rate may be applied to the excess amount.

Individual entrepreneurs are subject to progressive rates of 7% for annual income up to MDL 33,000 and 18% for annual income exceeding MDL 33,000.

Farming enterprises are subject to a 7% CIT rate.

Small and medium companies that are not registered as VAT payers may opt for a special CIT regime of 4% on their turnover (under specific conditions).

Local income taxes

There is no separate CIT at the local level. CIT is distributed between the national state budget and local budgets depending on the establishment of the entity and its subdivisions in accordance with the existing rules.

Corporate residence

According to Moldovan tax law, a tax resident is a legal entity organised or managed in Moldova or that has its main place of business in Moldova. In practice, tax residency is determined by the place of incorporation.

Permanent establishment (PE)

Based on the Moldovan tax law, a PE is a fixed place of business through which a non-resident carries out, wholly or partly, either directly or through a dependent agent, entrepreneurial activity in the territory of Moldova.

Due to the regulatory environment in Moldova, as well as certain difficulties in operating a PE in Moldova, foreign enterprises operating through a PE in Moldova are not common.

Other taxes

Value-added tax (VAT)

The standard VAT rate in Moldova is currently 20%. It is generally applied to local supplies of goods and services as well as to goods subject to import and services subject to the reverse-charge mechanism.

Apart from the above, certain types of supplies are subject to reduced VAT rates. For instance, local supplies of bread and bakery products; milk and dairy products; transport and distribution of natural gases services; biofuels used for electricity, heating, and hot water production; and specific phytotechnical, horticultural, and zootechnical products are subject to the reduced 8% VAT rate.

A number of supplies are VAT exempted with the right to be deducted, including international transportation and exports of goods or services. Certain supplies are VAT exempted without a deduction right, including financial services and the sale or rental of dwellings and land.

Input VAT

Input VAT incurred on acquisitions of goods and/or services may be deducted, provided it is incurred by a VAT-registered payer to perform VATable supplies within its business activity.

If input VAT relates to acquisitions destined to perform mixed supplies (i.e. both VATable and VAT-exempt ones), the input VAT deduction right is exercised on a pro-rata basis.

VAT refunds

Should a company register a deductible input VAT exceeding its output VAT, this balance can be partially refunded only if the company carries out a specific range of business activities (e.g. export supplies, international transportation services, production of bakery and dairy products, leasing activity). Otherwise, such VAT amount may be carried forward to the following months, offset against the company's future output VAT liabilities.

Additionally, VAT payers performing capital investments in Moldova may be entitled to refund the recoverable VAT related to these kinds of capital investments, provided such assets are used for product manufacture, service supply, and execution of works.

The possibility to refund the VAT against future obligations to the national public budget is also available, at the request of taxpayers not having debts to the national public budget.

VAT administration

A company is required to register for VAT purposes if the total turnover within the last 12 consecutive months reached the threshold of MDL 1.2 million. Also, companies can follow voluntary registration for VAT purposes if they only intend to perform taxable supplies.

All VAT payers registered for VAT purposes must submit electronic tax returns. VAT liabilities must be declared and settled monthly no later than the 25th day of the month following the reporting one.

Generally, VAT payers are required to issue VAT invoices for the VATable supplies performed, as well as to keep detailed records of their acquisitions and supplies in the correspondent VAT ledgers, according to a set of specific rules.

Additionally, all companies registered as VAT payers are required to register their VAT invoices with a taxable basis exceeding MDL 100,000 in the general electronic register of VAT invoices within ten working days from the date of issuing (with some specific exceptions).

VAT payers are entitled to a deduction of the amount of VAT paid to suppliers for material values and services purchased in Moldova if the VAT invoice is not registered by the seller in the register only on condition that the tax authorities are duly informed of such non-registration of VAT invoice.

Customs duties

Moldova's current customs framework is regulated by the Customs Code, Law on Customs Tariff, International Agreements concluded by Moldova to date, and by other legal acts.

Customs duties include customs procedural taxes, customs taxes, VAT, and excise duties. In general, any kind of goods and means of transport may enter and leave the territory of Moldova without any restriction. However, certain limitations specifically provided by the legislation are in force, which cover goods and means of transport crossing the border by breaching state security, public order, environment, etc.

Customs regimes

Definitive and suspensive customs regimes are provided under Moldovan law.

Definitive customs regimes refer to import and export, while suspensive customs regimes comprise transit, bonded warehouse, inward processing relief (with suspension), processing under customs control, temporary admission, and outward processing relief.

Customs valuation

Under Moldovan customs legislation, the customs valuation is generally performed in accordance with the customs valuation principles in the General Agreement on Tariffs and Trade (GATT).

The customs value is determined based on one of the six provided valuation methods (i.e. transaction value, transaction value of identical goods, transaction value of similar goods, deductive value, computed value, and reserve method). If the first method is not applicable, then the second method should be applied and so forth.

Preferential tariff treatment

Moldova has concluded free trade arrangements (FTAs) to date with most of the Commonwealth of Independent States (CIS) countries and is also a Central European Free Trade Agreement (CEFTA) contracting state. A preferential tariff treatment is granted for specific categories of goods, depending on their origin and in accordance with the FTAs to which Moldova is a party.

Also, further to the Association Agreement with the European Union, the customs duties on goods originating in the other party are eliminated. The origin of goods can be proven with an EUR.1 movement certificate or an origin declaration.

Customs duties applicable on imports performed in the Republic of Moldova are eliminated, except for products free of customs duties within the limits of the tariff quotas. In case these limits are exceeded, the most-favoured-nation customs duty rate shall apply.

Customs duties applicable on imports performed from the European Union are eliminated, except for the following products:

- Products free of customs duties within the limits of the tariff quotas. In case these limits are exceeded, the most-favoured-nation customs duty rate shall apply.
- Products subject to entry price for which the *ad valorem* component of the import duty is exempted.
- Products subject to the anti-circumvention mechanism.

Elimination of the customs duties on some specific categories of goods will be gradually made.

Favourable tariff treatment

A favourable tariff treatment presumes a reduction or an exemption from customs duty upon import of specific goods into Moldova, depending on their type or final destination, according to domestic customs law or international agreements to which Moldova is a party.

Moldovan customs law provides the following exemptions, among others, from customs duty:

- Goods imported by individuals for personal use, not exceeding a specific threshold.
- Goods released in Moldova under transit, bonded warehouse, or inward processing relief regimes.
- Moldovan goods previously exported and released back within a three-year term in the same status, as well as compensatory products obtained under outward processing relief.
- Certain movable goods imported by legal entities carrying out leasing activities for the purpose of paying off their contractual liabilities derived from lease agreements concluded with Moldovan individuals or legal entities.
- Goods imported by legal entities for non-commercial purposes whose customs value does not exceed 100 euros (EUR).
- Samples of goods with customs value not exceeding EUR 22 for one import operation.

- Aircraft, helicopters, locomotives, multiple units for railways providing public transportation of passengers, and parts thereof (only certain tariff headings as provided by law).
- Certain vehicles imported free of charge (donation), regardless of the exploitation term, for certain special purposes.

Customs administration

Moldovan customs legislation provides for:

- the concepts and procedures of post clearance audit
- the obligation of individuals and companies to maintain the necessary documents for customs control for five years, and
- the obligation of individuals and companies that perform external trade transactions to maintain the related documents for the purposes of post clearance audit for five years.

The Customs Service of Moldova uses procedures for issuing binding tariff and binding origin information. Additionally, companies may use the electronic procedure of customs clearance for the export of goods, as well as specific simplified customs procedures.

Excise duties

Excise duties apply to the production and import of cars, tobacco, alcohol, petrol and lubricants, and other goods. Special excise rates for each type of excisable goods are established in the tax code. The rates are widely variable and are based on multiple factors. The excise duty rates are generally indicated as a percentage applied to the value of goods or as a fixed amount for a certain quantity of excisable goods. However, for specific types of excisable duties, mixed excise duty rates are applicable.

The following are liable for excise duties:

- Any individual or legal entity producing and/or processing excisable goods on the territory of Moldova.
- Any individual or legal entity importing excisable goods, unless there is no specific exemption provided.

Businesses or individuals that produce and/or process excisable goods on the territory of Moldova (or intend to do so) must possess excise duty certificates, which must be granted by the tax authorities before these operations are actually carried out. It is mandatory for individuals or businesses, upon submitting the relevant applications to the tax authorities, to attach the details of the excise premises.

Under certain circumstances, excise duty exemptions may apply. Some excise-liable goods are subject to mandatory excise stamp marking and labelling.

Tax on immovable property

Tax on immovable property is a local tax paid on real estate (i.e. land and/or construction on the land) by the property owner or owner of material rights. Residents and non-residents owning real estate located in the territory of Moldova have similar obligations.

The 0.3% rate on immovable property used for entrepreneurial activity is applied either on the property's estimated value (if such exists) or on its book value, while the maximum tax rate on property used for agricultural activities is 0.1% of the property's book value.

Tax rates for real estate housing, including villages (communes) from Chisinau and Balti municipalities, are generally higher than for real estate housing from other municipalities.

Separate rates are applicable for agricultural land with construction buildings on it.

Tax on immovable property is paid in equal instalments on 15 August and 15 October for property owned before 30 June. For property acquired after 30 June, the tax is paid by 25 March.

Companies and individual entrepreneurs who own immovable property will be obligated to declare the immovable property tax by 25 July of the current fiscal period.

In the event of an owner change during the fiscal year, the previous owner may request recalculation of the real estate tax in proportion to the period in which they were subject to taxation.

Transfer taxes

Transfer taxes may be applied for notary acts performed by authorised notaries and other persons empowered by law. Transfer taxes are applied upon authentication by a notary of sale-purchase agreements regarding plots of land; transfers of houses into private property; alienation agreements of houses, apartments, garages, and other constructions; authentication of mortgage agreements; and other evaluative contracts.

Stamp taxes

According to the law on state tax, stamp tax (state duty) is the amount charged by specifically authorised state bodies from individuals and legal entities for the exercise of certain actions or issuance of legal documents of interest to them.

Stamp taxes may be applied for, but not limited to, the following:

- Claims submitted to courts of justice.
- Registration of civil status documents.
- Issuance of passports to Moldovan citizens and other related documentation.
- Residence registration.
- Redemption of goods from the state.
- Registration of mortgage, for issue of extracts from the Real Estate Register.
- Notary acts (i.e. for notarisation of sale-purchase agreements of immovable assets).
- Application of the apostil.

Payroll taxes

Salaries and other remunerations provided by an employer to its employees are subject to personal income tax (PIT). Thus, an employer is liable to withhold and pay PIT from employees' taxable income, as follows:

- 7% for annual income up to MDL 33,000 (limit applicable for 2018).
- 18% for annual income that exceeds MDL 33,000 (limit applicable for 2018).

Also, there are available deductions, each resident taxpayer being allowed to claim a personal allowance and allowance for spouse of MDL 11,280 a year and allowance for each dependant of MDL 2,520.

All payroll taxes are reported through a unified payroll tax return by the 25th day of the month following the reporting one.

Social security contributions

Employers must pay social security contributions of 23% of their employees' gross salary and other recompense to the Social Security Fund. Employees pay an individual contribution in the amount of 6% of their gross salary and other recompense. The legislation provides an annual fixed social security contribution for other categories of taxpayers in an amount approved for each year (e.g. MDL 8,424 applicable for 2018).

Companies report their social security contribution liabilities on a monthly basis (with certain exceptions) through the unique payroll tax return. The social security contribution due by both employer and employee must be transferred by the employer to the budget no later than the 25th day of the month following the reporting one.

A fine equal to double the amount of social security contributions is applied in case of diminishing or hiding the salary funds and other remuneration and the related social security contributions.

Health insurance contributions

The mandatory health insurance contribution, computed as a percentage of wages and other remuneration, is established at 4.5% for each payer category (employers and employees). The legislation also provides for an annual fixed amount of health insurance contribution paid by other categories of taxpayers in an amount approved for each year (e.g. MDL 4,056 applicable in 2018).

The mandatory health insurance contributions are declared on a monthly basis through the unique payroll tax return. The mandatory health insurance contribution due by both employer and employee must be transferred to the budget by the 25th day of the month following the moment of payment of salary and other remunerations.

As of 1 January 2018, the taxable income for health insurance contributions purposes has been mostly aligned to that of PIT.

A fine equal to the amount of contributions is applied in case of diminishing or hiding the salary funds and other remuneration from which the compulsory health insurance contributions are due.

Environmental pollution payments

Payments for environmental pollution are administered by the MTA. Subject to these payments are producers, importers, and/or purchasers of the specific types of goods that, during their usage, produces pollutants.

Companies should generally submit reports on environmental pollution payments on a monthly basis. The environmental pollution payments due by a company must be transferred to the budget no later than the 25th day of the month following the reporting one.

Road taxes

Road taxes are fees collected for the use of roads and/or protection zones of the roads outside the locality limits.

The system of road taxes includes the following:

- Tax for the use of roads by vehicles registered in Moldova.
- Tax for the use of roads of Moldova by vehicles not registered in Moldova (vignette).
- Tax for the use of roads by the vehicles with total mass, axle loads, or dimensions exceeding the admitted limits.
- Tax for the use of road protection zones outside the localities for carrying out construction or installation works.
- Tax for the use of road protection zones outside the locality limits for placing outdoor advertisements.
- Tax for the use of road protection zones outside the locality limits for placing roadside service objects.

Depending on the type of road tax, the tax law establishes the taxable person, deadlines for payment of the road tax, tax rates, exemptions (e.g. a legal entity or an individual shall pay road tax on vehicles registered in Moldova (i) on the date of state registration of vehicle or (ii) on the date of the vehicle inspection/annual technical testing of the vehicle).

Road tax rates for the use of roads by vehicles registered in Moldova vary depending on the type of vehicle and its specific characteristics (engine capacity, weight, etc.).

The fixed tax rates for vignette vary from EUR 4 to EUR 85, depending on the period the vehicle stays in the territory of Moldova.

Local taxes and duties

Local taxation in Moldova refers to the application of the following main types of taxes and duties:

- Taxes on the following natural resources:
  - Water.
  - Mineral exploration.
  - Geological exploration.
  - Mining operations.
  - Usage of underground areas for the construction of underground structures not related to mining operations.
  - Exploitation of underground structures within the performance of entrepreneurial activity, not related to mining operations.
  - Standing wood.
- Tax on immovable property.
- Duty for the right to perform local auctions and lotteries.
- Tax on advertising placement and tax on advertising devices.
- Fee for the right to use local symbols.
- Land improvement duty.
- Tax for commercial and/or services providing units.
- Parking tax.
- Hotel room occupancy tax.
- Resort fee.

Local authorities are authorised to establish the levels of tax rates for local taxes.

Branch income

Branches

Moldovan law does not distinguish between branches of non-resident companies and local companies established by a foreign investor. A non-resident's branch is established and registered in Moldova as a legal enterprise fully owned by the foreign investor. As such, it is subject to the same tax regime as local incorporated companies.

On the other hand, the concept of a tax PE does exist in Moldova. Generally, the PE of a non-resident entity will be subject to CIT in Moldova on any profits attributable to that PE. Since there is no local concept of a legal branch that is not a legal entity, non-residents do not typically intentionally operate in Moldova through a taxable PE.

Representative offices

Representative offices are often established by non-resident entities as a first step to operating in Moldova. According to the tax law, a representative office can engage only in auxiliary or preparatory activities. A representative office can perform only a limited range of activities without being considered a PE of the non-resident.

All representative offices must submit, by 25 March of the year following the reporting year, the required Tax Reporting Statement on the activity conducted during the year concerned.

Income determination

Resident legal entities are taxed on their worldwide income, while non-resident entities are taxed on their Moldovan-source income. Taxable income is computed as accounting profit adjusted in accordance with tax legislation.

Inventory valuation

Under the National Accounting Standards, the following inventory valuation methods are mandatory: specific identification, first in first out (FIFO), and weighted average cost.

Assets are generally valued at their acquisition cost, production cost, or market value.

Capital gains

Taxable gain is generally calculated as 50% of the difference between the sale price and the fiscal value of the capital assets (i.e. all costs related to the acquisition of capital assets). This taxable portion of the capital gain is then taxed at the standard tax rates.

This capital gain should be included in the total gross amount of income for the year in which the capital assets were sold (alienated). Capital gains may be decreased by capital losses registered in the current or previous year. Some examples of capital assets include shares, plots of land, options to purchase or sell capital assets, etc.

Specific exemptions might be applied in relation of certain transactions with capital assets.

Dividend income

Starting with profits earned in 2012, dividends paid by Moldovan legal entities to other Moldovan legal entities are taxed with the applicable final 6% withholding tax (WHT), while the distribution of dividends from profit earned during the period between 2008 and 2011 remain subject to the previously applicable final WHT of 15%.

Dividends received by Moldovan legal entities from foreign legal entities are included in taxable income and taxed at the applicable 12% CIT rate. According to Moldovan legislation, the beneficiary of such dividends is entitled to a credit for the tax paid in the foreign country, within certain limits.

Interest income

In general, the interest income derived by legal entities is included in the total taxable amount and taxed at the applicable 12% CIT rate unless a specific exemption is provided (e.g. interest from state bonds).

Royalty income

Royalties are defined as payments of any kind received in consideration for the use of, or the right to use, any copyright and/or ancillary right of a literary, artistic, or scientific work, including moving pictures, patent, trademark, design or model, plan, software, secret formula or process, or for information concerning industrial, commercial, or scientific expertise.

The following specific types of payments are not considered royalty under the Moldovan tax law:

- Payments for software purchase, intended solely for the operation of that software, including its installation, deployment, storage, customisation, or updating.
- Payments for the full acquisition of a software copyright or a limited right to copy it solely for the purpose of its use by the user or for the purpose of selling it under a distribution contract.
- Payments for obtaining the rights to distribute a product or service without giving the right to reproduction.
- Payments for access to satellites through the hiring of transponders or the use of cables or pipelines for the transport of energy, gas, or oil, where the customer is not in possession of transponders, cables, pipes, fibre optics, or similar technologies.
- Payments for the use of electronic communications services in roaming agreements, radio frequencies, and electronic communications between operators.

In general, royalties derived by legal entities are included in the total taxable amount and taxed at the applicable 12% CIT rate.

Exchange gains and losses

Revenues obtained from foreign exchange differences are to be included in taxable income. Foreign exchange losses are CIT deductible in the period they are incurred.

In certain circumstances (e.g. high depreciation of the national currency), foreign exchange differences should be capitalised to the value of assets in relation to which the expenses were incurred.

Non-taxable revenues

Moldovan tax law provides for the following main types of non-taxable revenues:

- Contributions to the capital of an entity.
- Income earned while benefiting from income tax incentives.
- Money received from special funds in the form of grants from government-approved programmes.
- Income from reversing impairment losses on depreciation of fixed and other assets.
- Income obtained under international projects and grants that contribute to the long-term development of education and research.

Foreign income

Resident legal entities are taxed on their worldwide income. The legal entities, under certain conditions, can benefit from tax credits provided under a double tax treaty (DTT) or can apply for unilateral tax credits against income tax paid in any foreign country if this income is subject to taxation in Moldova. Such tax credit shall not exceed the amount that would have been estimated at the CIT rate applicable in the given tax period. Otherwise, there is no specific tax deferral regime.

Deductions

As a general rule, expenses incurred by a company are deductible for CIT purposes only if they are deemed as ordinary and necessary, aimed at deriving taxable income, and justified with adequate supporting documentation.

The rate of deductible expenses for business purposes (ordinary and necessary) that are not adequately supported by necessary documentation is 0.2% from taxable income.

Depreciation and amortisation

Fixed assets are subject to CIT depreciation under the diminishing-balance method if their useful economic life exceeds one year and acquisition costs exceed MDL 6,000.

According to the fiscal law, fixed assets are divided into five categories of property. These categories are set out according to specific rules, mainly on the assets' useful life (i.e. the number of years during which the assets' utilisation generates economic advantages; the useful life for each type of depreciating asset is regulated by governmental decision). The depreciation rates vary as follows:

- First category (e.g. buildings): 5%.
- Second category (e.g. constructions): 8%.
- Third category (e.g. roads, certain equipment): 12.5%.
- Fourth category (e.g. industrial equipment): 20%.
- Fifth category (e.g. cars, computers, furniture): 30%.

Starting with 1 January 2018, taxpayers may opt for a new methodology for calculating fixed assets' depreciation for tax purposes. Thus, fixed assets evidence may be held for each asset in part by applying the straight-line method of depreciation and not for groups of assets. Starting with 2019, the new methodology shall be mandatory.

Intangible assets are subject to CIT amortisation according to the straight-line method. Moldovan tax law does not contain specific provisions regarding the useful life for intangible assets for tax purposes.

Goodwill

According to the National Accounting Standards, goodwill is not recognised as an intangible asset.

Start-up expenses

According to the National Accounting Standards, start-up expenses incurred by companies (e.g. stamp taxes paid upon company registration, drawing up of registration documents, manufacture of stamp) are not recognised as an intangible asset. Therefore, such expenses are to be treated as current expenses.

Interest expenses

Different CIT deductibility rules apply for interest on loans used for carrying out operational activities and for loans used for investment activities performed on an occasional basis.

As a general rule, deductions for interest expenses are allowed for CIT purposes, provided such expenses are deemed as ordinary and necessary for carrying out the activities of the business. Expenses should also be incurred for the purposes of obtaining taxable income and justified by adequate backup documentation.

If the interest paid by a Moldovan company relates to its operational or day-to-day activities, the related expenses are deductible for CIT purposes, taking into account the following:

- Interest expenses incurred by businesses, based on loan agreements, for the benefit of individuals and legal entities (except financial institutions, micro-financing organisations, and leasing companies) are deductible for CIT purposes within a specific limit established by law. Specifically, such interest expenses are deductible up to the limit of the average weighted interest rate on credit loans offered by banks to legal entities, depending on the period of the loan and its currency (e.g. different limits are applied for loans in Moldovan lei and those in foreign currency).
- If the loan is obtained for the purpose of acquiring/building fixed assets, the related interest expense should be capitalised to the initial fiscal value of such assets until they are put into exploitation. The deductibility of such interest expense is capped at the above limit. The excess difference is treated as a non-deductible expense for CIT purposes.

If interest relates to an investment activity, the interest expense is deductible for CIT purposes within the limit of the income derived from the investment.

Bad debt

Bad debts are deductible for CIT purposes, provided certain conditions are fulfilled and justifying documents are made available.

Charitable contributions

Charity and sponsorship expenses are deductible for CIT purposes if borne for the benefit of public authorities and public institutions financed from the state budget, as well as non-profit organisations and family-type foster homes within certain conditions, at up to 5% of taxable income.

Fines and penalties

Fines and penalties related to CIT, related to other taxes and due payments to the state budget, or for violations of legal acts are not deductible for CIT purposes.

Taxes

CIT incurred in line with requirements of the Moldovan tax law is not deductible for CIT purposes.

Other taxes are generally deductible for CIT purposes, except those paid on behalf of another person.

Other significant items

Among others, the following expenses are also generally deductible for CIT purposes:

- Research and development (R&D) expenses incurred during the fiscal year as current expenses, should certain conditions be met.
- Business trip expenses, protocol expenses, and expenses on insurance of business entities, within the limits approved by the government.
- Waste, spoilage, and perishability expenses, within the threshold approved by the company's manager.
- Leasing companies are allowed to deduct provisions to cover claims related to non-recovery of lease rates and interest rates up to 5% from the weighted average balance from the account receivables, provided certain conditions are met.
- Financial institutions are allowed to deduct loss loan provisions of assets and conditional commitments calculated according to International Financial Reporting Standards (IFRS).
- Micro-finance organisations are allowed to deduct loss loan provisions calculated according to requirements established by the National Commission on the Financial Markets.

Non-deductible expenses

Among others, the following expenses are generally not deductible for CIT purposes:

- Expenses not adequately supported by necessary documentation, except the 0.2% rate *as mentioned above*.
- Provisions, except for financial institutions, micro-finance organisations, and leasing companies *as mentioned above*.
- Losses incurred from transactions between affiliated parties.

Fiscal losses

Fiscal losses may only be carried forward for five consecutive years following the year the losses were incurred, provided the company records taxable income. If the company recorded fiscal losses for more than one year, such losses are carried forward in the order in which they arose. Fiscal losses are recorded on off-balance-sheet accounts.

Losses may not be carried back.

Payments to foreign affiliates

A Moldovan legal entity generally may deduct expenses related to payments to foreign affiliates to the extent that these amounts were actually paid and are not in excess of what it would have paid to an unrelated entity (i.e. arm's length). However, the payer is required to hold documentary evidence for the actually performed transactions. Still, certain types of expenses may follow general rules of deductibility that would limit their amount (e.g. interest expenses on loan agreements).

Group taxation

Moldovan tax law does not provide for group taxation.

Transfer pricing

Currently, transfer pricing regulations in Moldova are at an initial development stage. Formal transfer pricing documentation requirements might be introduced in the Moldovan tax law in the near future.

Moldova is currently not an Organisation for Economic Co-operation and Development (OECD) member country, and the domestic law does not provide for any reference to the possibility of applying the OECD Transfer Pricing Guidelines.

As a general rule, under Moldovan tax provisions, transactions concluded between related persons are taken into consideration only if the interdependence of these persons does not influence the outcome of the transaction. The arm's-length principle applies to transactions with both resident and non-resident related parties.

With reference to the transactions carried out by Moldovan companies with related parties, Moldovan tax law provides the following specific provisions:

- No deduction is allowed for losses incurred on the sale or exchange of property, performance of work, or supply of services between related parties, carried out either directly or through intermediaries (regardless of whether the transaction price corresponds to the market value).
- No deduction is allowed for expenses incurred in relation to related parties if no justification is available for payments and if such expenses do not represent necessary and ordinary business expenses.

In accordance with Moldovan tax law, a company is considered the taxpayer's related party if one of the following conditions exists:

- The company controls the taxpayer.
- The company is controlled by the taxpayer.
- Both the company and the taxpayer are under common control of a third party.

From a tax perspective, control is the ownership (either directly or through one or more related persons) of 50% or more in value of the capital or voting power of one of the companies. For this purpose, an individual will be treated as owning all equity interest that is directly or indirectly owned by members of one's family.

Two individuals are related parties if they are spouses or relatives up to the fourth degree.

Thin capitalisation

Moldovan tax law does not provide for a specific thin capitalisation regime.

The deductibility of interest expenses follows the deductibility regime as described under Interest expenses in the Deductions section.

Controlled foreign companies (CFCs)

Moldovan tax law does not contain CFC provisions.

Tax credits and incentives

Foreign tax credit

Income tax paid in any foreign country, if this income is subject to taxation in Moldova, is allowed for tax credit, provided that the taxpayer submits a document that justifies payment (withholding) of the income tax outside of Moldova, certified by the competent body of the respective foreign country, with its translation into the state language.

The amount of tax credit for any taxable year should not exceed the amount that would have been estimated at the rate applicable in Moldova with regard to this income.

A tax paid in a foreign country should be creditable for the year in which the income is taxable in Moldova.

Free entrepreneurial zones (FEZs)

FEZs are territories where domestic and foreign investors can carry out entrepreneurial activities on preferential terms (i.e. favourable tax, customs, visa, and other regimes). There are currently seven FEZs in Moldova.

The following types of activities may be carried out in an FEZ:

- Production of goods preferentially for export, excluding alcohol and alcoholic products.
- Sorting, packing, marking, and other similar operations of goods transiting the customs territory of Moldova.
- External commercial activities.
- Other supportive activities.

There is also an international free port (Giurgiulesti International Free Port) and airport (Marculesti International Free Airport) with status similar to FEZs that can benefit from specific tax and customs incentives.

FEZ incentives

For the 2018 year, the following CIT incentives for FEZ investors have been maintained:

- Entities that are established in the FEZ and export goods and services from the FEZ outside the customs territory of Moldova or deliver the produced goods to other FEZ residents for goods to be exported are entitled to apply only 50% of applicable CIT rate on such gains. For other cases, the CIT rate is 75% of the established one.
- The income obtained from export of goods (services) originating from the FEZ outside the customs territory of Moldova or from supply of the produced goods to

other FEZ residents for goods to be exported is CIT exempted for a period of three years, provided that the FEZ residents invested in the fixed assets of their enterprises and/or in development of the infrastructure of the FEZ capital equivalent to at least 1 million United States dollars (USD).
- The income obtained from export of goods (services) originating from the FEZ outside the customs territory of Moldova or from supply of the produced goods to other FEZ residents for goods to be exported is CIT exempted for a period of five years, provided that the FEZ residents invested in the fixed assets of their enterprises and/or in development of the infrastructure of the FEZ capital equivalent to at least USD 5 million.
- The income obtained from export of goods (services) originating from the FEZ outside the customs territory of Moldova or from supply of the produced goods to other FEZ residents for goods to be exported is CIT exempted for an additional period of time, provided that the FEZ residents performed additional investments in the fixed assets of their enterprises and/or in development of the infrastructure of the FEZ capital (under certain conditions).

From a VAT standpoint, goods and services supplied in the FEZ from abroad, from the FEZ outside the customs territory of Moldova, in the FEZ from other areas of Moldova, and those supplied to residents of other FEZs are VAT exempted with the right to deduct (with some exceptions).

According to the customs provisions, goods are introduced into the FEZ with no VAT or customs duty and are not subject to economic policy measures, according to specific criteria. However, certain taxes in specific situations might be incurred by residents of the FEZ. Investors in the FEZ are guaranteed and protected from changes in legislation for a general period of up to ten years, while under certain conditions this period may be extended to 20 years.

Law on information technology (IT) parks

Starting 1 January 2017, a new law on IT parks entered into force. The law provides for certain tax incentives for the IT parks' residents.

Under this law, residents of the parks could be legal persons or individuals registered in the Republic of Moldova as conducting entrepreneurial activity that carry out as their principal activity one or more of the following activities:

- Custom software activities (client-oriented software).
- Computer games editing activities.
- Editing activities of other software products.
- Management activities (management and exploitation) of calculation means.
- Data processing, webpage administration, and other related activities.
- Web portal activities.
- IT consulting activities.
- Other IT services related activities.

In this context, the principal activity is that which generates 70% of a park resident's sales income.

The residents of the parks will pay a single tax that includes:

- CIT.
- PIT.

- Mandatory social security contributions due by employers and employees.
- Mandatory health insurance contributions due by employers and employees.
- Local taxes.
- Tax on immovable property.
- Road tax applied to vehicles registered in Moldova.

The single tax of 7% of sales income, but not less than the minimum amount due per employee, is to be calculated and paid monthly by each park resident. The minimum amount of single tax per employee is set at 30% of the national average forecasted salary for that year (e.g. MDL 6,150 for 2018).

The employees of park residents will be granted all types of social insurance benefits established by the law. The insured monthly income when determining those benefits will be 60% of the national average forecasted salary for that year (e.g. MDL 6,150 for 2018).

Withholding taxes

Residents

Resident legal entities making payments to individuals (other than salary payments) must withhold and pay WHT to the MTA at the following rates:

- Preliminary WHT:
  - 7% preliminary withholding of payments made for the benefit of resident individuals, unless such payments are tax exempt.
  - 15% preliminary withholding from interests.

  The beneficiary deducts (i.e. recovers) the amount of preliminary WHT from annual income tax due.

- Final WHT:
  - 10% final withholding of an individual's income derived from leasing, rent, and usufruct of movable and immovable property.
  - 6% final withholding of dividends paid out to individuals, except for dividends for the profits received between 2008 and 2011, for which the WHT rate is 15%.
  - 15% from the amount withdrawn from the share capital related to the increase arisen from the distribution of net profit and/or other sources identified as equity among shareholders (associates) throughout the 2010 to 2011 fiscal period, in accordance with the share capital venture quota.
  - 5% from payments performed for the benefit of individuals, other than individual entrepreneurs and farmers, on income obtained from supplying phytotechnical, horticultural, and zootechnical products, except natural milk.
  - 10% from payments performed for the benefit of individuals, other than individual entrepreneurs and farmers, on income obtained from supplying goods through consignments trade units.
  - 18% from winnings from promotional campaigns, on each win value exceeding the personal allowance (i.e. MDL 11,280).
  - 18% from gambling winnings, except winnings from lotteries and sport bets.

  The tax charged to residents under this paragraph is a final one and exempts the recipient of such income from including it into gross income, as well as from declaring it.

The following tax treatment applies to royalty payments to residents:

- Practicing entrepreneurial activity: No WHT at source is applied.
- Resident individuals: A final WHT of 12% is applied, without including such income in the gross income of individuals (except royalty income of individuals aged 60 and over in the field of literature and art).

Also, earnings from promotional campaigns are considered non-taxable income sources if the value of each does not exceed the personal allowance (MDL 11,280 in 2018). Earnings from lottery and sports betting are considered non-taxable, irrespective of the amount earned.

Non-residents

The following WHT rates apply upon payments to non-residents:

- 6% for dividend payouts, except for dividends for the profits received between 2008 and 2011, for which the WHT rate is 15%.
- 15% from the amount withdrawn from the share capital related to the increase arisen from the distribution of net profit and/or other sources identified as equity among shareholders (associates) throughout the 2010 to 2011 fiscal period, in accordance with the share capital venture quota.
- 12% for other revenues.

Double tax treaties (DTTs)

The DTTs in force between Moldova and other countries may provide for more favourable tax rates than those provided by the local provisions. For their application, the foreign beneficiary of such income should provide the paying entity with its fiscal residency certificate before the payments are actually made. The Moldovan tax law expressly provides that the DTTs prevail over the national provisions. The only exception refers to the case where the domestic norms provide for more favourable tax rates (i.e. in such circumstances, the domestic ones shall apply).

Currently, Moldova has 48 operational DTTs, as outlined below:

	WHT * (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	6/15 **	12	12
Treaty:			
Albania	5/10	5	10
Armenia	5/15	10	10
Austria	5/15	5	5
Azerbaijan	8/15	10	10
Belarus	15	10	15
Belgium	15	15	0
Bosnia and Herzegovina	5/10	10	10
Bulgaria	5/15	10	10
Canada	5/15	10	10
China	5/10	10	10
Croatia	5/10	5	10
Cyprus	5/10	5	5
Czech Republic	5/15	5	10
Estonia	10	10	10

Recipient	WHT * (%)		
	Dividends	Interest	Royalties
Finland	5/15	5	3/7
Germany	15	5	0
Greece	5/15	10	8
Hungary	5/15	10	0
Ireland	5/10	5	5
Israel	5/10	5	5
Italy	5/15	5	5
Japan	15	10	0/10
Kazakhstan	10/15	10	10
Kuwait	0/5	2	10
Kyrgyzstan	5/15	10	10
Latvia	10	10	10
Lithuania	10	10	10
Luxembourg	5/10	5	5
Macedonia	5/10	5	10
Malta	5	5	5
Montenegro	5/15	10	10
The Netherlands	0/5/15	5	2
Oman	5	5	10
Poland	5/15	10	10
Portugal	5/10	10	8
Romania	10	10	10/15
Russian Federation	10	0	10
Serbia	5/15	10	10
Slovakia	5/15	10	10
Slovenia	5/10	5	5
Spain	0/5/10	5	8
Switzerland	5/15	10	0
Tajikistan	5/10	5	10
Turkey	10/15	10	10
Turkmenistan	10	10	10
Ukraine	5/15	10	10
United Kingdom	0/5/10	0/5	5
Uzbekistan	5/15	10	15

* If multiple rates are listed, then the WHT rate to be applied is subject to fulfilment of specific criteria provided by the DTT.

** 15% on dividends referring to the profit earned incurred during the period 2008 to 2011.

Tax administration

Taxable period

The tax year for CIT purposes is the calendar year. For new business entities, the fiscal year is considered the period beginning with the registration date until the end of the calendar year. Starting with 2017, certain taxpayers have the right to choose a tax period different from the calendar one.

For WHT and VAT purposes, the fiscal period is the calendar month starting the first day of the month.

Tax returns

An annual CIT return must be submitted to the MTA by 25 March of the year following the reporting year.

WHT and payroll liabilities must be declared and settled monthly, no later than the 25th day of the month following the reporting one.

Farming enterprises and individual entrepreneurs with an annual average number of employees not exceeding three and not registered as VAT payers must submit a unified annual tax return, provided certain conditions are met.

Companies that have, according to the average number of employees recorded in the previous year, more than five people employed under individual employment agreements or other contracts have to submit their tax returns by using automated methods of electronic reporting.

IT park residents must submit the single tax return to the MTA by the 25th day of the month following the reporting one. Such reporting is done electronically.

Adjusted tax returns

Taxpayers who discover that the tax return previously submitted contains an error are able to submit an adjusted tax return, provided that no written decision was issued by the tax authority in order to initiate a tax audit and the related tax period is not covered by a tax control.

Late interest payments will not be applicable in amounts higher than the tax liability resulting from the adjusted tax return submitted, and no fines will be applicable if the tax duties are paid before the announcement of a tax audit.

A fine will not apply in certain circumstances of fiscal violations specified by law, and, if already established, it will be entirely cancelled if no additional tax liabilities arise.

Companies that have miscalculated the taxes, and this was not detected in the previous tax audit, are absolved from fines and late interest payments for violations identified within the repeated tax audit.

Companies keeping the accounting records and preparing financial reports under IFRS or under the National Accounting Standards will not be fined for violation of accounting and record keeping for a period of up to two years from the date of implementation (transition) to those standards in case such violation represents an obstacle for performing tax audit.

Payment of tax

Taxpayers must declare and pay the applicable CIT by 25 March of the year following the reporting year. Taxpayers are also required to pay interim CIT, no later than 25 March, 25 June, 25 September, and 25 December, amounts equal to 25% of either the total estimated value of the CIT due for the current fiscal period or the total value of the calculated CIT for the previous fiscal period.

Fines and penalties

The MTA is entitled to apply a fine of 30% of the diminished tax liabilities (including CIT ones).

Under the tax law, the MTA is entitled to apply a fine in the amount of the undeclared tax if it is a result of tax evasion.

Taxpayers who settle amounts as assessed by the MTA within three business days and have no other outstanding liabilities may benefit from a 50% reduction of the fines applied by the tax authorities.

In addition, certain special provisions regarding tax evasion apply. The term 'tax evasion' is defined under Moldovan tax law as diminishing the tax liabilities by more than MDL 75,000 by means of including in accounting, tax, or financial documents deliberately distorted data on income or expenses or by hiding other objects of taxation. Should the amount of the tax due exceed MDL 75,000, the tax evasion is regarded as a criminal offence. According to the Moldovan Criminal Code, legal entities can be punished for tax evasion with a fine up to MDL 300,000 and preclusion from performing certain activities or winding-up.

Among the most important fines and sanctions for non-compliance with applicable tax law, the following are worth mentioning:

- The fine for the performance by the taxpayer of an economic activity with the issuance of a bill without using the existing cash register is MDL 5,000 (other fines might also be applied for non-compliance with rules related to use of cash registers).
- The fine for the failure to provide the VAT invoice in accordance with the tax law is MDL 3,600 for each VAT invoice but capped to MDL 72,000. The same fines are applicable for failure to register the fiscal invoice in the general electronic register managed by the tax authorities.
- The fine for hindering the execution of a tax audit by not providing access to production, storage, commercial, or other facilities is MDL 10,000.
- The fine for submitting a tax return containing unauthentic information is MDL 1,000 for each tax return, capped to MDL 7,000.

Tax audit process

The rules governing the tax audit process are stated in the tax code. Generally, the tax audit duration and frequency depends on its type. For instance, a tax audit performed at the taxpayer premises should not exceed two months (with some exceptions) and should be performed no more than once per year for the same taxes and duties, except for specific circumstances provided by law.

Also, a tax audit can be performed on a more frequent basis within certain specific circumstances (e.g. refund of VAT and other taxes, reorganisation).

A repeated tax audit for already audited periods can be performed in a number of cases, for instance:

- In case the results of previous controls are inconclusive, incomplete, or not satisfactory.
- If certain circumstances are identified that attest to the existence of tax infringements.

- In case of reorganisation or liquidation.

Statute of limitations

Under the general tax rule, the Moldovan tax authorities can assess tax liabilities no later than four years after the last date established for the submission of the relevant tax report or for the settlement of that tax liability (if submission of the tax report is not required). This limitation term does not apply in case of tax-related crimes or non-submitting of the corresponding tax returns.

Topics of focus for tax authorities

There are no specific topics of focus for the tax authorities. Generally, it depends on the nature of the taxpayer and the specifics of the activity it performs. The main criterion for selection of a company to be subject to a tax audit is a risk based one.

In addition, tax authorities are currently focused on promoting voluntary compliance of the taxpayers.

Rulings

From 2017, the concept of advanced binding ruling has been introduced in the Moldovan tax law.

The binding ruling under the Moldova tax law represents an administrative act issued by the MTA in order to solve claims submitted by individuals and legal entities that perform entrepreneurial activity, regarding the applicability of the tax legislation on the future specific situations and/or transactions. The anticipated individualised tax ruling is mandatory for MTA and other entities with tax administration attributions, provided certain conditions are met. The procedure of issuing and rejecting of advanced binding rulings is to be determined by the Ministry of Finance.

The law also provides for the possibility of obtaining comfort letters. Taxpayers that inadequately computed tax liabilities due to incorrect written explanations issued by the MTA may not be subject to sanctions (i.e. fines and late-payment penalties). Tax liabilities may still be recomputed by the MTA. Written explanations are issued by the MTA free of charge and may remain valid for an indefinite period of time, unless cancelled by new legislation or other rulings. Such explanations are generally issued by the Moldovan competent authorities during a period of up to one month.

Other issues

The legislation and the approach of the state authorities in Moldova related to corporate taxation have been and are expected to be subject to changes. Moreover, based on the publicly available sources, the Ministry of Finance intends to redraft the Moldovan Tax Code.

Taxpayers should seek professional advice on specific issues, given that only limited interpretations have been issued by the MTA.

US Foreign Account Tax Compliance Act (FATCA)

On 30 June 2014, the US Treasury announced that an intergovernmental agreement (IGA) was ‘in effect’, and, on 26 November 2014, the US Treasury and Moldova signed the Agreement for Cooperation to Facilitate the Implementation of FATCA, based on

IGA Model 2. Currently, Moldova applies FATCA requirements. The FATCA agreement was ratified by the Republic of Moldova Parliament on 10 December 2015.

Association Agreement with the European Union

As of 27 June 2014, the Republic of Moldova ratified the Association Agreement with the European Union. In this respect, a number of legislative changes have started to enter into force in a gradual way in order to harmonise local legislation with EU legislation (primarily in the area of indirect taxation).

Mongolia

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Significant developments

Currently, the Mongolian government is in the process of introducing new tax legislations, which are in public discussion. These laws are expected to be implemented in 2019. Specific changes and updates will be provided when more information is available.

Introduction of 'ultimate holder' concept for tax purposes

The Parliament of Mongolia amended the General Taxation Law of Mongolia and other several laws on 9 December 2017. Under these amendments, a concept of an 'ultimate holder' of a legal entity is newly introduced for tax purposes. Any change of ultimate holders of a legal entity that maintains a mining licence or land-use (or possess) right is deemed as a sale of its mining licence or land-use right and subject to a 30% corporate income tax (CIT).

Taxes on corporate income

Mongolian resident economic entities are taxable on aggregate annual income earned worldwide. Non-resident economic entities carrying out business activities in Mongolia are taxable on the income earned in the territory of Mongolia and from Mongolian sources.

Mongolian CIT is levied at the following rates, using a progressive-rate scale that ranges from 10% to 25%, as follows:

- 10% applies to the first 3 billion Mongolian tugrik (MNT) of annual taxable income.
- 25% applies to any excess of MNT 3 billion of annual taxable income.

However, the income described in the chart below is excluded when determining the annual taxable income and is taxed at different tax rates on a gross basis:

Source of income	Applicable tax rate (%)
Dividends	10
Royalties	10
Interest	10
Gambling, betting games, and lotteries (net)	40
Sale of immovable property	2
Sale of rights (e.g. mining licences, special activity licences, and other rights granted by the authorised organisations for conducting specific activities)	30

'Ultimate holder'

With the introduction of the amendment to the General Taxation Law of Mongolia, a concept of an 'ultimate holder' of a legal entity is newly introduced for tax purposes.

Any change of ultimate holders of a legal entity that maintains a mining licence or land-use (or possess) right is deemed as a sale of its mining licence or land-use right and subject to a 30% CIT. Importantly, a tax obligation is imposed on the legal entity holding such rights, but not the person who earns the income from the transaction.

'Ultimate holder' refers to the following types of persons who exercise control over management and assets of a legal entity, directly or indirectly, with a chain of ownership at one or more levels of legal entities through a number of shares, percentage of participation, or a number of voting rights:

- Holders of a majority of voting rights of a legal entity.
- Holders of a majority number of shares or shares with the highest market value of a legal entity.
- Similar others.

Assessing taxable income

In general, taxable income shall be assessed based on the value of rights pro-rated to the number of shares or percentage of participation that are transferred from a right-holding entity or its ultimate holders. For the purpose of certainty, the Ministry of Finance passed the Decrees No. 379 and 380, dated 25 December 2017, which set the following methodologies to assess taxable income:

- Methodology to assess and impose taxes on income from sales of the right to use or possess land (Decree No. 379).
- Methodology to determine the value of mining licences and assess taxes on income from transfer of mining licences (Decree No. 380).

Penalties

Breach of the above-mentioned legislative requirements (including failure to comply with requirements for assessing taxes, reporting and/or concealing relevant documents and information, and providing false documentation for tax purposes) shall be subject to cancellation of the respective rights (a mining licence and/or the respective right to use or possess land).

Local income taxes

CIT is levied at the state level in Mongolia. There are no provincial or local corporate income taxes.

Corporate residence

A resident legal entity is an economic entity formed under the laws of Mongolia or a foreign economic entity that has its place of management in Mongolia. There has not been further development of this concept, so it cannot be assumed that the standard place of effective management or control test will apply.

A non-resident company is a foreign economic entity that conducts its business in Mongolia and earns income from Mongolian sources.

Permanent establishment (PE)

Although there is a theoretical possibility to establish a branch of a foreign entity in Mongolia, it is currently not practically possible due to uncertainties in the law related to the legal status of such entity, filing procedures, etc.

It is also possible to register a non-resident PE in Mongolia with the tax authorities, but practically, only for foreign entities from countries that Mongolia has double tax treaties (DTTs) with. However, neither the legal status nor respective taxation rules are clear. According to the draft law on CIT, which is under public discussion at the moment, the time threshold for PE creation can be three months.

Other taxes

Value-added tax (VAT)

According to the VAT Law, a person (covering legal entities, individuals, and PEs) whose sales income has reached MNT 50 million or more has to be registered as a VAT withholder. The threshold for voluntary registration is MNT 10 million of sales income. A sale of fixed assets is not considered for the VAT registration thresholds.

VAT at the rate of 10% is imposed on the supply of goods, services, and works imported, exported, and sold in Mongolia.

One of specific features of the Mongolian VAT legislation is that works and services received from a non-resident (irrespective of whether they are supplied in Mongolia or not) are subject to VAT under the reverse-charge procedure (the RC VAT).

Customs duty

A customs tariff varies between 5% and 40% depending on the type of goods imported into Mongolia, except for gas condense, petroleum oils, crude, oils obtained from bituminous minerals, automatic data processing machines, electrical machinery, equipment and parts, medical equipment, and pure-bred livestock, which are zero-rated.

Export duties apply to certain exported goods, such as unprocessed camel wool, wood, and wooden materials.

Excise tax

Excise tax is levied on goods manufactured in or imported into Mongolia, such as tobacco, alcohol, gasoline and diesel fuel, and passenger vehicles. Excise tax is also levied on the physical units of special-purpose technical devices and equipment used for betting games and gambling and on the activities of individuals and legal entities that conduct such activities. Currently, the excise tax rate on the goods such as alcohol and tobacco varies between MNT 320 and MNT 19,140 per 1 litre of alcohol and 100 cigarettes of tobacco, and it will be increased by 5% in 2019 and 4% in 2020 and later years. For special-purpose technical devices and equipment, it varies between MNT 4.35 million and MNT 116 million per unit according to the origin and type.

The excise tax rates for gasoline and diesel that are produced in Mongolia are as follows:

- Gasoline:
  - MNT 0 to MNT 15,950 per tonne (up to 90 octane).
  - MNT 0 to MNT 17,400 per tonne (above 90 octane).
- Diesel: MNT 0 to MNT 21,750 per tonne.

For imported gasoline and diesel, the excise tax rates vary between MNT 0 and MNT 850,000, depending on the port of import.

Excise tax for imported automobiles varies between MNT 375,000 and MNT 65,975,000, depending on the year of production, type of automobile, and engine capacity.

Immovable property tax

Immovable property tax is an annual tax that varies between 0.6% and 1%, depending on the decisions made by the local representatives' committee, on the value of the immovable property that is owned. For tax purposes, the value used is the value registered with the government registration authority. If the property is unregistered, the insured value is used. In the absence of either a registered or insured value, the accounting value is used.

This tax does not apply to property of legal entities that are financed through the state budget, to any dwelling houses, or to any public nature buildings and construction.

Transfer taxes

Mongolia does not have a separate transfer tax. Transfer of certain rights (like land possession or usage rights and mining licences) is treated as sale of right and taxed at 30% under CIT law (*for more details, please refer to the Taxes on corporate income section*). For individuals, transfer of a land right is subject to 10% under personal income tax (PIT) law.

In the case of transfer of property, stamp duty will be applied.

Stamp duty

Under the Law of Mongolia on State Stamp Duties, there are 45 types of activities subject to stamp duties, including the following:

- Settlement of a legal dispute by a court.
- Court involvement in arbitration.
- Notary services.
- Consulate services.
- State registration services for legal entities.
- Registration services for foreign invested economic entities and representative offices of foreign organisations.
- Other specific activities that need permissions and rights from the state authorities.

The amount of duty varies depending on the types of services or activities involved.

Payroll taxes

There are no payroll taxes applicable for the employer other than social insurance contribution by employer (*see below*). The employer should withhold PIT at 10% or 20% from employees' employment income (10% rate is applied for Mongolian tax residents, whereas 20% rate is applied for tax non-residents) and submit PIT returns electronically on a quarterly basis.

Social insurance contribution by employer

Employers' social insurance contribution depends on the industry type and is subject to rates between 12% and 14%, which is comprised of 8% for pension, 1% for benefits, 2% for health, 0.2% for unemployment, and 0.8% to 2.8% for industrial accident and occupational disease insurance. Employer charges are not capped. Social insurance taxes paid by employers are deductible in determining taxable income.

The employer should also withhold social insurance taxes (10%) from employees and submit returns electronically and by paper before the 5th day of the following month on a monthly basis. Payments should be made before the end of the month to the social insurance fund account.

Fees and taxes applicable to the extractive industry

A range of fees and other taxes are payable for activities in the extractive industry. The primary ones include the following:

- Mining License Fee that is agreed to up front and stated in the mining licence.
- Mining Royalty Tax.
- Water Pollution Fee.
- Air Pollution Fee.
- Land Use Fee.
- Natural Resources Usage Fee.

Branch income

The repatriation of profits from branches of foreign legal entities is subject to branch profits tax at a rate of 20%.

Please note that it appears it is no longer possible for foreign legal entities to establish a branch in Mongolia. However, the above provision remains in place for branches that were previously established in Mongolia.

Income determination

Inventory valuation

There is no specific provision in the tax law for inventory valuation.

Capital gains

Capital and ordinary transactions are treated in the same way for tax purposes (i.e. included in annual taxable income). An exception is provided for income from sales of immovable property, which is subject to tax of 2% on gross sales proceeds.

In terms of tax base, taxation rules of capital gains of non-residents is not clear. The CIT Law could be interpreted in a way that the net gain from disposal of shares in a Mongolian company should be subject to CIT. However, since there was no mechanism in practice for non-resident companies to declare income in Mongolia and show the basis for the taxable gain, only withholding tax (WHT) (20% on the gross payment) charged at source of payment is available. With the introduction of an 'ultimate holder' concept, applicable from 1 January 2018, under the general rule, the Mongolian entities whose shares are traded will act as withholding agents to report and withhold the taxes of non-resident income from sale of its shares when there is a mining licence or a land right attached to the shares. Except for cases with mining licences and land rights, no mechanism for taxation of capital gains currently exists if the transaction takes place between two non-residents that have no taxable presence in Mongolia.

Dividend income

Dividend income earned by a Mongolian resident entity is subject to WHT of 10%. Dividend income to be remitted out of the country to a foreign tax resident is subject to WHT at 20% but may be reduced by an applicable DTT.

Interest income

Interest income is subject to a special income tax of 10%. Interest income to be remitted out of the country to a foreign tax resident is subject to WHT at 20% but may be reduced by an applicable DTT.

Rental income

Rental income is included in taxable income for tax determination.

Royalty income

Royalty income is taxed at a special rate of 10%. Royalty income to be remitted out of the country to a foreign tax resident is subject to WHT at 20% but may be reduced by an applicable DTT.

Partnership income

There is no transparent partnership concept in Mongolia. Partnership income is treated as income of a legal entity and is subject to CIT.

Unrealised currency exchange gains/losses

Unrealised currency exchange gains are not considered as taxable income, and, at the same time, unrealised losses are not deductible from taxable income.

Foreign income

Mongolian legal entities pay tax on their worldwide income. Unremitted earnings are taxed the same as ordinary earnings.

Credit relief is available with respect to foreign tax on income arising from countries that have DTTs with Mongolia, capped at the level of Mongolian tax that would have been due on the same income in Mongolia.

Deductions

Expenses mostly associated with generating aggregate annual income are deductible for CIT purposes (provided proper documentation is in place), and a list of these expenses is provided in the legislation. Expenses not on this list are not deductible.

Accrued expenses

Accrued expenses are deductible only if they are supported by valid documentation.

Contingent liabilities

Contingent liabilities are not deductible.

Depreciation and amortisation

Depreciation of fixed assets and amortisation of intangibles are deductible within the limits provided in tax legislation. A straight-line method is used and the years of usage are determined for tax purposes.

Non-current asset class		Useful life (in years)
1	Building and construction	40
2	Machinery and equipment	10
3	Computer, computer parts, and software	3
4	Intangible asset with undefined useful life	10
5	Intangible asset with defined useful life (includes licence for mineral exploration and extraction)	Period in force
6	Other non-current asset	10
7	Building and facilities of manufacture, management of technology park, unit production, and buildings within technology park	20
8	Machineries, mechanism, equipment, technical parts of manufacturing within the management technology park, unit production, and technology park	3

Goodwill

There is no specific provision in the tax law regarding the deductibility of goodwill.

Organisational and start-up expenses

Organisational and start-up expenses are not deductible.

Interest expenses

Interest expenses are deductible. However, there are limits with respect to the deductibility of interest expense. *See Thin capitalisation in the Group taxation section for more information*.

Bad debt

Bad debt provisions are not deductible. There is no clear guidance in the tax legislation as to whether bad debt is deductible or not; however, in practice, the tax authorities disallow deductibility of bad debt.

Charitable contributions

Charitable contributions are not deductible, except for donations to the fund of vocational training.

Pension expenses

Compulsory pension insurance premiums paid to the Social Security Authority of Mongolia are deductible. Additional voluntary insurance premiums are deductible but shall not exceed 15% of taxable income. Pension provisions or internal pension fund expenses are not deductible.

Payment for directors

If a payment for directors is a salary payment on which social insurance and PIT is levied, it is considered as deductible.

Bribes, kickbacks, and illegal payments

Bribes, kickbacks, and illegal payments are not in the list of permitted deductions. Per anti-corruption law, monetary amounts involved with respect to such payments will be confiscated and criminal proceedings will be instituted.

Fines and penalties

Fines and penalties are not deductible for tax purposes.

Taxes

Certain taxes paid by a taxpayer, as well as social contributions of employers, are generally deductible for tax purposes.

Tax losses

Tax losses generally may be carried forward for up to two years. However, the annual amount of carried forward losses deductible from taxable income may not exceed 50% of the taxable income in the tax year.

Legal entities involved in the infrastructure and mining industries may carry forward 100% of their losses for up to four to eight years, depending on their investment period and based on government regulations.

There is no provision for the carryback of losses.

Payments to foreign affiliates

As a general rule, deductible expenses shall be supported by proper documentation. Deductibility of payments to foreign affiliates depends on the nature of the payment, as follows:

- Interest payments are deductible but with restrictions (i.e. thin capitalisation rule may apply, interest paid on loans for construction of buildings and installation of equipment needs to be capitalised during that period).
- Dividend payments are not deductible.
- Technical assistance service payments are deductible if applicable taxes were levied.
- Payments for other services are deductible if applicable taxes were levied.

Group taxation

There are no rules permitting grouping for tax purposes in Mongolia.

Transfer pricing

Transfer pricing provisions are addressed in the CIT Law and the General Tax Law of Mongolia.

Per the CIT Law of Mongolia, if the following relation is present with a taxpayer, then it is considered as ‘a related party’:

- Holds 20% or more of the common stock.
- Has the right to receive 20% or more of the dividends or distributions.
- Has the right to appoint 20% or more of the management of the economic entity or is otherwise able to determine its policies.

If related parties have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value, the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work, and services among non-related parties.

The General Tax Law provides for a broader definition of related entities for transfer pricing purposes, which is "entities authorised to directly and indirectly participate in management, control, and property rights of any foreign and Mongolian legal entities". Per Article 48.3 of the General Tax Law, "if prices, payments, and fees (hereinafter the 'price') used in cooperative production, in the provision of technical services, in sending human resources, in purchase and sales transactions between related entities abroad and Mongolia are higher or lower than fair market value, then the fair market value method shall be used in order to determine taxable income".

Beginning from 2017, the Mongolian tax authorities introduced the rules strengthening the reporting requirements for transactions between related parties (transfer pricing rules). Under these reporting requirements, in particular, the affected Mongolian entities will need to disclose the very specific information, including the amount of income (profit) and/or expenses related to the covered related-party transactions, their profitability, transfer pricing methods applied, list of comparable entities used for a benchmarking study, etc. In case of non-submission/delay of submission of the transfer pricing report, there is an administration penalty (MNT 1.5 million).

Thin capitalisation

A thin capitalisation rule applies to direct shareholders, and interest paid in excess of the 3:1 debt-to-equity ratio is not deductible and is treated as a dividend. This is applied on an investor-by-investor basis as opposed to the company as a whole; no restriction applies to interest that is not paid to an investor.

Controlled foreign companies (CFCs)

There are no special CFC rules in Mongolia.

Tax credits and incentives

At present, the following types of incentives exist in Mongolia:

- Until 1 January 2021, a tax credit of 90% is available to a taxpayer conducting business activities in the following industries, provided annual/assessable income of a taxpayer does not exceed MNT 1.5 billion:
  - Agriculture, livestock industry, farming industry, and other auxiliary activities.
  - Food industry.
  - Fabric and clothing industry.
  - Construction materials industry.
- Tax stabilisation of certain taxes per investment made (*see below*).
- Interest on government notes payable (bonds) is exempt from CIT.

- Income earned from the production and/or sale of produced equipment and spare parts intended for the activities of small or medium-sized production businesses in the territory of Mongolia is exempt from CIT.
- Income earned from the sale of a technique or equipment that economises natural resources, reduces environmental contamination, and is nature-oriented is exempt from CIT.
- Tax losses incurred by a business entity involved in the infrastructure and mining sector in a given tax year shall be deducted from taxable income for four to eight consecutive years after such tax year. The period will depend on the size of the investment, as defined from time to time by the responsible government agency.
- In the event that a business entity or a citizen has been found to have made a donation of up to MNT 1 million to support non-governmental organisations founded by citizens having developmental disabilities, such amount shall be deducted from taxable income of such business entity or citizen for the given tax year.
- A 50% tax reduction is available from CIT for an economic entity that produces or grows the following products:
  - Cereal, potatoes, and vegetables.
  - Milk.
  - Fruits and berries.
  - Fodder plants.
- Free Trade Zones (FTZs) have a special regime in terms of tax and customs (*see below*).

Foreign investment incentives

The Law on Investment provides tax incentives, including exemptions from tax, tax credits, possibility to use accelerated depreciation for tax purposes, tax loss carryforward, and deduction of employee training costs from taxable income.

Tax stabilisation

The Law on Investment also provides a 'stabilisation certificate' in order to create a more stable tax environment in Mongolia. By obtaining a stabilisation certificate, investors can stabilise applicable rates of the following taxes:

- CIT.
- Customs duties.
- VAT.
- Minerals royalties.

The holder of a stabilisation certificate can stabilise tax rates for a period from 5 to 18 years, depending on amount of investment, industry of investment, and geographic location of investment in Mongolia (*see Stabilisation certificate terms below*). Under the valid period of a stabilisation certificate, investors also have the right to apply effective tax rates provided in general legislation if such rates are more beneficial for investors.

The criteria of issuing a stabilisation certificate are:

- the total investment amount specified in the business plan and feasibility study reaches thresholds specified in the stabilisation certificate terms (*see below*)
- an environmental impact assessment should be carried out
- the investment should create new permanent jobs, and
- the investment should introduce innovative technology.

An investor who made an investment in tobacco and alcohol related activities cannot benefit from tax stabilisation.

If certain conditions are met, the stabilisation certificate period may be extended by 1.5 times for some projects.

The conditions are that the projects:

- produce products that substitute for imported products or export-oriented products that are important for the long-term social and economic development of Mongolia, that will require investment of more than MNT 500 billion, and have a development period of more than three years, or
- produce value-added, processed products for export.

In addition to above, the law provides for incentives with respect to customs duty (exemption) and VAT (zero-rate) on imported equipment and machinery during the construction period of specific projects, as below:

- Construction of a factory for processing construction materials, petroleum, agricultural products, and products intended for export.
- Nano, bio, and innovation technology plant construction.
- Construction of power plants and railroads.

Stabilisation certificate terms

For the mining, heavy industry, and infrastructure sectors, a stabilisation certificate is issued as follows:

	Stabilisation certificate terms (years)					
Investment amount (MNT in billions)	Ulaanbaatar Region	Central Region (Gobisumber, Dornogobi, Dundgobi, Darkhan-Uul, Umnugobi, Selenge, Tuw)	Khangai Region (Arkhangai, Bayankhongor, Bulgan, Orkhon, Uwurkhangai, Khuwsgul)	Eastern Region (Dornod, Sukhbaatar, Khentii)	Western Region (Bayan-Ulgii, Gobi-Altai, Zawkhan, Uws, Khowd)	Period within which investment must be made (years)
30 to 100	5	6	6	7	8	2
100 to 300	8	9	9	10	11	3
300 to 500	10	11	11	12	13	4
more than 500	15	16	16	17	18	5

For any other sector, a stabilisation certificate is issued as follows:

Investment amount (MNT in billions)						
Ulaanbaatar Region	Central Region (Gobisumber, Dornogobi, Dundgobi, Darkhan-Uul, Umnugobi, Selenge, Tuw)	Khangai Region (Arkhangai, Bayankhongor, Bulgan, Orkhon, Uwurkhangai, Khuwsgul)	Eastern Region (Dornod, Sukhbaatar, Khentii)	Western Region (Bayan-Ulgii, Gobi-Altai, Zawkhan, Uws, Khowd)	Stabilisation certificate terms (years)	Period within which investment must be made (years)
10 to 30	5 to 15	4 to 12	3 to 10	2 to 8	5	2
30 to 100	15 to 50	12 to 40	10 to 30	8 to 25	8	3
100 to 200	50 to 100	40 to 80	30 to 60	25 to 50	10	4
more than 200	more than 100	more than 80	more than 60	more than 50	15	5

Free Trade Zones (FTZs)

Establishing FTZs

According to the FTZ Law, FTZs can be established not only at the border ports but also in qualifying regions proposed by the government. The Parliament will decide the proposed plan.

FTZs are under state protection. A joint free border trade zone covering multiple countries' borders can be established and will be regulated through international agreements between the governments.

Tax and customs regime

CIT

Businesses that have invested 500,000 United States dollars (USD) or more in the FTZs operating to improve infrastructures, such as energy and heating sources, pipeline networks, clean water supplies, wastewater sewage, auto roads, railways, airports, and basic communication lines, shall receive a CIT discount equal to 50% of their invested capital in the FTZ.

For businesses with more than USD 300,000 invested in building warehouses, loading and unloading facilities, hotels, tourist camps, or manufacturers of export and import-substituted goods in the FTZ shall receive a CIT discount equal to 50% of their invested capital in the FTZ.

Loss-making entities in the FTZs can carry forward their losses reflected on their CIT return up to five years from the time of becoming fully operational to reduce their future tax payable.

Entities using innovated and enhanced technology in their businesses shall be fully exempted from CIT for the first five years from the time of starting operation in the FTZs.

VAT

Goods imported to the FTZs are not subject to VAT. If goods are to be transferred from the customs territory to the FTZs, there will also be no VAT on those goods, and any previously paid VAT will be reimbursed accordingly based on related documents.

There will be a 0% rate on VAT for domestic goods to be transferred from the customs territory to the FTZs.

In addition to purchases per Article 38.1.4 of the Law on Custom Tax and Tariff (which refer to goods for passengers' personal use), purchases in the FTZ of up to MNT 3 million made by passengers are exempt from VAT when entered into the customs territory.

There will be no VAT imposed on goods and services manufactured and sold by registered individuals and businesses in the FTZs.

Customs and excise taxes

Goods imported to the FTZs are not subject to customs and excise taxes. If goods are to be transferred from the customs territory to the FTZs, there will be no customs and excise taxes on those goods, and any of these taxes previously paid will be reimbursed accordingly based on related documents.

In addition to purchases per Article 38.1.4 of the Law on Custom Tax and Tariff (which refer to goods for passengers' personal use), purchases in the FTZ of up to MNT 3 million made by passengers are exempt from customs tax when entered into the customs territory.

Any goods, except purchases made by passengers as mentioned above, are subject to customs and related taxes as required in the regulation when transferred from the FTZs to the customs territory.

Goods exported from the FTZs are not subject to taxation.

Land payments and property taxes in the FTZ

Individuals and businesses may request a land possession and usage right in the FTZs through either project bid or auction.

Entities operating in trade, tourism, and hotel sectors in the FTZs are fully exempted from land possession and usage right payment for the first five years from commencement of operation. This payment is further reduced up to 50% for the following three years.

Businesses operating to improve infrastructures in the FTZs, such as energy and heating sources, pipeline networks, clean water supplies, wastewater sewage, auto roads, railways, airports, and basic communication lines, will be fully exempted from land payment for the first ten years from start of operation.

Buildings and facilities built and registered in the FTZs are fully exempted from the immovable property tax.

Foreign tax credit

A foreign tax credit is available for foreign taxes paid up to the amount of the Mongolian tax liability that would have been due on the same amount based on an applicable DTT.

Withholding taxes

Dividends, interest, and royalties paid, and payments made for goods sold and work/services provided (directly or electronically), to non-residents are subject to WHT at a 20% rate. Interest provided to non-residents on bonds issued by Mongolian commercial banks and listed on the domestic or foreign stock exchange are subject to WHT at 10%.

Dividends, interest, and royalties paid to resident companies and individuals are all subject to WHT at 10%.

Current DTTs

	Beneficial WHT rates (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Technical fees**
Non-treaty	20	20	20	20
Treaty:				
Austria	5/10 (1)	10	5/10 (11)	N/A
Belarus, Republic of	10	10	10	N/A
Belgium	5/15 (2)	10	5	N/A
Bulgaria	10	10	10	N/A
Canada	5/15 (7)	10	5/10 (12)	5
China	5	10	10	N/A
Czech Republic	10	10	10	N/A
France	5/15 (7)	10	5	N/A
Germany	5/10 (1, 4)	10	10	N/A
Hungary	5/15 (9)	10	5	N/A
India	15	15	15	15
Indonesia	10	10	10	N/A
Kazakhstan	10	10	10	N/A
Korea, Democratic People's Republic of	5	5	10	N/A
Korea, Republic of	5	5	10	N/A
Kyrgyzstan	10	10	10	N/A
Malaysia	10	10	10	10
Poland	10	10	5	N/A
Russia	10	10	In accordance with domestic legislation	N/A
Singapore	0/5/10 (6, 9)	5/10 (10)	5	N/A
Switzerland	5/15 (5)	10	5	N/A
Turkey	10	10	10	N/A
Ukraine	10	10	10	N/A
United Kingdom	5/15 (3)	7/10 (8)	5	N/A
Vietnam	10	10	10	10

Notes

1. 5% if the recipient is a company (excluding partnerships) and directly owns at least 10% of the capital of the company paying dividends.
2. 5% if the beneficial owner is a company (excluding partnerships) and directly or indirectly holds at least 10% of the capital of the company paying dividends.
3. 5% if the beneficial owner is a company that directly or indirectly controls at least 10% of the voting power in the company paying dividends.
4. 5% if the beneficial owner is a company (excluding partnerships) and directly owns at least 10% of the company.
5. 5% if the beneficial owner is a company (excluding partnerships) and directly owns at least 25% of the capital of the company paying dividends.
6. No tax if dividends paid to the government/certain public bodies.
7. 5% if the beneficial owner is a company and directly or indirectly holds at least 10% of the capital of the company paying dividends.
8. 7% if interest is paid to a bank that is the beneficial owner of the interest and carrying on a *bona fide* banking business.
9. 5% if the beneficial owner is a company and directly owns at least 25% of the capital of the company paying dividends.
10. 5% if interest is received by a bank or a similar financial institution.
11. 5% if the beneficial owner of the royalties in the meaning of any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience; 10% in all other cases.
12. 5% if the beneficial owner of the royalties in the meaning of copyright royalties and other payments for production or reproduction of any literary, dramatic, and other work, royalties for the use of, or the right to use, computer software or any patent, or for information concerning industrial, commercial, or scientific experience; 10% in all other cases.

Tax administration

Taxable period

The tax year is the calendar year.

Tax returns

Companies must submit a quarterly return by the 20th day of the month following the end of each quarter and an annual return by 10 February after the end of the tax year.

A withholder must prepare and submit a quarterly return of the tax deducted by the 20th day of the first month of the following quarter and an annual return by 10 February after the end of the tax year.

Payment of tax

A taxpayer shall pay the taxes due in advance by the 25th day of each month in accordance with the payment schedule based on the previous year. Year-end settlement is made by 10 February of the following year (along with the annual tax statement).

In practice, the Mongolian tax authorities allow concessions as follows:

Where total tax paid exceeds the tax liability, the excess may be credited against other taxes due or credited against future tax payments. The overpayment also may, theoretically, be refunded; however, the practice of refunding in Mongolia is not clear or consistent.

An economic entity or organisation that has withheld tax from a payment of dividends, royalties, sale of rights, or a payment of income to a taxpayer should transfer the WHT to the tax authorities within seven working days. Tax withheld relating to the sale of immovable property should be transferred to the tax authorities within ten working days.

Tax audit process

The tax audit cycle is not clearly stated in the tax laws. However, the regular cycle in Mongolia is three to five years in practice, and it is very common if the company requests a refund from tax authorities or liquidates its company. Moreover, a tax audit can come anytime if the tax authorities suspect some risk or misuse of the legislation or receive information from a trustworthy source about tax evasion.

Statute of limitations

The statute of limitations in Mongolia is five years for tax arrears, fines, and penalties. However, the dispute settlement timeframe shall not pertain to payment of tax, fine, and penalty debts.

Topics of focus for tax authorities

The tax authorities normally focus their attention on issues like understatement of income, overstatement of expenses, and withholding obligations of taxpayers.

Another hot topic in Mongolia right now is transfer pricing. The transfer pricing concept is at an early stage of development. Nevertheless, the basic principle governing Mongolian transfer pricing rules is that transactions between related parties should be undertaken at fair market value.

The tax authorities introduced new transfer pricing regulation. This transfer pricing regulation applies to controlled transactions between related parties. The list of controlled transactions, transfer pricing methods to be applied, transfer pricing documentation requirements, and very concise comparability analysis items are based on the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines.

PE is also becoming one of the focus areas of the tax authorities. Although it is possible for PEs to be registered as taxpayers, determination of taxable income of PE is still in question.

Montenegro

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Significant developments

Value-added tax (VAT)

Montenegrin VAT Law and the Rulebook on application of VAT Law are amended. The most important changes relate to the increase of the standard VAT rate to 21%, amendments of the rules for determining the place of supply of services, and introduction of the procedure for appointment of a fiscal representative (*see Value-added tax [VAT] in the Other taxes section for more information*).

Customs duty

During 2017, Customs Law was amended. The amendments introduce the institute of authorised economic operator and other procedural related matters.

Taxes on corporate income

Entities operating in Montenegro are subject to a 9% corporate profit tax (CPT).

Resident taxpayers are taxed on their worldwide profit. Non-resident taxpayers are taxed on their Montenegrin-sourced income or income attributed to their Montenegrin permanent establishment (PE). Non-residents are also subject to withholding tax (WHT) on income sourced in Montenegro (*see the Withholding taxes section for more information*).

Local income taxes

No local (i.e. municipality) corporate income taxes exist in Montenegro.

Corporate residence

A legal entity is considered to be a tax resident if it is incorporated in Montenegro. In addition, a foreign corporation may also be deemed a Montenegrin tax resident if the corporation has a place of effective management in Montenegro. No explicit rules exist for determination of effective management. In practice, it usually is the place where key managerial decisions are made or where the board of directors sits.

Permanent establishment (PE)

Montenegrin tax legislation contains very basic PE rules following, in main features, the guidelines set out in the Commentary to the Organisation for Economic Co-operation and Development (OECD) Model Tax Treaty. PE is defined as a fixed place of business through which a non-resident carries out business in Montenegro. PE is deemed to exist in case of a non-resident having one of the following in Montenegro:

place of management, branch office, office, factory, workshop, mine, gas or oil site, stone pit, or any other place of natural resources exploitation in Montenegro. A construction site constitutes a PE only if construction activities last longer than six months.

PE is not deemed to exist in case of a non-resident having storage of inventory in Montenegro only for the purpose of delivery of goods or having operations in Montenegro that are of a preparatory or auxiliary nature.

Other taxes

Value-added tax (VAT)

The main principles of the Montenegrin VAT are in line with the European Union (EU) Sixth Directive guidelines. Taxable supplies are subject to a general 21% VAT rate; however, certain supplies are taxed at a reduced 7% rate (e.g. bread, milk, books, medicines, computers) and 0% rate (e.g. export of goods, supply of gasoline for vessels in international traffic).

In principle, the VAT base is comprised of consideration (in cash, goods, or services) received for supplies, including taxes, except VAT (e.g. customs, excise duty), and direct costs (e.g. commissions, cost of packing, transport). If the consideration is not paid in cash, or if an exchange of goods for services takes place, the tax base will be the market value of the goods or services received at the time of supply. The VAT base cannot be lower than the cost of goods sold.

Registration for VAT in Montenegro may be either voluntary or mandatory. Voluntary VAT registration is possible for small taxpayers who have not realised turnover exceeding 18,000 euros (EUR) in the last 12-month period. Once registered, a company may not apply for deregistration for at least three years. VAT registration is mandatory for an entity that realises turnover exceeding the EUR 18,000 threshold in any 12-month period.

VAT is calculated and paid on a calendar-month basis (i.e. a VAT return must be submitted and VAT liability must be cleared monthly). VAT calculated on imports is paid along with customs duties.

Customs duty

Exports

There are no export duties in Montenegro, nor is it forbidden to export any goods. Exceptionally, the Montenegrin government can impose quantity limitation of exports only in case of critical shortage of certain goods or for the purpose of protection of non-renewable natural resources, under certain conditions.

Imports

Customs duties are paid on goods imported into the customs territory of Montenegro in accordance with the rates and tariffs set forth in the Customs Tariffs, which is in line with the harmonised system of tariff codes prescribed by the World Trade Organization (WTO). Customs duties can be levied in two manners, as *ad valorem* or specific duty per unit of goods.

For agricultural and alimentary products, a combined duty has been determined, that is, both *ad valorem* and specific duty are charged simultaneously.

Ad valorem duties are prescribed within the scope from 0% to 30%. Specific duties range from EUR 0.04 per 1kg to EUR 1 per 1kg.

Customs rates stipulated by international agreements are only applied to goods of preferential origin from countries covered by such agreements. The most important free trade agreements that Montenegro signed are with the European Union, the European Free Trade Association (EFTA), the Central European Free Trade Agreement (CEFTA) states, Russia, Turkey, and Ukraine.

Excise duty

Legal entities that are importers or producers of the following products are subject to excise duty:

- Alcoholic and alcohol beverages.
- Tobacco products, including non-combustible tobacco.
- Mineral oils, their derivatives and substitutes, and coal.
- Mineralised water with sugar or aroma.
- Liquid for charging electronic cigarettes.

Excise duty can be prescribed as a fixed amount and/or as a certain percentage (*ad valorem*).

Tax on coffee

Tax on coffee is payable on coffee imported and produced in Montenegro. The tax rate varies from EUR 0.80/kg to EUR 1.30/kg, depending on the type of the coffee. Tax on coffee is also payable for products and beverages that contain coffee. The tax rate for these products is EUR 2.50/kg for one kg of net coffee contained in the final product.

Property tax

Property tax is payable by legal entities who own or have user rights over real estate located in Montenegro. The annual tax is levied at proportional rates, ranging from 0.25% to 1% on the market value of assets as of 1 January of the current year. In case of acquisition of new property, the taxpayer is obligated to submit a tax return to the tax authorities within 30 days from the acquisition date (i.e. registration return for property tax) and to declare annual property tax by the submission of annual returns. Tax is payable in two instalments, based on decisions issued by the tax authorities.

Property transfer tax

Transfer tax of 3% is payable on the acquisition of ownership rights over immovable property.

The taxable base is the market value of the immovable property at the time of the acquisition. A taxpayer (i.e. the acquirer of immovable property) is obligated to self-assess a tax liability, submit a tax return, and settle a tax liability within 15 days from the contract date.

Stamp taxes

No stamp taxes are in place in Montenegro.

Payroll tax

Employment income includes all receipts paid or provided to an individual based on employment (salaries, pensions, benefits in kind, insurance premiums, benefits, and awards above the non-taxable thresholds). Income generated through other types of personal engagements similar to employment (e.g. temporary jobs) is also considered employment income.

While employees are the taxpayers, the employer is responsible for calculating and withholding personal income tax (PIT) on behalf of its employees.

Employment income is subject to WHT at a flat rate of 9%. Gross salary exceeding average monthly gross salary in Montenegro for the previous year published by the relevant authority is subject to 11% PIT. The 11% rate applies to the part of the salary exceeding the prescribed threshold, while the 9% rate applies to the part of the salary below (and including) this threshold.

Social security contributions

Social security contributions for pension and disability insurance, health insurance, and unemployment insurance are calculated and withheld by an employer from the salary paid to an employee. Unlike the other two types of social security contributions, pension and disability insurance contributions are subject to a specific annual cap (EUR 52,308 for 2017).

Social security contributions are payable by the employer and employee at different rates. The amount borne by the employer is treated as an operating cost while the portion payable by the employee is taken from the gross salary.

The rates paid by the employer are as follows:

- Pension and disability insurance: 5.5%.
- Health insurance: 4.3%.
- Unemployment insurance: 0.5%.

The rates paid by the employee are as follows:

- Pension and disability insurance: 15%.
- Health insurance: 8.5%.
- Unemployment insurance: 0.5%.

Environmental charges

Legal entities are subject to environmental charges for the following:

- Use of firing or electrical feed equipment with power greater than 1MW.
- Import of substances harmful to the atmosphere.
- Production or deposit of dangerous waste.
- Tax for use of road vehicles (vignettes).
- Charges for access to certain services that are of general interest (for use of mobile telephones, electricity, cable television connection, space denominated for consumers of tobacco products and acoustic devices).

Branch income

Non-residents carrying out business in Montenegro through a PE are taxed on their Montenegrin-source income at a rate of 9%. A branch is considered to be a PE.

Income determination

Taxable profit is calculated by adjusting the accounting profit (determined in accordance with International Financial Reporting Standards [IFRS] and accounting legislation) in accordance with the provisions of the CPT Law.

Inventory valuation

Inventory is valued by applying the average weighted cost method or the first in first out (FIFO) method. If another method is used for book purposes, an adjustment for tax purposes should be made.

Capital gains

Capital gains realised by the sale or transfer of real estate or other property rights, as well as shares and other securities, are subject to the 9% CPT rate.

Capital gains may be offset against capital losses occurring in the same period. A capital loss may be carried forward for five years.

Dividend income

Dividend income of the recipient is exempt from CPT in Montenegro if the distributor is a Montenegrin corporate taxpayer.

Interest income

Interest income is included in taxable profit and subject to 9% CPT.

Royalty income

Royalty income is included in taxable profit and subject to 9% CPT.

Foreign income

A Montenegrin resident receiving foreign income is granted a tax credit in the amount of the tax paid abroad but limited to the amount that would be calculated using Montenegrin rates.

There are no provisions that provide for the possibility that taxation of income earned abroad may be deferred.

Deductions

Depreciation

Depreciable assets are tangible and intangible assets with a useful life of at least one year and an individual acquisition value of at least EUR 300.

Intangible and fixed assets are divided into five depreciation groups, with depreciation rates prescribed for each group (I - 5%, II - 15%, III - 20%, IV - 25%, and V - 30%). A straight-line depreciation method is prescribed for assets classified in the first group (real estate), while a declining-balance method is applicable for assets classified in the other groups.

Goodwill

Goodwill is determined according to IFRS and is subject to impairment. There are no other special provisions on goodwill.

Start-up expenses

There are no special provisions regarding treatment of start-up expenses. Consequently, they will be deductible if they are incurred for business purposes and properly documented under the general expense deductibility rule.

Interest expenses

Interest expenses are generally deductible if they are business related and properly documented. Also, interest and related cost of loans paid out to a creditor with the status of a related party are recognised as expenses only in the amount that does not exceed market interest rates between unrelated parties. The exceeding amount is not recognised as an expense, but it is included in the taxable profit and subject to 9% CPT.

Interest paid out to non-resident legal entities (unless it is revenue of a PE of a non-resident legal entity) is subject to WHT levied at 9%.

Bad debt

Write-offs and provisions for doubtful debts are considered deductible, provided that:

- written-off/provided receivables were previously included in the taxpayer's revenues
- doubtful debts were written-off as uncollectible
- the taxpayer can provide proof of filing a lawsuit, that enforced proceedings were instigated, or that receivables were reported in bankruptcy or liquidations proceedings, and
- such receivables are older than 365 days.

Charitable contributions

Expenses incurred for social purposes, reduction of poverty, protecting persons with disabilities, child and youth social care, elderly care, protection and promotion of human and minority rights, the rule of law, civil society and volunteerism, Montenegro's Euro-Atlantic and European integration, art, technical culture, promotion of agriculture and rural development, sustainable development, consumer protection, gender equality, the fight against corruption and organised crime, and the fight against addictions are recognised for CPT purposes, up to a threshold of 3.5% of total revenue.

Expenditures for the above-mentioned purposes are recognised regardless of whether they are made in cash, goods, rights, or services.

Expenses incurred in this regard will be deductible for CPT purposes only if they are made to legal entities, which are engaged in provision of the aforementioned services in accordance with specific regulations, and if received funds are used by such entities exclusively for the above-mentioned purposes.

Impairment of assets

Expenses incurred on the basis of impairment of assets are not deductible for CPT purposes. Impairment expenses are deductible in the period in which assets are disposed of or damaged due to *force majeure*.

Salary costs and costs related to termination of employment

Salary costs, severance payments related to retirement of employees, costs related to technological surplus, and other payments related to termination of employment are recognised as deductible in the tax period in which they are paid (not in the period in which they are accrued).

Fines and penalties

Penalty interest for late payment of taxes is not CPT deductible.

Taxes

The basic deductibility rule is that business expenses incurred for business purposes are CPT deductible. Following that rule, CPT Law provides for full deductibility of taxes.

Other significant items

The following expenditures are also recognised for CPT purposes, up to the prescribed threshold:

- Entertaining expenses, up to 1% of total revenue.
- Membership fees paid to chambers of commerce and other associations (except political parties), up to 0.1% of gross revenue unless the amount of the fees has been determined by law.
- Provisions for redundancy payments and jubilee awards recognised as expenditures, up to the amount prescribed by the labour legislation.
- Increase of provisions of balance sheet receivables and the provisions for off-balance sheet losses are recognised as expenses in the bank's tax assessment form, in the amounts calculated at the level of the bank, which were, in accordance with the bank's internal acts, reported in the bank's profit and loss statement as an expense in the tax period, in accordance with the regulations of the Central Bank of Montenegro.
- Increase of indirect write-off made according to the receivables collectability and technical provisions are recognised as expense in the insurance company's tax assessment form in the amount prescribed by the insurance legislation.
- Provisions for special risks of brokers and dealers, up to the amounts prescribed by the securities law.
- Provisions for renewable natural resources, warranties for the sale of goods and services (guarantee period), and the expected loss from court process (delicate agreements) if accounted for in accordance with the accounting legislation.

Net operating losses

The taxpayer is entitled to carry forward losses incurred in an accounting period over the following five years. Carryback of losses is not allowed.

Payments to foreign affiliates

Supplies of goods or services from a foreign group entity not established in Montenegro to a Montenegrin entity must be valued at arm's length. Excess expenses recorded over market value are treated as non-deductible expenses.

With respect to payment of charges of a PE, CPT Law provides that administrative costs charged by the non-resident head office are non-deductible for CPT at the level of the PE.

Group taxation

Tax consolidation is permitted for a group of companies in which all of the members are Montenegrin residents and the parent company directly or indirectly controls at least 75% of the shares in the other companies. Each company files its own tax return, and the parent company files a consolidated tax return for the entire group.

Each company is taxed based on its contribution to the consolidated taxable profit (or loss) of the group.

Tax consolidation is binding for at least five years.

Transfer pricing

The difference between the transfer price and arm's-length price is included in the taxable profit and is taxed accordingly. Parties considered to be related are the parties between whom special relations exist, which could directly impact the conditions or economical results of the transaction between them.

Methods permitted in determining arm's-length price are the comparable uncontrolled price (CUP) method (as the primary method), resale minus method, or cost plus method.

There are no other rules or guidelines introduced apart from the above rules in respect to transfer pricing.

Thin capitalisation

There are no thin capitalisation provisions in place in Montenegro.

Controlled foreign companies (CFCs)

There are no CFC rules in Montenegro.

Tax credits and incentives

The CPT Law provides four tax incentives related to businesses: one for newly established businesses in underdeveloped municipalities, one for non-governmental organisations (NGOs), a discount for settling of CPT liability by the prescribed deadline, and a foreign tax credit.

Tax exemption for newly established businesses in underdeveloped municipalities

Newly established production companies located in underdeveloped municipalities are entitled to an eight-year tax exemption. The maximum amount of tax exemption for the period of eight years is limited to EUR 200,000.

The incentive is applicable to companies whose business units are established in underdeveloped regions. In that case, tax holiday is proportional to the amount of profit generated by such unit over the total profit for the period of eight years from establishment of the unit.

The tax incentive is not applicable to a taxpayer operating in the sectors of (i) primary production of agricultural products, (ii) transport, (iii) shipbuilding, (iv) fishery, (v) steel production, (vi) trade, and (vii) catering, except primary catering facilities.

Tax exemption for NGOs

NGOs registered for business activity are permitted to decrease the corporate tax base by EUR 4,000, with the condition that profit is used for realisation of the main goals of an NGO.

Discount for settling CPT liability on time

A discount of 6%, which is applied on the amount of the calculated CPT liability, is available to taxpayers that settle their CPT liability by the prescribed deadline (i.e. by 31 March of the current year for the tax liability of the previous year).

Foreign tax credit

Resident taxpayers are entitled to a tax credit up to the amount of corporate tax paid in another country on income realised in that country. This tax credit is equal to the tax paid in another country but may not exceed the amount of the tax that would have been paid in Montenegro.

Withholding taxes

Montenegrin CPT Law imposes WHT on income realised from a Montenegrin source and distributed to a non-resident. The scope of the WHT applies to dividends and profit distribution, capital gains, interest, royalties, intellectual property rights fees, rental income, fees for consulting, market research, and audit services, as well as to income earned on the basis of performing entertainment, artistic, sport, or similar programmes in Montenegro.

WHT will also be payable on income earned by non-resident or resident individuals on the basis of repurchase of used products, semi-final products, and agricultural products from a manufacturer registered for VAT purposes.

Distributions of dividends and share of profits are also subject to WHT if the recipient is a Montenegrin resident (either an individual or legal entity).

The general WHT rate is 9%.

Application of a double tax treaty (DTT) may reduce or eliminate Montenegrin WHT. To qualify for the beneficial rates prescribed by the treaty, a non-resident must prove tax residency of a relevant treaty country and beneficial ownership over the income. In order to qualify for a preferential tax rate according to a DTT, a non-resident will need to provide the tax residency certificate filled out and stamped by the relevant authority of its country of residence.

Although Serbia is regarded as the legal successor of the Serbia and Montenegro State Union that ceased to exist in June 2006, the Republic of Montenegro, upon its Decision on Independence (dated 3 June 2006), continues to honour international treaties that were applicable in the State Union, including those executed by State Union's legal predecessors (Federal Republic of Yugoslavia and Socialist Federal Republic of Yugoslavia, i.e. former Yugoslavia). However, a quite low statutory WHT rate of 9%, which was enacted after most of the treaties had been introduced, is usually more beneficial than treaty rates.

The list of the treaties is provided below:

	WHT (%)			
Recipient	**Dividends (1)**	**Interest**	**Royalties**	**Applicable from**
Non-treaty	9	9	9	
Treaty:				
Albania	5/15	10	10	2006
Austria	5/10 (8)	10	5/10 (4)	2016
Azerbaijan	10	10 (7)	10	2014
Belgium	10/15	15	10	1982
Belorussia	5/15	8	10	1999
Bosnia and Herzegovina	5/10	10	10	2006
Bulgaria	5/15	10	10	2001
China	5	10	10	1998
Croatia	5/10	10	10	2005
Cyprus	10	10	10	1987
Czech Republic	10	10	5/10 (4)	2006
Denmark	5/15	0	10	1983
Egypt (2)	5/15	15	15	2007
Finland	5/15	0	10	1988
France	5/15	0	0	1976
Germany	15	0	10	1989
Hungary	5/15	10	10	2003
India (3)	5/15	10	10	N/A
Ireland	5/10	10	5/10 (4)	2012
Italy	10	10	10	1986
Korea	10	10	10	2002
Kuwait	5/10	10	10	2004
Latvia	5/10	10	5/10 (4)	2007
Macedonia	5/15	10	10	1998
Malaysia	0 (5)	10	10	1991
Malta	5/10	10	5/10 (4)	2010
Moldova	5/15	10	10	2007
Netherlands	5/15	0	10	1983
Norway	15	0	10	1986
Poland	5/15	10	10	1999
Romania	10	10	10	1998
Russia	5/15	10	10	1998
Serbia	10	10	5/10 (4)	2012
Slovak Republic	5/15	10	10	2002
Slovenia	5/10	10	5/10 (6)	2004
Sri Lanka	12.5	10	10	1987
Sweden	5/15	0	0	1982
Switzerland	5/15	10	10	2006
Turkey	5/15	10	10	2008

Recipient	WHT (%) Dividends (1)	Interest	Royalties	Applicable from
Ukraine	5/10	0/10 (7)	10	2002
United Arab Emirates	5/10 (8)	10	5/10 (4)	2014
United Kingdom	5/15	10	10	1983

Notes

1. If the recipient company owns/controls at least 25% of the equity of the paying company, the lower of the two rates applies.
2. A new DTT was signed with Egypt in 2005, but it is not applicable yet. Meanwhile, the old treaty is still applicable.
3. Instruments of ratification have not been exchanged between the two countries.
4. A tax rate of 5% will be applicable to literary, scientific, and work of art, films and works created like films, or other sources of reproduction tone or picture. A tax rate of 10% will be applicable to patents, petty patents, brands, models and samples, technical innovations, secret formulas, or technical procedure.
5. Only in cases when dividends are to be paid to Montenegrin residents. If paid to Malaysian residents, they are taxable at 9% in Montenegro.
6. A 5% rate is applicable for intellectual property and 10% rate for industrial property.
7. A 0% rate is applicable in cases when the income recipient is the government or government-owned banks.
8. A 5% rate is applicable in cases when the beneficial owner is a company that holds at least 5% of the capital of the payer of the income. In all other cases, a 10% rate applies.

Tax administration

Taxable period

The tax year in Montenegro is the calendar year.

Tax returns

Tax returns and supplementary documents (e.g. tax depreciation form) must be filed with the tax authorities by the end of March of the following year.

Payment of tax

CPT is paid by the end of March of the following year for the previous year. Alternatively, CPT may be paid in six annual instalments at the taxpayer's request. A discount of 6% is applicable on the amount of the calculated CPT liability for the timely payment of the tax due (*see the Tax credits and incentives section for additional information*).

Taxation of non-residents

Montenegrin CPT Law contains specific rules for assessment and mechanisms for taxation of:

- capital gains of non-residents in transactions with other non-resident entities or resident and non-resident individuals, and
- Montenegrin-sourced income realised by non-residents on the basis of lease of movable and immovable assets from a person who is not obligated to calculate, withhold, and pay WHT (i.e. non-resident entities or resident and non-resident individuals).

The non-resident is obligated to file the tax return, via their Montenegrin tax representative (tax agent), within 30 days from generating income. Tax liability will be determined based on the decision issued by the Montenegrin tax authorities.

Tax audit process
There are no particular provisions regarding the audit cycle in Montenegro.

Statute of limitations
The right to assess taxes expires within five years after the end of the year in which the tax should have been assessed.

The right to collect taxes expires within five years after the end of the year in which tax has been determined.

Topic on focus for tax authorities
According to our best knowledge, the focus of the tax authorities is proper documenting of expenses, WHT, and VAT. Apart from this, we are expecting that in the near future the focus of the tax authorities will be transfer pricing, following trends of the countries in the region.

Other issues

Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA)
Montenegro and the United States reached an 'agreement in substance' on a Model 1 IGA and consented to this status as of 30 June 2014. In accordance with this status, the text of such IGA has not been released, and financial institutions in Montenegro are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

On 1 June 2017, Montenegro signed an IGA in order to implement provisions of the FATCA and to promote transparency between Montenegro and the United States on tax matters. The Agreement was ratified on 1 March 2018, and it is applicable from 28 March 2018.

Morocco

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Significant developments

Application of progressive corporate income tax (CIT) rates

Starting 1 January 2018, Moroccan CIT is levied at the following rates, using a progressive rate scale (instead of a proportional rate scale):

Taxable income (MAD*)		
From	To	CIT rate (%)
0	300,000	10
300,001	1,000,000	20
1,000,001	and above	31

* Moroccan dirham

Credit institutions and insurance companies remain subject to a flat CIT rate of 37%.

Modification of the tax regime applicable to capital gains on non-depreciable assets recorded following merger/demerger operations

Starting 1 January 2018, the capital gains on non-depreciable assets recorded following a merger/demerger operation cannot be offset against available losses.

Carryforward of losses by merging companies

Starting 1 January 2018, absorbing companies are allowed to carry forward the amortisation loss on following fiscal years.

Taxes on corporate income

In general, the Moroccan tax code considers that all revenues and capital gains generated in Morocco are subject to Moroccan taxation.

Companies are taxed on the difference between their trading income and expenditure. Business expenses incurred in the operation of the business are generally deductible unless specifically excluded.

The CIT rates are as follows (progressive scale):

Taxable income (MAD)		
From	To	CIT rate (%)
0	300,000	10

Taxable income (MAD)		
From	To	CIT rate (%)
300,001	1,000,000	20
1,000,001	and above	31

A higher CIT rate of 37% applies to credit institutions and insurance companies.

Non-resident companies can, under certain conditions, opt for an alternative tax at the rate of 8% of the amount of their contract, whatever the taxable income is.

Minimum contribution

CIT cannot be lower than a minimum contribution of 0.5% (or 0.25% for specific products) levied on the turnover and other specific revenues. The minimum contribution is not due during the first 36 months following the beginning of activities.

Local income taxes

There are no provincial or local taxes levied on income in Morocco.

Corporate residence

Companies, whether or not established in Morocco, are subject to CIT on all profits or income relating to property that they own, activities that they carry on, and profit-making transactions that they carry out in Morocco, even when these are of an occasional nature.

Permanent establishment (PE)

The notion of PE is not explicitly defined under Moroccan tax law.

However, the Moroccan tax authorities apply this concept for non-resident companies according to some determined criteria that are inspired from the various tax treaties that Morocco has signed with other countries.

Indeed, the question of whether an entity will be deemed to have a PE in Morocco is a question of fact, in particular, subject to having, in Morocco, any fixed place of business through which a foreign entity conducts industrial or commercial activity for an indefinite or substantial period of time.

The term fixed place of business includes, for instance, a place of management or operations, a branch, an agency, a premises used as a sales outlet, a construction of assembly project, or a purchasing office. Also, in some specific cases, a non-resident company may be deemed as having a PE if it operates in Morocco through a dependent agent.

Other taxes

Value-added tax (VAT)

VAT is levied under the Moroccan Tax Code and is due on all industrial, commercial, and handicraft transactions taking place in Morocco, as well as on importation operations.

The standard rate of VAT is 20%. Lower rates of 7%, 10%, and 14% apply to specifically designated operations.

The sale of goods is considered as taking place in Morocco, and thus subject to VAT, if the goods sold are delivered in Morocco.

The sale of services is considered as taking place in Morocco, and thus subject to VAT, if the services sold are consumed or used in Morocco.

Two types of exemptions from VAT are provided. The first is an exemption with credit, equivalent to the zero tax concept. The second is an exemption without credit.

The zero-rated supplies include (but are not limited to) supplies of the following goods or services:

- Exported goods and services.
- Certain agricultural equipment supplied under prescribed circumstances.
- Investment goods recorded as fixed assets in the company accounting and acquired during the first 24 months following the beginning of activity.
- Offshore banks for certain specific operations, such as interest and commissions.
- Goods and services rendered to companies established in free trade zones (FTZs).
- Activities related to hydrocarbon exploration, etc.

Exempt supplies without deduction right include (but are not limited to) supplies of the following goods or services:

- Milk, sugar, bread, cereals.
- Fiscal stamps.
- Newspapers, books, documentaries.
- Interest on government loans.

Customs duties

Importation of goods in Morocco gives rise to payment of importation duties, the VAT on importation, and the special tax on importation called *Taxe Parafiscale à l'Importation* (TPI).

Customs duties are computed on the basis of the *ad valorem* value of the goods at the time of their entrance into Morocco.

Customs duties can be reduced if the imported products are covered by free trade agreements signed by Morocco or other specific regulatory dispositions.

Under Moroccan tax law, the importation operations are subject to VAT at the rate of 20%. Lower rates of 7%, 10%, and 14% apply to specifically designated importations.

The Moroccan tax law also offers some economical customs regimes that provide VAT exemptions with credit (equivalent to zero rate).

The TPI rate is 0.25% levied on the value of the imported goods.

Excise taxes

Excise taxes apply to specific products imported or produced in Morocco, such as tobacco, alcohol, and lubricants.

Professional tax

A professional tax is levied on individuals and enterprises that carry out a professional activity in Morocco.

The tax consists of a tax on the rental value of business premises (rented or owned) and fixed assets. The tax rates range from 10% to 30%, with exemption for the first five years of activity.

The rental value is exempted for the portion of cost exceeding MAD 50 million.

Registration duties

Registration duties are due on all written or verbal conventions, such as property transfer of real estate, shares, or rights; company set up; equity increase; and goodwill transfer.

The rates of registration duties range from 1% to 6%. A flat rate of MAD 200 is also applicable to specific operations and conventions.

The applicable rate for the transfer of goodwill is 6%.

Payroll taxes

Individual income tax on salaries is paid by way of withholdings made by resident employers.

Social security contributions

The only mandatory social security regime in Morocco is the one managed by the CNSS fund (*Caisse Nationale de Sécurité Sociale*).

The CNSS rates are as follows and apply to the gross salary, excluding exempted allowances and indemnities:

Contribution	Employee portion (%)	Employer portion (%)	Computation basis ceiling (MAD)
Family allocation	-	6.40	-
Social allocation	4.29	8.60	6,000
Professional tax	-	1.60	-
Mandatory medical care	2.26	4.11	-

Branch income

Non-resident entities are subject to income tax at normal CIT rates derived from all profits or income relating to property that they own, activities that they carry on, and profit-making transactions that they carry out in Morocco.

The taxation is levied to the portion of income allocable to the branch located in Morocco.

In addition, a 15% 'branch tax' applies to a non-resident's after-tax profits. Some treaties may provide protection against the application of the branch tax.

For resident entities having branches in Morocco, the income is taxable in the hands of the head office at normal CIT rates.

Income determination

Inventory valuation

Cost of inventory must be determined in accordance with the first in first out (FIFO) or the average cost method. The last in first out (LIFO) method is prohibited.

Capital gains

Capital gains are taxable as a part of ordinary business income.

Dividend income

Dividends received by corporate shareholders from Moroccan-resident entities subject to CIT must be included in business profits of the recipient company, but the dividends are 100% deductible in the computation of taxable income.

The participation exemption in Morocco is also applicable to dividends derived from foreign subsidiaries.

Interest income

Interest income received from tax resident entities (other than financial institutions) is subject to a withholding tax (WHT) at the rate of 20%. The WHT is deductible from CIT.

Rents/royalties income

Rents and royalties income are taxable as a part of ordinary business income.

Foreign income

The income derived from activities carried out in a foreign country is not subject to taxation in Morocco unless the taxation is granted by treaty dispositions.

Note that the participation exemption in Morocco is also applicable to dividends derived from foreign subsidiaries.

Deductions

Depreciation

Fixed assets are normally depreciated according to their economic life duration according to the provision of the accounting regulation.

Depreciation is computed according to two methods: the straight-line method and the declining-balance method.

The tax regulation (through administrative guidelines) has provided indicative depreciation rates applicable when the company activity or the asset to be depreciated is specific or particular.

Indicative depreciation rates are as follows:

Asset	Depreciation rate (%)
Business premises and buildings	4 to 5
Light construction (metal frame construction)	10

Asset	Depreciation rate (%)
Production equipment, tools, and construction fittings	10 to 15
Huge computer facilities	10 to 20
Computers and related items (printers) and programs, as well as vehicles (cars, trucks, vans, lifters)	20 to 25
Office furniture and software	20
Non-significant tools	30

Goodwill

Under Moroccan tax law, goodwill cannot be subject to amortisation. However, a decrease of the value of goodwill is allowed to be recorded through provisions.

Start-up expenses

The development as well as incorporation expenses shall be capitalised and depreciated for tax purposes over a period of five years.

The carryforward of any loss due to the above expenses is limited to a period of four years.

Interest expenses

Interest on loans granted by direct shareholders is deductible if the capital is fully paid in. Also, the deductible interest is limited to (i) the portion of the loan that does not exceed the share capital equity and (ii) the interest rate provided, annually, by the Ministry of Finance (2.22% in 2018).

Bad debt

Bad debts that are definitively non-recoverable (after all recovery procedures have been undertaken) are treated, from a tax point of view, as deductible losses.

Charitable contributions

Charitable contributions made by companies are deductible only if they are granted to foundations and societies explicitly provided by law.

The contributions made to the community enterprise are deductible at up to 0.2% of the company turnover.

Fines and penalties

Fines and penalties are not tax deductible expenses if they relate to infringements to legal and regulatory dispositions.

However, expenses relating to late payment penalties (calculated in accordance with the provisions of the law) should be tax deductible.

Taxes

Taxes constitute deductible expenses, except CIT itself and recoverable taxes.

Net operating losses

Tax losses may be carried forward for a period of four years from the end of the loss-making accounting period. However, the portion of a loss that relates to depreciation may be carried forward indefinitely.

A carryback mechanism is not allowed under Moroccan law.

Payments to foreign affiliates

Payments to foreign affiliates are allowed under Moroccan law. However, such payments should respect the arm's-length principle and foreign exchange regulations.

Group taxation

Under Moroccan law, consolidation or group taxation is not allowed.

Transfer pricing

Morocco has a general provision within its tax legislation requiring transactions between related parties to be at arm's length.

Where a Moroccan company is directly or indirectly connected with enterprises situated inside or outside Morocco, profits transferred indirectly to such enterprises, by means of increases or decreases in buying or selling prices or by any other means, must be included among taxable profits on the tax return.

In order to determine the amount to be included among taxable profits, Moroccan tax authorities will make comparisons with other similar companies carrying on normal business activities or by means of direct assessment based on information available to the tax authorities.

Thin capitalisation

No specific thin capitalisation rules exist in Morocco.

However, the tax law restricts the interest rate on debts issued by shareholders and the basis of calculating deductible interests.

Interest incurred is tax deductible if the shareholder's capital is fully paid. Additionally, the sum of the shareholder loans generating deductible interests should not exceed the equity capital subscribed, and the applicable interest rate should not exceed the official rate calculated annually on the basis of six months treasury bills.

Controlled foreign companies (CFCs)

There are no provisions for CFCs in Morocco.

Tax credits and incentives

The Moroccan tax law provides several tax incentives for specific sectors of activities.

Export companies

Export companies are exempt from CIT on their profits related to their export turnover during the first five years following their first export transaction. These companies benefit from a reduced CIT rate of 17.5% in subsequent years.

Hotel companies

Hotel companies are fully exempt from CIT on their profits relating to foreign currency turnover for the first five years following their first accommodation operation in foreign currency. They also benefit from a reduced CIT rate of 17.5% on such profits for subsequent years.

Mining companies

Exporting mining companies, including those that sell products to export companies, benefit from a reduced CIT rate of 17.5%.

Agricultural companies

Small-scale companies

Agricultural companies with a turnover of less than MAD 5 million qualify for a total exemption of CIT. If such companies realise a turnover that exceeds MAD 5 million in year (n), they become liable to CIT in year (n), year (n+1), year (n+2), and year (n+3).

Moreover, such companies qualify for a reduced rate of 17.5% during the first five fiscal years following the first year during which they become liable to CIT.

Medium and large-scale companies

Finance Law 2014 provides for a progressive approach to tax medium and large-scale agricultural companies that realise a turnover exceeding MAD 5 million. As such, companies with a turnover exceeding MAD 35 million, MAD 20 million, or MAD 10 million should become liable to CIT, respectively, in 2016, 2018, and 2020.

Moreover, such companies qualify for a reduced rate of 17.5% during the first five fiscal years following the first year during which they become liable to CIT.

Capital risk companies

Capital risk companies are exempt from CIT on profits derived within the scope of their activities (these are profits related to purchases of companies' shares that support such companies' development and the sales of such shares thereafter).

Hydrocarbon companies

Companies holding hydrocarbon exploration and exploitation permits are exempt from CIT for ten years from the beginning of hydrocarbon regular production.

Banks and holding companies located in offshore zones

Banks and holding companies located in offshore zones benefit from a reduction in CIT for the first 15 years of operation.

Banks may opt for a minimum CIT of 25,000 United States dollars (USD) or pay the tax at a reduced rate of 10%.

Holding companies pay a flat tax of USD 500 during the first 15 years.

Casablanca Finance City

A law was enacted in 2010 for the setting up of a finance area in Casablanca, called, Casablanca Finance City.

The Casablanca Finance City statute may be granted to specific financial institutions as well as non-financial institutions that offer such services as auditing, fiscal, legal, financial, actuarial, and human resources management advisory.

The above statute may also be granted to regional and international headquarters.

Entities established in Casablanca Finance City are exempt, for their export turnover, from CIT during the first five years following the date they obtain the Casablanca Finance City statute. These companies benefit, for the export turnover, from a reduced rate of 8.75% in subsequent years.

Free trade zones (FTZs)

The activities that must be necessarily performed by the companies established in the FTZs are mainly the following (the activities may vary for each FTZ):

- Food processing industries.
- Textile and leather industries.
- Metallurgic, mechanic, electric, and electronic industries.
- Chemical and special chemical industries.
- Services connected with the aforementioned activities.

Entities established in FTZs are exempt, for their export turnover, from CIT during the first five years. These companies benefit, for the export turnover, from a reduced CIT rate of 8.75% for the following 20 years.

Moreover, for entities established in FTZs, the dividends paid to non-residents relating to activities performed in the FTZ are totally exempted from the WHT on dividends.

Listed shares

Non-resident entities are exempt from capital gains derived from the sale of stocks listed on the Casablanca stock exchange, excluding the shares of real estate entities.

Foreign tax credit

Income tax paid on income earned from outside Morocco may be credited against CIT payable in Morocco if provided by treaty.

Withholding taxes

WHT on dividends

The standard WHT rate on dividends is set at 15% according to the Moroccan law (unless reduced by treaty).

WHT does not apply to dividends paid to Moroccan companies subject to Moroccan CIT, subject to the delivery of a property attestation.

A branch tax of 15% applies to the net income transferred by the Moroccan branch to foreign entities (may be reduced by the tax treaty).

WHT on interests

The standard WHT on interest paid to non-resident entities is set at 10% as provided by the Moroccan law (unless reduced by treaty). However, the Moroccan law provides that interest on loans granted in foreign currency with a maturity exceeding ten years is exempt from WHT.

WHT on services paid to non-resident entities

According to the Moroccan tax code, all payments of all kinds of services rendered by non-resident entities are subject to WHT at the rate of 10%.

However, it shall be noted that treaty dispositions limit the scope of application of WHT only to remunerations that constitute royalties. Such dispositions overrule the domestic tax law provided by the Moroccan law.

Treaty WHT rates

Payments to non-resident corporations and individuals are subject to WHT, as shown below.

	WHT (%)			
	Dividends			
Recipient	Individuals and non-qualified companies	Qualifying companies	Interest (1)	Royalties
Non-treaty	15	15	10	10
Treaty:				
Arab Maghreb Union (2)	(3)	(3)	(3)	(3)
Austria	10	5	10	10
Bahrain	10	5	10	10
Belgium	15	6.5	10	10
Bulgaria	10	7	10	10
Canada	15	10	10	5/10 (4)
China (People's Republic)	10	10	0/10	5/10
Czech Republic	10	10	10	10
Denmark	15	10	10	10
Egypt	12.5	10	10	10
Finland	15	10	10	10
France	15	10	10	5/10 (4)
Germany	15	5	10	10
Guinea Conakry	10	5	10	10
Hungary	12	10	10	10
India	10	10	10	10
Ireland	10	6	10	10
Italy	15	10	10	5/10 (4)
Ivory Coast	10	10	10	10
Jordan	10	10	10	10
Korea (Republic of)	10	5	10	10
Latvia	10	6	10	10
Lebanon	10	5	10	5/10 (4)
Luxembourg	15	10	10	10
Malaysia	10	5	0/10	10
Mali	10	5	10	10
Malta	10	6.5	0/10	10
Netherlands	15	10	10	10
Norway	15	10	10	10
Oman	10	5	0/10	10
Pakistan	10	10	10	10
Poland	15	7	10	10
Portugal	15	10	10	10

Recipient	WHT (%) Dividends: Individuals and non-qualified companies	Dividends: Qualifying companies	Interest (1)	Royalties
Qatar	10	5	0/10	10
Romania	10	10	10	10
Russia	10	5	10	10
Singapore	10	8	10	10
Spain	15	10	10	5/10 (4)
Switzerland	15	7	10	10
Syria	10	7	10	10
Turkey	10	7	10	10
Ukraine	10	10	10	10
United Arab Emirates	10	5	10	10
United Kingdom	15	10	10	10
United States	15	10	10	10

Notes

1. Some treaties provide for an exemption for certain types of interest (e.g. interest paid to public bodies and institutions). Such exemptions are not dealt with in this treaty chart.
2. The member states of the Arab Maghreb Union are Algeria, Libya, Mauritania, Morocco, and Tunisia.
3. There is no limitation on WHT under the treaty.
4. The lower rate (i.e. 5%) usually applies to copyright royalties and other similar payments in respect of the production or reproduction of any literary, artistic, or dramatic work (excluding cinematographic and television films), while the 10% rate applies to other types of royalties.

Tax administration

Taxable period

The taxable period corresponds to 12 months. The first taxable period can be less than one year but should never exceed it.

Tax returns

CIT returns must be filed within three months following the closing of the fiscal year.

Payment of tax

Payment of tax is made during the fiscal year by way of four instalments of 25% each based on the CIT of the previous year.

In case the CIT of the year exceeds the sum of the four instalments, the company should proceed to tax regularisation along with the submitting of the taxable income return after three months following the closing of the fiscal year (i.e. 31 March for fiscal year corresponding to the calendar year). Otherwise, the exceeding tax amount should be offset against the following instalments without limitations.

Penalties

Finance Law 2016 provides for the application of the following rates for penalties and late payment interest:

In case of late tax return:

- 5% penalty in case the tax return is submitted within 30 days following the legal deadline, or in case of corrective return.
- 15% penalty in case the tax return is submitted after the above mentioned 30 days.
- 20% penalty in case of automatic taxation due to non-submission of tax return.

In case of late tax payment:

- 5% penalty in case the tax payment is made within 30 days following the legal deadline.
- 10% penalty in case the tax is paid after the above mentioned 30 days.
- 20% penalty in case of non-payment or late payment of VAT and other WHTs.
- 5% interest related to the first month late tax payment and 0.5% interest for the following months.

Statute of limitations

The statute of limitations runs until the end of the following fourth year. This period may be extended in case of deficits or credits.

Topics of focus of tax authorities

The topics of focus of tax authorities depend on each specific situation (sector of activity, company size, etc.). However, it is very common to find the following points:

- Transfer pricing.
- Tax treatment of provisions.
- Taxation of indemnities and benefits granted to employees.

Other issues

Exchange controls

Foreign investors are allowed, following the accomplishment of some formalities, to freely transfer abroad the whole proceeds of their investments in Morocco (i.e. dividends, shares sale price, and liquidation income under the condition that the initial investment is realised in one of the foreign currencies listed by the Moroccan Central Bank).

However, some specific transfers of funds into and out of Morocco are subject to prior authorisations from the exchange control office.

Choice of business entity

The legal vehicles used by foreign companies for the purpose of setting up a business in Morocco are the branch and the subsidiary.

Under subsidiary form, the foreign entities generally opt for the corporation (SA) or the limited liability company (SARL).

The SARL is most adequate for companies with low investment capital while the SA is most appropriate for companies that are investing an important amount of capital. In general, the rules relating to the organisation and functioning of an SARL are more flexible than those required for an SA.

Mozambique

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Significant developments

On 12 September 2017, the Mozambican Council of Ministers approved the Decree no. 70/2017 of 6 December that regulates the transfer pricing regime.

This regime contain rules with huge impact in the transactions between related entities, introduces some concepts, and lists the obligations related with information to be provided for transfer pricing purposes. Main topics include the following:

- The concept of 'related parties' is introduced for the purpose of transfer pricing.
- A number of methods are listed to determine the terms and conditions that would be established in compliance with the 'arm's-length principle'.
- Specific rules are established to be observed in the agreements to be entered between related parties.
- The list of information and documentation is established that the taxpayer should obtain, prepare, and maintain to justify the adopted transfer pricing method.

Taxes on corporate income

Corporate entities and other entities with headquarters or effective management in Mozambique (i.e. resident entities) are subject to corporate income tax (CIT) based on their worldwide income. On the other hand, corporate entities and other entities without headquarters or with a permanent establishment (PE) in Mozambique (i.e. non-resident entities) are only subject to CIT on the income earned in Mozambique.

CIT is levied on taxable profits, defined as accounting profits adjusted to comply with tax law rules, at a tax rate of 32%. Non-resident entities without a PE in Mozambique are only subject to withholding tax (WHT) in Mozambique in respect to income earned in Mozambique.

Specific tax regime and tax benefits for mining activity

Under the specific tax regime for mining activity, namely the tax on mining production (TMP), the value of mining products is determined by the price of the last sale by the taxable person, which must match with the price of reference in the international market, or, if there was no sale, is determined by the price of reference in the international market.

The rates for mining products are as follows:

- 8% for diamonds.
- 6% for precious metals, precious stone and semi-precious stone, and heavy sand.
- 3% for base metals, coal, and others.
- 1.5% for sand and stone.

Such rates can be reduced to 50% when the products are used in Mozambique for the development of local industry.

The settlement of the TMP is performed on the tenth day of the month that follows the production.

Surface tax (ST) is a tax due for entities undertaking a mining activity in the country. ST is based on the type of mining title and year of activities, with exception of the mining concession for mineral water that has an amount of 85,000 Mozambican metical (MZN) per mining title.

The additional settlement for the TMP and ST must be made within 30 days from the tax settlement.

At the end of each year, the taxpayer must report the yearly profit for each mining title separately.

The holder of the mining title also pays the tax on mining resource rent (TMRR), and, for its deduction, the concessionaire must provide information to the tax authorities on the accumulated net cash flows, corresponding to the taxable income.

The applicable rate for TMRR is 20%.

At the beginning of the fiscal year, each taxpayer must prepare a forecast to TMRR that must be regularly updated and presented by 31 May of the fiscal year. The TMRR is paid in two instalments (50% in August and 50% in November) based on the forecast.

The specific tax regime for mining activities was recently amended by Law no. 15/2017 of 28 December, which introduced the following changes:

Capital gains

- Capital gains arising from the onerous or gratuitous alienation, whether direct or indirect, of mining rights situated in Mozambique are considered as capital gains.
- Capital gains are taxed in full (32% rate), the liability for payment is jointly and severally liable between seller, purchaser, and holder of the mining right, and the respective tax must be paid within 30 days from date of alienation.

Stability clause

- Possibility to negotiate a tax stability for a period of ten years, effective upon a proven investment of 5 million United States dollars (USD).

US dollar accounts

- Possibility to adopt US dollars as the currency to present the company's accounts, subject to prior authorisation from the Minister of Finance, not subject to alteration during the life of the project.
- Companies are eligible if an investment equal to or greater than the equivalent of USD 500 million is made and more than 90% of its transactions are in US dollars.

Audited accounts

- Companies are required to have the accounts certified by an independent auditor.

Specific tax regime and tax benefits for oil and gas operations

In accordance with the specific tax regime and tax benefits for oil and gas operations, the obligation to pay the tax on oil production (TOP) is deemed to be at the time that the oil produced comes to the station defined in the concession agreement.

The settlement of the TOP is made by the taxpayer, which must submit the official form to the tax administration by the tenth day of the following month of the production, and, if the taxpayer fails to do so, the tax administration will make the necessary assessments based on the elements it has and the application of penalties established in article 22 of the mentioned regulation.

The TOP rates are the following: 10% for crude oil and condensate and 6% for natural gas and liquefied natural gas (LNG), which can be reduced by 50% in cases where the production is to be used for the development of local industry. It is considered local industry if the sale is for the national hydrocarbon company (ENH, E.P).

After the settlement made by the taxpayer, the tax administration shall evaluate the official model and can make corrections to it. If a correction is to be made, the tax administration has the prerogative to conduct an additional settlement, in which it must charge or cancel the calculated difference, and this amount must be corrected in 30 days from the tax assessment.

It is important to mention that the government has a period of time to notify the taxpayer to pay in kind, which is within 12 months in advance, starting from the first day of the month to which the tax relates, indicating the quantity of oil and delivery point.

In order to have benefits established in Law no. 27/2014 of 23 September, the taxpayer must apply to the Customs Services for the exemption. In this request, the applicant must attach the global list of the goods to import for the determination of eligible goods for the exemption.

The violation of this regulation is subject to impeditive sanctions, suspensive sanctions, and extinctive sanctions.

The specific tax regime for oil and gas was recently amended by Law no. 14/2017 of 28 December, which introduced the following changes:

Capital gains

- Capital gains arising from the onerous or gratuitous alienation, whether direct or indirect, of petroleum rights situated in Mozambique are considered as capital gains.
- Capital gains are taxed in full (32% rate), the liability for payment is jointly and severally liable between seller, purchaser, and holder of the petroleum right, and the respective tax must be paid within 30 days from date of alienation.

Stability clause

- Possibility to negotiate a tax stability for a period of ten years, effective upon a proven investment of USD 100 million.

US dollar accounts

- Possibility to adopt US dollars as the currency to present the company's accounts, subject to prior authorisation from the Minister of Finance, not subject to alteration during the life of the project.
- Companies are eligible if an investment equal to or greater than the equivalent of USD 500 million is made and more than 90% of its transactions are in US dollars.

Audited accounts

- Companies are required to have the accounts certified by an independent auditor.

Local income taxes

See Municipality taxes in the Other taxes section.

Corporate residence

Corporate residence is determined on the basis of a company's place of incorporation or effective management. Thus, all companies with headquarters or effective management in Mozambique are considered tax residents and are liable for CIT on their worldwide income.

Permanent establishment (PE)

Under the relevant internal legislation, a non-resident entity is deemed to have a PE in Mozambique whenever any of the following circumstances exists:

- It has premises or other fixed places of business through which industrial, trading, agricultural, rendering of services, or similar activities are totally or partially carried out.
- It has an office, branch, plant, workshop, mines, quarries, oil or natural gas wells, or other places of extraction of natural resources.
- It has a construction, installation, or assembly site when the duration of works exceed six months, including the activities of coordination, inspection, and supervision connected to these sites.
- It has persons or hired personnel, acting and dealing in Mozambique, who are not independent agents in the terms of the law but rather acting on behalf of the company with legal capacity to conclude contracts on its behalf and its name within the scope of the company's activities.

Other taxes

Value-added tax (VAT)

VAT is chargeable on the sale of most goods and services as well as on imports. The standard rate is 17%. Usually, VAT is recoverable by corporate entities, except for those engaged in special business activities (e.g. financial and insurance operations, leasing [exemption with restrictions], sale of immovable property, some exempt activities).

Customs duties

Customs duties are charged on importation of goods into Mozambique, and the applicable rates vary from 0% to 20%. Mozambique is part of the Southern African Development Community (SADC) protocol on commercial trade that exempts from customs duties some goods produced within the SADC region. However, in order to benefit from the exemption, the importer should provide proof of the origin of the said goods through the presentation of the certificate of origin of goods.

Mozambique also has signed agreements with the European Union (EU) based on which preferential rates are applicable on certain goods imported from such region.

Excise taxes

Excise duties are levied on certain goods manufactured locally or imported, which are identified in a specific table that is an integrant part of the Excise Duty Act and indicates the applicable rates. Amongst others, the said table includes goods such as tobacco, beer and other alcoholic beverages, vehicles, cosmetics, cloths, airplanes, boats, etc.

Examples of excise duty rates include the following:

- Alcoholic beverages: 40% (55% for wine of fresh grape).
- Tobacco: 75%.
- Air vehicles without engines: 35%.
- Boats and other recreational or sportive crafts: 35%.
- Cloths and respective accessories: 30%.

Property transfer taxes (SISA)

In Mozambique, a property transfer tax is charged on transfers of real estate, excluding the land, which is owned by the state. The rate of tax is 2% of the selling price of the building. When the beneficiaries live in a country with a privileged tax regime, the applicable rate is 10%.

Stamp duties and service charges

Various documents require the payment of stamp duties. Service charges are payable for the performance of certain services for official purposes, such as those rendered by public notaries. These duties vary generally from 0.03% to 50% on the amount of the transaction supported by the document to be stamped. In some other cases, the stamp duty comprises fixed amounts, ranging from MZN 0.50 to MZN 5,000.

Payroll taxes

All remunerations paid to employees are subject to monthly withholding as per the tax rates that are established in a specific schedule approved by law, depending on the gross monthly amounts received and number of dependents of the taxpayer. The employer is obligated to withhold at source the tax due by the employees.

The monthly withholding rates vary from 0% to 32%, being withheld definitively at source if the individual has only received employment income throughout the year and has already been subject to taxation at source by a Mozambican company. In all the other situations, and/or if the individual opts to file one's annual tax return, monthly income tax withholdings are deemed as payment on account for the final annual tax.

The amounts withheld by the company shall be delivered to the tax authorities up to the 20th day of the following month.

In case any tax is paid by the company on behalf of employees, such cost will not be accepted as a deductible cost unless this is treated as part of the remuneration cost and taxed at the hands of the employee as employment income.

Social security contributions

Social security contributions are payable by employers and employees on monthly remuneration. The aggregate rate of contribution is 7%, with 4% paid by the employer and the remaining 3% by the employee. No ceiling is applicable.

Municipality taxes

Municipality taxes that should be considered for corporate purposes include the following:

Municipality tax on real estate

The municipality tax on real estate is levied annually on the value of immovable assets situated within the municipality and owned or possessed by corporate entities. Effective tax rates range from 0.4% (for housing purposes) to 0.7% (for office purposes or mixed activities) of the building value, depending on the municipality.

Municipality tax on economic activities

The municipality tax on economic activities is levied on commercial or industrial activities carried out within a municipal territory. The tax depends on the activity being carried out, adjusted by coefficients, which are based on the zone and total area of the premises in square metres. In Maputo, this tax is calculated based on the following formula:

Maputo tax on economic activities = Basis rate x Index of category x Index of location x Index of area occupied

Where the basis rate is the applicable maximum amount of the national minimum salary of the specific activity sector (for the year 2018, the highest minimum wage varies from MZN 4,150 to MZN 11,897.60).

Where the index of category varies from 1.3 to 3.0, depending on the activity sector (e.g. commercial sector, industrial, rendering of services).

Where the index of the location varies from 1.3 to 1.5, depending on the location of the premises within the municipality.

Where the index of the area occupied varies from 1.2 to 1.5, depending on the nature of the activities and the space occupied by the premises.

Municipal vehicles tax

The municipal vehicles tax is levied on the use of specific vehicles (e.g. light and heavy vehicles less than 25 years old, motorcycles less than 15 years old, aeroplanes, and boats for private use). This tax is due by the owners who are residents of a municipality, regardless of the place of registration of the vehicle owned.

The rate varies, depending on specific criteria, such as type of fuel, engine capacity, period of registration, and weight.

This tax must be paid between January and March or within 30 days after the acquisition of the vehicle.

Branch income

From a tax perspective, branches are liable for Mozambican CIT as a PE; consequently, branches are subject to CIT on the income earned in Mozambique, being subject to tax at a rate of 32%. However, on the grounds that branches do not distribute dividends, the 20% WHT does not apply to the after-tax profits arising in Mozambique.

Income determination

Inventory valuation

All inventory valuation methods generally accepted according to international accounting principles are permitted for tax purposes, provided that the method is:

- used by the taxpayer consistently and
- based on arm's-length prices duly documented and effectively exercised.

Based on the above assumptions, last in first out (LIFO) and first in first out (FIFO) methods are allowed. Write-downs and depreciation of inventories are not allowed. Conformity between book and tax reporting is required.

Large companies began adopting International Financial Reporting Standards (IFRS) in 2010.

Capital gains

Capital gains less any capital losses derived from the sale or disposal of tangible fixed assets, including insurance indemnities received in case of accident, are taxed as part of normal income. If a taxpayer reinvests the sale proceeds within three tax years following the year of sale, the gain may be deferred until the end of the third year. A three-year reinvestment period may be accepted, provided a prior application is submitted to the Minister of Finance. However, if the taxpayer does not realise the reinvestment, the CIT that was not assessed during the three-year period will be assessed, along with compensatory interest.

Capital gains arising from indirect transfers of participating interests of assets located in the country are subject to taxation. Capital gains resulting from the disposal of shares, participating interests, or rights in general, between non-residents, whether direct or indirect, free or for consideration, are taxable in Mozambique, provided the transaction involves assets located in the country.

Dividend income

In the case of resident companies, income arising from dividends is excluded from taxable income, provided that the shares that a resident company holds in another resident company represents at least 20% of the total capital and are held for at least two consecutive years (or with an undertaking to hold the shares for this period). The same applies to income arising from risk capital companies and holding companies (*Sociedade Gestora de Participações Sociais* or SGPSs) or from subsidiaries as a result of the application of technical reserves in insurance companies. However, in the case of holdings, the percentage of share capital decreases to 10% and shares should be held for at least one year.

If the shareholding falls outside the parameters indicated above, the tax withheld (20%) constitutes a payment on account. A tax credit corresponding to 62.5% of the CIT is attributable to the gross-up dividend.

Interest income

Interest is subject to 20% WHT. In the case of foreign entities, the WHT is considered as a definitive tax. In the case of resident entities, it is considered as an advance of the final tax.

Interests on treasury bonds and public debt bonds listed on the stock exchange are subject to definitive WHT at 20%.

Royalty income

Royalty income is subject to 20% WHT. In the case of resident entities, royalty income is considered as an advance of the final tax. In the case of foreign entities, the WHT is considered as a definitive tax.

In case royalty income is earned by a foreign entity with tax residency in a country with which Mozambique signed a double taxation treaty (DTT), the tax rate can vary from 5% to 10%, depending on the DTT.

Foreign income

Mozambican resident companies are taxed on the total income earned on a worldwide basis. Please note that there is no provision on tax deferral in Mozambique in relation to income earned abroad. DTTs allow tax paid abroad to offset Mozambican CIT. Mozambique has signed DTTs with Botswana, India, Italy, Macau, Mauritius, Portugal, South Africa, the United Arab Emirates, and Vietnam.

Deductions

Depreciation

Depreciation is a deductible cost for CIT purposes according to the regulations of the CIT Code, subject to restrictive and specific rules.

The main legal principles regarding depreciation are as follows:

- The establishment of the applicable rates falls under the competence of the Ministry of Finance.
- The calculation is carried out on a straight-line basis in accordance with the rates applicable.

The main depreciation rates are:

Assets	Rate (%)
Tangible assets:	
Industrial buildings	2.00
Residential buildings	10.00
Office and administrative buildings	2.00

Assets	Rate (%)
Machinery and installations, air conditioning, and telephone equipment	12.50
Lifts	8.33
Tools	25.00
Laboratory equipment	12.50
Telex and interior equipment	10.00
Furniture and filing systems	10.00
Typewriters and accounting machines	16.66
Computers and printers	25.00
Computer servers	20.00
Warehouse and filing installations:	
Of concrete	5.00
Of wood	6.66
Of steel	8.33
Trucks	20.00
Automobiles	25.00
Intangible assets:	
Pre-operating expenses incurred prior to the commencement of business	33.33
Deferred expenses arising in connection with increases in share capital, changes in form of business enterprises, issuance of debentures, marketing and other studies, and financial expenses incurred for the acquisition or own production of fixed assets prior to completion	33.33
Patents	10.00
Manufacturing licences, concessionaire agreements, and similar rights	5.00 (1)
Trademark or premium of taking over leases of real estate	(2)

Notes

1. Subject to certain conditions set forth by the tax authorities.
2. Depreciation is only allowed in cases of effective reduction of value within the limits regarded as reasonable by the tax authorities.

Accelerated depreciation

New immovable assets, used for the furtherance of the business, may be depreciated by increasing to 50% the normal depreciation rates approved by law. This benefit is also granted to rehabilitated immovable assets, machinery, and equipment used in agro-industrial activities, provided there is an investment project duly approved by the government.

Goodwill

Although goodwill is considered for accounting purposes in Mozambique, there is no provision for goodwill in the tax legislation. Consequently, goodwill should be regarded as an intangible asset for tax amortisation purposes.

Interest expenses

A basic principle regarding acceptance of costs and expenditures requires that these are necessary for the company's/branch's activity (i.e. indispensable to generate the profits and gains obtained by the company). This concept includes, among others, interest and other financial costs that are, in principle, also deductible for tax purposes unless the tax authorities assume that the interest rate applicable in one transaction is higher than the applicable rate applicable in the market, with the exceeding amount being subject to taxation.

Interest and other types of remuneration above the Maputo Interbank Offered Rate (MAIBOR) plus two percentage points at time of payment on the shareholders' loans are not tax-deductible costs.

Provisions and impairment losses

In Mozambique, companies are able to create all the provisions necessary and relevant for the normal course of business. However, for tax purposes, only the provisions and impairment losses listed below can be deducted as a cost:

- Bad debts.
- Depreciation of stock.
- Ongoing judicial procedures.
- Credit institutions/Insurance companies.
- Reconstruction of mines.
- Rehabilitation of land.

Any other provisions reflected in the company's accounts will not be accepted as tax-deductible costs.

Bad debt

With regards to provisions for bad debts, companies are only allowed to deduct 1.5% per year (and 6% accumulated) of the provisions created for bad debts.

Charitable contributions

Donations can be deducted as costs for tax purposes, provided specific requirements are met and the beneficiaries thereof are:

- Social and cultural organisations that, acting without lucrative intent, carry out actions in art, education, science, health, preservation and restoration of cultural patrimony, or social activities: Donations can be deducted up to the limit of 5% of the previous year's taxable income.
- The Mozambican state: Donations can be fully deducted.

It is important to note that this deduction is not applicable automatically, as it is necessary to present proof that the donation was previously communicated to and approved by the Ministry of Finance.

Fines and penalties

Fines and other penalties paid due to any infringement, which do not have a contractual basis, including interest, are not accepted as tax-deductible costs.

Taxes

Taxes paid in relation to the activities of a company are tax deductible, excluding CIT itself.

Net operating losses

Carryback of losses is not allowed in Mozambique. On the other hand, losses may be carried forward for a period of five consecutive years.

Payments to foreign affiliates

Any payments to non-residents are allowed as deductible expenses, provided that the amount does not exceed normal rates and that the taxpayer is able to prove that a business transaction was carried out with the non-resident company. The tax authorities may redetermine taxable income if, due to a special relationship between the Mozambican and non-resident companies, certain conditions existed that allowed a calculation of profit that differed from the profit that would have been calculated without the existence of such relationship (i.e. the arm's-length principle).

Group taxation

There are no group taxation provisions available in Mozambique. Each member of a group of companies preparing consolidated accounts for accounting purposes must file separate tax returns in order to be taxed on its profits on a stand-alone basis.

Transfer pricing

The tax authorities may proceed with the necessary corrections for assessing the profits for tax purposes whenever:

- by virtue of special relations between the taxpayer and other entities, different conditions from those that should be normally agreed upon between independent entities have been established, and
- in consequence of those conditions, the profits for accounts purposes are different from those that would have resulted had such special relations not existed.

The corrections above shall be equally applicable whenever the profits for accounts purposes regarding non-resident entities are different from those that should have resulted if the non-resident entity were a separate entity carrying out similar activities in similar conditions and with total independence.

The corrections referred to above will also be applicable to entities that carry out activities simultaneously subject and not subject to the CIT Code, provided that similar evasion regarding such activities is verified.

Whenever these corrections are applicable to one taxpayer of CIT (Taxpayer 1) by virtue of special relations with another taxpayer of CIT or of individual income tax (Taxpayer 2), the adjustments reflecting the corrections made in the calculation of the profits for tax purposes of Taxpayer 1 shall be applicable in the assessment of the profits for tax purposes of Taxpayer 2.

Although the definition of 'special relation' had been previously introduced into the transfer pricing regime foreseen in the CIT Code, the specific transfer pricing regulations were only recently approved and entered into force on 1 January 2018.

This regime contain rules with huge impact in the transactions between related entities, introduces some concepts, and lists the obligations related with information to be provided for transfer pricing purposes. Main topics include the following:

- The concept of 'related parties' for the purpose of transfer pricing is defined in more detail.

- A number of methods are listed to determine the terms and conditions that would be established in compliance with the 'arm's-length principle'.
- Specific rules are established to be observed in the agreements to be entered between related parties.
- The list of information and documentation is established that the taxpayer should obtain, prepare, and maintain to justify the adopted transfer pricing method.

Thin capitalisation

Where loans from related foreign corporations exceed twice the corresponding equity in the borrowing Mozambican corporation, the interest on the excess borrowing is not tax deductible. Thin capitalisation rules are in force.

According to the Mozambican thin capitalisation rules, subsidiaries are considered and treated as thinly capitalised companies if and to the extent that, as at any date of the tax period, any of their relevant debt-to-equity ratios exceed a factor of two.

'Relevant debt-to-equity ratio', within the context of the law, means the ratio between, on one hand, the amount of direct and indirect indebtedness of a Mozambican company towards a specially related non-resident, and on the other, the amount of equity that this non-resident holds in the Mozambican company.

A 'specially related non-resident', for these purposes, is an entity with special links with another, which includes any entity that:

- holds, either directly or indirectly, at least 25% of the share capital of the Mozambican company
- though holding less than 25%, has a significant influence on its management, or
- both taxpayer and non-resident entity are under control of the same entity, which has participation in their share capital, either directly or indirectly.

Under any of these circumstances, interest paid to such specially related non-residents is not allowed as a tax-deductible cost for the Mozambican company in the part that corresponds to the excessive indebtedness, unless the company can prove that it could have obtained the same level of indebtedness at comparable conditions from unrelated parties, taking into account the nature of its business, its sector of activity, dimension, and other relevant criteria.

Controlled foreign companies (CFCs)

Profits obtained by companies residing outside Mozambique and subject therein to a regime that is clearly more favourable shall be allocated to shareholders residing in Mozambique in proportion to their respective shareholding and irrespective of whether or not they are distributed, provided that the shareholder holds a direct or indirect shareholding of at least 25% or at least 10% if more than 50% of a non-resident company's capital is held directly or indirectly by resident shareholders.

A company is considered subject to a clearly more favourable tax regime if residing in a free-tax territory, where income grows free of tax or the effective tax rate is equal to or less than 60% of the Mozambican annual CIT rate, which is 32%.

Tax credits and incentives

Foreign tax credit

Resident companies are allowed to deduct a credit correspondent to a tax paid abroad. The tax credit to be deducted should be equal to the lower of the amount of Mozambican corporate tax imputed to income obtained abroad or the amount of foreign tax effectively paid.

Inbound investment incentives

In addition to the guarantees of ownership and remittance of funds abroad, the Mozambican government also guarantees the concession of tax and customs incentives. The incentives vary depending on whether a company is starting a new venture or rehabilitating one and also on the nature of the project to be developed. The incentives discussed in this section are the generic benefits applicable to standard projects. Certain specific benefits also may be applicable depending on the activities of the industry for the investment project (e.g. agriculture, tourism, science and technology).

Exemption from import duties

An exemption from customs duties and VAT applies upon the importation of capital equipment listed in Section K of the Customs Tariff Schedule.

Tax credit for investment

Investments in new fixed tangible assets used in the operations of an enterprise within the Mozambican territory may benefit from an investment tax credit equal to 5% to 10% of the total investment realised, for a period of five years. This investment tax credit is offset against CIT, up to the total amount of the tax assessment. This incentive does not apply when the investment in tangible fixed assets is with respect to the construction, acquisition, restoration, or extension of buildings, passenger vehicles, furnishings, and articles of comfort and decoration, leisure equipment, advanced technology, or other assets not directly associated with the production activity carried out by the enterprise. When the project is located outside Maputo City, this tax credit is increased to up to 10%.

Advanced technology incentive

The amount invested in specialised equipment classified as advanced technology during the first five years from the date of commencement of activity may be deducted from taxable income for purposes of calculating CIT, up to a maximum of 10% of taxable income.

Professional training incentive

Investment expenditures for professional training of Mozambican workers shall, up to a maximum amount of 5% of the taxable income (10% in case of professional training related to new/high technology equipment), be deductible from taxable income for the purposes of calculating CIT during the first five years from the date of the commencement of such activities.

Exploration incentives

During a period of five years counting from the date of exploration (i.e. the date the implementing company starts the activities approved under the investment project terms of authorisation), the following expenditures may be treated as deductible expenditures for purposes of calculating CIT:

- In the case of undertakings carried out in the City of Maputo, 110% of the value of expenditures for the construction and rehabilitation of roads, railways, airports, telecommunications, water supply, electric energy, and other works of public utility is deductible for tax purposes.
- In the case of undertakings carried out in the rest of the provinces, an amount equal to 120% of the expenditures referred to in the paragraph above is deductible for tax purposes.
- In the case of expenditures for the acquisition for personal ownership of works of art and other objects that are representative of Mozambican culture, as well as activities that contribute to the development of such works, 50% of the expenditures are deductible for tax purposes.

Withholding taxes

Any non-resident entity carrying out economic activities in Mozambique, without being registered as a taxpayer, is liable to a final and definitive 20% WHT that is applied on all income earned. An exception exists for (i) telecommunications and international transport, as well as the respective installation and assembly of equipment made by those same entities, (ii) construction and rehabilitation of production, transport, and distribution of electricity infrastructures in the rural zones under the public projects of rural electrification; and (iii) maritime vessels freight for fishing and coasting activities, all of which are subject to a 10% WHT rate.

Both Mozambican resident and non-resident recipients are liable to tax on dividends at a tax rate of 20%.

Tax treaties

In accordance with Mozambique's DTTs, the following tax rates are applicable to dividends, interest, and royalties:

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Capital gains on shares**
Non-treaty	20	20	20	20
Treaty:				
Botswana	0/12 (4, 5)	10	10	0
India	7.5	10	10	0
Italy	15	10	10	0
Macau	10	10	10	0
Mauritius	8/10/15 (1, 2, 3)	8	5	0
Portugal	10	10	10	(6)
South Africa	8/15 (1, 3)	8	5	0
United Arab Emirates	0	0	5	0
Vietnam	10	10	10	0

Notes

1. The 8% rate applies if the recipient of the dividends is a company that has more than 25% of the share capital in the company that distributes the dividends.
2. The 10% rate applies if the recipient of the dividends is a company that has less than 25% of the share capital in the company that distributes the dividends.
3. The 15% rate applies in all other cases.

4. The 0% rate applies if the recipient of the dividends is a company that has more than 25% of the share capital in the company that distributes the dividends.
5. The 12% rate applies in all other cases.
6. Gains are only taxed in the other state if assets of the entity sold are composed of more than 50% immovable assets.

Tax administration

Taxable period

The tax year is, as a general rule, the calendar year. A different tax year may be applied (if previously authorised by the Ministry of Finance) for companies that carry out activities that justify a different year (e.g. held at more than 50% by a company with a different year) or non-resident companies with a PE in Mozambique.

Tax returns

CIT assessment must be prepared by the companies on annual returns, based on the accounting records and on adjustments prescribed by the tax regulations.

The submission of the annual tax return is due by the last working day of May for companies using the calendar year as their tax year. For companies with a tax year that is not coincident with the calendar year, the presentation of the tax return is due by the last day of the fifth month subsequent to the respective year-end.

Payment of tax

Mozambican companies and non-resident companies with a PE in Mozambique must pay CIT as follows:

- In three advance payments (based on 80% of the preceding tax year's CIT), due in May, July, and September of the respective tax year; or, if the tax year chosen is not coincident with the calendar year, in the fifth, seventh, and ninth months of the respective tax year.
- In three special advance payments (based on 0.5% of the preceding year's turnover less the advance payments made in previous years, which cannot be less than MZN 30,000 or more than MZN 100,000) due in June, August, and October of the respective tax year; or, if the tax year chosen is not coincident with the calendar year, in the sixth, eighth, and tenth months of the respective year.

Final tax should be paid by the last working day of May or the fifth month after the tax year-end in cases where a different tax year is adopted.

Tax audit process

The tax authorities may carry out an inspection whenever necessary. Normally, the inspection occurs after the taxpayer files a refund application or on a random basis.

Statute of limitations

The statute of limitations period is five years, but the company documents must be kept for ten years.

Topics of focus for tax authorities

Based on our experience and through assistance provided to several clients during audit reviews, we noted that the Inspectors are focusing their attention on the following aspects:

- Confirmation of the amounts reported on the monthly VAT forms and the annual tax return to determinate if the figures are the same or not or if there are non-declared sales.
- Confirmation of whether the non-deductible costs were added back to the tax computation for CIT purposes.
- Deductibility of VAT.
- Analysis of supplier invoices to confirm the right of deduction of VAT.
- Analysis of the company's sales for verification of whether there are undisclosed sales.
- Authorisation for electronic invoicing.
- VAT on self-assessment.
- Mandatory books, namely, ledger (*diário*), day book (*razão*), and inventory and balance (*inventário e balanço*).
- WHT on payments to non-resident entities.
- Thin capitalisation.

Myanmar

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Significant developments

Union Taxation Law 2018 was enacted on 30 March 2018, and the provisions of the Law are effective from 1 April 2018. In particular, the Union Taxation Law 2018 has introduced changes to the fiscal year-end of taxpayers, commercial tax, and specific goods tax regime.

Taxes on corporate income

Foreign investors may register their companies under the Myanmar Companies Act (CA) or in conjunction with the Myanmar Investment Law (MIL) or Myanmar Special Economic Zone Law (Myanmar SEZ Law). The new MIL 2016 was enacted on 18 October 2016. The new MIL is a consolidation of the Myanmar Citizen Investment Law (2013) and the Myanmar Foreign Investment Law (MFIL) (2012). The Myanmar Citizen Investment Law and MFIL have been repealed with effect from 18 October 2016. New rules governing the implementation of the new MIL were enacted on 30 March 2017. Investment permits issued under the old investment laws continue to be valid.

The differences between companies registered under the CA and the Myanmar Investment Commission (MIC)/SEZ are in relation to their eligibility for tax incentives and longer land use terms, as well as minimum foreign share capital requirements.

Generally, resident companies are taxed on a worldwide basis, and, as such, income from sources outside Myanmar is taxable.

Non-resident companies are taxed only on income derived from sources within Myanmar. Income received from any capital assets within Myanmar and from any source of income within Myanmar is deemed to be income received within Myanmar. The income is generally subject to tax under the normal rules for residents.

A company registered under the MIC/SEZ is entitled to enjoy certain exemptions and relief from taxes (*see the Tax credits and incentives section for details*).

Type of taxpayer or income	Tax rate (%)
Companies incorporated in Myanmar under the Myanmar CA or Special Companies Act	25
Enterprises operating under the MIC or SEZ	25
Non-resident foreign organisations registered under the Myanmar CA or Special Companies Act, such as a branch of a foreign company	25

Local income taxes

There is no separate corporate income tax at the local level.

Corporate residence

A resident company is a company as defined and formed under the Myanmar CA or any other existing law of Myanmar.

A non-resident company is one that is not formed under the Myanmar CA or any other existing law of Myanmar. Generally, foreign branches registered in Myanmar are deemed to be non-resident companies.

Permanent establishment (PE)

Currently, there is no definition of a PE under the Myanmar Income Tax Act. Under the Myanmar Income Tax Act, the Myanmar tax authorities are empowered to collect income tax from a non-resident foreigner on its income sourced within Myanmar. In current practice, the Myanmar tax authorities seek to collect taxes from a non-resident foreigner on its income received from Myanmar by way of a withholding tax (WHT) mechanism, regardless of whether the foreigner has a PE or taxable presence in Myanmar or not. The term 'PE' may be defined in the tax treaties that Myanmar has with other countries. Subject to the relevant tax treaty, a foreigner who is tax resident of the treaty country may not be subject to Myanmar taxes if it does not have a PE in Myanmar.

Other taxes

Value-added tax (VAT)

There is no VAT in Myanmar.

Commercial tax

Commercial tax, at rates ranging from 0% to 8%, is levied as a turnover tax on goods and services. Generally, commercial tax is imposed at the rate of 5%. The commercial tax that a business charges and collects is known as output tax, which has to be paid to the Myanmar tax authorities. Commercial tax incurred on business purchases and expenses are known as input tax. Businesses that are registered for commercial tax can claim commercial input tax if certain conditions are satisfied.

Commercial tax is imposed on a wide range of specified goods and services traded, produced, or rendered within the country, based on the sales proceeds, and on imported goods (*see Customs duties below for details*). There are 86 goods exempted from commercial tax.

All services are subject to 5% commercial tax except for 30 types of services that are specifically exempt from commercial tax (e.g. life insurance, banking and financial services that are operated with the permission of the Central Bank of Myanmar, microfinance, public transportation, publishing services).

No commercial tax is imposed if the proceeds from production and sales of goods, receipts from services, or proceeds from trading for a financial year are not more than 50 million Myanmar kyats (MMK).

Commercial tax is zero-rated on all exports, except for electricity (8%) and crude oil (5%).

Companies registered under the MIC/SEZ may, at the discretion of the MIC/SEZ Committee, be granted exemption from commercial tax during certain stipulated periods (*see the Tax credits and incentives section for details*).

Specific goods tax

The Specific Goods Tax Law replaces commercial tax on a list of specific goods that are imported into Myanmar, manufactured in Myanmar, or exported to a foreign country. The list of specific goods include cigarettes, tobacco leaves, virginia leaves, cheroots, cigars, pipe tobaccos, and betel-chewing tobacco; beers, wine, and alcoholic beverages; wood logs and wood cuttings; raw jade, rubies, sapphires, emeralds, diamonds, and other precious gems; polished jade, rubies, sapphires, emeralds, diamonds, and other precious gems; jewellery studded with polished jade, rubies, sapphires, emeralds, diamonds, and other precious gems; vans, saloons, sedans and estate wagons, and coupe cars except double cab 4-door pickups from the range of 1501 cc to 4001 cc and above; and kerosene, petrol, diesel, and aviation jet fuel, as well as natural gas. The specific goods tax rates range from 5% to 80%.

Specific goods tax is zero-rated on all exports, except for natural gas, wood logs and wood cuttings, raw gemstones, and processed gemstones. The tax rates range from 5% to 15%.

Under the Specific Goods Tax Law, only a manufacturer of special goods can claim and offset the specific goods tax incurred on purchase of raw materials/semi-finished goods against the specific goods tax charged on sale of specific goods.

On top of special goods tax, commercial tax of 5% will also be imposed.

Companies registered under the MIC/SEZ may, at the discretion of the MIC/SEZ Committee, be granted exemption from internal taxes, which may cover specific goods tax, during certain stipulated periods (*see the Tax credits and incentives section for details*).

Customs duties

Customs duty is levied under the Customs Tariff of Myanmar (2017) at rates of up to 40%.

Companies registered under the MIC/SEZ may, at the discretion of the MIC/SEZ Committee, be granted exemption from customs duties during certain stipulated periods (*see the Tax credits and incentives section for details*).

Excise duties

Excise duty is levied on alcoholic drinks and is collected by the General Administration Department under the Ministry of Home Affairs.

Property taxes

Immovable property (land and buildings) in Myanmar is subject to property tax.

Stamp duties

Stamp duty is levied on various types of instruments, and some rates are given below:

- 2% of the amount or value of the consideration for conveyances of properties, for the sale or transfer of immovable property except those in the Nay Pyi Taw, plus an additional 2% for a consideration equal to the market value of the property. Conveyance of immovable properties located in Yangon is subject to an additional duty of 2% pursuant to Yangon Development Trust Act 1921. Conveyance of immovable properties located in Nay Pyi Taw is subject to an additional duty of 2% pursuant to Nay Pyi Taw Development Law 2009.
- 0.1% of share value for the transfer of shares.
- 0.5% of the amount or value secured for bonds.
- 0.5% of the annual value of rent for immovable properties lease agreements between one and three years, and 2% of the average annual value of rent where the term of the lease agreement is more than three years. 2% stamp duty will also be applicable on lease premium.

Capital gains taxes

Capital gains tax is levied on gains from the sale, exchange, or transfer of capital assets (i.e. any land, building, vehicle, and any capital assets of an enterprise, which include shares, bonds, and similar instruments).

Capital gains from the sale, exchange, or transfer of capital assets in the oil and gas sector are taxed at different rates from those in other sectors.

Type of taxpayer	Tax rate (%)
Resident companies	10
Non-resident companies	10
Transfer of shares in an oil and gas company or interest in production sharing contracts	40 to 50

Tax returns for capital gains must be filed within 30 days from the date of disposal of the capital assets. Capital gains tax payments are required to be made within 30 days from the date of disposal of the capital assets. The date of disposal refers to the date of execution of the deed of disposal or the date of delivery of the capital assets, whichever is earlier.

Registration taxes

There is a registration fee of MMK 250,000 payable to the Directorate of Investment and Company Administration for setting up a company or a branch in Myanmar. In addition to the registration fee, there may be other administrative expenses or stamp duty payable on the company's memorandum of agreement and memorandum of understanding.

Payroll taxes

An employer is responsible for deducting income tax due from salaries at the time of payment to employees and must pay the amount within seven days from the date of deduction. If the employer fails to deduct and pay the tax, the employer is deemed to be a defaulter and held responsible for such payment. In addition, the employer is also responsible for filing the statement of annual salary within three months after the end of the income year, and failure to file by the stipulated deadline (i.e. 30 June every year) may result in a penalty of 10% of the amount of tax to be deducted on annual salaries.

Social security contributions

An employer with five or more employees is required to provide Social Security Scheme benefits to those workers, such as health and social care insurance and insurance against employment-related injuries.

The rates of contribution by employees and employers are 2% and 3% of the total salaries and wages, respectively. The contribution must be made in Myanmar kyats for all currencies that the salaries are paid in within 15 days of the following month, using the exchange rate prescribed by the Myanmar Foreign Trade Bank (MFTB) on the first day of the relevant month.

The maximum contribution is limited to MMK 9,000 by the employer and MMK 6,000 by the employee.

Contributions made by the employees are deductible for tax purposes in the hands of the employees. The employer is obligated to withhold the employees' contributions from their salaries.

Branch income

Generally, foreign branches are deemed to be non-resident companies. Non-resident companies are taxed only on income derived from sources within Myanmar. Non-resident companies pay tax at the same rate as resident companies. This means a branch of a foreign company will pay tax at the 25% rate. The income is generally subject to tax under the normal rules for residents.

Income determination

Income is categorised as income from a profession, business, property, capital gains, other sources, and undisclosed sources, as well as income that has escaped tax assessment. Income from capital gains is assessed separately.

Tax is levied on total income, after the deduction of allowable expenditure and depreciation.

The Ministry of Planning and Finance, with the approval of the government, may, by notification, prescribe, amend, and add assessable income and rates of income tax.

Inventory valuation

There are no prescribed inventory valuation methods for tax purposes.

Capital gains

Income from capital gains is assessed separately. *See Capital gains tax in the Other taxes section for details*.

Dividend income

Myanmar has a one-tier corporate tax system, under which shares of profits received by a Myanmar taxpayer from an association of persons (i.e. partnerships, joint ventures, companies, etc.) are exempted from income tax.

Interest income

Interest income and income from movable property are treated as business income.

Royalty income

There is no specific provision under the current Myanmar Income Tax Law governing the taxability of royalty income. Royalty income is generally treated as business income.

Foreign income

Resident companies are taxed on a worldwide basis, and, as such, income from sources outside Myanmar is taxable in Myanmar.

Non-resident companies are not taxed on their foreign income.

There is no deferral regime available to foreign income in Myanmar.

Deductions

In respect of business income, deductions are allowed for expenditure incurred for the purpose of earning income.

Non-deductible items include capital expenditure, personal expenditure, expenditure that is not commensurate with the volume of business, irrelevant expenses and expenses incurred not for production of income, payments made to any member of an association of persons other than a company or a cooperative society, and inappropriate expenditure.

Depreciation and amortisation

Income from movable property is considered as business income, and depreciation allowance for the cost of such movable property can be deducted. Income from immovable property is generally computed in the same way as business income, except that no depreciation allowance can be deducted.

Technically, a taxpayer entity is required to claim tax depreciation on the qualifying assets used for its business purposes based on rates prescribed under the Myanmar Income Tax Law, using a prescribed tax depreciation claim form. A taxpayer is entitled to full-year tax depreciation in the year the asset is acquired. On the other hand, no tax depreciation is allowed in the year the asset is disposed of.

The tax depreciation rates of fixed assets, as prescribed under the Income Tax Regulations, are as follows:

- Buildings: 1.25% to 10%.
- Furniture and fittings installed in buildings: 5% to 10%.
- Machinery and plant: 2.5% to 20%.
- Various kinds of vehicles: 12.5% to 20%.
- Any fixed assets that are not prescribed: 5%.

Goodwill

There is no specific provision under the current Myanmar Income Tax Law governing the tax deductibility of goodwill.

Start-up expenses

There is no specific provision under the current Myanmar Income Tax Law governing the tax deductibility of start-up expenses. Generally, any operating expenses incurred before the commencement of business are not tax deductible. Myanmar tax authorities view pre-commencement expenses as capital in nature and not deductible for tax purposes. In current practice, capital expenditures incurred prior to the commencement of business should be allowed for tax depreciation where they relate to qualifying fixed assets.

Interest expenses

There is currently no specific provision in the Myanmar Income Tax Law indicating the tax treatment of interest expenses. In current practice, interest expenses and the related financing costs are likely deductible only in the year these expenses are incurred, provided that the interest expenses incurred are commensurate with the volume of business or benefits that the taxpayer received. Interest expenses incurred before the commencement of business generally are not tax deductible or tax depreciable.

Bad debt

There is no specific provision under the current Myanmar Income Tax Law governing the tax deductibility of bad debt.

Charitable contributions

Deductible charitable donations are limited to those made to the approved charitable organisations/activities and are subject to an overall limitation of 25% of total income.

Fines and penalties

Fines and penalties are generally not deductible as they are not incurred in the production of business income.

Taxes

There is no specific provision under the current Myanmar Income Tax Law governing the tax deductibility of taxes paid.

Net operating losses

Ordinary losses

Losses from any source may be set off against income accruing from any other sources in that year, except where the loss is from capital assets or a share of loss from an association of persons. Losses that are not fully deducted in a year can be carried forward and set off against profits in the next three consecutive years.

There is no provision for the carrying back of losses.

Capital losses

Capital losses and a share of loss from an association of persons cannot be set off against income from other sources or carried forward.

Payments to foreign affiliates

A Myanmar corporation can claim a deduction for royalties, management service fees, and interest charges paid to affiliates, provided that these payments are commensurate with the volume of business.

Group taxation

There is no group taxation regime in Myanmar.

Transfer pricing regime

There are currently no transfer pricing rules in Myanmar.

Thin capitalisation rules

Generally, there is currently no specific safe harbour with respect to a debt-to-equity ratio for Myanmar tax purposes. The Central Bank of Myanmar (CBM) has set a maximum debt-to-equity ratio of 3:1 or 4:1 (as part of the criteria for a Myanmar entity to obtain a foreign loan).

Controlled foreign company (CFC) regime

There are currently no CFC rules in Myanmar.

Tax credits and incentives

Myanmar Investment Law (MIL)

The new MIL 2016 was enacted on 18 October 2016. The new MIL is a consolidation of the Myanmar Citizen Investment Law (2013) and the MFIL (2012). The Myanmar Citizen Investment Law and MFIL have been repealed with effect from 18 October 2016.

The list of tax benefits under the new MIL are as follows:

1. For investments in sectors listed in a notification to be issued by the Commission in order to promote investment, exemption from corporate tax for seven, five, or three years, depending on whether the investment takes place in an underdeveloped, moderately developed, or adequately developed region or state. The designation of these zones are subject to change from time to time, depending on the development in the respective regions.
2. Income tax exemptions shall only be granted to sectors that the Commission has specified as sectors that are promoted for investments.
3. The Commission may allow more favourable exemptions and reliefs for locations where Myanmar citizen-owned businesses are operated. The government may also provide subsidies, funding, capacity building, and training to Myanmar citizen investors and citizen-owned small and medium-sized enterprises.
4. Exemption from customs duties or other internal taxes or both on machineries, equipment, instruments machinery components, spare parts, construction materials not available locally, and materials used in the business that are imported as they are actually required, during the construction period, or during the preparatory period of the investment business.

5. Exemption or relief from customs duties and/or other domestic taxes on raw materials and semi-finished goods that are imported for the production of export goods by wholly export investment businesses.
6. Right to obtain a refund, based on the amount of exported goods, of customs duties and/or other domestic taxes paid at the time of importation of raw materials and semi-finished goods that are used to manufacture the products in the country and re-export them.
7. If the volume of investment is increased and the original investment business is expanded during the period of investment, exemption or relief from customs duties or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, materials used in the business, and construction materials not available locally, which are imported as they are actually required for use in the business that is being expanded.
8. Exemption or relief from income tax if the profits obtained from the investment business is reinvested in the same business or in a similar type of investment business within one year.
9. Right to deduct depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on an accelerated depreciation rate (which is less than the stipulated lifetime of the asset).
10. Right to deduct expenses from assessable income incurred for research and development (R&D) related to the investment activities/business required for the development of the country and carried out in the country.
11. Foreign investors will pay income tax at the rates applicable to citizens residing within the country.

Union of Myanmar Foreign Investment Law (MFIL) incentives

Under the MFIL, companies registered under the MFIL that have obtained permits from the MIC were entitled to the following special benefits and tax incentives, which were granted at the MIC's discretion:

1. Exemption from income tax for up to five consecutive years for an enterprise. The exemption may be extended for a further reasonable period, depending on the success of the enterprise.
2. Exemption or relief from income tax on profits of a business that are maintained in a reserve fund and subsequently re-invested in Myanmar.
3. The right to deduct depreciation of machinery, equipment, building, or other capital assets used in the business at rates prescribed by the MIC.
4. Relief from income tax for up to 50% of the profits accrued from the export of manufactured goods.
5. The right to pay income tax on the income of foreigners at the rates applicable to citizens residing within the country.
6. The right to deduct from taxable income R&D costs that are necessary for the country.
7. The right to carry forward tax losses for up to three consecutive years, provided the losses are sustained within two years from the end of the tax exemption in (1) above.
8. Exemption or relief from customs duty and/or other internal taxes on imported machinery, equipment, instruments, machinery components, spare parts, and materials used in the business, which are required for use during the period of construction.

9. Exemption or relief from customs duty or other internal taxes on imported raw materials for the first three years of commercial production following the completion of construction.
10. If the investor increases the amount of investment and expands the business within the approved timeframe, it may enjoy exemption and/or relief from customs duty or other internal taxes on machinery, equipment, instruments, machinery components, spare parts, and materials that are imported for the expansion of business.
11. Exemption from commercial tax on goods that are manufactured for export.

Except for item (1) above, the other exemptions and reliefs are subject to discretion of the MIC.

Special economic zones (SEZs)

In addition to foreign investment under the MFIL, foreign investors may invest under the Myanmar Special Economic Zone Law of 2014 (Myanmar SEZ Law).

The Myanmar SEZ Law is a basic law for any SEZ within Myanmar. The main regulatory body handling foreign investment under the Myanmar SEZ Law is the Central Body for the Myanmar SEZ.

The Myanmar SEZ Law contains provisions relating to the exempted zone, business promoted zone, other zone, exempted zone business, other business, developers and investors, exemptions and reliefs, restrictions, duties of developers or investors, land use, banks and finance management and insurance business, management and inspection of commodities by the customs department, quarantine, labour and guarantee of non-nationalisation, dispute resolution, WHT, bank and financial management and insurance business, etc.

Incentives under the Myanmar SEZ Law include:

For investors:

- Income tax holidays for the first seven years starting from the date of commercial operation in respect of those investment businesses operated in an exempted zone or exempted zone businesses.
- Income tax holidays for the first five years starting from the date of commercial operation in respect of those investment businesses operated in a business promoted zone or other business in a promoted zone.
- 50% income tax relief for the investment businesses operated in an exempted zone and a business promoted zone for the second five-year period.
- For the third five-year period, 50% income tax relief on the profits of the business if they are maintained for re-investment in a reserve fund and re-invested therein within one year after the reserve is made.
- Exemption on customs duty and other taxes for raw materials, machinery and equipment, and certain types of goods imported for investors in exempted zones; whereas, for investors in prompted zones, exemption on customs duty and other taxes for the first five years in respect of machinery and equipment imported that are required for construction starting from the date of commercial operation, followed by 50% relief of customs duty and other taxes for a further five years.
- Carry forward of loss for five years from the year the loss is sustained.

For developers:

- Income tax holidays for the first eight years starting from the date of commercial operation.
- 50% income tax relief for the second five-year period.
- For the third five-year period, 50% income tax relief on the profits of the business if they are maintained for re-investment in a reserve fund and re-invested therein within one year after the reserve is made.
- Exemption on customs duty and other taxes for raw materials, machinery and equipment, and certain types of goods imported.
- Carry forward of loss for five years from the year the loss is sustained.

Land use may be granted under an initial lease of up to 50 years and renewable for a period of an additional 25 years. Developers/investors may rent, mortgage, or sell land and buildings to another person for investment purposes within the term granted with the approval of the management committee concerned.

Investors seeking to register an entity under the SEZ need to obtain an investment permit from the relevant SEZ Management Committee.

Foreign tax credit

There is no provision for unilateral relief. Relief may be available pursuant to a tax treaty, but the application of the tax treaties is at the sole discretion of the Ministry of Planning and Finance.

Withholding taxes

Any person making the following payments is required to withhold income tax at the time of payment at the rates listed below. The tax withheld must be paid to the Internal Revenue Department (IRD) within seven days from the date of withholding.

Tax withheld from payments to residents (and branches registered in Myanmar) will be set off against the tax due on their final assessments. Tax withheld from payments to non-resident companies (except the branches registered in Myanmar) is a final tax.

The application of the tax treaties is at the sole discretion of the Ministry of Planning and Finance.

For payments made by state organisations, state enterprises, development committees, co-operative societies, foreign companies, foreign enterprises and organisations, local companies, and under an existing law for purchase of goods, work performed, or supply of services and hiring within the country under a tender, contract, quotation, or other modes, the WHT rate is 2% if the payment is made to a resident and 2.5% if it is made to a non-resident.

	WHT (%)		
Recipient	**Dividends (1)**	**Interest**	**Royalties**
Resident national or resident foreigner	0	0	10
Non-resident corporations and individuals:			
Non-treaty	0	15	15
Treaty:			

Recipient	WHT (%) Dividends (1)	Interest	Royalties
India	0	10 (2)	10
Korea, Republic of	0	10 (2)	10/15 (3)
Laos	0	10	10
Malaysia	0	10 (2)	10
Singapore	0	8/10 (2, 4)	10/15 (3)
Thailand	0	10 (2)	5/10/15 (5)
United Kingdom	0	Not covered	0 (6)
Vietnam	0	10 (2)	10

Notes

1. There is no WHT on dividends, branch profits, and share of profits of an association of persons that have been taxed.
2. Exempt if paid to the government.
3. Lower rate for payments in connection with patents, designs, secret formulas/processes, or industrial, commercial, or scientific equipment/experience.
4. Lower rate if received by a bank or a financial institution.
5. The 5% rate applies for payments in connection with copyrights of literary, artistic, or scientific work, and the 10% rate applies to payments for services of a managerial or consultancy nature, and for information concerning industrial, commercial, or scientific experience.
6. Exempt if the amount is fair and reasonable.

Tax administration

Taxable period

The taxable period of a company is the same as its financial year (income year), which is from 1 April to 31 March. Income earned during the financial year is assessed to tax in the assessment year, which is the year following the financial year. Under the Union Taxation Law 2018, it is stated that the tax fiscal year for 2018/19 will remain the same (i.e. 1 April to 31 March) for all taxpayers except state-owned enterprises, which are required to file tax returns based on the budget year ending 30 September starting 2018/19, from 1 October 2018.

It is also stated in the Union Taxation Law 2018 that the fiscal year for Specific Goods Tax Law, Commercial Tax Law, and Income Tax Law shall be the same for all taxpayers, including both private taxpayers and state-owned enterprises, starting from 1 October 2019. In other words, all taxpayers are required to follow the new financial period of 30 September year-end beginning 1 October 2019. At this juncture, there is no guideline issued by the IRD/Directorate of Investment and Company Administration (DICA) addressing transition issues regarding the change of financial year-end for 2019/20 for private taxpayers. A private taxpayer is likely to have a financial period from 1 April 2018 to 31 March 2019 followed by a financial period from 1 April 2019 to 30 September 2019.

Tax returns

In general, annual income tax returns must be filed within three months from the end of the financial year.

Tax returns for capital gains must be filed within 30 days from the date of disposal of the capital assets.

If a taxpayer discontinues one's business, returns must be filed within one month from the date of discontinuance of business.

The failure of a taxpayer to file income tax returns, knowing that assessable income has been obtained, is deemed to have 'fraudulent intention'.

Payment of tax

Advance corporate tax payments are made in quarterly instalments within ten days from the end of the relevant quarter throughout the income tax year based on the estimated total income for the year. The advance payments and any taxes withheld are creditable against the final tax liability. The date for settling the final tax liability is specified in the notice of demand issued by the IRD.

Capital gains tax needs to be paid within 30 days from the date of disposal of capital assets.

Tax audit process

Under the Myanmar Income Tax Law, if it is found that there is a fraudulent intention to evade tax, the assessment or reassessment of income tax can be made at any time on the income that has escaped assessment of tax.

Failure by a taxpayer to file a return of income knowing that assessable income has been obtained, failure to comply with the notice of the IRD to submit accounts and documents, including the tax return and profit and loss accounts within the time prescribed, or submitting forged instruments and other documents are included within the meaning of fraudulent intention. If the tax authority in the course of investigation finds that a taxpayer has concealed income or particulars relating to income, the taxpayer may be permitted to fully disclose the facts within the specified time. In addition, the taxpayer must pay a penalty equal to 100% of the tax increased on account of the concealment. If the taxpayer fails to disclose the particulars within the specified time or discloses less than the income concealed, the taxpayer will also be subject to prosecution, in addition to paying the tax and penalty. If the taxpayer is found guilty, the taxpayer may be punishable with imprisonment for between three to ten years.

Statute of limitations

The statute of limitation to raise an assessment is three years after the financial year-end. It does not apply in cases of fraudulent default. Mere filing of the income tax return and payment of advance tax in time does not constitute a final tax assessment.

Topics of focus for tax authorities

The following issues are currently being focused on by the tax authorities:

- Timely filing of tax returns and payment of taxes (i.e. corporate tax, commercial tax, employer tax, specific goods tax, etc.).
- Tax deductibility of donations for corporate tax purposes.
- WHT compliance on both domestic and cross-border transactions.
- Stamp duty compliance (i.e. the application of the duty rates and timeliness of payment).
- Related-party transactions (e.g. payment of management fee to head office, shareholder loans).

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Significant developments

There have been no significant corporate tax developments in Namibia during the past year.

Taxes on corporate income

Namibia has a source-based tax system, which means that income from a source within Namibia or deemed to be within Namibia will be subject to tax in Namibia, unless a specific exemption is available.

Income earned by foreign companies from a source within or deemed to be within Namibia will be subject to tax in Namibia. In such cases, the foreign entity must determine whether it is obligated to register a local entity or branch. A foreign company is required to register a local company (local subsidiary) or an external company (branch) if it has established a place of business in Namibia.

In the event that Namibia has entered into a double tax agreement (DTA) with the country where the foreign company resides, such entity will only be taxable in Namibia if it has established a permanent establishment (PE) in Namibia. If a PE exists, only the portion of income attributable to the PE will be subject to tax in Namibia.

Non-residents who do not have a place of business in Namibia may, however, be subject to withholding taxes (WHTs). *See the Withholding taxes section for more information.*

Calculation of taxable income

Gross income	The total amount, in cash or otherwise, received by or accrued to any person from a source within, or deemed to be within, Namibia, excluding receipts of a capital nature (provisions for specific inclusions in gross income and amounts deemed to be from a Namibian source exist).
Less: Exemptions	The Income Tax Act provides for certain amounts to be specifically exempt from tax.
Equals: Income	
Less: Deductions	Expenditures and losses actually incurred to generate income may be deducted, provided that these expenses are not of a capital nature.
	The Income Tax Act specifically provides for certain expenditures to be deductible and allows a deduction for capital allowances.
	Only expenses incurred to generate 'income' may be deducted. Expenses incurred to generate income exempt from tax are not deductible. Apportionment should be considered when expenses are incurred to generate both income and exempt income.
Equals: Taxable income	Taxable income is taxed at the corporate tax rate *as set out under the Tax rates section below.*

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Tax rates

The corporate tax rates are summarised below:

Entity	2017/18 tax rate (%)
Domestic companies and close corporations (excluding entities mentioned below)	32
Branches of foreign companies	32
Registered manufacturers (only applicable for the first ten years of registration)	18
Diamond mining companies and companies that render services to such companies in connection with diamond mining	55
Mining companies (other than diamond mining companies) and companies that render services to such companies in connection with mining	37.5
Long-term insurers (the rate is applied to gross investment income)	12.8
Petroleum income tax rate	35

Local income taxes

Namibia does not levy income taxes at the local, state, or provincial levels.

Corporate residence

The Namibian tax system is based on source and not on residency. Income derived or deemed to be derived from sources within Namibia are subject to tax.

The source is determined as the place where income originates or is earned, not the place of payment. If goods are sold pursuant to a contract entered into within Namibia, the source of income is deemed to arise in Namibia, regardless of the place of delivery or transfer of title.

Certain types of income arising outside Namibia may, in the hands of a domestic company, be deemed to arise in Namibia and be taxed as such. Examples are interest and certain copyright royalties arising outside Namibia.

Permanent establishment (PE)

The term 'permanent establishment' is not defined or recognised in the Income Tax Act, but it is included in all DTAs concluded with Namibia.

A PE includes a fixed place of business. The establishment of a local entity or branch will usually create a PE, although the provisions of the related tax treaty should be considered.

Except for the PE concept embodied in the tax treaties and WHT on service provisions, corporate residence is of little tax significance since transactions are taxed on a source basis.

For the list of DTAs, please see the Withholding taxes section.

Other taxes

Value-added tax (VAT)

VAT is a transaction tax, and the implications will vary for different transactions. Some transactions are taxed at a rate of 15% or 0% while other transactions are exempt from VAT. Input tax deductions may be claimed, subject to certain provisions.

VAT is levied on every taxable supply by a registered person. A taxable supply means any supply of goods or services in the course or furtherance of a taxable activity. A taxable activity means any activity that is carried on continuously or regularly in Namibia that involves the supply of goods or services for consideration.

VAT is payable on all imports for home consumption in Namibia, subject to certain exemptions (e.g. in terms of a technical assistance agreement, donations to the state, goods of which the local supply is zero-rated).

Import VAT is payable on the greater of the free on board (FOB) value plus 10% or the market value. The payment may be deferred in terms of an import VAT account registered with the Directorate of Inland Revenue to the 20th day of the month following the month of importation. Penalties of 10% per month or part of a month and 20% interest on outstanding import VAT, according to the Customs Asycuda reports on import VAT account numbers, are levied by the Directorate of Inland Revenue.

A company/branch is required to register for VAT if it supplies goods or services on a regular basis for consideration and if its taxable supplies (standard rated and zero-rated supplies) exceed 500,000 Namibian dollars (NAD) in any 12-month period.

The Value-added Tax Act, 2000 (as amended) also makes provision for voluntary VAT registration, provided that taxable supplies exceeded or will exceed NAD 200,000 in any 12-month period and the applicant is in good tax standing, has a fixed place of business, and will keep acceptable accounting records.

A registered VAT vendor is entitled to deduct input tax credits paid in the course of taxable supplies made to such person, provided that a tax invoice is available to support the input tax deduction. It is also important to take note of deemed input tax deductions and prohibited input deductions. Import VAT paid may be deducted only as input tax if the import was in furtherance of a taxable activity and the required documentation (e.g. stamped customs entries) is held by the importer.

VAT returns are due within 25 days following the month to which the VAT relates.

The Inland Revenue system automatically selects VAT periods for audits. An audit will focus on deposits made into bank statements and whether VAT was charged as required. It will also focus on whether tax invoices meet the criteria as set out in the VAT Act.

Shareholders of companies and members of close corporations may be held liable jointly or severally for VAT debts of the company or close corporation.

Customs and excise duties

Namibia is a member of the Southern African Customs Union (SACU), and customs duties are not levied on intra-SACU trade (i.e. between Botswana, Lesotho, Namibia, South Africa, and Swaziland).

Customs duties are payable according to the Common Customs Tariff of SACU on imports from outside SACU. Preferential duty rates apply on imports from Southern African Development Community (SADC) countries, while goods may be imported free of customs duties from Zimbabwe in terms of the Namibia-Zimbabwe Free Trade Agreement.

Excise duties are levied on local production of excisable products (e.g. cigarettes, liquor, fuel) and are included on most excisable products imported from another SACU country in terms of the duty at source procedures. Identical excise duty rates are applied throughout the SACU. Importation of excisable products from outside the SACU is subject to customs duties and specific customs duties.

Current specific excise/customs duty rates for the above-mentioned products are as follows:

- Cigarettes: NAD 7.76/10 cigarettes.
- Beer: NAD 95.03/litre absolute alcohol (AA).
- Spirits (whisky, rum, brandy, gin, vodka, etc.): NAD 190.08/litre AA.
- Petrol: 3.909 cents/litre.
- Diesel and biodiesel: 3.817 cents/litre.
- Illuminating kerosene (paraffin): 3.817 cents/litre.

Namibia intends to introduce additional duties on certain excisable products at a rate of 5%. Enabling legislation has not been drafted yet.

Ad valorem excise/customs duties are levied on certain products (e.g. motor vehicles, perfumes) in addition to the normal customs duties.

Ad valorem excise/customs duty rates are as follows for the above-mentioned goods:

- Motor vehicles: ([0.00003 x A] - 0.75)%, with a maximum of 25%, where 'A' is the recommended retail price, exclusive of VAT.
- Perfumes: 7%.

Customs fuel levies are payable on petrol, diesel, and illuminating kerosene. The current customs fuel levies are as follows:

- Petrol: NAD 0.25/litre.
- Diesel: NAD 0.25/litre.
- Illuminating kerosene (paraffin): NAD 0.25/litre.

An increase in fuel levies of another NAD 0.25/litre was announced by the Minister of Finance during March 2018, but legislation has not been promulgated yet in this regard.

Fuel levies payable to the Namibian Road Fund Administration (RFA) may be claimed back for certain non-road operations (e.g. mining, farming, construction) under certain conditions (e.g. NAD 0.9 of the current RFA fuel levy of NAD 1.14 used in mining operations may be claimed back from the RFA).

Surety in the form of a provisional payment, bank, or insurance guarantee is required by Customs on most temporary imports to cover import VAT and customs duties (if applicable).

It is possible to import goods that are subject to customs duties into registered Customs' bonded warehouses, where goods are kept for later use. In this case, the payment of duties may be deferred until the goods are taken out of the bonded warehouse for home consumption or acquitted if the goods are subsequently exported.

Namibia has introduced the AsycudaWorld customs clearing system, which is a web-based, Java-enabled system utilised at points of entry. All land border posts, airports, and harbours are linked to the AsycudaWorld system.

Property taxes

Property taxes are levied by municipalities based on municipal valuations of properties.

Transfer duty

Transfer duty is payable at 12% of the acquisition value where property is acquired by non-natural persons (a sliding scale applies to property purchases by natural persons). While it is normally payable by the buyer, the agreement for the sale of the property may determine the person liable to pay these costs.

Amendments to the Transfer Duty Act were proposed to include transfer duty on the sales of shares/members interest in property/mining right-owning entities. These amendments have not been enacted or promulgated per the Government Gazette.

Stamp duty

Certain transactions may attract stamp duty. The amount of stamp duty payable differs and is based on the nature of every individual transaction.

The basic transactions can be summarised as follows:

Transaction	Stamp duty
Agreements or contracts (other than those where duty is specifically provided for in the Act)	NAD 5
Lease agreement or lease	The stamp duty will be based on lease payments, together with additional considerations specified in the lease agreement
Transfer or issue of marketable securities and other share transactions	NAD 2 for every NAD 1,000 or part thereof of the value/consideration, depending on the specific transaction
Transfer deed relating to immovable property purchased	NAD 12 for every NAD 1,000 or part thereof of the value/consideration, depending on the specific transaction

Additional stamp duty of NAD 5 for every NAD 1,000 of debt secured is payable on the registration of a bond over immovable property.

Annual duty

Annual duty is levied in terms of the Companies Act at an amount of NAD 4 for every NAD 10,000 (or part thereof) of the issued share capital of a company, with a minimum duty of NAD 80 *per annum*. Issued share capital includes ordinary shares, share premium, and preference shares.

Since a branch does not issue share capital, the issued share capital of the head office will be used to calculate the annual duty payable in Namibia.

Payroll taxes

Any remuneration paid by an employer to an employee will place an obligation on the employer to withhold employee taxes. The employee taxes are due on the 20th day of the month following the month during which the payment was made. *The tax tables applicable to individuals are provided in the Taxes on personal income section of Namibia's Individual tax summary at www.pwc.com/taxsummaries.*

Late payment of employee taxes will result in penalties of 10% per month and interest of 20% *per annum*. Both penalties and interest are limited to the amount of tax outstanding.

Social security contributions

Social security contributions are payable by the employer for employees working in Namibia. Social security is based on a principle of 50/50 contributions from employers and employees. It is calculated at 0.9% of earnings, with a minimum monthly contribution of NAD 2.70 and a maximum monthly contribution of NAD 81 each (i.e. the total maximum monthly contribution of both the employer and the employee will amount to NAD 162).

Workmen's compensation

Under the Employees Compensation Act, employers are required to contribute to a fund that provides cash benefits for industrial injury, disability, and death. Contribution rates vary according to inherent occupational risk, from less than 1% in most low-risk commercial/administrative occupations to 8% for high-risk sectors (drilling, tunnelling, and rock-blasting). Employees whose annual remuneration exceeds NAD 81,300 are normally excluded from coverage.

Branch income

Branch income that is received or accrued from a source within, or deemed to be within, Namibia is taxable in Namibia based on the normal corporate tax rules.

A branch is regarded as an extension of its foreign head office. A branch may, therefore, not deduct fees paid to its foreign head office (unless a tax treaty provides for such a deduction), as it is argued that a branch cannot transact with itself. Reimbursement of actual expenses may, however, be deducted, subject to the normal deduction rules.

Transfer pricing rules apply to transactions between a branch and cross-border related parties.

Income determination

Inventory valuation

Inventory is valued at cost for tax purposes in Namibia.

The last in first out (LIFO) basis of valuation is only accepted if:

- written consent was obtained from the Minister of Finance before such taxpayer renders one's income tax return for the first year of assessment for which the LIFO basis was adopted by the taxpayer, and
- various conditions are met by the taxpayer as determined by the Minister of Finance.

Capital gains

Other than profits on the sale of mining and petroleum licences/rights, and the transfer of any share/interest (whether directly or indirectly) in a company owning a mineral/petroleum licence or right, capital gains are not taxed in Namibia.

Mining and Petroleum licences/rights

The sale, donation, expropriation, cession, grant, or any other alienation or transfer of ownership of any share or member's interest in a company that holds a mineral or petroleum licence/right, whether directly or indirectly, is included in the definition of gross income. The definition also specifically includes a sale of shares in a company for a licence or right to mine minerals or oil and gas in Namibia.

Dividend income

Dividends received are exempt from tax. Non-resident shareholders tax (NRST) should be withheld on dividends declared to non-resident shareholders. *For more information on NRST, see the Withholding taxes section.*

Interest income

Namibian companies are taxed on interest received from a Namibian source. Persons other than Namibian companies are subject to a final WHT on interest from banks and unit trusts. Interest paid to non-residents is subject to WHT on interest. *For more information, see the Withholding taxes section.*

Partnership income

The relevant partners of a partnership are regarded as the responsible taxpayers and not the partnership itself.

In practice, the assessment of a partnership is treated like that of a private business. The partnership is first treated as a business entity on its own in terms of income and expenditure. The profit or loss at the end of the year is then allocated to the individual partners. If they derived a profit from the partnership, it is added to their other non-partnership income; or if the partnership made a loss, the partners have the right to deduct it from their non-partnership income.

Rental income

Companies are taxed on rental income received from a Namibian source.

Royalty income

Companies are taxed on royalty income received from a Namibian source.

Foreign income

Corporate tax in Namibia is determined on the source basis; consequently, only income from a Namibian source or deemed Namibian source is subject to corporate tax.

Deductions

Capital allowances

The cost (including finance charges) of vehicles, machinery, equipment, and other articles used by the taxpayer to generate income is deductible in three equal annual allowances claimable from the date the costs were incurred and not only when the asset was taken into use. No apportionment is allowed where an asset is held for less than 12 months.

Buildings used by the taxpayer to generate income qualify for an initial allowance of 20% of erection costs in the year they are first brought into use. Thereafter, an annual allowance of 4% is deductible for the 20 following years. Additions to existing buildings (not alterations, improvements, or repairs) qualify for the same 20% and 4% deductions. Note that the allowance is calculated on the cost of erection and not the cost of acquisition. The allowance is also only calculated for a period of 21 years from the date of erection.

Registered manufacturers can claim 20% of the erection costs of the building in the year it is first brought into use, and 8% for ten years thereafter (*see Manufacturing in the Tax credits and incentives section*).

Mining exploration and initial development expenditure incurred before commencement of mining production are deductible in full in the first year that income is generated from the mine. Subsequent developmental expenditures are written off in three equal annual allowances.

Capital allowances may also be deducted with respect to patents, trademarks, leasehold improvements, etc.

A recovery or recapture of allowances previously claimed should be included in the gross income of a taxpayer in the event that the allowance is recovered or recaptured by way of disposal, withdrawal from trade for non-trade purposes, or removal from Namibia. The recapture is calculated at the market value of the asset.

Goodwill

The amortisation of goodwill is not deductible for tax purposes and should be excluded from calculating taxable income.

Start-up expenses

Mining

The Income Tax Act allows exploration and initial development expenditure to be deducted in full during the year in which the mine commences with production. All exploration expenses incurred before the commencement of mining is therefore deferred until such time that the mine commences production.

All other industries

The general deduction formula determines that only expenses incurred in the production of income that are not of a capital nature may be claimed for tax purposes. The Income Tax Act defines income as ‘income in any year or period of assessment’.

Interest expenses

A deduction is allowed in respect of financing expenditure incurred in respect of any financing agreement for the acquisition of fixed assets utilised in ordinary trade activities.

The general deduction formula determines that only expenses incurred in the production of taxable income that are not of a capital nature may be claimed for tax purposes. Therefore, where the interest can be argued to be incurred in the production of income, the interest expense will be deductible.

Thin capitalisation legislation may be applied to interest paid on cross-border, related-party loans (*see Thin capitalisation in the Group taxation section*).

Bad debt

The Income Tax Act allows a specific deduction for bad debts, provided that the amount written off was previously included in the taxpayer's income.

Furthermore, the Income Tax Act prohibits the following deduction from taxable income:

"any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, security, or indemnity".

Accordingly, where the bad debts are recoverable under insurance, the amounts are not deductible for tax purposes.

Charitable contributions/donations

A specific deduction for donations is allowed, provided that it is made to a registered welfare organisation or an approved educational institution. It is a further requirement that a certificate should be issued by the welfare organisation/educational institution in respect of the donation and submitted with the entity's tax return in order for it to qualify as a deduction. However, this deduction may not create or increase a tax loss.

Fines and penalties

In terms of practise applied by Inland Revenue, tax penalties and fines are not deductible for tax purposes.

Taxes

Taxes levied on income are not allowed as a deduction.

Net operating losses

Assessed tax losses may be carried forward indefinitely if the company continues the same trade. Tax laws do not allow losses to be transferred to other members of a group, and anti-avoidance provisions may be triggered by transactions designed to transfer or exploit assessed losses.

If a company ceases to trade for a full fiscal year, its assessed losses are forfeited, regardless of subsequent activities. Assessed losses are also reduced in the event of a compromise agreement with creditors.

Namibian tax legislation does not provide for the carrying back of tax losses.

Payments to foreign affiliates

For information on payments to foreign affiliates, please refer to the Branch income section, Group taxation section, and Withholding taxes section.

Group taxation

No taxation of combined operations is allowed in Namibia where operations are conducted in a group.

Transfer pricing

The Minister of Finance confirmed that enforcing transfer pricing laws are high on their agenda and that they are working with, amongst others, the Finish Revenue Authority and the African Tax Administration Forum.

Namibian transfer pricing legislation is aimed at enforcing the arm's-length principle in cross-border transactions carried out between connected persons. It is based on guidance set out by the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for multinational enterprises and tax administrations.

The objective of the transfer pricing legislation is to provide taxpayers with guidelines regarding the procedures to be followed in the determination of arm's-length prices, taking into account the Namibian business environment. It also sets out the Minister of Finance's views on documentation and other practical issues that are relevant in setting and reviewing transfer pricing in international agreements.

The transfer pricing legislation is essentially aimed at ensuring that cross-border transactions between companies operating in a multinational group are fairly priced and that profits are not stripped out of Namibia and taxed in lower tax jurisdictions. The legislation achieves this by giving the Minister of Finance (who essentially delegates to the Directorate of Inland Revenue) the power to adjust any non-market related prices charged or paid by Namibian entities in cross-border transactions with related parties to arm's-length prices and to tax the Namibian entity as if the transactions had been carried out at market-related prices.

In terms of the normal penalty provisions of the Income Tax Act, the Directorate of Inland Revenue may levy penalties of up to 200% on any amount of underpaid tax. Consequently, the Inland Revenue may invoke such provisions in the event that a taxpayer's taxable income is understated as a result of prices that were charged in affected transactions, which were not carried out at arm's length. Further, interest will be charged on the unpaid amounts at 20% *per annum*.

Thin capitalisation

The Minister of Finance may, if any amount of financial assistance provided by a foreign connected person is excessive in relation to a company's fixed capital (being share capital, share premium, accumulated profits, whether capital or not), disallow, for income tax purposes, the deduction of any interest or other charges payable by the Namibian person on the 'excessive portion' of the financial assistance provided by the foreigner.

There is no guidance that provides a definition for 'excessive'. Therefore, each case should be considered on the basis of the facts provided. The 3:1 ratio is applied by the Bank of Namibia for exchange control purposes, and this guideline is therefore deemed suitable until otherwise determined by Inland Revenue.

Controlled foreign companies (CFCs)

CFC rules are not applicable in Namibia.

Tax credits and incentives

Foreign tax credit

A tax credit may be claimed in Namibia for foreign taxes paid on dividends, royalties, and similar income, limited to the amount of tax payable in Namibia. Proof of the taxes paid in the foreign jurisdiction should be provided to Inland Revenue in order to claim the tax credit.

Manufacturing

The following is a high-level comparison of the different tax treatments for normal companies and registered manufacturing companies. This description does not consider the specific conditions that should be met in order for these incentives to be utilised.

Note that only the building allowance and preferential tax rate (*as set out below*) may create or increase a tax loss.

Building allowance

A building allowance is deductible with respect to buildings used for purposes of trade.

For normal companies, the allowance is calculated as 20% of the cost of erection in the year in which the building enters service and 4% during the 20 years that follow.

For registered manufacturing companies, the allowance is calculated as 20% of the cost of erection in the year in which the building enters service and 8% during the ten years that follow.

Employee cost allowances

For normal companies, expenditures for remuneration and training of employees are deductible for tax purposes.

For registered manufacturing companies, an additional allowance of 25% of remuneration and training of employees that are directly engaged in the manufacturing process are deductible. However, this allowance may not create or increase a tax loss. Deductions sought for training should be approved by the government.

Export expenditure allowance

For normal companies, export expenditures incurred are deductible for tax purposes.

For registered manufacturing companies, an additional allowance of 25% of costs incurred in an export country, in order to export Namibian manufactured goods to such country, may be deducted. However, this allowance may not create or increase a tax loss.

Export allowance

Any taxpayer (not required to be a registered manufacturer) that derives income from the export of goods manufactured in Namibia, excluding meat or fish, may deduct an export allowance equal to 80% of the taxable income derived from the export of manufactured goods.

Gross profit derived from the export of manufactured goods as a percentage of total gross profit should be used to determine the percentage of taxable income that is used to calculate the export allowance. However, this allowance may not create or increase a tax loss.

Transport allowance

For normal companies, land-based transport costs (i.e. transport by road or rail) are deductible for tax purposes.

For registered manufacturing companies, an additional allowance of 25% of land-based transport cost in respect of material and components used in the manufacturing process or equipment imported for direct use in the manufacturing process may be deducted. However, this allowance may not create or increase a tax loss.

Preferential tax rate

The normal tax rate for companies other than mining companies or registered manufacturers is 32%.

The tax rate for a registered manufacturer for taxable income with respect to the manufacturing activity for which they are registered is 18%. This preferential rate is applicable for a period of ten years from registration as a manufacturer.

Export Processing Zones (EPZs)

In order to become an EPZ company, a particular entity must register with the EPZ governing body and obtain approval from Inland Revenue.

An EPZ company qualifies for the following benefits:

- The company is exempt from corporate tax.
- No VAT is payable on the sale of goods or services rendered in the zone.
- No VAT is payable on goods imported or manufactured in the zone.
- No customs or excise duty is payable on goods imported into the zone.
- No stamp duty or transfer duty is payable in relation to the transfer of movable or immovable property in the zone.
- A 75% refund of expenditures incurred in training Namibian citizens.
- Some of the provisions in the Labour Relations Act do not apply in the zone.

Enterprises must comply with the following requirements in order to qualify for EPZ status:

- Goods must be exported to countries other than countries in the SACU.
- Industrial employment must be created or increased.
- Namibia's export earnings must be increased as a result of manufactured goods exported.

EPZ companies may not be involved in retail business operations.

Withholding taxes

WHTs are applicable where certain payments are made to non-Namibian residents.

Dividends

Dividends declared by a Namibian company to a non-resident holding company are subject to NRST, a WHT. NRST is payable at the standard rate of 10% if at least 25% of shares are held in the Namibian company and the shareholder is a company. In all other cases, the NRST payable is 20%. DTA relief may be available.

NRST is payable within 20 days after declaration of a dividend.

Interest

A WHT of 10%, calculated on the gross amount of interest, is payable on interest accruing to any person, other than a Namibian company, from a registered Namibian banking institution or unit trust scheme. The tax withheld is a final tax, and the financial institution is responsible to withhold the tax.

Namibian companies, however, are taxed on interest at the corporate tax rate.

It is the obligation of the financial institution to withhold the tax and pay such tax to the revenue authorities.

WHT of 10% is payable on the interest accruing or paid to a non-resident. The WHT is payable within 20 days after the interest payment was made. Interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable.

Treaty relief may be available.

Royalties or similar payments

WHT on royalties are payable when a Namibian company pays a royalty to a non-resident. WHT is levied at a fixed rate of 10% and is payable within 20 days after the end of the month during which the liability for payment is incurred.

A royalty includes payment for the use or right to use any patent or design, trademark, copyright, model, pattern, plan, formula, or process, or any other property or right of a similar nature. A royalty also includes the imparting of any scientific, technical, industrial, or commercial knowledge or information for use in Namibia. The nature of fees payable should therefore be carefully considered in order to determine whether the relevant amount represents a royalty. It also include payments made for the use or right to use industrial, commercial, or scientific equipment (i.e. rentals).

Treaty relief may be available.

Services

Any Namibian resident paying a management or consultancy fee to a non-resident must withhold tax at 10%.

Management and consulting fees are specifically defined as: “any amount payable for administrative, managerial, technical, or consultative services or any similar services, whether such services are of a professional nature or not”.

A branch is specifically included in the definition of a resident.

The rate is subject to DTA relief, where applicable.

Fees paid to non-resident directors and foreign entertainers are subject to WHT of 25%. No treaty relief is available.

Summary of WHT payable

The WHT rates and treaty relief for Namibian DTAs can be summarised as follows. Note that the tax treaties contain certain requirements that should be met before the reduced tax rate may be applied.

The definitions of dividends, interest, and royalties in the various treaties should also be considered.

	WHT (%)				
Recipient	**Dividends**	**Interest**	**Royalties**	**Management, administrative, technical, and consulting fees**	**Directors fees**
Non-treaty	10/20 (1)	10 (2)	10	10	25
Treaty:					
Botswana	10	10	10	10 (7)	25
France	5/15 (3)	10	10	0	25
Germany	10/15 (3)	0	10	0	25
India	10	10	10	10	25
Malaysia	5/10 (1)	10	5	5	25
Mauritius	5/10 (1)	10	5	0	25
Romania	10 to 15 (4)	10	5	0	25
Russian Federation	5/10 (5)	10	5	0	25
South Africa	5/15 (1)	10	10	0	25
Sweden	5/15 (3)	10	5	10 (7)	25
United Kingdom	5/10/15 (6)	N/A	5	0	25

Notes

1. Lower rate applies where at least 25% of shares are held in the Namibian company. Higher rate applies otherwise.
2. Namibian companies are taxed at the corporate tax rate on interest received.
3. Lower rate applies where at least 10% of shares are held in the Namibian company. Higher rate applies otherwise.
4. Rate depends on shareholding.
5. Lower rate applies where at least 25% of shares are held in the Namibian company and recipient directly invested at least 100,000 United States dollars (USD) in the equity capital of the company paying the dividend. Higher rate applies otherwise.
6. 5% where at least 50% of shares are held in the Namibian company. 10% where at least 25% of shares are held in the Namibian company. 15% otherwise.
7. Local rates are lower than the 15% rate per the treaty.

Mining royalties

The Minerals (Prospecting and Mining) Act levies a royalty on minerals won or mined by a licence holder in Namibia, based on the table below:

Group of minerals	Market value of minerals levied as a royalty (%)
Rough diamonds	10
Rough emeralds, rubies, and sapphires	10
Unprocessed dimension stone	5
Gold, copper, zinc, and other base metals	3
Semi-precious stones	2
Nuclear fuel minerals	3
Industrial minerals	2
Non-nuclear fuel minerals	2
Oil and gas	5

Source: *www.chamberofmines.org.na/index.php/mining-tax-regime*

Tax administration

Taxable period

The tax year for companies and close corporations is aligned with the financial year.

Tax returns

The income tax return is due within seven months after the financial year-end of the company and can be extended to five months after the seventh month due date, provided that no other prior year income tax returns are outstanding.

Payment of tax

The first provisional payment for income tax is due within six months from the commencement of the company's financial year (at least 40% of tax payable at year-end is paid on first submission). The second provisional payment is due on/before the last day of the respective tax year (at least 80% of tax payable at year-end is paid on second submission). The final provisional payment is due within seven months after the financial year-end of the company.

WHT on dividends are due within 20 days after declaration of the dividend.

WHT on royalties or similar payments are due within 20 days after the end of the month during which the liability for payment of the royalty was incurred.

WHT on services is payable to Inland Revenue within 20 days after the end of the month during which the amount was deducted or withheld.

WHT on interest is due within 20 days after the end of the month during which the interest was paid. Interest is deemed to be paid on the earlier of actual payment or when the interest becomes due and payable.

It is advised that if relief is available under the DTA, a nil form should still be submitted when payment is made to non-residents. The amount of DTA relief claimed should be disclosed on the form submitted.

No cheques are accepted as a means of payment at Inland Revenue.

Penalties and interest

The penalties and interest due for late submissions and payments can be summarised as follows:

Tax area	Reason	Penalty	Interest (per annum)
1st provisional tax	Late submission	NAD 100 per day penalty for outstanding provisional tax returns	None
	Late payment	10% per month *	20%*
	Under-estimation	Up to 100% of underpaid amount	None
2nd provisional tax	Late submission	NAD 100 per day penalty for outstanding provisional tax returns	None
	Late payment	10% per month *	20%
	Under-estimation	Up to 100% of underpaid amount	None
Income tax return	Late submission	10% one-off penalty if taxes were paid late	None
	Late payment	Where tax return is submitted late, then 10% once-off penalty	20%
	Omission/incorrect statement	Up to 200%	20%
WHT	Late payment	10% per month *	20%
	Late submission	None	None

* Both penalties and interest are limited to the amount of taxes outstanding.

Anti-avoidance

Note that the Income Tax Act, Act 24 of 1981, contains an anti-avoidance section, Section 95, which enables the Receiver of Revenue to disregard the implications of a transaction or scheme if it can be proven that:

- such transaction or scheme had been entered into to avoid or postpone the payment of any duty or levy imposed by the Act
- such transaction or scheme was entered into or carried out by means or in a manner that would not normally be employed in the entering into or carrying out of a transaction, operation, or scheme of the nature of the transaction, operation, or scheme in question, or has created rights or obligations that would not normally be created between persons dealing at arm's length under a transaction, operation, or scheme of the nature of the transaction, operation, or scheme in question, and
- such transaction or scheme was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of liability for the payment of any tax duty or levy.

The Receiver of Revenue can, at its sole discretion, impose Section 95 on any transaction or scheme, which will place the onus on the taxpayer to prove that any/all of the requirements noted above will not be applicable to the transaction or scheme.

Tax audit process

The tax audit process is a discretionary process instituted by Inland Revenue. Inland Revenue will inspect the validity of invoices and whether such expenses are deductible for tax purposes.

Generally, income tax audits are initiated on amounts being refunded to taxpayers, with the focus being on high-value refunds.

Subsequent to an audit, a letter will be sent to the taxpayer indicating changes made to the return of income.

In the event that the taxpayer agrees with the outcome, an assessment is issued. Where the taxpayer is not satisfied with the outcome, an objection may be lodged within 90 days.

Statute of limitations

There is no statute of limitation in respect of claiming a refund for excess income tax paid. Debts to the state prescribe after 30 years.

Topics of focus for tax authority

Topics of focus for the tax authority include import VAT, general compliance, transfer pricing, payment of subsistence and travel allowances to employees, and employee taxes.

Netherlands

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Significant developments

The corporate tax system of the Netherlands contains a number of well-known features providing for an attractive investment climate, such as: the fiscal unity regime with tax consolidation for group companies, a full participation exemption for capital gains and dividends from qualifying participations, and several favourable tax regimes (e.g. for patent income, investment vehicles, and income from ocean shipping activities). There is currently no withholding taxation on interest or royalty payments made by the taxpayer.

On 19 September 2017 (Budget Day), the Dutch Ministry of Finance published the 2018 Dutch Tax Package. By the end of 2017, the Senate approved the Tax Package. Most changes have taken effect as of 1 January 2018 and apply to financial years starting on or after that date. In addition, a 'coalition agreement' expressing the intentions of the newly formed government was published in the second half of 2017. The coalition agreement foresees a number of changes in the current corporate income and dividend withholding tax regime, but there is yet no actual legislative proposal to amend those taxes accordingly.

Because of the 2018 Tax Package, a foreign entity holding a substantial interest in a company domiciled in the Netherlands may only be treated as a non-resident company subject to (Dutch) corporate income tax (CIT) if one of its main purposes is to help another to avoid personal income taxation. Before 2018, such tax liability also existed if one of the main purposes was to help another to avoid dividend withholding tax (WHT). The 2018 Tax Package introduced a dividend WHT obligation for holding cooperatives domiciled in the Netherlands in so far as there are 'qualifying membership rights', which entitle the holder to at least 5% of the annual profits or liquidation proceeds, in that cooperative. Additionally, it broadened the dividend WHT exemption in participation situations within the European Union (EU)/European Economic Area (EEA) by making it available to situations of third countries that have entered into a tax treaty or similar arrangement with the Netherlands, provided that the treaty or arrangement contains a dividend article. Note, however, that there are some additional tax treaty domicile requirements that must be complied with.

Also note that the new coalition has expressed the intention to abolish the dividend WHT by 2020, except in cases of abuse, and to reduce the CIT rate from 25% to 21% by 2021.

On 22 February 2018, the European Court of Justice (ECJ) issued its judgement in the joined cases C-398/16 and C-399/16 on the consequences of EU law for the Dutch fiscal unity regime. It ruled the 'per element approach' applicable to the Dutch regime. In reaction to the ECJ's decision, the Dutch Ministry of Finance will amend several provisions of the Corporate Income Tax Act (CITA) and Dividend Withholding Tax Act (DWTA) with retroactive effect to 25 October 2017, the date of the Advocate General (A-G) Campos Sanchéz-Bordona's Opinion in those cases. Despite the presence of a Dutch fiscal unity, the amended provisions will apply as if there was no fiscal unity. The amendments include the application of the rules on 'the deduction of interest on loans that are directly or indirectly granted by a group company in order to finance an acquisition or capital contribution deduction' and on the 'deduction of excess interest on debts that are deemed to be related to the financing of participations' as if there is no fiscal unity. The same holds true for elements of the participation exemption with respect to the portfolio investment participations and the 'anti-mismatch' rule, as well as for the limitation of the utilisation of losses after a change of 30% or more of the ultimate control in a company and the effective reduction of dividend WHT payments in case of certain re-distributions of dividend. The actual legislative proposal is expected in the course of 2018.

As of 1 January 2017, most proposals of the 2017 Dutch Tax Package have become applicable to financial years starting on or after that date. For the application of the interest deduction restriction aimed at profit drainage and in the case of certain acquisition debts, the term 'related entity' is extended to include, among other things, entities that form a collaborating group. Also, the Dutch innovation box regime is aligned with the modified nexus approach as described in the Organisation for Economic Co-operation and Development (OECD) report on Action 5. Transitional measures apply to certain assets, especially those created before 1 July 2016 (e.g. the continuing application of the current innovation box regime). Additionally, as of 1 January 2017, seaports are no longer be exempt from CIT.

Treaty developments

The Netherlands pursue an active tax treaty policy in order to maintain and extend its wide tax treaty network. Most Dutch bilateral tax treaties are based on the OECD Model Tax Convention. The Netherlands has concluded bilateral tax treaties for the avoidance of double taxation on income and capital (DTCs) with over 90 countries worldwide.

Taxes on corporate income

In general, a Dutch resident company is subject to CIT on its worldwide income. However, certain income can be exempted or excluded from the tax base. Non-resident entities only have a limited tax liability with regard to income from Dutch sources.

Standard corporate income tax (CIT) rate

The standard CIT rate currently stands at 25%. There are two taxable income brackets. A lower rate of 20% applies to the first income bracket, which consists of taxable income up to 200,000 euros (EUR). The standard rate applies to the excess of the taxable income.

The earlier proposal to increase the first bracket to EUR 250,000 per 2018, to EUR 300,000 per 2020, and to EUR 350,000 as of 2021, is withdrawn. The first bracket will continue to apply to taxable income up to EUR 200,000.

However, the new coalition has expressed its intention to reduce both the lower and standard CIT rate starting from 2019. The rate will be reduced in steps from 25% to

24% in 2019, to 22.5% in 2020, and to 21% in 2021. The lower rate will decrease by the same steps, from 20% to 19% in 2019, to 17.5% in 2020, and to 16% in 2021. There is no legislative proposal yet.

Fiscal investment fund regime

In general terms, under the existing fiscal investment fund regime, the CIT rate for fiscal investment funds is 0%, provided that their profit is made available to the shareholders and holders of certificates of participation no later than eight months after year-end.

Fiscal investment funds may also invest in real estate development (or redevelopment) activities, provided that these activities take place through a subsidiary subject to Dutch CIT and the development (or redevelopment) activities are exercised for the benefit of real estate that is (or will be) forming part of the fund's own portfolio, an affiliated fiscal investment fund's portfolio, the portfolio of a company in which the fund or the affiliated fund has a substantial interest, or for the benefit of the subsidiary's own portfolio ('project development' subsidiary). Fiscal investment funds that invest in real estate are allowed to hold a taxable subsidiary that provides customary services in relation to the real estate held by the Dutch real estate investment trust (REIT). Examples are conference facilities or the exploitation of an in-house restaurant.

Exempt investment fund regime

The exempt investment fund regime exists next to the fiscal investment fund regime described above. In accordance with the exempt investment fund regime, investment funds as defined in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*), which meet certain conditions, can request an exemption from CIT. Apart from the exempt status for CIT purposes, the exempt investment fund is not obligated to withhold dividend WHT with regard to profit distributions to its shareholders.

Innovation box regime

A special regime applies with respect to profits, including royalties, derived from a self-developed intangible asset (developed after 31 December 2006). In this so-called innovation box, the taxpayer may opt, under certain conditions, for the application of a lower effective rate on taxable profits derived from these intangible assets. Following the 2018 Dutch Tax Package, the effective tax rate of the innovation box is increased to 7% as of 1 January 2018 (previously 5%).

The innovation box is applicable if at least 30% of the profits have been originated by the patent. Companies that have incurred certain qualified research and development (R&D) costs for the development of intellectual property (IP) for which no patent was granted are also entitled to the favourable effective tax rate. This is subject to the condition that these qualified R&D assets became part of the company's assets after 31 December 2007.

The lower effective tax rate only applies to positive income, allowing innovation losses to be taken into account in full. It is also possible to include profits from an intangible asset derived in the period between the patent application and the granting of the patent in the innovation box regime (not for R&D assets).

The outcomes of the OECD/G20's base erosion and profit shifting (BEPS) project have influenced the Dutch innovation box regime. As of 2017, the Dutch innovation box regime is aligned with the modified nexus approach as described in the OECD report on Action 5. Transitional measures apply to certain assets, especially those created before 1 July 2016 (e.g. the continuing application of the former innovation box regime).

Tonnage tax regime

In order to stimulate entrepreneurs engaged in ocean shipping, a favourable regime (known as the Dutch tonnage tax regime) may be available to certain shipping companies. Under this regime, the taxable profit of a sea-going vessel is based on its registered net tonnage multiplied by a fixed amount of deemed profit per ton instead of the actual profits from the exploitation. The regime only applies to the calculation of the profit related to the qualifying shipping activities. These activities include operating vessels in international traffic (including transportation for the purpose of the exploitation of natural resources at sea), cable and pipe-laying activities at the bottom of the sea, and towing and dredging and connected activities. The profits from the qualifying activities are taxed at a deemed tonnage profit according to a five bracket regressive scale system. The tonnage tax regime applies upon request and for a fixed period of ten years or multiples of the ten-year period.

Local income taxes

There are no provincial or municipal corporate income taxes in the Netherlands.

Corporate residence

In the Netherlands, corporate residence is determined by each corporation's facts and circumstances. Management and control are important factors in this respect. Companies incorporated under Dutch law are deemed to be residents of the Netherlands (although not with respect to certain provisions, such as the participation exemption and fiscal unity).

Permanent establishment (PE)

Non-resident companies that are neither incorporated nor effectively managed in the Netherlands are limited in their liability to tax in the Netherlands if they receive Dutch-source income. This could be, for instance, business income derived from a Dutch PE or permanent representative. The definition of a PE for Dutch tax purposes is largely inspired by the OECD Model Convention definition and commentary.

The concept of a PE is also of relevance for resident corporate taxpayers. The Netherlands provides international double taxation relief, amongst others, with respect to income attributable to business activities carried on through a PE abroad.

The outcomes of the OECD/G20's BEPS project may influence the definition of a PE to be included in new or newly renegotiated Dutch tax treaties. The Netherlands has announced that the outcomes of the final report on Action 7 ('Preventing the Artificial Avoidance of Permanent Establishment Status') have now become part of Netherlands' tax treaty policy. In addition, the Netherlands has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) to implement the tax treaty related outcomes of, amongst other, BEPS Action 7. With respect to the MLI provisions relating to the definition of PE, the Netherlands has made some reservations and notifications at the time of the signature. Those relate to the MLI provision on the 'Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar

Strategies', the MLI provision on the 'Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions', and the MLI provision on the 'Splitting-up of Contracts'.

Other taxes

Value-added tax (VAT)

VAT, known in Dutch as the *Belasting over de Toegevoegde Waarde* or BTW, is payable on sales of goods and on services rendered in the Netherlands as well as on the importation of goods and on the 'intra-European' acquisition of goods. There are three VAT rates, which are 21%, 6%, and 0%.

The main VAT rate is 21%.

The reduced 6% VAT rate is applicable on certain prime necessities (and also on certain energy-saving insulation activities on houses).

The special 0% VAT rate is applicable mainly to intra-EU supplies, exports, imports stored in bonded warehouses, services rendered in connection with the above, and certain other services.

The following are exempt from VAT:

- The supply of immovable property two years after putting it into use and lease. However, if the lessee's use of the immovable property is 90% or more for input VAT-deductible purposes, the lessor and lessee may opt to be subject to VAT on rent, in which case the lessor may deduct the VAT charged in respect of the property.
- Medical, cultural, social, and educational services.
- Services provided by banks and other financial institutions in connection with payment transactions and the granting of credit facilities.
- Insurance transactions.
- Transactions in shares.

Customs and excise tax

Many goods imported to the Netherlands from outside the European Union are subject to customs and excise duties. The tariffs and rates that apply to the different goods vary widely and change regularly.

An excise tax is levied on certain consumer goods (e.g. cigarettes, cigars, mineral oils, alcoholic products). If the goods are used solely as raw materials, no excise tax is levied. The excise tax is refundable if the article is exported.

Immovable property tax

Municipalities impose an annual immovable property tax on the owners of immovable property. The rates depend on the municipality. The taxable basis is the market value of the immovable property. Please note that the (assessment of the) value is also of importance for CIT, as depreciation might be limited based on this value (*see Limited depreciation of immovable property in the Deductions section*).

Transfer tax on immovable property

Acquisition of economic or legal ownership of immovable property in the Netherlands is subject to a 6% transfer tax on market value. Some exemptions are available. Real estate transfer tax on dwellings is 2%.

Transfer tax on acquisition of shares in a real estate entity

The acquisition of shares in an entity that owns real estate may also be subject to transfer tax if that entity is characterised as a so-called real estate entity. The threshold for qualifying as a real estate entity is met if more than 50% of the assets of the entity consist of real estate and at least 30% consist of Dutch immovable property.

Stamp duty

There are no stamp duties in the Netherlands.

Capital tax

The Netherlands do not levy capital tax on capital transactions (e.g. issue or increase capital).

Payroll taxes

Employers must withhold wage tax from the employee's gross salary and transfer the amount to the tax authorities. Employees may treat the withheld wage tax as an advance levy of income tax. The income tax due is settled with the withheld wage tax. *The tax tables applicable to individuals are provided in the Taxes on personal income section of the Netherlands Individual tax summary at www.pwc.com/taxsummaries.*

Social security contributions

Employers must withhold national insurance contributions from the employee's salary at an aggregate rate of 27.65% (2018) calculated on the first EUR 33,994 (2018) of each employee's gross salary and transfer the amount to the tax authorities. The employer bears the burden of the employee's insurance contributions, which are also calculated by reference to the employee's salary. Under circumstances, it may be required to pay or withhold a contribution based on the Health Care Insurance Act.

Insurance tax

An insurance tax is payable on insurance premiums if the insured is a resident of the Netherlands or if the insured object is in the Netherlands. The insurance tax rate is 21%. Several exemptions are available (e.g. insurances of ships and aircraft operated in international traffic are exempt from insurance tax). In certain situations, an insurer outside the European Union may be required to take on a tax representative in the Netherlands.

Waste management contribution

Companies annually bringing 50,000 or more kilograms of packing material on the market must pay a 'waste management contribution' (*Afvalbeheersbijdrage*). The amount payable varies to the total weight and type of packaging. The contribution aims to cover the costs of recycling package materials.

Producers and importers of packaging expecting to exceed the threshold must register with the Packaging Waste Fund (*Afvalfonds Verpakkingen*) upfront. In the current year, they must file an estimation of the expected total volume of packing material. The contribution is then provisionally calculated. Before 1 April of the next calendar year, the actual amount and type of packaging must be reported. The actual contribution payable is recalculated accordingly.

Branch income

Rates for Dutch branch profits are the same as for other corporate profits, but no tax is withheld on transfers of profits to the head office. The tax base is, in principle, calculated on the same rules as for Dutch-resident companies.

Income determination

Inventory valuation

In general, stock/inventory is stated at the lower of cost or market value. Cost may be determined on the basis of first in first out (FIFO), last in first out (LIFO), base stock, or average cost. The LIFO system may be used for commercial/financial and tax purposes.

There is no requirement of conformity between commercial/financial and tax reporting.

Capital gains

Capital gains are taxed as ordinary income. However, capital gains realised on disposal of shares qualifying for the participation exemption are tax exempt (*see Dividend income below*).

The gain on disposal of depreciable assets may be carried over to a special tax deferral reinvestment reserve but must then be deducted from the acquisition cost of the later acquired assets. Except in special circumstances, the reserve cannot be maintained for more than three consecutive years. If the reserve has not been fully applied after three years, the remainder will be liable to taxation.

Capital losses are deductible unless attributable to the disposal of a shareholding qualifying for the participation exemption.

Dividend income

Subject to meeting the conditions for the participation exemption, a Dutch company or branch of a foreign company is exempt from Dutch tax on all benefits connected with a qualifying shareholding, including cash dividends, dividends in kind, bonus shares, hidden profit distributions, capital gains, and currency exchange results.

Participation exemption

The participation exemption will apply to a shareholding in a Dutch company if the holding is at least 5% of the investee's capital, provided the conditions are met.

As a general rule, the participation exemption is applicable as long as the participation is not held as a portfolio investment. The intention of the parent company, which can be based on particular facts and circumstances, is decisive. Regardless of the company's intention, the participation exemption also is applicable if the sufficient tax test (i.e. the income is subject to a real profit tax of at least 10%) or the asset test (i.e. the subsidiary's assets do not usually consist of more than 50% of portfolio investments) is met.

For portfolio investment participations not qualifying for the participation exemption, double taxation will be avoided by applying the tax credit method, unless the portfolio investment shareholding effectively is not subject to tax at all. For EU shareholdings, it is optional to credit the actual underlying tax. Until recently, the application of the rules on portfolio investment participations could be avoided through the inclusion of the companies concerned in a fiscal unity. In reaction to the ECJ's decision in the joined cases C-398/16 and C-399/16 in which the ECJ ruled the 'per element approach' applicable to the Dutch fiscal unity regime, the Dutch Ministry of Finance will amend several provisions of the CITA and DWTA with retroactive effect to 25 October 2017. These amendments will also have an impact on the elements of the participation exemption with respect to the portfolio investment participations. The amended provisions will apply as if there was no fiscal unity. The actual legislative proposal is expected in the course of 2018.

Due to the amendments to the EU's Parent-Subsidiary Directive, a corporate taxpayer is not eligible for the participation exemption or participation credit for received distributed profits to the extent that such distributed profits are deductible by the subsidiary. Similar rules apply throughout the European Union.

Dividends not qualifying under the participation exemption regime for an exemption or credit are taxable in full at the ordinary CIT rate.

Interests of 25% or more in a company of which the assets consist (nearly) exclusively of portfolio investments should be annually valued, as an asset, at the fair market value.

Costs related to the acquisition and disposal of a participation (e.g. legal fees, compensations, notary fees) are not deductible for corporate tax.

Losses arising from the liquidation of a (foreign) subsidiary are deductible for CIT, subject to certain conditions.

Note that a provision limits the deduction of excess interest on debts that are deemed to be related to the financing of participations (*see Anti-abuse rules regarding interest and loans in the Deductions section*).

Profits derived from a company that was created by converting a foreign PE only qualify for the participation exemption after they exceed the losses from the PE during the previous years insofar as those losses reduced the taxable profits in the Netherlands before 1 January 2012. Under certain circumstances, such as the alienation of (part of) the shares of the company, all non-recaptured losses will be added to the profits of the Dutch parent company at once. Note that the scope of these anti-abuse provisions has been extended by including situations in which a foreign intermediate holding company is interposed.

In April 2015, legislation was adopted introducing the compartmentalisation doctrine, based on case law. The legislation has retroactive effect to 14 June 2013. Based on the compartmentalisation doctrine, a taxpayer that derives income from a participation that first qualified but at a certain point in time no longer qualifies for the participation exemption, or *vice versa*, must attribute the income to the taxable and the tax-exempt period accordingly. The legislation applies to all changes in the application of the participation exemption regime irrespective of whether caused by a change in facts and circumstances or change in legislation. It applies to both capital gains and dividend distributions. Changes that occurred before 14 June 2013 are affected. However, if in favour of the taxpayer, changes caused by modification of legislation before 1 January 2007 are not taken into account. In April 2015, the Dutch State Secretary for Finance announced its willingness to limit the retroactive effects in such cases.

Stock dividends

Stock dividends are taxed as dividend income to the extent that they are paid out of earned surplus. They are not taxable if paid out of share premium ('agio'), provided the share premium account was not created pursuant to a share-for-share merger, in which only Dutch companies were involved. In the case of a share-for-share merger, in which shares in foreign subsidiaries were contributed to a Dutch company, the Dutch company can distribute the difference between the fair market value and the paid-in capital of the subsidiaries being contributed as a stock dividend without triggering Dutch dividend WHT (step-up in basis), provided certain requirements are met.

Interest income

Interest income is taxed as ordinary income against the regular CIT rate.

Royalty income

Royalty income is taxed as ordinary income against the regular CIT rate.

Work in progress

Profits with regard to work in progress should be accounted before actual completion, to the extent that the work is completed. All project costs should be recognised in the year the costs occurred.

Foreign income

In general, a Dutch resident company is subject to CIT on its worldwide income. However, certain income can be exempted (e.g. due to the application of the participation exemption described above) or excluded from the tax base.

Certain foreign-sourced income (foreign branch income, real estate income, and other income) is 'excluded' from the Dutch taxable base. The so-called 'object exemption' or 'base exemption', a method to provide relief for international juridical double taxation in situations of Dutch companies with a PE abroad, is designed as a tax base adjustment instead of a real exemption. Consequently, losses of foreign PEs can no longer be offset against profits of the Dutch head office (except for final losses), but currency exchange results are still included in the tax base. Also, if the foreign activities cease, any losses upon 'liquidation' can, in principle, be deducted. For certain low-taxed passive PEs, the object exemption is replaced by a credit system.

Double taxation of foreign dividends, interest, and royalties is relieved by a tax credit provided by Dutch tax treaties or unilaterally if the payer of the income streams is a resident of a developing country designated by Ministerial Order. If no treaty or unilateral relief applies, a deduction of the foreign tax paid is allowed in computing the net taxable income.

However, relief by exemption is given for dividends from foreign investments qualifying for the participation exemption, as discussed above. In that case, there is no Dutch tax to credit against taxes withheld in the subsidiary's country of residence.

In most circumstances, the foreign dividend is exempt for Dutch CIT under the participation exemption, as previously discussed. As a consequence, foreign WHT cannot be credited, and the WHT constitutes a real cost for the companies concerned. A credit of the foreign WHT is granted against Dutch dividend WHT due on the distribution to foreign parents of the Dutch company. The credit amounts to a maximum of 3% of the gross dividend paid, to the extent that it can be paid out of foreign-source dividends received that have been subject to at least a 5% WHT and the foreign company is liable to CIT. This tax credit does not result in taxable income for CIT purposes.

Deductions

Depreciation, amortisation, and depletion

Generally, depreciation may be computed by a straight-line or a reducing-balance method or, in accordance with any other sound business practice, on the basis of historical cost. Depreciation is applied from the date the asset comes into use. Dutch tax law includes specific rules (*see below*) that potentially limit the depreciation of assets (e.g. immovable property, goodwill, and other fixed assets).

A depletion allowance for natural resources may be granted for tax purposes when it conforms to sound business practice and is appropriate for accounting purposes.

Limited depreciation of immovable property

There are special provisions for depreciation of immovable property. A distinction is made between immovable property held for investment purposes and buildings used in a trade or business.

Investment property cannot be depreciated to an amount lower than the official property's fair market value for tax purposes, which is known as *WOZ-waarde*. In other words, a property will not be subject to depreciation unless the carrying amount of the building and the land on which it is located is higher than its value for tax purposes. This value is determined by the municipal tax authorities annually. As this value is based on the assumption that the property is free of lease, the value for tax purposes of commercial real estate may be lower than fair market value.

Alternatively, the depreciation of buildings employed in a trade or business is limited to 50% of the property's value for tax purposes. It should still be possible to value immovable property at fair market value if this is demonstrably lower than the current book value. In addition, anti-abuse measures apply to prevent the division of land and buildings into separate legal entities or to related individuals.

Note that maintenance costs continue to qualify for tax relief and any maintenance-related value increase does not lead to a compulsory upward revaluation of the property. Moreover, a property is not required to be revaluated as its value increases due to market developments.

Depreciation of land is not permitted.

The sale of depreciated assets triggers tax on the difference between the sale price and the depreciated book value unless a reinvestment reserve is set up (*see Capital gains in the Income determination section*).

Limited amortisation of goodwill and depreciation of fixed assets

With regard to goodwill, the amortisation for tax purposes is limited to 10% of the purchase price *per annum*. Furthermore, the tax depreciation of other fixed assets (i.e. inventory, equipment) is limited to 20% of the purchase price or production costs *per annum*.

Accelerated depreciation

The law provides accelerated depreciation of several specific assets. Accelerated depreciation applies to investments in assets that are in the interest of the protection of the environment in the Netherlands and that appear on the so-called VAMIL (*Vervroegde Afschrijving Milieu-investeringen*) list. From 2011, the accelerated depreciation facility for investments in environment-improving assets is limited to 75% of the total (investment) costs. Prior to 2011, 100% of the investment costs were eligible for the facility.

Accelerated depreciation also is available for certain other designated assets (e.g. investments of starting entrepreneurs).

Also eligible for accelerated depreciation are certain investments made in new business assets in 2009, 2010, and 2011 and between 1 July 2013 and 31 December 2013. Certain conditions apply. Investment costs minus residual value of sea-vessels that are operated mainly from the Netherlands may be depreciated straight-line over five years. Instead of accelerated depreciation, these taxpayers may choose immediate taxation (*see Tonnage tax regime in the Taxes on corporate income section*).

Anti-abuse rules regarding interest and loans

Due to existing anti-abuse rules, the deduction for interest paid on intra-group debts relating to certain transactions is disallowed. However, if the taxpayer provides credible evidence of overriding commercial reasons for the transaction as well as the loan, or of taxation of the interest in the hands of the recipient at an effective tax rate that is considered adequate by Dutch standards, the interest may be deductible.

Furthermore, interest paid on certain profit participating loans will be qualified as a dividend and will not be tax deductible. Interest received upon these loans may meet the definitions for the participation exemption if the creditor also holds a qualifying participation in the debtor. Intra-group conduits may be denied a credit of foreign WHT with respect to royalties or interest received if no economic risk is deployed.

If the interest payment to a group company relates to a loan that is directly or indirectly granted by a group company in order to finance an acquisition or capital contribution, the interest will be deductible only if the loan and the underlying transaction are based predominantly on sound business considerations ('the double business motive test') or if the interest received is effectively and sufficiently taxed by Dutch standards. Under the 'double business motive test', it thus must be substantiated that there are sound business reasons for both the loan and the transaction.

When the debt ultimately is financed externally (outside the group) and a direct relationship exists between the internal debt and the ultimate external financing, it can be substantiated that there are sound business reasons for the loan. Furthermore, the use of tax losses or similar relief claims by the recipient of the inter-company interest may adversely affect the deductibility of the interest paid. Also, the law states that the interest deduction related to indebted dividend distributions, paid back capital, and capital contributions is not only possible in case of sound business reasons but also if the interest is taxed in the hands of the creditor at an effective tax rate that is considered adequate by Dutch standards. The latter requirement means that the interest needs to be subject to an effective tax rate of at least 10% over taxable profits determined according to Dutch standards. For the determination of 'a taxable base according to Dutch tax standards', the tax base limitation for the innovation box is not taken into account.

If the taxpayer makes a reasonable case that the interest is taxable at an effective tax rate of at least 10%, the tax authorities, nevertheless, have the option to substantiate that either the liability or the corresponding transaction is not based on sound business reasons. The tax authorities also have the option to substantiate that the liability is incurred in order to compensate losses or other rights that were formed in that year or that will be formed shortly thereafter. This is also applicable to existing loans.

In addition, the deduction of interest (including costs and currency exchange results) on excess acquisition debt is restricted if the acquired company subsequently joins a Dutch fiscal unity with the taxpayer. The acquisition debt is considered excessive in so far as it exceeds 60% of the acquisition price. The interest expenses may only be deducted from the acquiring company's 'own profits', meaning that the profits of the target company that was added to the fiscal unity are not taken into consideration. The restriction is not applicable if the interest on the debt does not exceed EUR 1 million. Contrary to the other existing interest deduction restrictions illustrated above, this measure also relates to interest on loans obtained from third parties.

Furthermore, a provision limits the deduction of excess interest on debts that are deemed to be related to the financing of participations. Under this rule, the taxpayer is deemed to have debt relating to the financing of participations to the extent that the average cost price of its participations exceeds its average equity. This is a mathematical test. However, a few exceptions apply. For example, the cost prices of the participations that at the time of the initial acquisition led to an extension of the operational activities of the group are not taken into account for the purpose of the mathematical test. The 'participation debt' calculated may consist of both loans from affiliated and third parties. The interest on the deemed participation debt is not deductible to the extent the amount of the interest exceeds EUR 750,000. The provision for excessive participation interest also contains a number of specific anti-abuse measures.

Until recently, the application of the rules on 'the deduction of interest on loans that are directly or indirectly granted by a group company in order to finance an acquisition or capital contribution deduction' and on the 'deduction of excess interest on debts that are deemed to be related to the financing of participations' could be avoided in fiscal unity situations. However, the Ministry of Finance has announced that those rules will apply as if there was no fiscal unity. This as a reaction to the ECJ's decision in the joined cases C-398/16 and C-399/16 in which the ECJ ruled the 'per element approach' applicable to the Dutch fiscal unity regime. The actual legislative proposal is expected in the course of 2018 and will have retroactive effect to 25 October 2017.

Provision for bad debt

It is possible to make a provision for future expenses with a cause existing on the balance sheet of the tax year in question. Therefore, a provision may be made for bad debts.

Charitable contributions

Charitable contributions are deductible if certain conditions are met. The gift must be documented in writing and contributed to a qualifying charity (ANBI or SBBI). The deductible amount may not exceed 50% of the taxable profits, with a maximum of EUR 100,000.

Limited deductibility of costs relating to remuneration by way of shares

Any remunerations by way of shares, profit-sharing certificates, option rights on shares, or similar rights are not deductible. However, grandfathering rules exist for situations where option rights have been granted to employees before 24 May 2006.

Costs related to so-called stock appreciation rights for employees that earn an income that exceeds EUR 500,000 are not deductible.

Fines and penalties

Most criminal fines and penalties are not tax deductible. This applies, for instance, to fines imposed by a Dutch criminal judge, administrative fines, disciplinary fines, and penalties from a European institution.

Taxes

Certain taxes, such as the tax on insurance transactions, are deductible. Tax paid on the transfer of immovable property must be included in the cost price and taken into account in the course of normal depreciation. The CIT itself is not deductible.

Other significant items

Deduction of certain expenses (e.g. costs for food, drink, and entertainment) paid by employers for employees are not deductible, in part. These costs are often referred to as mixed costs. The non-deductible portion is 0.4% of the total taxable wages of all employees but never less than EUR 4,500 per year. Alternatively, the employer may choose to deduct only 73.5% of the actual expenses.

Net operating losses

Tax losses can be carried back one year and carried forward nine years. This also applies to start-up losses.

With regard to losses arising in the years 2009, 2010, and 2011, corporate taxpayers may opt for a temporary extension of the carryback period for losses from one to three years. This option, however, also means that the maximum period for loss carryforward will be limited to six years (instead of nine). Furthermore, the extended measure is limited to EUR 10 million loss carryback per extra year.

Complex rules may prohibit the utilisation of net operating losses after a change of 30% or more of the ultimate control in a company. Furthermore, limitations exist on loss utilisation for holding/finance companies. Based on these rules, losses incurred by a mere holding or group finance company can be offset only against holding or finance income in preceding and following years, provided that certain strict conditions are met. These conditions are meant to counter tax planning, whereby the Dutch company concerned acquires (e.g. by way of equity contribution or exchange) other assets that enhance its income streams and its capacity to make use of the losses. Companies carrying out significant other activities (with 25 or more full-time employees) are, in principle, unaffected by these loss relief restrictions.

Until recently, the application of these rules could be avoided in fiscal unity situations (where the company can leverage on the non-decreased activities of its subsidiaries), but the Ministry of Finance has now announced that the rules will not apply to fiscal unity situations as of 25 October 2017 because the ECJ decided in line with the A-G Campos Sanchéz-Bordona Opinion in the cases C-398/16 and C-399/16. The legislative proposal is expected in the course of 2018.

Payments to foreign affiliates

A Dutch corporation generally can claim a deduction for royalties, management service fees, and most other charges paid to foreign affiliates, to the extent that the amounts are not in excess of what it would pay an unrelated entity (i.e. arm's-length principle). Dutch companies are obligated to produce transfer pricing documentation describing the calculation of the transfer price and the comparability of the transfer price with third-party prices.

Group taxation

Fiscal unity regime

A Dutch-resident parent company and its Dutch-resident subsidiaries (if the parent owns at least 95% of the shares) may, under certain conditions, file a tax return as one entity (fiscal unity). Group taxation is available for companies having their place of effective management in the Netherlands, both for Dutch tax and treaty purposes.

The main feature of the fiscal unity is that profits of one company can be offset against losses of another company forming part of that fiscal unity. Furthermore, inter-company transactions are eliminated.

A cross-border fiscal unity is not possible. In February 2010, the ECJ decided that the Dutch fiscal unity regime does not violate EU law (the freedom of establishment), insofar as it disallows a cross-border fiscal unity. However, the ECJ has not yet explicitly dealt with the effects of the fiscal unity regime, other than cross-border loss utilisation, such as the transfer of assets between group companies without immediate taxation and the use of 'final losses'. The Dutch Supreme Court will possibly deal with those issues at a later stage.

It does follow from EU law that Dutch resident companies should not be denied a fiscal unity amongst them merely because of a non-resident parent or intermediary company if located within the EU/EEA. On 16 June 2014, the ECJ decided that the Dutch fiscal unity regime does violate EU law to the extent it denies a fiscal unity between a Dutch resident parent company and its Dutch resident subsidiaries because of a non-Dutch resident EU/EEA intermediary holding company and insofar as it disallows a fiscal unity between two Dutch resident 'sister' companies that are held by a non-Dutch EU/EEA parent company.

The CIT law therefore now explicitly allows a Dutch fiscal unity between Dutch entities that are linked via a non-Dutch resident EU/EEA intermediary holding company or via an EU/EEA parent company.

On 22 February 2018, the ECJ issued its judgement in the joined cases C-398/16 and C-399/16 on the consequences of EU law for the Dutch fiscal unity regime. It ruled the 'per element approach' applicable to the Dutch regime. In reaction to the ECJ's decision, the Dutch Ministry of Finance will amend several provisions of the CITA and DWTA with retroactive effect to 25 October 2017, the date of the Advocate General (A-G) Campos Sanchéz-Bordona's Opinion in those cases. Despite the presence of a Dutch fiscal unity, the amended provisions will apply as if there was no fiscal unity. The actual legislative proposal is expected in the course of 2018.

Transfer pricing rules

Based on a general transfer pricing provision in the CIT law, all transactions between related parties must be at arm's length. Furthermore, a specific transfer pricing provision exists with respect to the transactions of an interest and royalty conduit company. Dutch companies are obligated to produce transfer pricing documentation describing the calculation of the transfer price and the comparability of the transfer price with third-party prices. If a transaction between related parties is not at arm's length, the taxable income may be corrected by the tax authorities. Moreover, transactions that do not meet the arm's-length test may constitute a contribution of informal capital or a hidden profit distribution.

On the basis of a decree of the State Secretary for Finance regarding transfer pricing, companies may request an advance tax ruling (ATR) and an advance pricing agreement (APA). An ATR may be requested on the classification of activities and an APA may be required on the classification of activities and the arm's-length character of the transfer price.

Country-by-country (CbC) reporting

The Netherlands has implemented the OECD outcomes in the area of country-by-country (CbC) reporting. The documentation obligations include the requirement for eligible taxpayers to produce a CbC report, a master file, and a local file.

Thin capitalisation

There are currently no thin capitalisation rules in the Netherlands.

Controlled foreign companies (CFCs)

Dutch tax law does not provide for specific legislation regarding CFCs. However, interests of 25% or more in a company of which the assets consist (nearly) exclusively of low-taxed portfolio investments should be annually valued, as an asset, at the fair market value. The participation exemption is not applicable to portfolio investment participations unless these participations are qualifying portfolio investment participations for the participation exemption. A portfolio investment participation can only qualify for the participation exemption if either the intention of holding the participation is not an investment intention or if the participation is, in itself, either subject to sufficient tax or if the participation holds sufficient qualifying assets. This rule prevents shareholders of low-taxed portfolio investment participations from benefitting from the Dutch participation exemption because dividends not qualifying under the participation exemption are taxable in full at the ordinary CIT rate. Double taxation is avoided by applying the tax credit method, unless the portfolio investment shareholding effectively is not subject to tax at all. For EU shareholdings, it is optional to credit the actual underlying tax.

Tax credits and incentives

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Small investments

There is a system of deductions for small investments, the so-called small scale investment deduction. To calculate this annual deduction, investments of more than EUR 450 each are totalled to determine the percentage of the deduction.

Total of investments (EUR)	Deduction
0 to 2,300	0
2,301 to 56,642	28% of the value of the total of small investments
56,643 to 104,891	EUR 15,863
104,892 to 314,673	EUR 15,863 minus 7.56% of the amount exceeding EUR 104,891
Above 314,673	No deduction

Investments in energy-efficient assets

For investments in new energy-efficient business assets that meet the Energy List requirements, an additional deduction (EIA) from corporate income is available. The minimum investment amount per asset is EUR 2,500. The allowance equals a percentage of the annual amount, with a maximum of EUR 121 million, of eligible energy investments. The right to the EIA is declared with the tax return, provided the investment is reported previously in good time to the Netherlands Enterprise Agency (*www.rvo.nl*). An investment can be reported in phases, but the minimum amount for notification is EUR 2,500. For 2018, the allowance is set at 54.5%.

Investments in environmental assets

For investments in certain new environmental improving assets that meet the Environment List requirements, an additional deduction (MIA) from corporate income is available. The minimum investment amount per asset is EUR 2,500. In 2018, the allowance equals 36%, 27%, or 13.5% (depending on the ministerial classification of the assets) of the annual amount, with a maximum of EUR 25 million, of eligible environmental investments. The right to the MIA is declared with the tax return, provided the investment is reported previously in good time to the Netherlands Enterprise Agency. An investment can be reported in phases, but the minimum amount for notification is EUR 2,500.

New technology

Wage costs

Conducting certain R&D activities on applied new technology is subsidised by a reduction of wage tax to be paid on wages of employees engaged in R&D of technologically new products. The subsidy accrues to the employer when the employee is credited for the normal amount of wage tax. The subsidy is based on specific legislation (WBSO).

To obtain the relief under the R&D incentive programme, taxpayers must file an electronic/online application with the Netherlands Enterprise Agency. The taxpayer will receive an R&D declaration. The budget for this subsidy is fixed, so the amount of the subsidy is dependent on budget availability. Note that self-developed and utilised software falls within the scope of the R&D incentive under certain conditions.

The WBSO application for R&D includes not only salary costs but also other costs and expenses related to R&D. The benefit of the fiscal scheme is awarded in the form of a wage tax reduction. In 2018, the benefit amounts to 32% of the first EUR 350,000 of R&D costs (both salary and other costs and expenses). For start-ups, this amounts to 40%. For R&D costs above EUR 350,000, this amounts to 14%. Note that the maximum benefit cannot exceed the total amount of wage tax due. Instead of applying for the real costs and expenses (non-salary costs), the taxpayer may choose to take into account a fixed amount based on R&D hours. The fixed amount is EUR 10 per hour as long as the total R&D hours do not exceed 1,800 and EUR 4 for every hour above. Withholding agents are obligated to report the number of hours, costs, and expenses jointly for all R&D statements granted in a calendar year.

Withholding taxes

Dividends from Dutch corporations are generally subject to a 15% Dutch dividend WHT. In general, this does not apply to the Dutch cooperative (i.e. 'co-op') in a business driven structure, a widely used vehicle for holding and financing activities.

The Netherlands does not levy a WHT on interest and royalty payments.

Domestic corporations are required to withhold taxes as follows:

Recipient	Dividends (%) (1)
Resident corporations	0/15
Resident individuals	15
Non-resident corporations and individuals:	
Non-treaty situations	15
Treaty:	
Albania	0/5/15 (30)
Argentina	10/15 (2)
Armenia	0/5/15 (3)
Aruba	5/7.5/8.3/15 (5, 21, 40)
Australia	15 (5)
Austria	0 (6) or 5/15 (3, 7)
Azerbaijan	5/10 (38)
Bahrain	0/10 (8)
Bangladesh	10/15 (8)
Barbados	0/15 (42)
Belarus	0/5/15 (2, 9)
Belgium	0 (6) or 5/15 (5, 8)
Bosnia Herzegovina	5/15 (2, 4)
Brazil	15 (5)
Bulgaria	0 (6)/5/15 (2)
Canada	5/15 (10)
Caribbean Netherlands (Bonaire, Saint Eustatius, and Saba)	0/15 (41)
China, People's Republic of	10 (5, 11)

Netherlands

Recipient	Dividends (%) (1)
Croatia	0/15 (6, 8)
Curaçao	0/15 (5, 46)
Czech Republic	0 (6) or 0/10 (2, 5)
Denmark	0 (6) or 0/15 (8)
Egypt	0/15 (2)
Estonia	0 (6) or 5/15 (2)
Ethiopia	5/15 (45)
Finland	0 (6) or 0/15 (37)
France	0 (6) or 5/15 (2, 5)
Georgia	0/5/15 (31)
Germany	0 (6) or 5/10/15 (12)
Ghana	5/10 (8)
Greece	0 (6) or 5/15 (2)
Hong Kong	0/10 (42)
Hungary	0 (6) or 5/15 (2)
Iceland	0/15 (8)
India	10/15 (32)
Indonesia	10 (2, 5)
Ireland, Republic of	0 (6) or 0/15 (13)
Israel	5/15 (2)
Italy	0 (6) or 5/10/15 (14)
Japan	0/5/10 (15)
Jordan	5/15 (8)
Kazakhstan	0/5/15 (17)
Korea, Republic of	10/15 (2)
Kuwait	0/10 (8)
Kyrgyzstan	15 (5, 24)
Latvia	0 (6) or 5/15 (2)
Lithuania	0 (6) or 5/15 (2)
Luxembourg	0 (6, 18) or 2.5/15 (2, 18)
Macedonia	0/15 (8)
Malawi	0/5/15 (19)
Malaysia	0/15 (7)
Malta	0 (6) or 5/15 (2)
Mexico	5/15 (16)
Moldavia	0/5/15 (20)
Mongolia	0/15 (44)
Montenegro	5/15 (2, 4)
Morocco	10/15 (2)
New Zealand	15 (5)
Nigeria	12.5/15 (8)
Norway	0/15 (2)
Oman	0/10 (8)
Pakistan	10/15 (2)
Panama	0/15 (42)
Philippines	10/15 (8)
Poland	0 (6) or 5/15 (5, 8)
Portugal	0 (6)/10
Qatar	0/10 (39)
Romania	0 (6) or 0/5/15 (22)

Recipient	Dividends (%) (1)
Russian Federation	5/15 (23)
Saint Martin	0/15 (5, 46)
Saudi Arabia	5/10 (8)
Serbia	5/15 (2, 4)
Singapore	0/15 (5, 7)
Slovak Republic	0 (6) or 0/10 (2, 5)
Slovenia	0 (6) or 5/15 (2)
South Africa	5/10 (16)
Spain	0 (6) or 5/15 (5, 25)
Sri Lanka	10/15 (2)
Surinam	7.5/15 (2)
Sweden	0 (6) or 0/15 (2)
Switzerland	0/15 (36, 43)
Taiwan	10
Tajikistan	15 (24)
Thailand	5/15 (34)
Tunisia	0/15 (8)
Turkey	5/15 (2)
Turkmenistan	15 (5, 24)
Uganda	0/5/15 (35)
Ukraine	0/5/15 (26)
United Arab Emirates	5/10 (8)
United Kingdom	0 (6) or 0/10/15 (33)
United States	0/5/15 (27)
Uzbekistan	0/5/15 (28)
Venezuela	0/10 (2)
Vietnam	5/7/15 (29)
Zambia	5/15 (2)
Zimbabwe	10/15 (2)

Notes

1. A 0% WHT rate applies to payments to a resident corporation when its shareholding qualifies for the participation exemption and the shares form part of a company whose activities are carried on in the Netherlands. However, dividend WHT may be levied on certain profit participating loans.
2. The lower rate applies if the foreign company directly owns at least 25% of the capital of the Dutch company.
3. The 5% rate is applicable if the foreign company directly owns 10% of capital of the Dutch company. The 0% rate is applicable if the dividend originates from ordinary taxed profits and the dividend is tax exempt in the hands of the recipient.
4. Based upon the treaty concluded with former Yugoslavia.
5. Negotiations on (revisions of) tax treaties are currently pending with Angola, Aruba Australia, Belgium, Brazil, Chile, Colombia, Costa Rica, France, Indonesia, Kenya, New Zealand, Poland, Saint Martin, Singapore, Slovak Republic, and Spain. The revised treaty with the Czech Republic is signed but not yet effective.
6. Indicates that this country is a member state of the European Union. The EU Parent/Subsidiary Directive applies from 1 January 1992. According to the Directive, dividends paid by a Dutch company (BV or NV) to a qualifying parent company resident in another EU member state must be exempt from Dutch WHT, provided certain conditions are met. Among other things, the EU parent company must hold at least 10% of the Dutch dividend-paying company's capital (or, in certain cases, voting rights) for a continuous period of at least one year. Please note that the Dutch tax legislation is more lenient with respect to the minimum holding; it only requires a holding of 5% at the moment of distribution. A provisional exemption from dividend WHT will apply from the start of the one-year holding period. The exemption will be cancelled retroactively if, following the dividend distribution, the one-year holding requirement is not actually met. The Dutch dividend-distributing company must provide to the Dutch tax authorities a satisfactory guarantee for the payment of dividend WHT that, but for the provisional exemption, would be due. The exemption is also applicable if the parent company is a resident of a EU

member state and owns at least 10% of the (voting) shares in the Dutch company but only on the basis of reciprocity (Finland, Germany, Greece, Luxembourg, Spain, and United Kingdom). Should the WHT exemption not be available under the EU Parent/Subsidiary Directive, the treaty rate(s) set out in the right-hand side of the same column (following 'or') will apply.

7. The lower rate applies if the foreign company directly or indirectly owns at least 25% of the capital of the Dutch company.
8. The lower rate applies if the foreign company directly owns at least 10% of the capital of the Dutch company.
9. The 0% rate applies if the foreign company directly owns at least 50% of the capital of the Dutch company, or invested more than EUR 250,000 in the Dutch company or directly owns 25% of the capital of the Dutch company and has a statement indicating that the investment in Dutch capital is, directly or indirectly, guaranteed by the government of Belarus.
10. The 5% rate applies if the foreign company directly or indirectly owns at least 25% of the capital or at least 10% of the voting rights in the Dutch company.
11. The treaty is not applicable for Hong Kong and Taiwan.
12. The 5% of rate applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the payer company. The 10% rate applies if the beneficial owner is a pension fund that is resident in the Netherlands. The 15% rate applies in other cases.
13. The lower rate applies if the foreign company owns at least 25% of the voting rights in the Dutch company.
14. The 5% rate is applicable if the Italian company owns at least 50% of the voting shares in the Dutch company for a continuous period of at least 12 months prior to the date chosen for distribution of a dividend. The 10% rate is applicable if the Italian company owns at least 10% of the voting shares in the Dutch company for the continuous period mentioned above. In other cases, the dividend WHT rate is 15%.
15. The 5% rate applies if the foreign company owns at least 10% of the voting shares of the Dutch company for a continuous period of at least six months immediately before the end of the book year to which the dividend distribution relates. No WHT is levied if the foreign company directly or indirectly owns at least 50% of the voting power in the Dutch company distributing the dividends for a period of six months. Also, no WHT is levied if the foreign company is a pension fund.
16. The lower rate applies if the foreign company directly or indirectly owns at least 10% of the capital of the Dutch company.
17. The 0% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company or if it has invested more than 1 million United States dollars (USD) in the Dutch company, insofar as the government of Kazakhstan has guaranteed the investment; the 5% rate applies if the recipient company owns at least 10% of the capital of the paying company.
18. These rates do not apply to dividend payments to Luxembourg '1929' holding companies.
19. A 0% rate is only applicable to certain pension funds. The 5% rate is applicable only to shareholdings of at least 10%.
20. The 0% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company and invested more than USD 300,000 in the Dutch company. The 5% rate is applicable if the foreign company directly owns 25% or more of the capital of the Dutch company. The 15% rate is applicable on portfolio investments.
21. The rate is 15% unless the dividend is paid to a company holding at least 25% of the paid-up capital in the Dutch company. In this latter case, the WHT rate will be reduced to: (i) 5% if the dividends received are subject to a profits tax in the other state of at least 5.5% on the dividend or (ii) 7.5% if the profits tax is less than 5.5%. The combined CIT of the other state and Dutch dividend WHT for participations of at least 25% must not exceed 8.3%. Depending on the tax percentage levied in the other state, the Dutch dividend WHT will be restituted accordingly.
22. The 5% rate is applicable if the recipient of the dividend is the beneficial owner and directly owns 10% of the capital of the Dutch company. The 0% rate is applicable if the recipient of the dividend is the beneficial owner and directly owns at least 25% of the capital of the Dutch company.
23. The 5% rate is applicable if the recipient of the dividend is the beneficial owner and directly owns at least 25% in the capital of the Dutch company with a minimum investment of at least EUR 75,000.
24. The Netherlands applies the treaty with the former Soviet Union unilaterally to Kyrgyzstan, Tajikistan, and Turkmenistan.
25. The lower treaty rate applies if the Spanish company owns 50% or more of the capital of the Dutch company or if the Spanish company owns 25% or more of the capital of the Dutch company and another Spanish company also owns 25% or more of that capital.
26. The 0% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company or invested more than USD 300,000 in the Dutch company. The 5% rate is applicable if the foreign company directly owns 20% or more of the capital of the Dutch company.
27. The lower rate applies if the foreign company directly owns at least 10% of the voting rights in the Dutch company. On 8 March 2004, the Netherlands and the United States signed a protocol amending the applicable tax treaty. Based on this protocol, the WHT on dividends will be reduced to 0% if the receiving company owns 80% or more of the voting power of the distributing company, provided that certain other conditions are also met. This reduction of the dividend WHT has taken effect as of 1 January 2005.
28. The 5% rate is applicable if the foreign company directly owns 25% or more of the capital of the Dutch company. The 0% rate is applicable if the dividend for that company qualifies for the participation exemption in the Netherlands. The 15% rate is applicable to portfolio dividends.

29. The 5% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company or invested more than USD 10 million in the Dutch company. The 7% rate applies to the foreign company owning, directly or indirectly, at least 25% of the capital of the Dutch company.
30. No dividend WHT is due if the share in the participation is at least 50% and at least USD 250,000 capital is paid in, in the participation. A dividend WHT of 5% is due if the share in the participation is at least 25%.
31. A dividend WHT of 5% is due if the share in the participation is at least 10%. No dividend WHT is due if the share in the participation is at least 50% and at least USD 2 million capital is paid in, in the participation.
32. Based upon most-favoured nation principle.
33. The 0% rate applies if a company controls at least 10% of the voting power of the Dutch company paying the dividends. The 15% rate applies to dividends arising from income from immovable property, distributed by certain tax exempt real estate investment vehicles (e.g. REITs or FBIs).
34. In case a Thai company holds at least a 25% share in a Thai company, the Dutch dividend WHT rate is 5%.
35. If a share of at least 50% is held by a company, no dividend WHT is due. If the share the company holds is less than 50%, 5% dividend WHT is due.
36. As of 29 December 2004, Switzerland and the European Union concluded a treaty in light of the EU Savings Directive. The treaty, amongst others, contains a clause that no dividend tax is withheld if certain requirements are met. The main requirements are that a shareholding of at least 25% is held directly for a period of at least two years and both corporations are not subjected to a special tax regime. Please note that even though the treatment of dividend appears to be equal to the treatment on the basis of the EU Parent-Subsidiary Directive, the Directive is, in fact, not applicable to Switzerland.
37. The 0% rate applies if the foreign company directly owns at least 5% of the capital of the Dutch company.
38. The 5% rate applies if the foreign company directly owns at least 25% of the capital of the Dutch company with a minimum investment of at least EUR 200,000 in the Dutch company.
39. The 0% rate applies if the foreign company directly owns at least 7.5% of the capital of the Dutch company.
40. The WHT rates are based on the Dutch '*Belastingregeling voor het Koninkrijk*'.
41. The WHT rates for the Caribbean Netherlands are based on the Dutch '*Belastingregeling voor het land Nederland*'.
42. No WHT is levied if the foreign company (beneficial owner) receiving the dividends directly holds at least 10% (15% threshold for the Panama Treaty) of the shares of the Dutch company, provided that the shares of the foreign company are regularly traded on a recognised stock exchange or at least 50% of the shares of the foreign company is owned by residents of either contracting state or by companies the shares of which are regularly traded on a recognised stock exchange. Also, no WHT is levied if the foreign company is a bank or insurance company, a state or political subdivision, a headquarter owning at least 10% of the shares of the Dutch company, or a pension fund.
43. The 0% rate applies if the foreign company directly owns at least 10% of the capital of the Dutch company, is a pension fund, or, as far as Switzerland is concerned, the beneficial owner is a social security scheme.
44. Because the treaty with Mongolia is not applicable anymore, the national WHT rate applies.
45. The 5% rate applies if the foreign company is the beneficial owner of the dividends and directly owns at least 10% of the capital of the Dutch company or is a pension fund.
46. The 0% rate applies if the shareholder is a pension fund or a governmental entity. The 0% rate also applies if the foreign company is the beneficial owner of the dividends and directly owns at least 10% of the capital of the Dutch company and meets one or more of the following criteria: it is listed on a recognised stock exchange, more than 50 of the shares is held by an entity listed at a recognised stock exchange, is the head office of a multinational or engages in group financing, has at least three qualifying employees, is commercially active and the dividends are connected to the business activities, is commercially active and the main purpose of the entity or shareholding is not the benefits of the tax arrangement, the shares are held for more than 50% by natural persons resident in the Netherlands or the other state.

Tax administration

Taxable period

Generally, the tax year is equal to the calendar year. However, corporate taxpayers may deviate from this by adopting a different financial year.

Tax returns

Corporate taxpayers are required to file a tax return annually. The due date is generally five months after the end of the company's financial year. This filing due date may be extended upon request by the taxpayer.

The Dutch tax authorities generally make a provisional assessment before issuing the final assessment after a full examination of the return. The final assessment must be issued within three years following the financial year. This period is prolonged with the time of the extension for filing the tax return. The Dutch tax authorities may issue an additional assessment if it appears that the amount of CIT payable (as calculated in the final assessment) is too low.

During the current tax year, a provisional assessment can be issued on the basis of prior years' taxable income or on an estimation provided by the taxpayer.

Payment of tax

The CIT assessed must be paid within two months of the date of the provisional or final assessment. Interest is payable on the CIT due. The interest is calculated from six months following the financial year. The minimum interest rate is 8%.

Refund of tax unduly levied

If a corporate taxpayer is entitled to a refund of Dutch CIT or WHT because the levy appeared to be in conflict with EU law, the Netherlands might be obligated to repay with interest for the period from the levy to the refund. The taxpayer must file a request at the Dutch tax authorities within six weeks after the refund.

Interest on late payment dividend WHT

Interest is calculated on late payments or refunds of Dutch dividend WHT.

Tax audit process

Corporate taxpayers might be subject to regular audits by tax inspectors. This forms part of the so-called vertical monitoring tasks of the national tax authorities. In recent years, there has been a tendency towards a more enhanced cooperation between tax authorities and taxpayers in the Netherlands (*see Horizontal monitoring in this section below*). Part of this trend is that there are to be less audits in retrospect.

Statute of limitations

Under certain conditions, the tax administration can impose an additional assessment within five years from the year in which the tax debt originated (if the filing due date was extended on request, this period is added). In case of income from abroad, the period for additional assessment is extended to 12 years. In 2013, the Dutch tax legislator published a proposal to reduce the period for the issuing of an additional assessment to three years after the tax return is received by the Dutch tax authorities. The same proposal also suggests extending that period to 12 years in case the taxpayer intentionally filed an incorrect tax return. This proposal, however, is recently withdrawn.

Advance pricing agreement (APA)/Advance tax ruling (ATR)

Taxpayers are able to obtain (legal) certainty concerning their CIT positions. They may request the Dutch tax authorities to conclude an APA with respect to the transfer pricing of controlled transactions. Taxpayers may also request the Dutch tax authorities to provide an ATR with respect to the CIT implications of a (contemplated) set of transactions.

Horizontal monitoring

If the taxpayer is willing, the Dutch tax authorities, in certain cases, shift their method from vertical monitoring to horizontal monitoring. Emphasis is placed on cooperation and on the responsibilities of the parties involved, instead of retrospective control. Horizontal monitoring is based on mutual trust, understanding, and transparency between the taxpayers and the Dutch tax authorities. It aims at reducing administrative burdens and providing legal certainty in advance. Taxpayers need to have a solid Tax Control Framework.

Topics of focus for tax authorities

The topics of focus for the Dutch tax authorities may vary.

Other issues

Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA) with the United States (US)

The Netherlands signed an FATCA IGA with the United States on 18 December 2013. As of 1 July 2014, banks and insurers must be compliant with the FATCA provisions. This US-based legislation is implemented in Netherlands' domestic law and applies to all financial institutions worldwide. The FATCA IGA is based on the standard Model 1A IGA of 4 November 2013 and provides for specific exemptions.

Common Reporting Standard (CRS)

The CRS is implemented in Netherland's domestic law as of 1 January 2016. The same holds true for the amended EU Directive on Administrative Cooperation.

Based on this domestic law, financial service companies in the Netherlands must comply with certain administrative obligations and report information on foreign account holders to the Dutch tax authorities. This information may include account numbers and the balance on a bank account of foreign account holders.

Base erosion and profit shifting (BEPS)

According to the Netherlands, the BEPS issues should be addressed through international cooperation. As a member of the OECD, the Netherlands is an active participant in the BEPS project of the OECD and supporting its goals. As a consequence, the Netherlands will enact legislation when agreement is reached within the OECD on the BEPS project and all parties agreed to implement. One example of this type of legislation is the OECD CbC reporting implementation package that has been published in the OECD report on Action 13 in 2015. As of 1 January 2016, the Netherlands has implemented CbC reporting in domestic law in accordance with the system and methods as prescribed in the OECD CbC reporting package. Another example concerns the OECD recommendations on innovation box rules. As of 1 January 2017, the Dutch innovation box regime is aligned with the modified nexus approach as described in the OECD report on Action 5.

The Netherlands has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) to implement the tax treaty related outcomes of BEPS. The Netherlands wishes 82 of its bilateral tax treaties to be covered by the MLI.

EU state aid

In 2014, the European Commission (EC) opened an investigation to examine whether a specific, individual ruling issued by the Dutch tax authorities on the calculation of the taxable basis for CIT purposes complies with the EU rules on state aid. The EC has concluded that this ruling does, in fact, constitute state aid. The Dutch Ministry of Finance has appealed the decision.

It is expected that the EC may also investigate other tax rulings. However, the EC has explicitly stated that it does not expect to encounter systematic irregularities in the Dutch tax ruling system as such.

New Zealand

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Significant developments

Employee share schemes

In March 2018, the government enacted the Taxation (Annual Rates for 2017/18, Employment and Investment Income, and Remedial Matters) Act 2018. The Act introduces new rules for the taxation of employee share schemes and how to determine the amount and time of derivation of income and when expenditure is incurred under an employee share scheme. The purpose of the changes is to effect tax neutral treatment of employee share schemes relative to cash-based schemes. The rules also include a new definition of employee share scheme that means the rules apply to share benefits provided to employees (past, present, and future) and shareholder-employees. With some exceptions, the rules will come into effect from 29 September 2018, which is six months after legislative enactment.

Base erosion and profit shifting (BEPS) update

In May 2018, the Taxation (Neutralising Base Erosion and Profit Shifting) Bill, which was introduced into Parliament in December 2017, was reported back. The Bill represents the accumulation of extensive work conducted by Officials following the finalisation of the Organisation for Economic Co-operation and Development's (OECD's) BEPS framework in late 2015. Measures contained within the Bill seek to prevent multinationals from achieving tax advantages by using:

- artificially high interest rates on loans from related parties to extract profits out of New Zealand
- hybrid mismatching arrangements that exploit differences between countries' tax rules to achieve an advantageous tax position
- artificial arrangements to avoid having a permanent establishment (PE) for tax purposes in New Zealand, and
- related-party transactions to shift profits into offshore group members in a manner that does not reflect the actual economic activities undertaken in New Zealand and offshore.

The Bill is expected to be enacted by mid-2018.

Research and development (R&D) tax credit

The government released a Discussion Document for public consultation in May 2018, which proposes the introduction of a 12.5% R&D tax credit on eligible expenditure for businesses undertaking R&D in New Zealand. A maximum tax credit of 15 million New Zealand dollars (NZD) will be available each year.

It is expected that the tax credit will be enacted in early 2019 and be available for eligible expenditure incurred from 1 April 2019.

Goods and services tax (GST) on low-value imported goods

In May 2018, the government sought feedback on a proposal to introduce GST on the importation of low-value goods. The proposal would require offshore suppliers of goods supplied to New Zealand consumers to charge and remit GST on goods valued at less than NZD 400. Offshore suppliers supplying a total value of goods and services to New Zealand consumers above NZD 60,000 in a 12-month period would be required to register for GST purposes.

Consultation is currently underway, with the changes expected to be introduced to Parliament before the end of 2018 and effective from 1 October 2019.

Customs and excise duties

The Customs and Excise Act was enacted in March 2018 and represents a monumental step towards replacing and modernising the current customs legislation. Some of the key substantive changes affecting importers, exporters, and manufacturers include:

- moves to streamline the GST at the border for business importers
- a more flexible disputes regime
- ability to declare a provisional value for imported goods in specified cases
- ability to obtain rulings on more matters, including valuation, and
- more clarity on administrative penalties.

Double tax agreements (DTAs)

New Zealand is currently negotiating new and updating DTAs with a number of countries, including China, Luxembourg, and the United Kingdom.

The OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) was signed by New Zealand on 7 June 2017. The signing of the MLI will enable signatory countries to quickly update existing DTAs to include articles on PE avoidance, treaty abuse, dispute resolution, and hybrid mismatches.

An update to the existing DTA between New Zealand and Hong Kong was signed in June 2017. The new protocol allows automatic and spontaneous exchanges of tax information, with the first automatic exchange of information expected to occur before 30 September 2018.

Taxes on corporate income

New Zealand resident companies are taxed on their worldwide income, and non-resident companies (including branches) are taxed on New Zealand-sourced income.

The New Zealand corporate income tax (CIT) rate is 28%.

Local income taxes

There are no state or municipal income taxes in New Zealand.

Corporate residence

Residence is determined by place of incorporation, location of head office, centre of management, or by directors' exercising control of the company in New Zealand.

Permanent establishment (PE)

Generally, DTAs to which New Zealand is a party define a PE by reference to a fixed place of business through which the company's business is carried on. A PE can also exist without a fixed place of business if the employees of the overseas company habitually exercise an authority to conclude contracts in New Zealand or provide services in New Zealand for a period of time.

Other taxes

Goods and services tax (GST)

GST is a form of value-added tax (VAT) that applies to most supplies of goods and services, including services and intangibles supplied remotely by an offshore supplier to New Zealand resident consumers. The narrow category of exempt supplies includes financial services. The rate applied to taxable supplies is currently 15% or 0%.

The 0% rate applies to a few supplies only, including exports and financial services supplied to other registered businesses. The 0% rate also applies to the sale of land between two GST-registered parties if the purchaser acquires the land with the intention of using it to make taxable supplies and the land is not intended to be used as a principal place of residence for the purchaser or an associate.

There is also a 'reverse charge' mechanism that requires the self-assessment of GST on the value of certain services imported by GST-registered persons.

GST is also imposed on remote services provided by non-residents to New Zealand private consumers. The concept of 'remote services' is wide and includes streamed and downloaded digital products (e.g. music, movie, and game downloads, e-books, e-magazines) as well as remotely provided webinars, software, web design and publishing, insurance, gambling, consulting, IT, and professional services.

Non-residents who do not make taxable supplies in New Zealand can register for GST, provided they meet certain criteria, allowing them to claim a refund for their input GST costs.

Customs duties

Customs duty is levied on some imported goods at rates generally ranging from 1% to 10%.

Excise duty

Excise duty is levied, in addition to GST, on alcoholic beverages (e.g. wines, beers, spirits), tobacco products, and certain fuels (e.g. compressed natural gas, gasoline). The excise duties are levied item-by-item at rates that vary considerably.

Property taxes

Local authorities levy tax known as 'rates' on land within their territorial boundaries. Rates are levied on properties based on the properties' rateable value.

Residential land withholding tax (RLWT)

RLWT applies to the sale of residential land in New Zealand by an 'RLWT offshore person'. RLWT applies where the land was acquired on or after 1 October 2015 through 28 March 2018 and owned for less than two years before being sold, or where the land was acquired on or after 29 March 2018 and owned for less than five years before being sold.

An 'RLWT offshore person' includes all non-New Zealand citizens and non-permanent residents. It also includes a New Zealand citizen who is living overseas if they have been overseas for the last three years. A holder of a New Zealand residence class visa may be an offshore person if they are outside New Zealand and have not been in New Zealand within the last 12 months. New Zealand trusts and companies may also be 'offshore persons' if there are significant offshore interests in them.

The amount of RLWT to be deducted is the lessor of:

- 10% of the sale
- the gain on sale x the RLWT rate (28% for companies, incorporated clubs, and societies; 33% for individuals, all other non-individuals, and companies acting as trustees of a trust), or
- the sale price less outstanding local authority rates or less security discharged amount, depending on which party is withholding the tax.

Transfer taxes

There are no taxes on the transfer of property in New Zealand.

Stamp duty

Stamp duty has been abolished in respect of instruments executed after 20 May 1999.

Accident compensation levy

A statutory-based scheme of accident insurance is funded in part by premiums payable by employers and employees.

Premiums paid by employers (including the self-employed) fund insurance for work-related accidents. Employers are liable to pay a residual claims levy and an employer levy. The employer levy payable is determined according to the industry or risk classification of the employer and the level of earnings of employees.

Fringe benefit tax (FBT)

Employers are subject to a tax-deductible FBT on the value of non-cash fringe benefits provided to their employees. Employers can elect to pay FBT at flat rates (for the 2018/19 income year, 49.25% on attributed benefits and 42.86% on pool benefits, i.e. those benefits that cannot be attributed to a particular employee) applied against the value of the benefit or can attribute fringe benefits to individual employees and pay FBT based on each employee's marginal tax rate.

Under the attribution option, the applicable FBT rate depends on the net remuneration (including fringe benefits) paid to the employee. The attribution calculation treats the fringe benefit as if it was paid in cash and calculates FBT as the notional increase in income that otherwise would have arisen.

The current multi-rates are:

Net remuneration (NZD)	FBT rate (%)
12,530 or less	11.73
12,531 to 40,580	21.21
40,581 to 55,980	42.86
Greater than 55,980	49.25

Fringe benefits include motor vehicles available for private use, loans at below prescribed interest rates, contributions to medical insurance schemes, and non-monetary employer contributions to superannuation schemes.

In relation to motor vehicles, employers can value a vehicle on an annual basis either using 20% of the cost price or market value (GST inclusive) of the vehicle (depending on whether the vehicle is owned or leased by the employer) or 36% of the vehicle's tax written down value (GST inclusive). In each case, the FBT value must be reduced proportionately for whole days when the vehicle is not available for private use at any time.

FBT is also applicable to benefits received by an employee from a third party where there is an arrangement between the employer and the third party and where the benefit would be subject to FBT if it had been provided by the employer.

Employer superannuation contribution tax (ESCT)

Employers' contributions to an approved superannuation fund (excluding foreign schemes) are subject to ESCT. This includes employer contributions to KiwiSaver (or other qualifying registered superannuation schemes).

ESCT is generally deducted at the employee's relevant progressive rate based on the total salary or wages and employer superannuation cash contributions paid to the employee in the previous year.

Salary or wages plus superannuation contributions (NZD)	ESCT rate (%)
Up to 16,800	10.5
16,801 to 57,600	17.5
57,601 to 84,000	30.0
Over 84,000	33.0

Non-resident contractor's tax (NRCT)

New Zealand imposes an obligation to deduct NRCT on those making contract payments to non-residents in relation to certain contract activities undertaken in New Zealand. Contract activities generally relate to services but also include the granting of a right to use property in New Zealand. The NRCT rate is generally 15% (or 45% for individuals and 20% for companies if the relevant paperwork is not provided). Some contractors are eligible to apply for a certificate of exemption or a reduced rate certificate.

In additional to a certificate of exemption, no NRCT is required to be withheld if the non-resident has full relief from tax under a DTA and is present in New Zealand for no more than 92 days in a 12-month period.

Payments for contract work amounting to less than NZD 15,000 in a 12-month period are also exempt from NRCT. In such cases, contractors themselves are responsible for paying any New Zealand tax owed at the end of the year (provided there is no relief from tax under a DTA).

Branch income

A non-resident company is taxed on income generated by business wholly or partially carried on in New Zealand. Branch profits are subject to ordinary corporate rates of taxation, and there is no withholding tax (WHT) on repatriated profits.

Income determination

Inventory valuation

Inventory must be valued by a cost-valuation method or, where market-selling value is lower than cost, may be valued at market-selling value. If the inventory is shares, it must be valued at cost. Cost is determined under New Zealand Generally Accepted Accounting Practice (NZ GAAP). Acceptable cost flow methods are first in first out (FIFO) or weighted-average cost. Some valuation concessions are available to small taxpayers.

Capital gains

There is no separate capital gains tax. However, the income tax legislation specifically includes various forms of gain that would otherwise be considered a capital gain within the definition of 'income'. Taxable income includes gains on the sale of real estate in certain circumstances and on personal property where the taxpayer acquired the property for resale or deals in such property or where a profit-making purpose or scheme can be deemed or imputed.

Dividend income

Inter-corporate dividends paid between New Zealand resident companies are exempt where there is 100% common ownership.

Dividends from a foreign company

A dividend derived by a company resident in New Zealand from a foreign company is treated as exempt income unless it is:

- a dividend on a fixed rate share or a dividend for which the foreign company has received a tax deduction in its home jurisdiction, or
- a dividend from a portfolio foreign investment fund (FIF) (i.e. interests under 10%) that is exempt from FIF rules (e.g. an interest in an Australian listed company).

Dividends from foreign companies derived by taxpayers other than companies are taxable (generally with a credit for any foreign WHTs).

Supplementary dividend tax credit regime

Previously, the supplementary dividend tax credit regime (commonly referred to as FITC) ensured that foreign investors were not taxed at more than the New Zealand corporate tax rate by effectively rebating the New Zealand WHT to the extent that the dividend was fully imputed. As non-resident withholding tax (NRWT) rates have been reduced to nil on most fully imputed dividends, a supplementary dividend tax credit is generally no longer required.

The supplementary dividend tax credit regime applies only to fully imputed dividends paid to shareholders holding less than 10% of the shares in the company and NRWT rates of at least 15%.

Broadly therefore:

- only portfolio investors (i.e. those with less than 10% holdings) with NRWT rates of at least 15% will qualify for relief under the supplementary dividend rules, and
- a zero rate of NRWT applies to dividends paid to non-portfolio shareholders (i.e. shareholders with more than 10% holdings) and to any other dividends subject to lower tax rates, to the extent they are fully imputed.

Stock dividends

Bonus issues can be taxable or non-taxable. With a taxable bonus issue, the amount capitalised becomes available for tax-free distribution upon a subsequent share cancellation. With a non-taxable bonus issue, the amount capitalised is not available for tax-free distribution upon a subsequent share cancellation.

Shares issued under profit distribution plans (PDPs) are treated as taxable dividends.

Interest income

All interest derived by a company is income. The financial arrangement rules may require income for tax purposes to be recognised on an accrual basis. When this is not required (because the person is classified as a 'cash basis' person), interest income is recognised as and when it is received.

Royalty income

All royalty payments derived by a company is income. Royalty income includes payments for the supply of knowhow. It also includes a payment of any kind derived as consideration for a copyright, patent, plant variety right, trademark, design or model, plan, and secret formula.

Other significant items

The taxation of debt and debt instruments is governed by the financial arrangements rules, a specific set of timing rules. Income or expenditure (including foreign exchange gains and losses) from financial arrangements must be recognised on an accrual basis (generally, yield to maturity or other commercially acceptable method). These rules do not apply to the income or expenditure of a non-resident if the financial arrangement does not relate to a business carried on in New Zealand.

Foreign income

A New Zealand corporation is taxed on foreign passive income as earned. Double taxation with respect to all types of taxable income, including interest, rents, and royalties, is avoided by the recognition of foreign tax credits.

New Zealand does not offer specific tax deferral rules.

Deductions

Depreciation and depletion

For tax purposes, depreciation of property can be computed under the diminishing-value method, the straight-line method, or a pooling method. The rates of depreciation depend on the following factors:

- Type of asset.
- Whether the asset is acquired new or second-hand (i.e. used).

Taxpayers must use the economic depreciation rates prescribed by Inland Revenue. Fixed-life intangible property (including the right to use land and resource consents) is depreciable on a straight-line basis over its legal life. Any depreciation recovered on the sale of an asset (up to its original cost) is taxable in the year of sale.

The double-declining-balance (diminishing value) method applies to most plant and equipment. Under the double-declining-balance method, equipment with an estimated useful life of ten years results in diminishing value depreciation deductions of 20% *per annum* (i.e. double the straight-line rate of 10% over the equipment's ten-year life). Buildings, certain motor vehicles, high-residual-value property, fixed-life intangible property, and property acquired prior to the introduction of the new rules cannot be depreciated under the double-declining-balance method.

The depreciation rate for buildings with an estimated useful life of 50 years or more is 0% as of the 2011/12 income year.

Goodwill

Goodwill is generally regarded as a capital asset, thus any payment for goodwill is non-deductible. There is a limited exception for payments made to preserve goodwill.

Start-up expenses

Expenses incurred by a company before the commencement of the business are generally regarded as outgoings of a capital nature and are therefore not deductible. However, certain expenditure on scientific research may be deductible, provided that it is incurred for the purpose of the company deriving assessable income.

Research and development (R&D)

R&D costs are tax deductible. Expenses written off as immaterial and not tested against certain asset-recognition criteria are not automatically deductible for tax purposes.

Unsuccessful software development costs

Taxpayers are allowed an upfront deduction for expenditure incurred on unsuccessful software development projects in the year that the development is abandoned.

Interest expense

Generally, interest incurred by most companies is deductible, subject to thin capitalisation rules (*see the Group taxation section*).

Bad debt

A company is allowed a deduction for bad debt in the income year in which the debt is physically written off by the company.

Charitable contributions

A company is generally allowed a deduction for charitable contributions it makes to an approved Inland Revenue donee organisation or a charity that performs its activities in New Zealand. The list of approved donee organisations is available on Inland Revenue's website. The deduction available for charitable contributions is limited to the company's net income for that income year.

Entertainment expenditure

Entertainment expenditure is generally only 50% deductible. However, entertainment expenditure incurred overseas is 100% deductible.

Legal expenditure

Legal expenditure is deductible if the expenditure is:

- incurred in deriving assessable or excluded income or
- incurred in the course of carrying on a business for the purpose of deriving assessable or excluded income.

However, the expenditure is not deductible if it is of a capital, private, or domestic nature.

Taxpayers with business-related legal expenditure of NZD 10,000 or less are able to deduct the full amount of the expenditure in the year it is incurred, whether or not it is capital in nature.

Fines and penalties

Generally, no deduction is available where a company has incurred expenditure on fines or penalties paid in breach of statute or regulation. Expenditure on other fines and penalties requires further evaluation before its deductibility can be determined.

Taxes

FBT is deductible, as is GST payable on the value of a fringe benefit.

Net operating losses

Losses may be carried forward indefinitely for offset against future profits, subject to the company maintaining 49% continuity of ownership. There is no loss carryback. Losses of a subsidiary are preserved on a spinout (i.e. when shares in the subsidiary are transferred to shareholders of its parent company).

Payments to foreign affiliates

A New Zealand corporation can claim a deduction for royalties, management service fees, and interest charges paid to non-resident associates, provided the charges satisfy the 'arm's-length principle', which forms the basis of New Zealand's transfer pricing regime.

Group taxation

Groups of resident companies that have 100% common ownership may elect to be subject to the consolidated group regime. The group is effectively treated as a single company, and transfers of assets, dividends, interest, and management fees among members of the group are generally disregarded for tax purposes. The group files a single return and is issued a single assessment. Group members are jointly and severally liable for tax purposes, unless an election is made to limit the liability to one or more companies in the group.

Outside of the consolidated group regime, companies that are 66% or more commonly owned constitute a 'group'. Group companies are able to offset losses by election as well as by subvention payment. A subvention payment is a payment made by the profit company to the loss company and cannot exceed the amount of the loss company's loss. The payment is deductible to the profit company and assessable to the loss company.

Companies that are more than 66% commonly owned but not wholly owned may transfer imputation credits as part of loss grouping (i.e. loss offsets or subvention payments). This allows the company receiving the benefit of the loss grouping to pay a fully imputed dividend despite engaging in loss grouping and allows the company to retain the benefit of the loss transfer.

Certain companies subject to special bases of assessment (e.g. mining companies other than petroleum extraction companies) are excluded from the grouping provisions. Branches of non-resident companies may be included, provided they continue to carry on business in New Zealand through a fixed establishment.

Losses incurred by a dual-resident company are not available for offset by election or subvention payment.

Transfer pricing

The transfer pricing rules are based on OECD principles and require taxpayers to value all cross-border transactions with associates on an arm's-length basis.

The transfer pricing rules apply to arrangements for the acquisition or supply of goods, services, money, intangible property, and anything else (other than non-fixed rate shares) where the supplier and acquirer are associated persons. Similar rules apply to the apportionment of branch profits.

Various methods are available for determining the 'arm's-length consideration'. The taxpayer is required to use the method that produces the most reliable measure of the amount that independent parties would have paid or received in respect of the same or similar transactions. Inland Revenue has published guidelines that make it clear that documentation is required to support a taxpayer's transfer prices. However, currently there is no legal requirement to maintain transfer pricing documentation in New Zealand.

Significant changes are proposed to the transfer pricing rules as part of a series of BEPS-related proposals included in legislation before Parliament. The new concept of a 'control group' is being introduced, which is when members of a group are consolidated for accounting purposes. Those who meet the definition of a 'control group' will be subject to more restricted transfer pricing rules. These changes are expected to come into effect for income years beginning on or after 1 July 2018.

Country-by-country (CbC) reporting requirements

New CbC reporting requirements have been published by the OECD in order to address BEPS. In New Zealand, the first reporting of CbC data took place during the 2017 calendar year.

Each year, the New Zealand Inland Revenue will contact the New Zealand headquartered corporate groups required to file the CbC report and provide templates and guidance.

Thin capitalisation

'Inbound' thin capitalisation rules apply to New Zealand taxpayers controlled by non-residents, including branches of non-residents. The aim of the rules is to ensure that New Zealand entities or branches do not deduct a disproportionately high amount of the worldwide group's interest expense. This is achieved by deeming income in New Zealand when, and to the extent that, the New Zealand entities in the group are thinly capitalised (i.e. excessively debt funded).

The inbound rules include situations where non-residents are 'acting together' and include trusts where the majority of settlements have come from non-residents or from entities subject to the thin capitalisation rules.

The 'outbound' thin capitalisation rules are intended to operate as a base protection measure to prevent New Zealand residents with controlled foreign company (CFC) investments and certain FIF investments from allocating an excessive portion of their interest cost against the New Zealand tax base.

To reduce taxpayer compliance costs, the outbound thin capitalisation rules do not apply when the New Zealand taxpayer has 90% or more of their assets in New Zealand.

Further concessions are available under the 'outbound rules' to taxpayers who do not fall below this threshold. If the taxpayer's interest deduction and dividends paid for fixed rate shares (the finance cost) is below NZD 1 million, no apportionment of deductible interest is required. If the finance cost is above NZD 1 million, but below NZD 2 million, the interest apportionment may be reduced.

An apportionment of deductible interest is required under the thin capitalisation rules when the debt percentage (calculated as the total group interest bearing debt/total group assets of a New Zealand entity or group) exceeds both:

- 60% (for 'inbound' thin capitalisation) or 75% (for 'outbound' thin capitalisation) and
- 110% of the worldwide group's debt percentage.

The use of the debt-to-asset ratio differs from most thin capitalisation models that apply to an entity's debt-to-equity ratio. All interest (both related and unrelated party) is subject to apportionment.

Foreign-owned banks operating in New Zealand are subject to specific thin capitalisation rules that deem income if the bank does not hold a level of equity equivalent to 6% of their New Zealand banking risk-weighted assets. In addition, banks are required to have sufficient equity to equity fund offshore investments that do not give rise to New Zealand taxable income in full.

Significant changes are proposed to the thin capitalisation rules as part of a series of BEPS-related proposals currently before Parliament. These changes are expected to come into effect for income years beginning on or after 1 July 2018. The proposed changes include:

- A 'restricted transfer pricing rule' within the transfer pricing regime, which would require inbound related-party loans to be priced as plain vanilla senior debt with a rebuttable presumption of parental support, unless the foreign parent has substantial third-party debt that includes those terms.
- An administrative safe harbour in the form of an interest rate cap calculated with reference to the credit rating of the New Zealand borrower's ultimate parent company.
- An anti-avoidance rule to ensure that taxpayers do not repay loans just before year-end for thin capitalisation purposes.
- Measuring total assets net of non-debt liabilities, excluding any interest-free shareholders loans.

Controlled foreign companies (CFCs)

The CFC regime imposes New Zealand tax on the notional share of income attributable to residents (companies, trusts, and individuals) with interests in certain CFCs.

Central to the regime is the definition of a CFC. When five or fewer New Zealand residents directly or indirectly control more than 50% of a foreign company, or when a single New Zealand resident directly or indirectly controls 40% or more of a foreign company (unless a non-associated non-resident has equal or greater control), that company is a CFC. For interests that do not meet the definition of a CFC, the investment may be taxed under the FIF regime (*see below*).

Note that a person with an income interest in a CFC does not have attributed CFC income or losses if:

- the Australian exemption applies or
- the CFC passes an active business test.

If the exemptions do not apply, only the CFC's passive (attributable) income is subject to tax on attribution (on an accrual basis). However, no income attribution is required if a New Zealand resident has an income interest of less than 10% in the CFC.

Active business test

A CFC passes the active business test if it has passive (attributable) income that is less than 5% of its total income. For the purposes of the test, taxpayers measure passive and total income using either financial accounting (audited International Financial Reporting Standards [IFRS] or NZ GAAP accounts) or tax measures of income.

CFCs in the same country may be consolidated for calculating the 5% ratio, subject to certain conditions.

Australian exemption

A person with an interest in a CFC does not have attributed CFC income or a loss if the CFC is a resident in, and subject to income tax in, Australia and meets certain other criteria.

Passive (attributable) income

Attributable, or passive, income is income that is highly mobile and not location-specific (i.e. income where there is a risk that it could easily be shifted out of the New Zealand tax base).

The broad categories of attributable income are as follows:

- Certain types of dividend that would be taxable if received by a New Zealand resident company.
- Certain interest.
- Certain royalties.
- Certain rents.
- Certain amounts for financial arrangements.
- Income from services performed in New Zealand.
- Income from offshore insurance business and life insurance policies.
- Personal services income.
- Income from the disposal of revenue account property.
- Certain income related to telecommunications services.

Taxpayers must disclose interests in CFCs in their annual tax returns. Failure to disclose CFC interests can result in the imposition of penalties.

Foreign investment funds (FIFs)

The FIF regime is an extension of the CFC regime, which subjects persons with interests in certain foreign entities (which are not CFCs) to New Zealand tax. It also applies when the investor does not have a sufficient interest in a foreign entity to be taxed under the CFC regime.

Common examples of investments classified as FIFs include foreign companies, unit trusts, and life insurance policies issued by foreign entities not subject to New Zealand tax.

The FIF rules can be split into two regimes:

- The portfolio FIF rules, which apply to interests of less than 10% in an FIF.
- The non-portfolio FIF rules, which apply to interests of 10% or more that are outside the CFC rules.

Portfolio FIF rules

The portfolio FIF rules apply to interests of less than 10% in foreign companies, foreign superannuation schemes, and foreign life insurance policies issued by non-resident life insurers (if the CFC rules do not apply). However, a New Zealand resident does not generally have FIF income when:

- the total cost of FIF interests held by the individual does not exceed NZD 50,000
- the income interest is in certain Australian Stock Exchange (ASX) listed companies or certain Australian unit trusts, or
- the CFC rules apply.

There are also exemptions for interests in certain foreign employment-related superannuation schemes. These include interests held by returning residents and new migrants acquired before the person became a New Zealand resident or within the first five years of New Zealand residence.

When an interest is exempt from the FIF rules, distributions are subject to tax on a receipts basis in accordance with normal principles.

The taxable income of a New Zealand resident with an interest in an FIF that does not qualify for one of the exemptions is calculated using one of the following methods:

- Fair dividend rate (FDR).
- Comparative value.
- Cost.
- Deemed rate of return.
- Attributable FIF income.

The nature of the interest held and the availability of information restrict the choice of method.

Taxpayers must disclose interests in certain FIFs in their annual tax returns. Failure to disclose can result in the imposition of penalties.

Non-portfolio FIF rules

The active business exemption (which applies for CFCs) also includes certain non-portfolio FIFs. If the FIF fails the active business test, passive income will be attributed to the New Zealand shareholders. There is also an exemption for shareholders with a 10% or greater interest in an FIF that is resident and subject to tax in Australia.

When investors do not have sufficient information to perform the calculations required under the active business test (or choose not to apply the active business test), they will be able to use one of the attribution methods for portfolio FIF investments (*see above*).

Tax credits and incentives

Foreign tax credits

If a New Zealand resident company derives overseas income that is subject to New Zealand income tax, the company is generally allowed a credit for the foreign income tax paid in respect of that income. Generally, the credit is limited to the lesser of the actual overseas tax paid on the overseas income or the New Zealand tax applicable to the overseas income.

Foreign tax credits can only be used if the taxpayer is in a tax paying position. If foreign tax credits are not claimed in the current year, they are forfeited.

Inbound investment incentives

There are limited, specific tax incentives designed to encourage the flow of investment funds into New Zealand.

Legislation encourages foreign venture capital investment into unlisted New Zealand companies. Gains derived by certain non-residents from the sale of shares (held on revenue account and owned for at least 12 months) in New Zealand unlisted companies that do not have certain prohibited activities as their main activity are exempt from income tax. The rules apply to foreign investors who are resident in all of the countries with which New Zealand has a DTA (except Switzerland) and who invest into New Zealand venture capital opportunities.

Capital investment incentives

Investment allowances on fixed assets are not available.

Trans-Tasman imputation

Elective rules allow trans-Tasman groups of companies to attach both imputation credits (representing New Zealand tax paid) and franking credits (representing Australian tax paid) to dividends paid to shareholders.

The regime allows eligible wholly owned groups of Australian and/or New Zealand companies to group for imputation purposes only. Groups with both Australian and New Zealand members are known as trans-Tasman imputation groups (TTIGs). New Zealand companies within a trans-Tasman group maintain a separate 'resident imputation subgroup' account.

Withholding taxes

Resident corporations paying certain types of income are required to withhold tax on gross income, as shown in the table below.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations	33 (1)	28 (1)	0
Resident individuals	33	max 33	-
Non-resident corporations and individuals		(2)	
Non-treaty	0/15/30 (3)	15 (4)	15
Treaty:			
Australia	0/5/15 (5)	0/10 (5)	5
Austria	15	10	10
Belgium	15	10	10
Canada	5/15 (6)	10	5/10 (6)
Chile	15	10/15 (7)	5
China, People's Republic of	15	10	10
Czech Republic	15	10	10
Denmark	15	10	10
Fiji	15	10 (8)	15
Finland	15	10	10
France	15	10	10
Germany	15	10	10
Hong Kong	0/5/15 (9)	0/10 (9)	5
India	15	10	10
Indonesia	15	10	15
Ireland, Republic of	15	10	10
Italy	15	10	10
Japan	0/15 (10)	0/10 (10)	5
Korea, Republic of	15	10	10
Malaysia	15	15	15

New Zealand

Recipient	WHT (%) Dividends	Interest	Royalties
Mexico	0/5/15 (11)	10	10
Netherlands	15	10	10
Norway	15	10	10
Papua New Guinea	15	10	10
Philippines	15	10	15
Poland	15	10	10
Russian Federation	15	10	10
Samoa	5/15 (12)	10	10
Singapore	5/15 (13)	10	5
South Africa	15	10	10
Spain	15	10	10
Sweden	15	10	10
Switzerland	15	10	10
Taiwan	15	10	10
Thailand	15	10/15 (14)	10/15 (14)
Turkey	5/15 (15)	10/15 (15)	10
United Arab Emirates	15	10	10
United Kingdom	15	10	10
United States	0/5/15 (16)	0/10 (16)	5
Vietnam	5/15 (17)	10	10

Notes

1. Resident WHT applies to both interest and dividends. Unless the recipient corporation holds an exemption certificate, and if the recipient provides a tax file number, the default rate of the interest WHT is 28%. Recipients can elect for the rate of interest withholding to be 28% or 33%. The rate of interest WHT is 33% where the recipient does not provide a tax file number.

   The rate of WHT on dividends paid is 33%, but the tax is reduced by the aggregate imputation and withholding payment credits attached to the dividend or taxable bonus share. Interest and dividends paid between group companies and in certain other limited circumstances are exempt from the WHT.

   Where a fully imputed dividend is paid to a corporate shareholder, there is no requirement to withhold RWT or NRWT.

2. Resident corporations paying interest to non-associated, non-resident corporations and individuals need not withhold tax if they have approved-issuer status and the security under which interest is payable is registered with Inland Revenue. In this case, the resident corporation pays a 2% levy (tax deductible) on the interest payments instead of the WHT otherwise applicable.
3. NRWT is imposed on dividends at the following rates, regardless of the jurisdiction to which the dividends are paid:
   - 0% for fully imputed dividends paid to a shareholder holding 10% or more of the direct voting interests in the company and fully imputed non-cash dividends.
   - 15% for fully imputed cash dividends paid to a shareholder holding less than 10%.
   - 30% in most other cases, subject to any relief available under a DTA.
4. Net interest income is subject to reassessment at the company tax rate where the payer and the recipient are ‘associated persons’, but WHT is the minimum liability. NRWT is not imposed where the recipient of the interest has a fixed establishment in New Zealand.
5. The WHT on dividends is reduced from 15% to 5% for an investing company that has at least a 10% shareholding in the company paying the dividend. The rate reduces to 0% if the investing company holds 80% or more of the shares in the other company and meets other criteria. The WHT rate on interest is 10% but is reduced to 0% if it is payable to eligible financial institutions.
6. The WHT on dividends is reduced from 15% to 5% for an investor who holds at least 10% of the shares in the company that pays the dividend. The WHT rate on royalties is reduced from 15% to 10% generally, with a further reduced rate of 5% for royalties relating to copyright, computer software, and others.
7. The WHT on interest is reduced to 10% if the interest received is derived from loans granted by banks or insurance companies. In all other cases, 15%.

8. The WHT on interest may differ in accordance with the rates prescribed by New Zealand legislation for interest paid to 'associated persons'.
9. The WHT on dividends is reduced from 15% to 5% for an investing company that has at least a 10% shareholding in the company paying the dividend. The rate reduces to 0% if the investing company holds 50% or more of the shares in the other company and meets other criteria. The WHT rate on interest is 10% but is reduced to 0% if it is payable to eligible financial institutions.
10. The WHT rate on dividends is reduced from 15% to 0% for an investor who holds at least 10% of the voting power in the company paying the dividend (subject to certain conditions being met). The WHT rate on interest is 10% generally and 0% if it is payable to eligible financial institutions.
11. The 0% WHT rate applies where the foreign company owns at least 80% of the voting rights in the paying company (directly or indirectly) for 12 months prior to the date the dividend is paid and meets other criteria. The 5% rate applies if the foreign company has a direct interest of at least 10% of the voting rights in the paying company.
12. The WHT rate on dividends will reduce from 15% to a maximum of 5% for an investor who holds at least 10% of the shares in the company that pays the dividend.
13. The standard WHT rate on dividends reduces to 5% for an investing company that has at least a 10% shareholding in the company paying the dividend.
14. The WHT rate on interest is reduced to 10% if it is received by a financial institution or it is paid with respect to debt arising from a sale on credit of any equipment, merchandise, or services. The WHT rate is reduced to 10% for certain types of royalty.
15. The WHT rate on dividends is reduced to 5% if the beneficial owner is a company holding at least 25% of the capital of the company paying the dividends and 15% in all other cases. The WHT rate on interest is reduced to 10% if the interest is paid to a bank and 15% in all other cases.
16. The WHT rate on dividends is 5% for an investor who holds at least 10% of the shares in the company that pays the dividend; 0% if the investor holds 80% or more of the shares in the company and meets other criteria; 15% in all other cases. The WHT rate on interest is 10% but is reduced to 0% if it is payable to eligible financial institutions.
17. The WHT rate on dividends is reduced to 5% if the beneficial owner is a company holding at least 50% of the voting power in the company paying the dividends and 15% in all other cases.

Tax administration

Taxable period

Tax returns are based on the fiscal year ending 31 March, although other fiscal year-ends are possible if permission is obtained.

Tax returns

The system is one of self-assessment, under which the corporation files an income tax return each year. For those not linked to a tax agent, returns must be filed by 7 July for balance dates between 1 October and 31 March, or by the seventh day of the fourth month following a balance date between 1 April and 30 September. The filing date for taxpayers linked to a tax agent is extended to 31 March of the following year.

Payment of tax

Terminal tax payment is due on 7 February for balance dates between 31 March and 30 September. For other balance dates, terminal tax payments are generally due on the seventh day of the 11th month following the balance date. The terminal tax due date is extended by two months for taxpayers linked to a tax agent.

Provisional tax payments are generally due in three instalments: (i) 28th day of the seventh month before the balance date, (ii) 28th day of the third month before the balance date, (iii) 28th day of the month following the balance date.

Calculating provisional tax

For the 2018/19 income year (i.e. year ending 31 March 2019), provisional taxpayers have the following five options:

1. Where the 2017/18 return of income has been filed, 2018/19 provisional tax can be based on 105% of the 2017/18 residual income tax.

2. Where the 2017/18 return of income has not been filed, due to an extension of time for filing, 2018/19 provisional tax can be based on 110% of the 2016/17 residual income tax, but only for the first two instalments. The final instalment must be calculated based on the first option above.
3. Provisional tax can be based on a fair and reasonable estimate of the 2018/19 residual income tax.
4. The GST ratio option.
5. The Accounting Income Method (AIM).

The GST ratio option enables smaller taxpayers to align their provisional tax payments with their cash flow and reduce their exposure to use of money interest. The option is intended to benefit those taxpayers with declining, seasonal, or fluctuating income. This option calculates provisional tax by reference to the taxpayer's GST taxable supplies in the relevant provisional tax instalment period.

With effect from 1 April 2018, a new method for calculating provisional tax payable, the AIM, is available for businesses with gross annual income of less than NSD 5 million. AIM uses accounting information from the business' accounting software for a period as a basis for calculating the tax liability of the business for that period. The resulting amount is payable by the taxpayer as a provisional tax instalment.

Taxpayers can also make voluntary payments. Such payments can be made to minimise exposure to use of money interest. A taxpayer choosing to estimate residual income tax is required to take reasonable care when estimating.

When the taxpayer's return of income for the year is furnished, the provisional tax paid for that year is credited against the tax assessed. This results in either a refund or further tax to pay by way of terminal tax.

For the 2017 year and prior, where provisional tax paid was less than the amount of income tax deemed due on that instalment date, interest was imposed. If provisional tax was overpaid, interest was payable to the taxpayer. Interest was deductible for tax purposes by business taxpayers, and interest earned on overpaid provisional tax was gross income for tax purposes.

From the 2018 year and onwards, there will be no interest charged by or received from Inland Revenue if the first and second instalments are in line with the standard uplift method (described as options 1 and 2 above). A taxpayer will be exposed to full use-of money interest (UOMI) from the point they choose to estimate. 'Provisional tax associates' should use the same method (i.e. standard or estimation).

Use-of-money interest (UOMI)

From 8 May 2017, the interest rate for unpaid tax is 8.22%, while the rate for overpaid tax is 1.02%.

Tax pooling

Taxpayers are able to pool their provisional tax payments with those of other taxpayers through an arrangement with a commercial intermediary. Tax pooling allows underpayments to be offset by overpayments within the same pool and *vice versa*.

Tax penalties

An initial late payment penalty of 1% applies if a tax payment is not made on the due date. A further 4% late payment penalty applies if the payment is not made within seven days of the due date. For the 2017 year and prior, an incremental late payment penalty of 1% was imposed monthly until payment was made. The 1% monthly penalty is no longer being charged on amounts that remain unpaid for the 2018 year onwards.

Inland Revenue is required to notify a taxpayer the first time their payment is late rather than imposing an immediate late payment penalty. If payment is not made by a certain date, a late payment penalty will be imposed. Taxpayers will be entitled to one notification every two years. After receiving a first warning, Inland Revenue will not send further notifications for two years, and an initial late payment penalty will be imposed in the normal manner.

Shortfall penalties

Shortfall penalties, calculated as a percentage of the tax shortfall resulting from the action or position taken by the taxpayer in a tax return, may also apply.

There is a 50% discount on certain penalties where the taxpayer has a past record of 'good behaviour' and, in certain circumstances, a cap of NZD 50,000 on shortfall penalties for not taking reasonable care or for taking an unacceptable tax position.

Tax audit process

Inland Revenue maintains an active audit programme across all tax types and taxpayer profiles and regularly publishes information about their compliance focus. Often, Inland Revenue audits are preceded by a risk review where Inland Revenue requests information in order to evaluate the risk of non-compliance. Where this review detects an issue that requires further inspection, Inland Revenue will then advise that an audit will be commenced.

Statute of limitations

The general rule is that Inland Revenue has four years from the end of the New Zealand income tax year (31 March) in which the return is filed to re-assess the return, unless the return is fraudulent, wilfully misleading, or omits income of a particular nature or source.

Topics of focus for tax authorities

For multinational corporations, Inland Revenue highlights tax avoidance, transfer pricing, CFCs, and international financing arrangements as key risk areas, in tune with the OECD's current dialogue on the BEPS work. In particular, Inland Revenue is focussing on the following:

- Transfer pricing: Lack of transfer pricing documentation, major downwards shifts in profitability, widely differing profits between local entities and their global group members, unsustainable levels of royalties or management fees, transactions with low or no tax jurisdictions, and chronically recurring losses.
- CFCs: Technical compliance, possible New Zealand tax residency of CFCs through local management control or director decision making.
- BEPS concerns: Taxation of digital goods and services provided over the internet, hybrid mismatches occurring as a result of variances in tax treatment between countries, and misuse of tax treaties.

- GST: Associated party transactions, non-routine transactions, and zero rating of goods or services.
- Non-residents: Transactions with non-residents and non-resident contractors.

For small-to-medium sized enterprises (SMEs), Inland Revenue is focussing on GST errors, employer deductions, NRCT, and other minor filing errors.

Other key focus areas include the following:

- Aggressive tax planning.
- Central and local government.
- Life insurance providers.
- Trusts.
- Fraud and identity theft.
- Charities.
- The property sector.
- Under-reporting income and operating outside the system.

Other issues

Financial reporting standards for SMEs

The Financial Reporting Act 2013, along with the Financial Reporting (Amendments to other Enactments) Act 2013, changed the financial reporting and audit requirements for some New Zealand entities. As of 1 April 2014, entities that do not fall under the definition of 'large' or have 'public accountability' do not have to prepare general purpose financial statements in accordance with NZ GAAP. Entities that no longer have to prepare general purpose financial statements under the Financial Reporting Act 2013 are still required to prepare special purpose financial statements for tax purposes. Inland Revenue has provided the minimum requirements for financial statements in an Order in Council. These include:

- a balance sheet, profit and loss, and supporting notes or schedules
- accounts based on double entry cost-based accrual accounting
- tax values utilised for the determination of income and expenditure and preparation of the balance sheet
- a statement of accounting policies and changes
- a reconciliation of the financial statements to taxable income, and
- a schedule of related-party transactions.

BEPS Multilateral Instrument (MLI)

New Zealand signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) in June 2017. New Zealand has ratified the MLI. However, to complete the process, New Zealand needs to deposit the instrument of ratification with the OECD.

The MLI will enter into force on 1 July 2018, given five signatories have now completed the ratification process. The MLI will enter into force for relevant New Zealand treaties three months after New Zealand has deposited the instrument of ratification with the OECD, provided the other treaty partner has also completed its ratification process.

Nicaragua

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Significant developments

There have been no significant corporate tax developments in Nicaragua during the past year.

Taxes on corporate income

Nicaragua has a territorial income tax system under which only income generated in, or that causes effects in, Nicaragua is generally subject to income tax. The corporate income tax (CIT) is imposed on a corporation's profits, which consist of business/trading income, and passive income. Capital incomes and capital gains are subject to definitive withholding tax (WHT). General business expenses are allowed as a deduction in computing taxable income.

Corporate income tax (CIT) rate

CIT is levied only on domestic-sourced income at a flat rate of the higher of:

- 30% of net taxable income (i.e. gross taxable income less allowed deductions), or
- a definitive minimum tax of 1% on gross income obtained during the fiscal year.

If the company does not have net income, 30% of net income will not be greater than 1% of gross income.

The law establishes the following exceptions to the 1% definitive minimum tax:

- First three fiscal periods of recently incorporated entities. For tax purposes, the beginning of business operations is when a company generates taxable income.
- Taxpayers whose sales prices are controlled by the government.
- Taxpayers that ceased operations on account of *force majeure*.
- Investments subject to a period of development. The Treasury Ministry must approve such period.

Local income taxes

See Municipal sales and services tax in the Other taxes section.

Corporate residence

Legal entities considered as a tax resident must comply with one of the following criteria:

- Registered according to the Laws of Nicaragua.
- Have their fiscal domicile in the territory of Nicaragua.
- Have their place of management located in the territory of Nicaragua.

The legal forms permitted in Nicaragua to constitute a corporation are stock corporations or limited liability companies, either as subsidiaries or branches.

Permanent establishment (PE)

Law 822 has incorporated a definition of 'permanent establishment' into the Nicaraguan income tax regime. This term means a place through which a non-resident taxpayer wholly or partially carries on business, including, *inter alia*, the following: a place of management; a branch; an office or agent; a factory; a workshop; and a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

Such definition also includes a building site or construction or installation project or connected supervision activities, but only if its duration exceeds six months; and the performance of consultancy services, provided that they exceed six months within an annual period.

A PE may also be created where a person other than an agent of independent status acts on behalf of a non-resident taxpayer if:

- this person has in Nicaragua authority to habitually conclude contracts or undertake acts in the name of the non-resident taxpayer, or
- even though this person does not have such authority, this person habitually maintains in Nicaragua a warehouse of goods or merchandise from which this person regularly delivers goods or merchandise in the name of the non-resident taxpayer.

These PE rules will not apply to a branch or PE of non-resident taxpayers operating business activities of marine and air transportation of cargo and passengers, as well as land cargo transportation.

Other taxes

Value-added tax (VAT)

The following transactions are subject to VAT when performed within Nicaragua:

- Supplies of goods.
- Supplies of services.
- Importations of goods.
- Exports of goods and services.

VAT is imposed at a 15% rate on the sale of goods, rendering of services, grant of use of assets, and import of goods. Export of goods and services are subject to a 0% rate.

VAT exemptions are available for certain items, including medicine, real estate transfer, sale of used goods, basic food products, credit instruments, tuition, and textbooks and educational supplies.

Taxpayers may recover VAT paid for the purchase of goods and services used to generate other goods and services subject to VAT. This is known as VAT liquidation, which is determined by subtracting VAT credits paid on transactions needed to generate taxable income for VAT purposes from VAT collected on the sales of goods or the rendering of services. Note that VAT paid on transactions to generate non-taxable income for VAT purposes are not allowed as VAT credits.

The exemption with right to deduct input VAT applies when:

- the input VAT is necessary in the business activity process for selling of goods or provision of services, and
- the tax is properly detailed in the invoice of a legal document.

VAT returns must be filed on a monthly basis, with payment due in full on the same day. Taxpayers registered as high taxpayers (with annual income greater than 60 million Nicaraguan córdobas [NIO]) must present an advanced bi-weekly VAT return in the first five business days after the 15th day of each month and a definite return in the first 15 days of the following month.

Selective consumption tax

A selective consumption tax is applied to goods that are considered to be non-essential. The tax base is the cost, insurance, and freight (CIF) price for imported items, and the tax is levied and paid only at that stage (based on the list of products published as an appendix to Law 822).

Customs duties

Customs duties relate to the importation of any good within the Nicaragua territory for commercial purposes. The following taxes apply to imports, depending on the product:

- Import Custom Duties (DAI), which are the local tariff liens in the importation of goods agreed to in the Central American Import Tariff.
- Excise Tax (ISC), which is an indirect tax levied on selective consumption of goods (e.g. tobacco cigarettes).
- VAT.

Temporary Admission for Active Processing (TAP) regime

Exporters can apply for the TAP regime, which is designed to allow the importation of goods without payment of duties, import taxes, or other taxes, on condition of being transformed (i.e. subject to any subsequent operation) to be re-exported or exonerated.

Transfer taxes

Nicaragua’s tax system does not impose transfer taxes.

Stamp taxes

Stamp duty is levied on certain types of documents issued in Nicaragua.

Payroll taxes

The employer is responsible to withhold and pay employee income tax on a monthly basis through withholding income tax return Form IR-122, according to progressive tax rates.

Social security contributions

In principle, social charges apply to nationals and legal residents from the first day of employment on a monthly basis. Social security contributions are calculated upon the gross salary of the employee, as follows:

	Social security rates (%)				
	Pension	Family health	Labour healthcare	War victims	Total
Employer	10.00	6.00	1.50	1.50	19.00
Employee	4.00	2.25	0	0	6.25

The employer must also pay 2% of its payroll, on a monthly basis, for Training Tax (INATEC).

Municipal sales and services tax

A monthly 1% tax is levied on all sales of goods and rendering of services in each of the municipalities of the country.

Municipal registration tax

An annual 2% tax is levied by each municipality on the average of income received in the months of October, November, and December of the previous year. In the case of the incorporation of a new establishment or enterprise, the municipal registration tax is 1% of the capital invested.

Real estate municipal tax

The real estate municipal tax is an annual tax that is levied at a rate of 1% on 80% of cadastral value, as recorded by the government. If the cadastral value is not available, the cost or fiscal appraisal value may be used.

Branch income

Branch income received is subject to the general CIT. The repatriation of income from the branch to the head office in the form of dividends, profits, capital gains, or any other form that suggests the income repatriated is an economic benefit is considered taxable.

Income determination

Taxable income is determined by the sum of all income derived from Nicaraguan sources, less allowable deductions, which generally include all expenses necessary to generate taxable income. Taxable income is computed according to International Financial Reporting Standards (IFRS) and modified, as required, by Nicaraguan income tax law.

Inventory valuation

Last in first out (LIFO), first in first out (FIFO), and the average cost methods are accepted for inventory valuation purposes. The tax authorities must authorise the change of a valuation method.

Capital gains and losses

Capital income and capital gains and losses are subject to definitive WHT and are not treated as ordinary taxable corporate income. The general rule is that capital income and capital gains for tax residents are subject to 10% WHT; however, the following exceptions apply:

- Capital gains derived from the sale or transfer of Nicaraguan shares that took place out of the territory of Nicaragua are subject to 5% WHT over the transaction value.
- Capital income derived from the lease of fixed assets and non-fixed assets for tax residents are subject to 7% and 5% WHT, respectively; in the case of tax non-residents, they are subject to 10.5% and 7.5% WHT, respectively.
- Capital gains derived from the transfer of assets subject to annotation in the public registry (e.g. real estate, vehicles) will be subject to a WHT based on the amount of the transaction, as follows:

Good value (USD*)		
From	Through	WHT rate (%)
0.01	50,000.00	1
50,000.01	100,000.00	2
100,000.01	200,000.00	3
200,000.01	or more	4

* United States dollars

Dividend income

Stock dividends paid by Nicaraguan entities to resident shareholders are subject to a 10% definitive WHT (15% in the case of non-resident shareholders).

Interest income

Interest received from a Nicaraguan source by residents of Nicaragua, as well as the interest gained by residents from deposits placed in the national financial system, is subject to a 10% WHT (15% in the case of non-residents).

Interest earned on government bonds and securities is considered taxable income subject to a 10% WHT.

The WHT will not apply if the beneficiary of the interest payment is included in the list of exempt International Credit Institutions and Agencies or Foreign Governments Development Institutions, provided in the Ministerial Agreement 24-2014, which requires that the beneficiary should request the Finance and Public Credit Ministry for the corresponding exemption recognition.

Royalty income

Royalties are treated as capital income subject to a 10% WHT (15% in the case of non-residents).

Foreign income

Business enterprises are subject to CIT only on Nicaraguan-source income.

Deductions

Depreciation

Depreciation must be computed using the straight-line method. Depending on the type of construction and the estimated life of fixed assets, annual rates for depreciation are as follows:

Asset	Rate (%)
Buildings	3/5/10
Vehicles	12/20/33
Plant and equipment	10/14/20
Other assets	10/20/50

Alternative method of depreciation

Taxpayers under the TAP regime (*see Customs duties in the Other taxes section*) may, at their convenience, request a different depreciation rate (i.e. accelerated depreciation) from the tax authorities. Used fixed assets acquired abroad may also be subject to a different depreciation rate.

Goodwill

Goodwill, meaning the excess paid over book value in a transaction, can be deductible for CIT purposes if the capital gain is considered in the seller's CIT return. However, the tax authorities must authorise the tax periods in which the goodwill will be amortised.

Start-up expenses

Start-up expenses are amortised over a three-year period of time after the beginning of business operations.

Interest expenses

As a general rule, deduction of interest is allowed when derived from loans of financial institutions; however, the interest paid derived from loans of non-financial institutions will be deductible up to the amount resulting from applying the average lending rate of the national bank at the date of obtaining the loan, if fixed, or at the date of each payment, if variable.

In order for interest paid to a non-resident to be deductible, the corresponding 15% WHT must be withheld and paid.

Bad debt

Corporations are allowed a deduction for receivables as an allowance for doubtful accounts as long as there is supporting documentation of the credit, identification documents of the debtor and creditor, and administrative and judicial collection proof.

Charitable contributions

A deduction is allowed, at up to 10% of the corporation's income, for charitable contributions made to the government and its institutions, the Red Cross, and other organisations.

Compensation

A deduction of up to 10% of the accumulated profits before this expense is allowed for payments made to employees as bonuses or in addition to their salaries or wages.

Life insurance

A deduction is allowed for employee insurance payments made.

Fines and penalties

Penalties or charges made by tax, customs, social security, or municipal authorities are not deductible for CIT purposes.

Taxes

In principle, income tax expense is not deductible for CIT purposes. Municipal or local taxes (i.e. real estate tax, monthly sales and services tax, annual registration tax) are deductible from CIT.

Net operating losses

Losses may be carried forward and deducted from future profits, for up to three years. The carryback of losses is not allowed.

Payments to foreign affiliates

Payments made from affiliates to foreign related parties are deductible for CIT purposes, provided the following requirements are met:

- The expenses (i.e. royalties, interest, and services) are needed to generate taxable income.
- The expenses are duly supported (e.g. agreements, invoices, payment receipts).
- The expenses are incurred within the fiscal period.
- The WHT is applied and paid to the tax authorities.

Group taxation

Group taxation is permitted only when previously approved by the tax authorities. The economic group must submit a business case to the tax administration justifying the economic reason of their request.

Transfer pricing

The Nicaragua tax system recognises transfer pricing as a method of trading. Law 822 regulates transfer pricing rules based on the Organisation for Economic Co-operation and Development (OECD) regulations (including contemporaneous documentation requirements), and it has been in effect since 30 June 2017.

Thin capitalisation

The Nicaragua tax system does not impose any form of thin capitalisation rules.

Controlled foreign companies (CFCs)

Nicaragua does not have any CFC rules.

Tax credits and incentives

Foreign tax credit

The Nicaragua tax system does not recognise any form of foreign tax credit.

Tourism incentives

Under present law, and on a case-by-case basis, new companies with tourist activities may request and the government may grant, during the facilities' construction phase, total exemption of customs duties and partial or total CIT exemption for a maximum period of ten years.

Renewable energy incentives

The renewable energy sector is covered by a special law with tax benefits or exemptions in CIT, VAT, customs duties, and municipal tax.

Free trade zones (FTZs)

The Nicaraguan government amended Decree No. 46-91, and enacted Law 915/2015 - Export Free Trade Zone Law, which provides for several types of export free zones (e.g. for processing, industrial production, logistics and outsourcing services).

Although the law does not bring major changes with respect to Decree No. 46-91, it has modified the tax exemption period to FTZ users, and, as of the publication of this law (i.e. 16 October 2015), they will qualify for a ten-year income tax holiday, which can be extended for an additional ten years. Once the full tax exemption expires, qualifying companies will be entitled to a 60% exemption. These incentives are subject to the approval of the National Free Zone Commission.

Qualifying companies are entitled to exemptions from capital tax and stamp duties, indirect and excise taxes, export taxes on locally made products, municipal taxes, and the immovable property transfer tax and capital gains tax on the alienation of immovable property if they are closing their operations in the FTZ and the immovable property will remain there.

Raw materials, machinery, equipment, spare parts, samples, molds, and accessories required for the operation of companies in the FTZs are exempt from import duties.

Withholding taxes

Payments to residents

Dividend payments to resident shareholders (corporations or individuals) are subject to 10% WHT.

Payments of royalties to resident individuals or corporations are subject to 10% WHT.

Interest paid to a resident individual or legal entity is subject to 10% WHT.

Professional services provided by an individual are subject to 10% WHT.

Payments on the local acquisition of goods and services are subject to 2% WHT.

Payments to non-residents

Payments of dividends, interest, royalties, and service fees to non-resident corporations are subject to WHT, as follows:

Payment	WHT rate (%)
Dividends	15
Interest:	
Non-financial companies	15
Financial companies	15
Royalties	15
Services provided in general	15
TV and radio programming or subscription	15

Payments of any kind of income to non-resident individuals are subject to WHT of 15%.

In principle, Nicaragua has not signed any agreement or treaty with any country to avoid double taxation.

Transactions with tax havens

Expenses that are paid by Nicaraguan residents to an individual or entity that is a resident of a tax haven are subject to a 17% WHT. For this purpose, a tax haven may be:

- a foreign territory where the income tax is 'substantially' lower than the Nicaraguan income tax
- a foreign country or territory that has been listed, for the corresponding taxable year, as an un-cooperative jurisdiction by the Global Forum on Transparency and Exchange of Information for Tax Purposes, or
- a foreign territory that is listed by the Nicaraguan Public Credit and Finance Ministry.

Tax administration

Taxable period

The standard tax year in Nicaragua is the calendar year (from 1 January to 31 December); however, companies can obtain authorisation from the tax authorities in order to change or have a different year-end: 31 March, 30 June, or 30 September.

Tax returns

Without exception, all corporations are required to file CIT returns for a fiscal year within the following three months after the fiscal year-end.

Payment of tax

Corporations shall pay fiscal-year income tax in monthly advance payments. The monthly payable amount is calculated as 1% of gross income.

Final CIT payment is due with the final CIT return (i.e. within the following three months after the fiscal year-end).

Tax audit process

The tax authorities are entitled to conduct a tax audit of the taxpayer when considered necessary. The taxpayer has the obligation to submit before the tax auditor the corporate information and documents related to the generation of income.

Statute of limitations

The statute of limitation in Nicaragua is up to the last four fiscal-ended periods.

Topics of focus for tax authorities

In Nicaragua, tax audits are determined randomly; however, high taxpayers or taxpayers who request reimbursement of tax credit are more likely to be audited. For corporate tax compliance, the tax authorities normally seeks information in regards to taxpayer operations through the advance income tax returns.

Nigeria

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Significant developments

Federal government increases excise duties on tobacco and alcoholic products

The President of Nigeria, on the recommendation of the Tariff Technical Committee of the Ministry of Finance, approved an increase to the excise duties on tobacco and alcoholic beverages effective from 4 June 2018.

The increase will be introduced in phases over a three-year period from 2018 to 2020 to moderate the impact of the increase on the price of the products.

The Voluntary Assets and Income Declaration Scheme (VAIDS)

On 29 June 2017, the Acting President of Nigeria formally launched the VAIDS. The Scheme commenced on 1 July 2017 and lasted for a period of nine months. The VAIDS is an initiative designed to encourage voluntary disclosure of previously undisclosed assets and income for the purpose of payment of all outstanding tax liabilities.

The legal basis for the Scheme is an Executive Order signed into law by the Acting President and a Memorandum of Understanding signed between the Federal Inland Revenue Service (FIRS) and the State Internal Revenue Services. Taxpayers who made full and honest declarations will enjoy waiver of interest and penalty, immunity from prosecution, confidentiality, exemption from tax audits for the periods covered, and flexible payment of tax due for up to three years.

The Scheme was applicable to all persons (individuals, companies, executors, trustees, partnerships, etc.) liable to tax in Nigeria. Taxes covered include corporate income tax (CIT), personal income tax (PIT), petroleum profit tax (PPT), capital gains tax (CGT), value-added tax (VAT), stamp duties, tertiary education tax, and information technology levy. Taxpayers who failed to participate in the Scheme will be investigated and if found culpable will be subject to criminal prosecution and subsequent inclusion in a 'name and shame' list.

The Scheme has been implemented by the FIRS in collaboration with all 36 State Internal Revenue Services and the Federal Capital Territory (FCT) IRS. The government will gather intelligence locally and through various international conventions and multilateral agreements to obtain information required for prosecution of defaulting taxpayers or those who make false declarations. An international forensic and asset tracing company has also been engaged to support this process.

Nigeria signs double taxation treaty (DTT) with Singapore

Nigeria and Singapore have signed a treaty for the avoidance of double taxation on income and capital gains tax between the two countries.

When ratified by the National Assembly, the treaty will provide enhanced reliefs to investors and businesses between both countries to eliminate or reduce the incidence of double taxation in addition to exchange of information and mutual assistance on tax matters.

Nigeria ratifies DTT with Spain

On 26 January 2018, the Nigerian government announced the ratification of the Nigeria-Spain DTT.

The DTT was initially negotiated in June 2009 and presented to the National Assembly for ratification in 2016, alongside DTTs with Sweden and South Korea.

Nigeria signs Organisation for Economic Co-operation and Development (OECD) Multilateral Instruments to Curb Tax Avoidance and Evasion

On 17 August 2017, Nigeria became a signatory to two major international multilateral instruments to address tax avoidance and evasion. These are the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) ('Multilateral Instrument' or 'MLI') and the Multilateral Competent Authority Agreement for the Common Reporting Standard (CRS MCAA).

The MLI will cause amendments to be made to Nigeria's existing tax treaties. The aim of these amendments is to limit treaty abuse and other forms of tax avoidance. The CRS MCAA will potentially allow the Nigerian tax authorities to automatically receive financial information on Nigerian nationals who hold bank accounts in any of the nearly 100 foreign jurisdictions that have signed the CRS MCAA.

The list of pioneer industries has been amended and suspension on grant of the incentive lifted

The federal government of Nigeria has lifted the suspension of the pioneer status incentive after embarking on a review of the incentive to address identified lapses, abuses, and loopholes. On 2 August 2017, the Federal Executive Council approved a new Pioneer Status Incentive Policy based on the comprehensive review of the scheme. As part of the new regime, 27 new industries have been added to the list of eligible industries, while new Application Guidelines have been issued.

Revised Guidelines on Export Expansion Grant (EEG) Scheme

The EEG Scheme was introduced in 1986 through the Export (Incentives and Miscellaneous Provisions) Act (amended in 1992) to stimulate non-oil exports. The scheme is administered by the Nigerian Export Promotion Council (NEPC). The scheme was suspended in 2014 to ensure a review and redesign in order to prevent abuse and ensure that the scheme is fit for purpose.

Before the suspension of the scheme, the incentive was granted in the form of a negotiable duty credit certificate (NDCC) utilisable by exporters for payment of import and excise duties. The NDCC has now been replaced with the Export Credit Certificate (ECC), which can be used to settle all federal government taxes, such as

VAT, withholding tax (WHT), CIT, etc. It can also be used to purchase government bonds and repay government credit facilities and debts due to the Assets Management Company of Nigeria (AMCON).

To encourage export of value added and processed/manufactured products, exporters are divided into four categories with maximum applicable EEG rates as indicated below:

- Fully manufactured products: 15%.
- Semi-manufactured products: 10%.
- Processed/intermediate products: 7.5%.
- Merchants/primary agricultural commodities: 5%.

The revised guidelines were released and effective from 1 January 2017.

Taxes on corporate income

Resident companies are liable to CIT on their worldwide income while non-residents are subject to CIT on their Nigeria-source income.

The CIT rate is 30%, assessed on a preceding year basis (i.e. tax is charged on profits for the accounting year ending in the year preceding assessment).

Investment income paid by a Nigerian resident to a non-resident is sourced in Nigeria and subject to WHT at source, which serves as the final tax.

In respect of business profits, a non-resident company that has a fixed base or a permanent establishment (PE) in Nigeria is taxable on the profits attributable to that fixed base. As such, it is required to register for CIT and file its tax returns. Any WHT deducted at source from its Nigeria-source income is available as offset against the CIT liability.

Small company rates

For small companies in the manufacturing industry and wholly export-oriented companies with turnover not exceeding 1 million Nigerian naira (NGN), the CIT rate is reduced to 20% in the first five calendar years of operation.

Petroleum profit tax (PPT)

PPT is a tax on the income of companies engaged in upstream petroleum operations *in lieu* of CIT.

The PPT rates vary as follows:

- 50% for petroleum operations under production sharing contracts (PSC) with the Nigerian National Petroleum Corporation (NNPC).
- 65.75% for non-PSC operations, including joint ventures (JVs), in the first five years during which the company has not fully amortised all pre-production capitalised expenditure.
- 85% for non-PSC operations after the first five years.

Tertiary education tax

Tertiary education tax is imposed on every Nigerian resident company at the rate of 2% of the assessable profit for each year of assessment. The tax is payable within two months of an assessment notice from the FIRS. In practice, many companies pay the tax on a self-assessment basis along with their CIT.

For companies subject to PPT, tertiary education tax is to be treated as an allowable deduction. For other companies, income/profit taxes are not deductible in arriving at taxable income. Non-resident companies and unincorporated entities are exempt from tertiary education tax.

Minimum tax

Minimum tax is payable by companies having no taxable profits for the year or where the tax on profits is below the minimum tax. However, companies in the first four calendar years of business, companies engaged in the agriculture business, or companies that have foreign equity capital of at least 25% are exempt from minimum tax.

Minimum tax payable is calculated as follows:

- Where the turnover of the company is NGN 500,000 or below, minimum tax is the highest of:
  - 0.5% of gross profits
  - 0.5% of net assets
  - 0.25% of paid-up capital, or
  - 0.25% of turnover of the company for the year.
- Where the turnover is higher than NGN 500,000, minimum tax is the highest of the calculations listed above plus 0.125% of turnover in excess of NGN 500,000.

Alternative tax on distribution

There is a tax on distribution where a company pays a dividend in excess of its taxable profit. Such a company will be charged tax on the dividend paid as if the dividend is the taxable profit of the company for that year of assessment.

Enforcement of advance CIT on interim dividends

The leadership at the FIRS has commenced the strict enforcement of advance CIT on interim dividends. Companies that declare interim dividends are required by the law to be subject to advance CIT at 30% of the interim dividend paid. The advance CIT is creditable against the final CIT computed at the end of the year.

Alternative tax on deemed profit

The law allows the FIRS to assess and charge companies to tax on a fair and reasonable percentage of turnover under the following circumstances:

- When the trade or business produces no assessable profits.
- When the trade or business produces assessable profits that, in the opinion of the Board of the FIRS, are less than might be expected to arise from that trade or business.
- When the true amount of the assessable profits of the company cannot be ascertained.

Local income taxes

CIT is payable only to the federal government. State governments collect income taxes of individuals and unincorporated entities, while local governments are only allowed to collect levies and rates but not income tax.

Corporate residence

A company is considered resident in Nigeria if such a company is registered or incorporated under the Companies and Allied Matters Act. This means that a company formed outside Nigeria under the laws in force in the foreign territory will be considered as a non-resident company for CIT purposes.

Permanent establishment (PE)

Fixed base is not defined but is generally considered to be a location with a degree of permanence. The following would generally not be considered to be a fixed base:

- The use of facilities solely for the purpose of storage or display of goods or merchandise.
- The use of facilities solely for the collection of information.

Other activities that could trigger a tax presence in Nigeria include a dependent agency arrangement, execution of a turnkey project, or artificial arrangements between related parties.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 5%. Based on the 2018 Budget Speech delivered by the President, there was no specific proposal to change the VAT rate in 2018.

Zero-rated items include non-oil exports, goods and services purchased by diplomats, and goods and services purchased for use in humanitarian donor-funded projects. Exempt items include plants and machinery for use in export processing zones (EPZs) or free trade zones (FTZs), basic food items, medical products and services, pharmaceutical products, books and educational materials, and exported services. Commissions on stock market transactions are also exempted from VAT.

Government agencies and oil and gas companies are required to deduct at source VAT charged by their suppliers and remit it to the tax authority. All other organisations are required to collect VAT charged on their invoices from their customers for filing and payment to the tax authority.

The FIRS has implemented a platform for auto tracking and remittance of VAT known as FIRS VAT-Collect. Some of the users of the system are domestic airlines (for instant remittance of VAT on their ticket sales) and other retailers.

Customs duties

Customs duties in Nigeria are levied only on imports. Rates vary for different items, typically from 5% to 35%, and are assessed with reference to the prevailing Harmonized Commodity and Coding System (HS code).

Nigeria

Excise duties

Excise duty is applicable on beer and stout, wines, spirits, cigarettes, and homogenised tobacco manufactured in or imported into Nigeria at 20%.

Excise duties on tobacco and alcoholic beverages has increased effective 4 June 2018. The new regime applies only to tobacco and its products (such as cigarettes) and alcoholic beverages (beers and stouts, spirits, and wines) as follows:

Tobacco

For 2018, in addition to the 20% ad valorem rate, a specific rate of NGN 1 will be paid on each cigarette stick (NGN 20 per pack of 20 sticks).

In 2019, the specific rate will increase to NGN 2 per stick (NGN 40 per pack of 20 sticks). In 2020, the specific rate will increase to NGN 2.90k per stick (NGN 58 per pack of 20 sticks).

Beer and stout

With respect to alcoholic beverages, no ad valorem rate is applicable.

In 2018, NGN 0.30k per centilitre (cl) is payable on beer and stout. In 2019 and 2020, NGN 0.35k per cl will be payable.

Wines

In 2018, NGN 1.25k per cl is payable on wines. In 2019 and 2020, NGN 1.50k per cl will be payable.

Spirits

In 2018, NGN 1.50k per cl is payable on spirits. In 2019, NGN 1.75k per cl will be payable. In 2020, NGN 2.00k per cl will be payable.

Property taxes

Property taxes in Nigeria are usually levied annually by the state government with varying rates depending on the state and the location of the property within the state. The two major property taxes are governor's consent fee and land registration fee. In Lagos (which is the economic hub of Nigeria), governor's consent fee, land registration fees, and other levies payable to the state give rise to a total levy of 3% of the fair value of the land.

Also, Right of Occupancy fee and tenement rates are chargeable by state and local government authorities.

Stamp duties

Under the Stamp Duty Act, stamp duty is payable on any agreement executed in Nigeria or relating, whatsoever, to any property situated in or to any matter or thing done in Nigeria. Instruments that are required to be stamped under the Stamp Duties Act must be stamped within 40 days of first execution.

Stamp duty is chargeable either at fixed rates or *ad valorem* (i.e. in proportion to the value of the consideration), depending on the class of instrument. Stamp duty is imposed at the rate of 0.75% on the authorised share capital at incorporation of a company or on registration of new shares.

All deposit banks and financial institutions are required to charge stamp duties of NGN 50 on every eligible transaction above NGN 1,000. There are exemptions for transactions between accounts held by the same bank customer and for salary accounts.

Capital gains tax (CGT)

Gains accruing to a chargeable person (individual or company) on the disposal of chargeable assets shall be subject to tax under the CGT Act at the rate of 10%. There is no distinction between long-term and short-term gains and no inflation adjustment to cost for CGT purposes.

All forms of assets, including options, debts, goodwill, and foreign currency, other than those specifically exempt, are liable for CGT. The gains on the disposal of shares are exempt from CGT.

CGT is applicable on the chargeable gains received or brought into Nigeria in respect of assets situated outside Nigeria.

Capital losses are not allowed as an offset against chargeable gains accruing to a person from the disposal of any assets.

Payroll contribution

Under the Employee Compensation Act, all employers were required to contribute 1% of their payroll cost in the first two years of commencement of the Act (2010 to 2012). Subsequently, assessments were expected to be issued by the Nigeria Social Insurance Trust Fund, the body empowered to administer and implement the Act. In practice, a contribution of 1% of payroll continues to apply.

Pension contributions

Employers with at least 15 employees are required to participate in a contributory pension scheme for their employees. The minimum contribution is 18% of monthly emolument (with a minimum contribution of 10% by the employer and 8% by the employee). If the employer decides to bear all the contribution, the minimum contribution is 20% of monthly emolument. Mandatory and/or voluntary contributions by the employers are deductible for CIT purposes.

National Housing Fund (NHF) contributions

NHF contributions are applicable to Nigerian employees earning a minimum of NGN 3,000 *per annum*. The employer is required to deduct 2.5% of basic salary from employees earning more than NGN 3,000 *per annum* and remit it to the Federal Mortgage Bank of Nigeria within one month of deduction.

Information technology levy

A company with an annual turnover of NGN 100 million or more is required to pay 1% of its profit before CIT as information technology tax. This levy is deductible for CIT purposes when paid (typically in the year of assessment following that in which the payment was made).

This tax is applicable to:

- Banking and other financial activities, including capital and money market operators, mortgage institutions, and micro-finance banks.

- Insurance activities, including brokerage.
- Pension fund administration, pension management, and related services.
- GSM service providers and telecommunication companies.
- Cyber and internet services providers.

Levy on contracts awarded in the upstream oil and gas sector

The Nigerian Content Development Act was introduced to increase the level of Nigerian participation in the oil and gas industry. The Act imposes a levy of 1% on every contract awarded in the upstream oil and gas sector of the economy. Any violation of the Act is liable for a fine of 5% of the contract value and may result in outright cancellation of the contract.

Branch income

Except in rare circumstances, it is illegal for a non-resident company to operate through a branch in Nigeria. The Nigeria-source income of a non-resident company is taxable at the CIT rate of 30% (*see the Taxes on corporate income section for more information*).

Income determination

The following income is subject to CIT in Nigeria:

- Profits accruing in, derived from, brought into, or received in Nigeria in respect of any trade or business.
- Dividends, interest, royalties, discounts, charges, or annuities.
- Rent or any premium arising from the right granted to any person for the use or occupation of any property, where applicable.
- Any source of annual profits or gain not falling within the preceding categories.
- Fees, dues, and allowances (wherever paid) for services rendered.
- Any amount of profits or gains arising from the acquisition or disposal of short-term money instruments like federal government securities, treasury bills, treasury or savings certificates, debenture certificates, and treasury bonds.

Inventory valuation

The first in first out (FIFO) valuation method is commonly used. Average and standard cost methods are also allowed, but last in first out (LIFO) is not permitted. Other than the accounting requirement in the local generally accepted accounting principles (GAAP), there are no special statutory provisions for inventory valuation.

Capital gains

Capital gains are not subject to CIT, but may be subject to CGT. *See Capital gains tax in the Other taxes section for more information*.

Dividend income

Dividends received by a Nigerian resident company from another Nigerian resident company are taxable at source (*see the Withholding taxes section for more information*) and not subject to further tax.

Dividends received from non-resident companies are taxable except if repatriated into Nigeria through government-approved channels (i.e. any financial institution authorised by the Central Bank of Nigeria to deal in foreign currency transactions).

Dividends received from small manufacturing companies are exempt for CIT purposes during the first five years of operation. Dividends from investments in wholly export-oriented businesses are also exempt.

Stock dividends

Stock dividends (bonus shares) are not taxable at source or included in the taxable income of the recipient company.

Interest income

Interest received by a Nigerian company is liable to tax at the CIT rate of 30% with tax withheld at 10% available as an offset against the final tax liability.

Interest on government bonds is tax exempt. Interest on foreign currency domiciliary accounts is also exempt.

Interest payable to a non-resident investor is liable to WHT at 10%, which is the final tax. Recipients who are resident in a country with a DTT with Nigeria enjoy a reduced rate of 7.5%.

Royalty income

Royalties received by a Nigerian company are liable to tax at the CIT rate of 30%. WHT at 10% is available as an offset against the final CIT liability.

Royalties received by a Nigerian company from non-resident payers are taxable except if repatriated into Nigeria through government-approved channels.

Non-resident companies who receive Nigerian royalties are subject only to WHT at 10%, which is reduced to 7.5% if a treaty is in place with Nigeria.

Other significant items

The following entities' income or profit is exempt for CIT purposes:

- Statutory or registered friendly societies.
- Co-operative societies registered under any ecclesiastical, charitable, or education establishments of a public character.
- Profit of a company established within an EPZ or FTZ (*see the Tax credits and incentives section*).
- Profit of a registered trade union.
- Export profits, as long as proceeds are brought into Nigeria through government-approved channels and invested in raw materials, spare parts, and plant and machinery (*see Export incentives in the Tax credits and incentives section*).

Foreign income

A Nigerian resident company is taxable on its worldwide income. On the other hand, a non-resident company is subject to tax only on income derived from Nigeria.

Dividends, interest, rents, and royalties earned abroad and brought into Nigeria through government-approved channels are exempt from Nigerian tax; otherwise, the income is taxable at the CIT rate of 30% and tertiary education tax at 2%. Government-approved channels mean the Central Bank of Nigeria and any bank or financial institution authorised to carry out foreign exchange transactions.

Taxable foreign income earned by a Nigerian tax resident entity cannot be legally deferred.

Deductions

Expenses are deductible for CIT purposes if they are wholly, reasonably, exclusively, and necessarily incurred for the business or trade.

Depreciation

Capital allowances are calculated on a straight-line basis. Capital allowances claimable in any year are restricted to two-thirds of assessable profits for all companies, except companies in the manufacturing and agricultural sectors, which are excluded from this restriction.

The following are the capital allowance rates on fixed assets (qualifying expenditures):

Qualifying expenditure	Initial allowance (%)	Annual allowance (%)
Building (industrial and non-industrial)	15	10
Furniture and fittings	25	20
Plant expenditure (1)	50/95	0/25
Mining expenditure	95	0
Plantation equipment	95	0
Motor vehicle (2)	50/95	0/25
Ranching and plantation expenditure	30	50
Housing estate expenditure	50	25
Research and development (R&D)	95	0

Notes

1. 95% initial allowance for plant used in agricultural production; others 50%.
2. 95% initial allowance is granted for motor vehicles used for public transportation if the company has a fleet of at least three buses; all other motor vehicles 50%.

The initial allowance is first deducted, and the balance is written off on a straight-line basis over a fixed period, depending on the rates of annual allowance. There is a requirement that assets not yet disposed of cannot be fully written off in the books. A nominal amount of NGN 10 per asset must be retained in the books till the assets are disposed of. However, where 95% has been claimed as an initial allowance, the 5% balance is the value that must be maintained in the books until the final disposal of the asset.

When assets are sold, the proceeds over the tax written-down value are taxed at 30% to the extent of the allowances already claimed.

Goodwill

There is no tax deduction for goodwill.

Start-up expenses

Start-up expenses are not specifically stated as non-deductible in the tax law, but, in practice, they are usually not allowed by the tax authority. This is based on the assumption that start-up expenses are not directly attributable to any taxable income of the company, which is a fundamental condition for tax deductibility of expenses.

Interest expense

Interest on money borrowed and employed in producing taxable income is a deductible expense. There is currently no thin capitalisation regulation in Nigeria, but general anti-avoidance rules are usually applied to limit deductible interest on related-party loans.

Bad debt

Bad debt incurred in the course of trade is deductible.

Charitable contributions

Donations are deductible, subject to the provisions of the law.

Fines and penalties

Any punitive payments for default or violation of law are expressly not deductible for CIT purposes. In practice, this is usually extended to include default surcharges and other avoidable fines.

Taxes

Any tax on income or profit is not deductible except where such tax was paid on profit earned outside Nigeria. In this case, if the source country has no DTT with Nigeria, the foreign tax paid is allowed as a deduction for CIT purposes. State and local taxes (business rates) and levies may be deducted from taxable income.

Other significant items

Other deductible expenses include the following:

- Sum payable by way of interest on capital borrowed.
- Rent for the period.
- Expenses incurred in respect of salary and wages.
- Expenses incurred for repair of assets.
- Liability incurred for purpose of trade.
- R&D costs.

Net operating losses

Losses can be carried forward indefinitely, except for insurance companies, where losses can only be carried forward for four years. Losses made from one line of business cannot be relieved against another line of business. Losses cannot be carried back.

Payments to foreign affiliates

Payments considered to be artificial are not deductible for CIT purposes. Royalties, management fees, and technical fees require the approval of the National Office for Technology Acquisition and Promotion (NOTAP) for exchange control purposes and for tax deduction. NOTAP-approved royalties and technical fees are limited to a range of 1% to 5% of net sales, while management fees are limited to a range of 2% to 5% of profit before tax, and consultancy fees are limited to 5% of total project cost. Technical fees are limited to approved man-hour rates.

Trademark fees are disallowed where the trademark owner has more than 75% equity participation in the local company.

Group taxation

There are currently no provisions for group taxation, group relief, or group filing of tax returns in Nigeria. Each legal entity within a group is treated as distinct and separate for CIT purposes.

Transfer pricing

The transfer pricing regulations are applied in a manner consistent with the arm's-length principle in Article 9 of the United Nations (UN) and OECD Model Tax Conventions on Income and Capital and the OECD Transfer Pricing Guidelines for Multi-national Enterprises and Tax Administrations. However, where there are inconsistencies between the model conventions and the local legislation, the provisions of the relevant local tax laws shall prevail.

The rules cover all transactions between 'connected taxable persons', which is broadly defined to include individuals, PEs created by head offices, subsidiaries, associates, partnerships, joint ventures, and trusts to the extent that they participate directly or indirectly in the management, control, or capital of another, or both of which have common control, management, or shareholders. Specifically, the rules apply to sale and purchase of goods; lease or sale of tangible assets; licensing, transfer, or use of intangible assets; provision of services; lending or borrowing of money; manufacturing arrangements; and any transaction that may affect profit and loss or any other incidental matter.

The rules are applicable to both domestic and cross-border related-party transactions.

Thin capitalisation

Nigeria has no thin capitalisation rules. However, interest charged between related parties is expected to reflect arm's-length transactions. The tax authority may disallow any related-party interest considered to be excessive.

Note that the tax authorities are currently considering introducing a formal thin capitalisation rule with a likely 3:1 debt-to-equity ratio.

Controlled foreign companies (CFCs)

There are no specific CFC rules in Nigeria.

Tax credits and incentives

Nigeria has various tax incentives intended to encourage investment in key sectors of the economy, as follows.

Tax holidays

Pioneer companies investing in specified industrial activities may, on application, be granted a tax holiday for three years initially, which may be extended for up to two years upon satisfaction of specified conditions. Examples of economic activities that may be granted a tax holiday include glass and glassware manufacturing, manufacturing of fertilisers, and steel manufacturing.

A new company that engages in the mining of solid minerals is exempt from tax for the first three years of its operation.

Rural location incentives

Certain incentives are available to companies located in rural areas. The incentives take the form of tax reductions at graduated rates for enterprises located at least 20 kilometres from available electricity, water, and tarred roads.

Export incentives

Export processing zones (EPZs) and free trade zones (FTZs) are locations within Nigeria designated by the government as free areas where export trade activities can be carried on free of tax and foreign exchange restrictions.

A company that is engaged in an approved manufacturing activity in an EPZ and incurs expenditures in its qualifying building and plant equipment is entitled to 100% capital allowance in that year of assessment.

In addition, a company that is 100% export oriented but located outside an EPZ will enjoy a three year tax holiday, provided the company is not formed by splitting up or reconstruction of an already existing business and the export proceeds form at least 75% of its turnover.

Profits of companies whose supplies are exclusively inputs to the manufacture of products for export are exempt from tax. Such companies are expected to obtain a certificate of purchase of the input from the exporter in order to claim tax exemption.

Where plant and machinery are transferred to a new company, the tax written down value of the asset transferred must not exceed 25% of the total value of plant and machinery in the new company. The company should also repatriate at least 75% of the export earnings to Nigeria and place it in a Nigerian domiciliary account in order to qualify for a tax holiday.

Profits of any Nigerian company in respect of goods exported from Nigeria are exempt from tax, provided that the proceeds from such exports are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment, and spare parts.

In order to streamline the administration of permissible taxes within the tax free zones, the Oil and Gas Free Zone Authority (OGFZA) has established the Free Zones Tax Administration (FZTA) Unit with effect from January 2015. Going forward, all tax matters relating to the free zones will be coordinated by the FZTA.

Export Expansion Grant (EEG) Scheme

The EEG Scheme grants the Export Credit Certificate (ECC) as an incentive that can be used to settle all federal government taxes, such as VAT, WHT, CIT, etc. It can also be used to purchase government bonds and repay government credit facilities and debts due to the Assets Management Company of Nigeria (AMCON).

To encourage export of value added and processed/manufactured products, exporters are divided into four categories with maximum applicable EEG rates as indicated below:

- Fully manufactured products: 15%.
- Semi-manufactured products: 10%.
- Processed/intermediate products: 7.5%.
- Merchants/primary agricultural commodities: 5%.

Gas utilisation incentives

Companies engaged in gas utilisation are entitled to:

- A tax-free period for up to five years.
- Accelerated capital allowance after the tax-free period.
- Tax-free dividends during the tax-free period.

Tourism incentives

25% of the income derived from tourism by hotels in convertible currencies is exempt from tax if such income is put in a reserve fund to be utilised within five years for expansion or construction of new hotels and other facilities for tourism development.

Interest incentives

Interest accruing on deposit accounts of a non-resident company is tax-exempt, provided the deposits are made by transfer of funds to Nigeria on or after 1 January 1990 and the depositor does not become non-resident after making the deposit while in Nigeria.

Interest on foreign-currency domiciliary accounts is also tax-exempt.

Interest on any foreign loans, and interest on any loan granted by a bank for the purpose of manufacturing goods for export, is exempt from tax as follows:

Repayment period	Moratorium	Exemption (%)
Over 7 years	Not less than 2 years	100
5 to 7 years	Not less than 1.5 years	70
2 to 4 years	Not less than 1 year	40

Interest on any loan granted by a bank to a company engaged in agricultural trade, fabrication of local plant and machinery, or as working capital to any cottage industry is 100% tax free if the loan has a moratorium of not less than 18 months and the rate of interest is not more than the base lending rate.

Investment allowances

An investment allowance of 10% on the cost of qualifying expenditures in respect of plant and machinery is available as a deduction from assessable profits in the year of purchase. There is no restriction to the full claim of capital allowance in any year of assessment for companies in the mining, manufacturing, and agricultural sectors.

Foreign tax credit

Nigeria does not grant automatic tax credits to Nigerian companies for foreign tax on income derived from other countries. The Nigerian tax laws already provide for tax exemption for dividends, interest, and royalties.

Foreign tax credits are only granted based on the provisions of existing DTTs and partial credits as applicable to Commonwealth countries. In this regard, full tax credits are usually provided for in the DTTs. Tax credits for members of Commonwealth countries are granted at up to half the Nigerian CIT rate.

Withholding taxes

WHT is applicable on specified transactions as indicated below. There is no distinction between the WHT rates for resident companies or individuals and non-resident companies or individuals.

Types of payment	WHT for companies (%)	WHT for individuals (%)
Dividends, interest, and rents	10	10
Directors fees	N/A	10
Hire of equipment	10	10
Royalties	10	5
Commission, consultancy, technical, service fees	10	5
Management fees	10	5
Construction/building (excluding survey, design, and deliveries)	5	5
Contracts other than sales in the ordinary course of business	5	5

The period for filing WHT is 21 days after the duty to deduct arose for deductions from companies.

The penalty for failure to deduct or remit tax is 10% of the amount not deducted/ remitted.

Note that companies are required to submit, in electronic form, a schedule of all their suppliers for the month showing the tax identification number (TIN), address of the suppliers, the nature of the transaction, WHT deducted, and invoice number.

Double tax treaties (DTTs)

Nigeria has DTTs with the countries listed in the table below. Nigeria also has tax treaties with Kenya, Mauritius, and Poland; however, these treaties have not been ratified by the Nigerian National Assembly. The tax treaties with South Korea, Spain, and Sweden are still in the process of being ratified.

	WHT (%)			
Recipient	Dividend	Interest	Royalties	Management/ Technical fees
Non-treaty	10	10	10	10
Treaty:				
Belgium	7.5	7.5	7.5	10

Recipient	WHT (%) Dividend	Interest	Royalties	Management/ Technical fees
Canada	7.5	7.5	7.5	10
China	7.5	7.5	7.5	10
Czech Republic	7.5	7.5	7.5	10
France	7.5	7.5	7.5	10
Netherlands	7.5	7.5	7.5	10
Pakistan	7.5	7.5	7.5	10
Philippines	7.5	7.5	7.5	10
Romania	7.5	7.5	7.5	10
Slovakia	7.5	7.5	7.5	10
South Africa	7.5	7.5	7.5	10
South Korea *	7.5	7.5	7.5	10
Spain	7.5	7.5	7.5	10
Sweden *	7.5	7.5	7.5	10
United Kingdom	7.5	7.5	7.5	10

* The tax treaties with South Korea and Sweden are still being ratified.

Tax administration

Taxable period

The taxable period is the fiscal year, which runs from 1 January to 31 December.

Tax returns

Companies are required to register for tax and file their audited accounts and tax computations with the FIRS within six months of their financial year-end on a self-assessment basis or 18 months after incorporation (whichever comes first). A company may file an application for extension of filing tax returns for up to two months at the discretion of the FIRS.

Upon registration, a company is issued a TIN, which serves as the company's file number for all federal taxes and future correspondence with the FIRS.

The company must file the following documents with the tax authority on an annual basis:

- Tax computation for the relevant year of assessment.
- The audited financial statements for the respective period; this should be in conformity with the International Financial Reporting Standards (IFRS).
- A duly completed and signed self-assessment form for CIT.
- Evidence of remittance of the income tax liability (partly or in full).

PPT is payable on an actual year basis. Estimated tax returns must be filed within two months of the fiscal year. Actual tax returns should be filed within five months after the end of the accounting period, that is, not later than 31 May.

Assessment

Nigerian companies file their tax returns based on a self-assessment system where the taxpayer prepares its annual returns and determines its tax liability. However, the

FIRS may apply a best of judgment (BOJ) assessment where it is of the opinion that the tax returns filed are deliberately misstated or where no returns are filed within the stipulated period.

Payment of tax

CIT

A company that files its self-assessment within six months after the accounting year-end can apply to the FIRS in writing to pay its income tax in instalments. The maximum number of instalments the FIRS may approve is three. Evidence of the first instalment has to accompany the tax returns filed in order to qualify for the instalment payment. However, all payments have to be made not later than eight months after the financial year-end.

Assessments are made on a preceding year basis. This means that the financial statements for a period ended in 2017 will form the basis for the 2018 year of assessment.

PPT

Payments with respect to PPT in any accounting period of 12 months are made in 12 instalments, with a final 13th instalment (if there is an underpayment). The first instalment for the year is due by the end of March.

Penalty for non-compliance

Failure to file CIT returns attracts a penalty of NGN 25,000 for the first month and NGN 5,000 for each subsequent month of default. Late payment of CIT attracts a 10% penalty and interest at the commercial rate.

Late submission of PPT returns attracts an initial penalty of NGN 10,000 and NGN 2,000 for each day such failure continues, while late payment of tax attracts a penalty of 5% of the tax not paid.

Tax audit process

Generally, the tax authority will commence a desk examination of a taxpayer's returns immediately after filing. This may be followed by a tax monitoring exercise whereby tax officers visit taxpayers to conduct an interview and on-site high level review of their tax affairs.

Random or specific tax audit may be carried out usually within six years of filing tax returns. In unusual cases, a back-duty tax investigation may be conducted for more than six years, especially where a tax fraud or wilful default is suspected.

In the past, tax audits took a long time to conclude, usually between three to five years. However, the tax authorities are seeking ways to improve the average turnaround time.

New methodology for tax audit

FIRS has now implemented an audit methodology that contains a dashboard for monitoring the progress of tax audits. Altogether there is a timescale of three months from commencement of audit to completion broken into one or two weeks for different activities (field work, initial report, reconciliation meetings, assessment). Colour green, amber, or red are used to indicate if everything is 'on time', 'becoming due', or 'overdue', respectively.

Statute of limitations

The tax authority may carry out a tax audit and issue an additional assessment within six years from the relevant tax year. However, the limitation does not apply in the event of a fraud, wilful default, or neglect by the company.

Topics of focus for tax authorities

The tax authorities are currently exploring ways to generate more tax revenue. As a result, certain areas of taxation, such as transfer pricing, filing of tax returns by PEs, and review of tax incentives and waivers have become a central focus for tax authorities.

There has been increased scrutiny by the FIRS on related-party transactions as a way of preventing taxpayers from shifting profits away from Nigeria. It is expected that transfer pricing audits are expected to be an area of focus in the next one to two years.

Further, for non-resident entities that create a PE in Nigeria, the tax authorities are focused on ensuring that they file full tax returns, including audited accounts, as opposed to filing on a deemed-profit basis. It is expected that the expenses of these PEs will be scrutinised for tax deductibility.

The tax authorities at the federal and state levels are sealing up companies, putting up non-compliance stickers, and holding principal officers of organisations to public scrutiny and prosecution under the tax law for non-compliance in terms of tax default or failure to make timely payments or to file tax returns. On a related note, the Lagos state government has set-up a rapid tax prosecution unit to prosecute tax evaders with considerations to a jail term.

Other issues

The OECD Multilateral Instruments

On 17 August 2017, Nigeria became a signatory to the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) ('Multilateral Instrument' or 'MLI') and the Multilateral Competent Authority Agreement for the Common Reporting Standard (CRS MCAA).

The MLI

Nigeria signed the MLI and also submitted its MLI position listing DTTs with 19 treaty partners for amendment. These include the agreements that are already in force and those that are not yet in force (e.g. DTTs with Korea, Mauritius, United Arab Emirates). Also, of the 19 agreements, 13 treaty partners (including Belgium, Canada, China, Netherlands, and the United Kingdom) have all listed their DTTs with Nigeria for amendment under the MLI. Nigeria and its treaty partners will need to subsequently agree on any parts of their proposals that do not match. Subsequent to this, each partner will then need to undertake the local domestication process to ensure that the changes become law.

The CRS MCAA

The CRS MCAA allows signatory countries to obtain financial information from financial institutions and automatically exchange the information with other jurisdictions that have signed up to the convention. Notably, the CRS MCAA will allow jurisdictions to exchange the following information:

- Name, address, and tax identification number of taxpayers.
- Taxpayer's account number.
- Name of the reporting financial institution.
- The taxpayer's account balance at the end of the reporting period.

Nigeria became the 94th jurisdiction to join the CRS MCAA. Some of the other signatories to the CRS MCAA include Bermuda, Cayman Islands, China, France, Germany, Mauritius, the Netherlands, Spain, Switzerland, and the United Kingdom.

Norway

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Significant developments

National Budget for 2018: Tax changes

The National Budget for 2018 included some changes in the Norwegian tax legislation. The main changes are the following:

- The tax rate is reduced from 24% to 23% as of the income year 2018 and applies, in general, to both individuals and enterprises. The resource rent tax for hydropower companies is increased by 1.4% to 35.7%, and the special tax rate on petroleum is increased by 1% to 55%, to ensure that the general reduction of the tax rates are proceeds neutral in relation to these sectors.
- Production equipment and production installations will be exempt from property tax from 2019, with a seven-year transitional period.

Revised National Budget 2018

- The Ministry of Finance has proposed new documentation requirements that non-resident shareholders in Norwegian companies must fulfil in order to achieve a reduced or zero withholding tax (WHT) rate on dividend distributions. The new documentation requirements are supposed to enter into force 1 January 2019.
- In the revised National Budget for 2018, the Ministry of Finance stated that it will reconsider the proposal and try to simplify the documentation requirements. The Directorate of Taxes has been assigned to prepare a proposal that is supposed to be sent on for public consultation in June 2018.

Taxes on corporate income

A Norwegian resident company is, as a starting point, subject to corporate income tax (CIT) on its worldwide income. Non-resident companies are, as a starting point, liable for CIT in Norway when engaged in a business that is either conducted in or managed from Norway.

CIT is, in general, assessed at a rate of 23%. Certain companies within the financial sector are assessed at a CIT rate of 25%.

As a general rule, income is taxable when the right to receive it arises and costs are deductible when the liability to cover the costs arises. The actual payment is generally not relevant.

Petroleum tax regime

All upstream petroleum activity on the Norwegian Continental Shelf (NCS) is taxable to Norway.

Taxation is based on net income at a marginal tax rate of 78%, which is comprised of the ordinary 23% CIT rate and a 55% special tax. All income is subject to 23% CIT, while only income from offshore production and pipeline transportation of petroleum from the NCS (offshore tax regime) is subject to the additional 55% special tax. The ordinary and special tax rates were changed in 2018 (from 24% and 54%, respectively, in 2017). However, the marginal tax rate remains the same, and the purpose of the changes in the special tax rate (from 54% to 55%) and uplift (from 5.4% to 5.3%) is to leave the deduction value of the uplift unchanged (*see below*).

All upstream activity on the NCS must be consolidated within the company. There is no ring fence per oil field, and tax consolidation against other activity is limited. Crude oil sales from most of the fields are taxed at a predetermined market price set by an official board (i.e. the norm price). In theory, a norm price may be imposed on gas sales, but this has not been implemented. Instead, an extensive reporting requirement was implemented in October 2012. Investments in installations for the exploitation and production of petroleum, as well as investments in pipelines, are depreciated linearly over six years.

An investment-based 'supplementary depreciation' (uplift) of 21.2% (5.3% per year for four years) is granted on investments in installations for the exploitation and production of petroleum, as well as investments in pipelines. The rate was reduced from 5.4% in 2017 to 5.3% in 2018. The new rate applies for investments made on or after 1 January 2018. Special transitional rules apply for investments made before 5 May 2013, and an uplift rate of 7.5% may still apply in some cases. The uplift is deducted against the special tax base. Losses and unused uplift may be carried forward indefinitely with an annual interest. Both depreciation and uplift may be claimed from the year of the investment, regardless of whether title has passed or the asset has been taken into use. If the upstream activity on the NCS ceases, the tax value of losses carried forward and unused uplift may either be sold or compensated by the Norwegian state. Exploration costs are tax deductible as incurred. If a loss is created due to exploration costs, the taxpayer may claim that the tax value of such a loss is repaid in the year following the income year in which the loss was created.

Special rules apply as to the deductibility of net interest costs in the special tax basis (55%).

A special regime ensures that transfer of licences on NCS is tax exempt; there is no step up in the tax basis.

Note that dividends that stem from income subject to the special tax regime are exempted from dividend WHT.

The Oil Taxation Office (OTO) has a special responsibility for the taxation of the petroleum sector. Generally, the OTO has a high focus on transfer pricing.

Hydro power tax regime

The hydro power tax regime is applicable for the taxation of income derived from the production, sales, transfer, or distribution of hydro power.

Taxation is based on net income at a marginal tax rate of 58.7%, which is comprised of the ordinary 23% CIT rate and a 35.7% resource rent tax. All income is subject to 23% CIT, while only income from hydro power production is subject to the additional 35.7% resource rent tax.

The resource rent is calculated per hydro power plant. The gross income is, with some exceptions, calculated based on spot market price per hour multiplied by actual production. In addition, actual income from green certificates is included in the gross income. Deductible costs will be the same as for CIT; that is, expenses related to the power plant except for interest expenses, which are not deductible. Uplift is granted. Special rules apply to the depreciation of investments in hydro power plants. Rent expenditure and depreciation related to waterfalls are not deductible, and waterfalls are not included in the basis for uplift. Tax consolidation is mandatory within the company and, provided the conditions for group taxation are fulfilled, available on a group level. Losses (negative resource rent) on a company (eventually on a group) level will be compensated by the Norwegian state.

Shipping tonnage tax regime

The tonnage tax rules in Norway are in line with those found in other European Union (EU)/European Economic Area (EEA) countries and imply that shipping income will be tax-exempt on a permanent basis. On 14 December 2017, the European Free Trade Association (EFTA) Surveillance Authority (ESA) announced that the Norwegian tonnage tax regime is approved for a new ten-year period, with certain amendments.

Norwegian tonnage-taxed companies are allowed to keep only certain kinds of assets inside the tonnage regime (legal assets) and are not allowed to have income from non-tonnage-taxed activities except financial income. If the requirements are not fulfilled, the company will fall outside the scope of the model and be taxed at the ordinary rate (23%).

Qualifying assets

A tonnage-taxed company must own at least one qualifying asset (i.e. a vessel, for example bulk tankers, container vessels, car carriers, tugboats, and entrepreneurial vessels and auxiliary vessels for use in the petroleum industry), new building contracts, a 3% share in another tonnage-taxed limited company, or a 3% ownership interest in a qualifying partnership or controlled foreign company (CFC).

One of the important amendments from the ESA announced in December 2017 relates to the inclusion of windmill farm entrepreneurial vessels to the regime. More precisely, this means that vessels engaged in the construction, maintenance, repair, and disassembly of windmills at sea are eligible under the scheme as of the income year 2017.

Non-self-propelled barges are eligible for the tonnage tax regime with effect from 1 January 2018, provided certain conditions are met.

Qualifying and legal business activities/income

Qualifying business income is income from the operation of the company's own and chartered vessels. With effect from 1 January 2018, there are limitations on chartering out vessels on bareboat. The limitations on bareboat chartering out in the approved regime are different for vessels in the offshore sector and vessels outside the offshore sector (traditional shipping). The following limitations apply for bareboat chartering out in the offshore sector:

- Chartering out on bareboat terms may not exceed 50% of the company's fleet during an income year, alternatively over a period of four years.
- Bareboat chartering out must not exceed a contract period of five years, with a possibility to extend the contract by another three years.
- The strategic management of vessels chartered out on bareboat terms must be carried out from an EEA state.

On bareboat chartering out outside the offshore sector, a distinction must be made between contracts regarded as operational lease and financial lease.

Chartering out on contracts regarded as financial lease are not permitted under the regime.

Bareboat contracts regarded as operational lease are allowed with the following limitations:

- Chartering out on bareboat terms may not exceed 40% of the fleet per income year, alternatively over a period of four years.
- The chartering period may not exceed one half of the vessel's life-time.
- The strategic management of vessels chartered out on bareboat terms must be carried out from an EEA state.

For both the offshore sector and traditional shipping, the share of allowed bareboat chartering out is measured on group level.

The limitations on bareboat chartering out will not apply to existing contracts that are not regarded as long-term. The assessment of what constitutes a long-term contract are different in and outside the offshore sector. Further, a transitional period will be implemented for the companies subject to the updated rules.

Chartering in of vessels on time-charter terms is, with effect from 1 January 2018, limited to 90% of non-EEA flagged vessels. These rules are not applicable for existing time-charter contracts.

Furthermore, gains upon disposal of vessels and new building contracts are exempt from taxation.

Income from related activities, such as the sale of goods and services onboard vessels, loading and discharging vessels, or leasing out containers and operations of ticket offices, is also exempt from taxation. The exemption also applies to income from the strategic and commercial management of the company's owned and chartered vessels, as well as vessels owned or operated by group companies (more than 50% joint ownership), and vessels operated according to a pool agreement. Pure management companies are not included (i.e. all companies must have at least one qualifying asset).

Financial income is permitted, except for income from shares in unlisted companies and ownership interests in partnerships that are not taxed under the tonnage tax system. The condition is that financial activities do not constitute a separate business. Net financial income is subject to ordinary taxation (23%). Currency gains and losses are partly taxable/deductible, and interest costs are partly deductible, depending on the proportion between the company's finance capital and total book capital.

Entrance into the tonnage tax system

Entry into the tonnage tax system is optional and may take place with effect from 1 January every year, provided that the company has fulfilled the conditions for the application into the tonnage tax system from the beginning of the year. Newly established companies will have direct entry and may enter into the tonnage tax system from the date of incorporation. All qualifying companies within the same group are obligated to make the same election (tonnage taxation or ordinary taxation).

Companies that enter into the tonnage tax system are subject to a formal ten-year lock-in period. If a company exits the tonnage tax system before the lock-in period expires, it will be excluded from the tonnage tax system until after the initial lock-in period has ended.

Upon entry into the tonnage tax system, the difference between market value and tax value of the company's assets (including vessels, new building contracts, ownership interests in partnerships, and shares in CFCs/tax exempt assets) is taxed as a capital gain (23%) that can be transferred to the gain and loss account. 20% of the balance will be entered as income each year (balance method). There is continuity for financial assets and assets covered by the tax-exemption rules (qualifying shares and derivatives).

Exit from the tonnage tax system

A shipping company may exit the regime on a voluntary basis or may be obligated to do so after breaching specific company requirements within the tonnage tax system. There should be no exit charge when leaving the regime, and the tax value on the company's assets will be adjusted to market value at the time of exit. However, a company that has untaxed gains calculated upon entry into the tonnage tax system could have a tax liability upon exit.

Local income taxes

There is no county or municipal CIT in Norway.

Corporate residence

Companies that are registered and incorporated in Norway in accordance with Norwegian company law are, as a general rule, regarded as tax resident in Norway and taxable for their worldwide income. If effective management at the board/director level is carried out outside Norway, residency in Norway for tax purposes may cease, and the company may be subject to exit taxation. Note that several factors should be considered in order to determine whether tax residency has moved (e.g. other management functions and the overall connection to Norway).

Foreign corporations will be regarded as tax resident in Norway if the place of effective management is in Norway. The place of effective management will be deemed to be in Norway if, for example, the board of directors makes its decisions in Norway.

Permanent establishment (PE)

According to Norwegian domestic law, a foreign company is liable to tax in Norway when engaged in a business that is either conducted in or managed from Norway. The tax liability is limited to income that is derived from Norwegian sources. As a general rule, non-residents without a PE are not liable for tax on capital gains when selling Norwegian financial instruments. However, if the financial instrument is connected to a business that is conducted in or managed from Norway, the sale of the financial instrument can trigger taxation in Norway.

The legislation does not contain a reference to the treaty concepts of 'permanent establishment' or 'permanent representative'. The threshold for tax liability is normally lower under Norwegian domestic law than the taxing right afforded to source states under double tax treaties (DTTs).

With respect to DTTs, the Norwegian tax authorities will, to a large extent, follow the Organisation for Economic Co-operation and Development (OECD) Commentaries when interpreting the relevant DTT, provided the wording is similar to the OECD Model Tax Convention.

Other taxes

Value-added tax (VAT)

The general VAT rate is 25% and applies to all supplies of goods and services not qualifying for another rate or an exemption. A reduced rate of 15% applies to supply of food and beverages, excluding tobacco, alcohol, medication, and water from waterworks. The reduced rate is not applicable to the supply of food and beverages consumed in restaurants and other food establishments.

Applicable from 1 January 2018, the reduced VAT rate of 10% has been increased to 12%. This new VAT rate applies to the television licence fee charged for broadcasting services provided by the Norwegian Broadcasting Company (NRK), domestic passenger transport services and procurement of such services, domestic ferry services related to transport of vehicles, accommodation services, cinema tickets, museum and gallery tickets, amusement park tickets, and sports events.

Exemptions with credit (zero-rated) include, but are not limited to, the following (please note that there might be specific conditions for the exemptions to apply):

- Export of goods and services.
- Goods and services for Norwegian offshore and non-resident ships.
- Transfer of a going concern.
- Supply of newspapers (including e-newspapers) and books (does not include e-books, which are subject to the 25% VAT rate).
- Sale of vessels and aircraft for use in taxable activity.
- Sale of vessels for use in search and rescue.

Exemptions without credit include, but are not limited to, the following (please note that there might be specific conditions for the exemptions to apply):

- Supply of works of art owned by the artist.
- Health services.

- Social services.
- Financial services, including banking, insurance, and the sale of shares (entities within the financial services sector are, in general, subject to a special financial activities tax, *see below*).
- Educational services.
- Sale and lease of real estate (accommodation and lease of parking lots are taxable).
- Services supplied by cultural and entertainment institutions.

Exemptions, whereby an option to tax is available, include the letting of immovable property to VAT-liable lessees following a specific VAT registration with the VAT authorities. Please note that an ordinary VAT-registered business is not required to specifically register for letting of property.

The registration threshold is met when supplies subject to VAT in accordance with the Norwegian VAT legislation (including self-supplies) exceed 50,000 Norwegian kroner (NOK) during a 12-month period. For charitable and public utility institutions and organisations, the threshold is NOK 140,000.

Customs duties

There are quite extensive customs duties on agricultural products, which must be paid upon importation. However, it is often possible to avoid customs duties on these products partly or completely by applying for an exemption from the agricultural authorities in advance. Some of these exemptions are subject to tariff quotas.

Clothes and some other textile products are also subject to customs duties upon importation to Norway, but imports comprised by free trade agreements (such as the EEA with the EU) and the General System of Preferences (for developing countries) are exempt. As a result, clothes will, as a general rule, not be subject to customs duties as long as the importer presents the necessary certificates of origin.

There are no customs duties on other products than agricultural products, clothes, and textile products.

Excise taxes

Excise taxes are calculated on import and domestic production of the following:

- Petroleum products, including gas.
- Alcoholic beverages.
- Non-alcoholic beverages.
- Ethanol for technical purposes.
- Tobacco.
- Chocolate, candy, sugar, etc.
- Products containing the chemicals TRI/PER.
- Products containing the propellant gases HFK/PFK.

There are also excise taxes related to the following:

- Registration of vehicles.
- Use of vehicles.
- Emissions of NOx.
- Sale of electricity.
- Flight passengers.

Property taxes

Real estate may, under certain conditions, be subject to property tax. It is up to the different municipalities to choose whether it wants to impose property tax on real estate. Not all municipalities impose property tax on real estate. The applicable rate varies between 0.2% and 0.7%, which is decided by the municipality. The tax base will normally be the estimated market value (with some adjustments).

Production equipment and production installations will be exempt from property tax from 2019, with a seven-year transitional period.

Hydro power producers must pay property tax on the hydro power plant's capitalised value using a capital interest rate of 4.5%. However, the basis for the calculation of the property tax should fall in the range of NOK 0.95 to NOK 2.74 per kWh of the power plant average production for the last seven years. For hydro power plants with nominal capacity less than 10,000 kVA, the property tax base will be the same as the tax value for income tax purposes.

Stamp taxes

A tax is levied on the registration of a change of ownership of real estate. The tax is calculated at 2.5% of the fair market value.

Net wealth taxes

There is no net wealth tax or other capital taxes for limited liability companies, investment funds, state-owned enterprises (according to the State-owned Enterprise Act), inter-municipal companies, and companies in which somebody owns a part in or receives income from, when the responsibility for the companies' liabilities is limited to the companies' capital.

Some institutional holders (e.g. mutual insurance companies, savings banks, cooperatives, taxable pension funds, self-owned finance institutions, mortgage credit associations) pay 0.15% (state) net wealth tax. The maximum net wealth tax rate for a corporate body is 0.85% (state and municipal tax figures for fiscal year 2018).

From the income year 2018, shares in quoted limited liability companies and equity funds are valued at 80% of quoted value as of 1 January of the year after the relevant income year for net wealth tax purposes. If quoted both on the Norwegian and a foreign stock exchange, the Norwegian stock exchange value will be applicable. If not quoted, the basis for taxation is, as a rule, the company's net taxable value for wealth tax purposes as of 1 January of the income year in question. The basis for taxation of non-quoted shares in foreign companies is, as a starting point, the assumed market value of the shares as of 1 January of the assessment year.

Payroll taxes

There are no payroll taxes other than national insurance contributions and financial activities tax (*see below*).

National insurance contributions

Employers are subject to pay employers' national insurance contributions on the employees' gross salary. The employers' contribution rate varies between 0% and 14.1% based on the municipality of the head office of the business. The contribution shall be reported and paid on a bimonthly basis.

Financial activities tax

Entities within the financial services sector are, in general, subject to a special payroll tax. The tax rate is 5% and shall be calculated on the wage base. Companies where the employees use more than 30% of their time on financial services exempt from VAT will be comprised by the tax.

Exit tax

The exit rules levy taxes upon the migration of assets or liabilities. The tax is calculated by reference to the accrued but unrealised gains at the time of migration at a rate of 23% (25%). Exit tax is also levied if Norwegian CFC taxation lapses because the control requirement is no longer met or if:

- a Norwegian tax resident company transfers its tax residency (effective management) to another country
- a Norwegian tax resident company has assets or liabilities that are transferred to a PE that is tax exempt pursuant to a DTT, or
- a foreign company has assets or liabilities that are transferred from a Norwegian PE to the head office or a foreign PE of the same company.

Transfer of assets or liabilities from a PE of a Norwegian company to another PE in a country where the DTT in question is based on the credit method is, however, not regarded as a taxable event.

According to the rules, the tax treatment is different depending on the type of assets being transferred. Business-related operational equipment and financial assets being transferred out of Norwegian taxing jurisdiction are considered as taxable events, but the tax charge may be deferred if certain conditions are met. The main conditions are that the taxpayer is resident within the EEA/EU and has provided a guarantee for the deferred tax and interest charge. The transfer of intangible assets and inventory trigger immediate and unconditional exit taxation.

De minimis exception rules apply when determining whether the exit tax may be levied. Exit tax on the transfer of tangible assets is applicable only if the unrealised capital gains exceed NOK 5 million. Exit tax on the transfer of other assets and liabilities is only applicable if the unrealised capital gains exceed NOK 1 million.

Carbon dioxide (CO2) tax

A CO2 tax is calculated on petroleum that is flared and on natural gas emitted into the air, as well as on CO2 that is separated from petroleum and emitted into the air, and on installations used for production or transportation of petroleum. The CO2 tax is regarded as a normal operating cost for CIT purposes and is a fully deductible cost both for corporate and special tax calculations.

Type of petroleum	NOK per l/Sm3/kg
Petrol	1.16
Petroleum:	
Light oil, diesel oil	1.33
Residue	1.33
Aviation turbine kerosene	1.28

Type of petroleum	NOK per l/Sm3/kg
Domestic used gas:	
Natural gas	1.00
LPG	1.50
Reduced rate natural gas	0.057
Reduced rate LPG	0.00
Continental shelf:	
Light oil, diesel oil	1.06
Residue	1.06
Natural gas	7.30

Natural resource tax

A NOK 0.013 per kWh natural resource tax applies to hydro power activities, based on one-seventh of the produced kWh for the income year in question and the six previous years. The natural resource tax is creditable against the standard CIT.

Branch income

Branch income is taxed at the corporate rate of 23% (25% for certain entities within the financial sector, i.e. the same as Norwegian companies). The basis for taxation is gross income less deductible costs. Both direct and indirect costs related to the activities carried out in Norway may be deductible.

There is no branch profit tax or other repatriation taxes. However, if assets and/or liabilities are transferred from a PE in Norway to the head office or another foreign PE of the same company, this may trigger exit taxation. The transfer of assets to another corporate entity is subject to regular taxation.

Income determination

Inventory valuation

Inventory is valued at cost. Cost is normally determined using the first in first out (FIFO) method. The last in first out (LIFO) method is not acceptable for tax purposes. Conformity between book and tax reporting is not required.

Capital gains

Capital gains realised in the course of a business activity are almost always regarded as taxable income. Gains resulting from real estate transactions are taxed, regardless of whether they are incurred in connection with business activity. Losses may be offset against the taxpayer's other income.

Capital gains realised on both business-related and non-business-related securities are, in principle, taxable. In general, any capital gains realised on bonds at maturity are regarded as taxable income. Correspondingly, realised losses will be eligible for deductions.

Tax-exemption rules for corporate shareholders

Under the tax-exemption rules, corporate shareholders are generally exempt from tax on dividends received and capital gains on qualifying shares and on derivatives where the underlying object is qualifying shares. Correspondingly, losses on shares are, in general, non-deductible. All operational expenses related to exempt income from shares are fully tax deductible. In order to limit the benefit of these deductions, the tax-exemption method is, with some exemptions, limited to 97% for received dividends, and the remaining 3% is taxable for Norwegian corporate shareholders giving an effective tax rate of 0.69% (0.75% for certain entities within the financial sector). The 3% taxable income is calculated on dividends. Dividend distributions within a tax group (where the ultimate parent company directly or indirectly owns more than 90% of the shares and voting rights) are fully tax exempt. In addition, the tax-exemption method also applies for certain distributions from partnerships and, under certain conditions, to foreign-resident companies with taxable activity in Norway (3% of the income taxable at 23% [25%]). However, distributions on hybrid instruments will not be tax exempt if the distribution is deductible for the distributing company.

Note that an investment in a company resident in a low-tax country in the EEA has to fulfil certain substance requirements to qualify for the tax-exemption rules. These requirements are intended to be in line with the substance requirements of the European Court of Justice's (ECJ's) decision in the Cadbury Schweppes case. A country is considered a low-tax country if the level of effective taxation is less than two-thirds of the tax that would have been due had the foreign company been resident in Norway. This is the same test used for the CFC regime (*see the Group taxation section for more information*).

However, for investments outside the EEA, the tax exemption rules apply only if a shareholder owns 10% or more of the share capital and the voting rights of the foreign company for a consecutive period of two or more years. To be able to deduct losses on the realisation of shareholdings outside the EEA, the shareholder and/or a related party may not own 10% or more of the share capital and the voting rights of the foreign company in a two-year period prior to the realisation. For dividends, the holding period of two years does not have to be met when dividends are distributed, but can also be met after the dividend date.

Shareholdings in low-tax countries outside of the EEA do not qualify for the tax-exemption rules. The Directorate of Taxes has published a non-exhaustive list of low-tax jurisdictions (black list) and non-low-tax jurisdictions (white list).

Acquisition and sales related costs (e.g. broker fees) must be added to the cost price of the shares for tax purposes. Costs incurred to manage acquired tax-exempt shares are, however, tax deductible.

Norway's internal tax rules do not allow taxation of a non-resident's capital gain on the disposal of financial instruments, including shares in Norwegian companies, unless the non-resident has a PE to which the financial instrument may be allocated.

Stock dividends

Stock dividends (bonus shares) are not taxable on receipt, provided that the dividends have been distributed in accordance with the Limited Liability Company Acts and distributed in proportion with the ownership level of the shares.

Tax treatment of investments in security funds

The taxation of the investment in security funds will be determined by the share ratio in the fund. Distributions from security funds with a share interest between 20% and

80% will be split between dividend and interest income calculated on a *pro rata* basis based on the share interest in the fund. Furthermore, distributions from funds with more than 80% shares will only be taxed as dividends, and funds with less than 20% shares will only be taxed as interest.

Interest income

In general, interest income is taxable on an accrual basis.

Royalty income

In general, royalty income is taxable on an accrual basis.

Foreign income

A Norwegian resident company is subject to CIT on its worldwide income. Double taxation of foreign-source income, including foreign-branch income and CFC income, is mitigated either through tax treaties or domestic tax provisions. A deduction for foreign tax may either be claimed as an expense or as a credit against Norwegian tax payable on that income. In most circumstances, foreign dividends are exempt according to the tax-exemption rules. As a consequence, foreign WHT may not be credited and constitutes a real cost for the companies concerned.

Norway does not have any legislation for the deferral of tax on foreign income.

Deductions

Depreciation

In Norway, the declining-balance method of depreciation is mandatory for capitalised assets. The depreciation rates given below are the maximum rates.

There is a duty to capitalise an asset that has a value of NOK 15,000 or higher and has an economic life of at least three years.

Asset	Depreciation rate (%)
Office equipment machines, etc.	30
Acquired goodwill/business value	20
Trucks, lorries, buses, taxis, vehicles for persons with disabilities	24/30 (1)
Cars, tractors, other vehicular machinery, instruments, fixtures and furniture, etc.	20
Ships, vessels, offshore rigs, etc.	14
Aircraft, helicopters	12
Construction for transmission and distribution of electric power and electronic equipment in a power company	5 (2)
Buildings and construction, hotels, hostels, inns, etc.	4/6/10 (3)
Office buildings	2
Fixed technical installations in buildings, including heating plant, cooling and freezing plant, electrical installation, sanitary installation, elevator, etc.	10

Notes

1. An increased depreciation rate of 30% applies to certain electric delivery trucks.
2. Auxiliary and supplementary installations in industrial plants will be depreciated together with the building and constructions group (10% depreciation if expected operating time is less than 20 years).

In addition, constructions for transfer and distribution of energy, and electronic equipment, used in other business activities than power generation will be depreciated at 5%.

3. The applicable rate is 10% if, from the date of its erection, the structure has an economic life of 20 years or less.

Norwegian tax regulations allow for accelerated depreciation of wind power plants. According to the rules, the main assets in wind power plants acquired between 19 June 2015 and 31 December 2020 can be depreciated on a linear basis over five years, provided that the project did not commence prior to 19 June 2015.

Special depreciation rules apply to assets moved in and out of Norwegian jurisdiction to and from companies resident outside the EEA.

Goodwill

Acquired goodwill may be amortised according to the declining-balance method at a maximum of 20% *per annum*. The tax authorities have, however, on several occasions recently questioned the allocation to goodwill and claimed that a part of the purchase price should be allocated to intellectual property (IP), concessions, etc. Intangibles other than goodwill are amortisable on the condition that they are subject to an evident loss in value (impairment test) or if they are time-limited.

Start-up expenses

In general, start-up expenses are deductible, provided that the costs are borne by the company. Start-up costs could include costs related to registration in the Register of Business Enterprises, lawyers and accountants fees, drafting articles of association and shareholders agreement, etc.

Interest expenses

In general, interest expenses are deductible. Norway does not have a rule distinguishing between different income categories (as in the United Kingdom). If income is exempt from taxation in Norway pursuant to a tax treaty, corresponding costs or losses are not tax deductible.

Limitations on tax deductible inter-company interest expenses apply. *Please see the detailed description under Thin capitalisation in the Group taxation section for further information*.

Bad debts

In general, receivables are tax deductible if the debt is clearly irrecoverable or realised (e.g. if the receivable is sold to a third party, converted to share capital, or waived) and is sufficiently connected to the company's business (the business requirement). For accounts receivables, a calculated rate multiplied by the total account receivables at year-end may be deducted. The rate is calculated based on the two preceding years losses on such receivables multiplied by a fixed rate set by the Ministry of Finance.

Losses on receivables between group companies (with more than 90% direct or indirect mutual ownership of shares) and partnerships are, as a main rule, not tax deductible. However, trade receivables and losses on receivables created in connection with mergers or demergers are deductible for tax purposes.

Charitable contributions

Donations to certain charitable institutions are tax deductible. The upper limit for the tax deduction per year is NOK 40,000. The same limit applies to individuals and companies. The receiving entity must be pre-approved by the Norwegian tax authorities.

Fines and penalties

Fines and penalties are normally not tax deductible. This also applies to some administrative charges that are penal in nature. Charges that have no statutory basis in Norwegian law may be tax deductible, provided that the general conditions are fulfilled.

Taxes

Real estate tax, as well as foreign income and capital taxes paid by the taxpayer, are deductible when determining corporate income. Foreign taxes derived from income that is taxable in Norway are deductible only if they have not been credited against Norwegian tax payable.

Net operating losses

Losses may be carried forward indefinitely. Losses incurred in the year of ceasing business may be carried back for a period of two years.

Payments to foreign affiliates

Royalties and service fees paid to related foreign companies are fully deductible, provided they meet the arm's-length principle. As regards loans, the tax authorities require that the entity in question is able to service its debts. In addition, any loan terms should be comparable to those that would have been agreed upon by unrelated parties. Interest on financing, to the extent that these rules are not satisfied, may be regarded as dividends and are thus non-deductible and, in certain cases, subject to Norwegian WHT. In addition, limitations on tax deductible inter-company interest expenses apply. *Please see the detailed description under Thin capitalisation in the Group taxation section for further information*.

Group taxation

Income taxes are assessed on companies individually, not on a consolidated basis. This may be avoided through group contributions between Norwegian companies, provided common direct or indirect (including foreign) ownership and voting rights is more than 90%. Furthermore, the Norwegian group contribution rules are, under certain conditions, also applicable to Norwegian branches of foreign companies that are resident within the EEA. Note that group contributions are not deductible for companies engaged in oil and gas producing activities subject to the Petroleum Tax Act.

Assets may, pursuant to the Group Regulations, be transferred tax-free between group companies at tax book value for tax purposes and at market value for financial book purposes. However, a guarantee for the latent tax liability created by the transfer must be provided upon request by the tax authorities.

Payment must equal market value of the assets transferred. The same applies to payment in the form of shares. If the transferee loses the affiliation with the tax group while still owning the transferred assets, the transferor will be taxed for the difference between the tax book value and the market value of the assets.

Transfer pricing

In Norway, the arm's-length principle for related-party transactions is incorporated into the Tax Act. The transfer pricing provision of the Tax Act states that the OECD Guidelines 'shall be taken into account' when addressing transfer pricing issues under Norwegian tax law.

Transfer pricing has increasingly become the focus of the tax authorities' attention in recent years. It is fairly common for the Norwegian tax authorities to choose test cases that are subject to substantial investment. During the most recent years, focus has been on business restructuring, commissionaire arrangements, and the financing of operations.

Norway has an advance pricing agreement (APA) regime. It is also becoming more common to discuss complex cases with the tax authorities on a non-binding basis in advance of implementation or before assessment. However, there are no particular Norwegian safe harbour rules or any other official guidance of how to price specific transactions, etc.

Country-by-country (CbC) reporting

Norway has implemented CbC reporting rules for multinational groups with a joint income of more than NOK 6.5 billion. The report is to be submitted, at the latest, by 31 December of the year after the relevant accounting year. The report for the accounting year 2017 has to be submitted by 31 December 2018.

Thin capitalisation

There is no fixed debt-to-equity ratio requirement in Norwegian tax law. However, for companies that are part of a group, adjustments may be made under the arm's-length provisions. Generally, these provisions apply only if the company has obtained a larger loan from a group company than an independent credit institution would have granted, or if the agreed level of interest is higher than an independent credit institution would have required. Naturally, this analysis will vary based on the actual company's credit worthiness, which consists of several elements, such as the nature of the business, financial status, future income possibilities, and group relationships. As such, there is no applicable 'safe harbour'. The company must also be able to service its debts.

If a Norwegian entity is regarded as being thinly capitalised, part of the entity's interest and debts may be reclassified to dividend and equity.

Limitations apply to tax-deductible inter-company interest expenses. In general, interest expenses to related parties that exceed 25% of a Norwegian company's taxable earnings before interest, taxes, depreciation, and amortisation (EBITDA), with some adjustments, will not be tax deductible. The regulations only apply to companies that have more than NOK 5 million in total net interest expenses.

Two parties are related if one party directly or indirectly owns or controls the other party by at least 50%. Related parties may be resident in Norway or abroad.

External loans can also, under certain conditions, be regarded as intra-group loans if an entity has provided a guarantee for the debt of a related party. However, an exemption applies if the guarantee is provided by a company that is more than 50% owned by the borrower or a company that is controlled by the borrower or if the security is the shares in the borrower.

The interest deductibility limitation is calculated for each entity in the group. Disallowed interest deductions may be carried forward for ten years.

The limitation applies both to local and foreign companies that have a taxable presence in Norway, as well as partnerships, CFCs, etc.

The EFTA Surveillance Authority (ESA) has issued a reasoned opinion stating that the Norwegian interest limitation rules might violate Norway's obligations under the EEA Agreement. The Norwegian Ministry of Finance has rejected this in their reply to the ESA dated 31 January 2017. The outcome of the investigation and effect for previous and future years is still pending.

Controlled foreign companies (CFCs)

Norwegian residents are taxed directly on their allocable part of the profits from a CFC's income if the company is resident in a low-tax country, irrespective of whether income is distributed to the Norwegian investor. A low-tax country, in this respect, is a country where the effective foreign income taxation of the company's profits is less than two-thirds of the effective taxation that would have been due had the company been resident in Norway. A condition for such taxation is that 50% or more of the foreign company's shares or capital is held or controlled, directly or indirectly, by Norwegian taxpayers (alone or together), based on the status at the beginning and end of the income year in question.

Note that if Norwegian taxpayers own or control more than 60% of the shares or capital at the end of the income year, Norwegian control exists irrespective of the level of control at the beginning of the year. Norwegian control ceases to exist if Norwegian taxpayers own or control less than 50% of the shares or capital at both the beginning and end of the income year or less than 40% of the shares or capital at the end of the income year.

On the condition that Norway has signed a tax treaty with the country involved and the company in question is covered by the treaty, the CFC rules will be applicable only if the income of the entity in question is mainly of a passive nature. Furthermore, CFC taxation may also be prohibited if the company in question is resident within the EEA and cannot be deemed as a wholly artificial arrangement as outlined in the ECJ's decision in the Cadbury Schweppes case. Hence, CFC taxation will be avoided for EEA companies that fulfil certain substance requirements.

Tax credits and incentives

Foreign tax credit

Norwegian limited liability companies that have paid taxes on foreign-source income may, under certain conditions, offset the Norwegian tax paid against the foreign tax paid. The tax credit is limited to the lower of the Norwegian tax paid on the same type of foreign income and the foreign tax actually paid. It is possible to carry forward unused foreign taxes for five years. A credit claimed in accordance with the regulations stated above may not be used in addition to deductions pursuant to other rules and regulations. These rules are very technical, and it should be noted that there are two different 'baskets' of income.

Roll-over regulations

Upon application, the Ministry of Finance has the authority to grant tax relief on the transfer of assets within a group. The transfer may be carried out between group companies (more than 90% ownership and voting rights) or partnerships (with mainly the same owners). If a tax relief is granted, the transfer would not trigger any taxation at the time of the transfer, but all tax positions, including the tax basis of the transferred assets, will be transferred to the acquiring company. A condition for the tax relief is normally that the companies remain within the group.

The Ministry of Finance also has the authority to grant tax relief on the realisation of property, business, shares, etc. during a reorganisation. The reorganisation must improve the efficiency of the business to qualify for tax relief, and, accordingly, administrative effects would not be sufficient. The tax relief must also help companies to carry out the reorganisation. In addition, the tax relief must not reduce the Norwegian tax base; the tax positions would be transferred to the new taxpayer.

SkatteFUNN research and development (R&D) tax incentive scheme

The SkatteFUNN R&D tax incentive scheme is a government program that is designed to stimulate R&D in Norwegian trade and industry. Businesses and enterprises that are subject to taxation in Norway are eligible to apply for tax relief.

All Norwegian companies and branches with R&D projects can apply for a deduction of up to 20% of incurred costs, limited up to a cost base of NOK 25 million for self-developed R&D and NOK 50 million for R&D purchased from approved institutions. If the company does not have taxable income for the income year in question, the company will receive a cash refund for the year following the income year.

The main criterion for applying for SkatteFUNN is that the company has an R&D project with the aim of developing a new or improved asset, service, or production process. There are no requirements regarding type of business. A distinction is made against ordinary product development without developing new knowledge, functions, etc., the ordinary day-to-day business operations, etc.

The application for SkatteFUNN must be approved by Norges Forskningsråd (The Research Council of Norway) and is awarded for a period of a maximum of three years. If the application is approved, there is a requirement to submit a form attested by the company's auditor, together with the ordinary tax return, in order to obtain the tax incentive.

Withholding taxes

Norway levies WHT on dividends. However, no WHT is levied on payments of royalties and interest, except on interest derived from primary capital certificates ('*Egenkapitalbevis*').

The internal WHT rate on dividends is 25%, which may either be reduced under the tax-exemption rules or by an applicable tax treaty. To qualify for the tax-exemption rules, the recipient of the dividends has to be a corporate investor resident in an EEA country and must also fulfil certain substance requirements.

Norway

Dividends

Recipient	Regular rate (%)	Parent/subsidiary rate (%)
Non-treaty	25	25
Treaty:		
Albania	15	5 (1)
Argentina	15	10 (1)
Australia	15	0 (11)/5 (4)
Austria	15	0 (1)
Azerbaijan	15	10 (2)
Bangladesh	15	10 (3)
Barbados	15	5 (3)
Belgium	15	5 (1)
Benin	20	20
Bosnia and Herzegovina	15	15
Brazil	25	25 (8)
Bulgaria	15	5 (3)
Canada	15	5 (4)
Chile	15	5 (5)
China, People's Republic of	15	15
Croatia	15	15
Cyprus	15	0 (3)
Czech Republic	15	0 (3)
Denmark	15	0 (3)
Egypt	15	15
Estonia	15	5 (1)
Faroe Islands	15	0 (3)
Finland	15	0 (3)
France	15	0 (1)/5 (3)
Gambia	15	5 (1)
Georgia	10	5 (3)
Germany	15	0 (1)
Greece	20	20
Greenland	15	5 (3)
Hungary	10	10
Iceland	15	0 (3)
India	10	10
Indonesia	15	15
Ireland, Republic of	15	5 (3)
Israel	15	5 (6)
Italy	15	15
Ivory Coast (Côte d'Ivoire)	15	15
Jamaica	15	15
Japan	15	5 (5)
Kazakhstan	15	5 (3)
Kenya	25	15 (5)
Korea, Republic of	15	15
Latvia	15	5 (1)
Lithuania	15	5 (1)
Luxembourg	15	5 (1)
Macedonia	15	10 (1)

Recipient	Regular rate (%)	Parent/subsidiary rate (%)
Malawi	15	5 (3)
Malaysia	0	0
Malta	15	0 (10)
Mexico	15	0 (1)
Montenegro	15	15
Morocco	15	15
Nepal	15	5 (1)/10 (3)
Netherlands	15	0 (1)
Netherlands Antilles	15	5 (1)
New Zealand	15	15
Nordic Treaty	15	0 (3)
Pakistan	15	15
Philippines	25	15 (3)
Poland	15	0 (10)
Portugal	15	5 (13)
Qatar	15	5 (3)
Romania	10	5 (3)
Russia	10	10
Senegal	16	16
Serbia (not Montenegro)	15	5 (1)
Sierra Leone	5	0 (6)
Singapore	15	5 (1)
Slovak Republic	15	5 (1)
Slovenia	15	0 (9)
South Africa	15	5 (1)
Spain	15	10 (1)
Sri Lanka	15	15
Sweden	15	0 (3)
Switzerland	15	0 (3)
Tanzania	20	20
Thailand	15	10 (3)
Trinidad and Tobago	20	10 (5)
Tunisia	20	20
Turkey	15	5 (12)
Uganda, Republic of	15	10 (1)
Ukraine	15	5 (1)
United Kingdom	15	0 (3)
United States	15	15
Venezuela	10	5 (3)
Vietnam	15	5/10 (7)
Zambia	15	5 (1)
Zimbabwe	20	15 (1)

Notes

1. 25% of the capital.
2. 30% of the capital and an investment of no less than 100,000 United States dollars (USD).
3. 10% of the capital.
4. 10% of the voting rights.
5. 25% of the voting rights.
6. 50% of the voting rights.
7. 5% for over 70% of the capital; 10% for 25% to 70% of the capital.

8. Internal Norwegian WHT rate (i.e. 25%).
9. 15% of the capital.
10. 10% of the capital for an uninterrupted 24-month period.
11. 80% of voting rights.
12. 20% of the capital provided that such dividends are exempt from tax in the other state.
13. 10% of the capital for an uninterrupted 12-month period.

Tax administration

Taxable period

The income tax year normally runs from 1 January to 31 December, with assessments being issued no later than 1 December in the following calendar year. Companies are liable for both advance payments and final settlements in the calendar year of assessment. Companies with a financial year other than the calendar year may use the financial year for tax purposes in certain instances (e.g. if they belong to a foreign group with a deviating accounting year, they may use the financial year of the group for tax purposes).

Tax returns

Companies are, in general, required to file their tax returns electronically by the end of May in the year following their financial year. Upon application, an extension of the time limit to file the tax return will normally be granted. The tax returns and the basic attachments are obligatory for all corporate taxpayers. Additional requirements may apply for specific business sectors, such as hydro power production. Under the petroleum tax regime, the filing deadline is the end of April.

The taxpayer is responsible for reporting the taxable income in the tax return, which will be the basis for the tax assessment. The taxpayer can voluntarily change information given in the tax return for up to three years after submitting. This does not apply to the income years prior to 2016, where an appeal must be filed in order to amend the tax assessment.

Payment of tax

Companies are required to make advance payments of tax on 15 February and 15 April in the year following the income year. The two payments should together cover all of the expected CIT to be assessed. Any balance must be paid three weeks after the assessment has been made public (i.e. in the autumn of the year following the relevant accounting year).

The above applies to all corporate taxpayers, except for taxpayers under the petroleum tax regime, where tax shall be paid in six instalments.

Tax audit process

The Norwegian tax system is tax return based. The Norwegian tax office carries out tax audits based on different selection criterions. A tax audit can be caused by a review of the tax return, random selection of companies or business sectors, information obtained from other parties, etc.

The tax office normally gives notice of an upcoming tax audit, but it can also be unannounced. The examination generally takes place by formal, written communication, and the process can take from a few weeks to several years.

In general, a reassessment of the tax assessment requires a notice from the tax authorities with a reasonable timeframe for the taxpayer to give a reply to the notified amendments.

Statute of limitations

Norway introduced new statutes of limitations for reassessing tax assessment as of 2017. The general reassessment period is five years (from the year after the income year in question). A ten-year limit applies in cases where the taxpayer has demonstrated gross negligence. The reassessment period will apply to the income year 2015 going forward. For the years 2012 to 2014, the old reassessment period will, in general, apply to the advantage of the taxpayer (*see below*).

After the old statutes of limitations, the tax office has a ten-year limit for reassessing tax assessment (from the year after the income year in question). However, a two-year limit applies for negative adjustments and a three-year limit for positive adjustments if the taxpayer has provided sufficient and correct information in the tax return.

The taxpayer may file an appeal on the resolutions made by the tax authorities within six weeks after they were sent to the taxpayer. The time limit for appealing other decisions is normally three weeks after the tax office's decision. This applies both under the new and previous rule set.

Topics of focus for tax authorities

The tax office's topics of focus can vary each year and from region to region. The primary topics of focus lately have been thin capitalisation/interest limitation, transfer pricing, and (cross-border) reorganisations. Due to a recent judgement from the Norwegian Supreme Court, it is possible that the tax office will focus more on the survivability of tax positions not connected to specific assets (e.g. losses carried forward when the taxpayer has been part in a merger, demerger, or the ownership has been altered).

Other issues

Foreign Account Tax Compliance Act (FATCA) agreement with the United States

In April 2013, Norway entered into an FATCA agreement with the United States. The agreement is based on the US FATCA regulations and is the basis for information exchange between the Norwegian and US tax authorities with regards to financial transactions.

According to the agreement, Norwegian financial institutions can report to the Norwegian authorities instead of reporting to the US authorities. It is expected that this will ease the reporting liabilities for Norwegian financial institutions.

Common Reporting Standard (CRS) regime

Norway has also entered into agreements with other countries concerning the automatic exchange of information relating to financial accounts in order to prevent tax evasion and international tax crime. Under the agreements, the Norwegian tax authorities will receive information from foreign financial institutions and tax authorities regarding persons liable to tax to Norway.

In addition, financial institutions are liable to report certain financial information about their clients, accounts, etc. to the Norwegian Tax Administration, which will forward the information to the relevant foreign tax authorities.

Base Erosion and Profit Shifting (BEPS)

Norway is positive to the BEPS project and seeks to be an active contributor to implement measures that facilitate its objectives of preventing base erosion and profit shifting. Norway has, over the last few years, adopted regulations for, among others, tax treatment of hybrid instruments, interest limitation rules, transfer pricing regulations and CbC reporting, and the MLI as a result of the BEPS action points.

Multilateral Instrument (MLI)

On 7 June 2017, Norway signed the MLI, and the preliminary Norwegian MLI positions were published 6 July 2017. Norway included 28 treaties to be covered tax agreements and, in addition, several other treaties are under negotiation.

Oman

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Significant developments

There have been no significant corporate tax developments in Oman during the past year.

Taxes on corporate income

The Income Tax Law seeks to tax worldwide income of entities formed in Oman and the Oman-source income of branches and other forms of permanent establishment (PE).

The rate of income tax is uniform for all types of business entities, regardless of whether it is a corporate entity and/or whether it is registered or not.

The income tax rate is 15% for all taxpayers other than Omani proprietorships ('establishments') and limited liability companies (LLCs) that fulfil the conditions of small and medium enterprises (SMEs).

For Omani proprietorships ('establishments') and LLCs that meet the following requirements:

- registered capital does not exceed 50,000 Omani rial (OMR) at the beginning of the tax year
- gross income does not exceed OMR 100,000 for any tax year
- average number of employees during the tax year does not exceed 15, and
- taxpayer activities do not include air/sea transport; extraction of natural resources; banking, insurance, or financial services; public utility concessions; or other activities to be decided by the Minister of Finance after approval by the Council of Ministers,

a 3% tax rate is effective and is coupled with a requirement for SME taxpayers to file income tax returns.

Petroleum income tax

Special provisions are applicable to the taxation of income derived from the sale of petroleum. The tax rate specified for such companies is 55%. However, the tax rates are applied on income as determined by the individual Exploration and Production Sharing Agreement entered into between the government of Oman and the company engaged in the sale of petroleum. Under these agreements, the government pays the company's share of income tax from amounts withheld from the government's share of production. Consequently, the income tax is not actually borne by the company.

Local income taxes
There are no regional or local income taxes in Oman.

Corporate residence

The term 'resident' is not defined in the tax law.

Permanent establishment (PE)
PE is defined in very broad terms and includes places of sale, places of management, branches, offices, factories, workshops, mines, quarries, other places of extraction of natural resources, and a building site, place of construction, or assembly project (if it continues for more than 90 days). However, the mere use of storage or display facilities does not constitute a PE. The definition of PE references carrying on business in Oman, either directly or through a dependent agent.

Additionally, the definition stipulates that a total stay of 90 days during a 12-month period creates a PE in Oman. However, this 90-day period applies to rendering of consultancy services or other services only. Under this definition, while the sale of goods into Oman will not be deemed to be a taxable activity, a contract for the supply and installation of equipment is likely to attract tax. By the same criterion, services rendered by personnel visiting Oman will be treated as taxable activities, applying the 90-day rule.

Other taxes

Value-added tax (VAT)
Oman has announced its intention, along with other Gulf Cooperation Council (GCC) member countries, to implement VAT. The implementation date is expected to be 1 January 2019. The rate of VAT will be 5%.

Customs duty
Customs duty of 5% of cost, insurance, and freight (CIF) value applies to most non-GCC source goods. Exemptions apply for certain food items, medical supplies, etc.

Excise taxes
There are no excise taxes in Oman.

Property taxes
There are no property taxes in Oman.

Stamp duty
Stamp duty is applicable on transfer of land and property at 5% of the value.

Payroll taxes
There are no payroll taxes in Oman other than social security contributions (*see below*).

Social security contributions
A 17.5% social security contribution is applicable to employees who are Omani nationals, but not to expatriate employees. The employee pays a contribution of 7% of

salary, and the employer pays the balance of 10.5%. The employer is also required to contribute for insurance for work-related injuries in the amount of 1% of the salary of the employee. This brings the total monthly social security and insurance contributions to be made by the employer to 11.5%.

Municipal taxes

Municipal taxes apply to the following items:

- Property rents: 3%.
- Hotel occupancy: 5%.
- Leisure and cinema houses: 10%.

Branch income

The tax rate for branches of foreign entities (regardless of country) is a flat 15%.

Expenses incurred by the head office that can be identified as directly related to the branch's activity are deductible. The deduction for other head office expenses is limited to 3% of the branch's gross income for the year. This rate is 5% for banks and insurance companies, and 10% for high-tech industrial activities.

Income determination

Inventory valuation

Inventory should be valued using a method that complies with International Accounting Standards.

Capital gains

Gains on sales of securities listed on the Muscat Securities Market are exempt from taxation. Gains on transfers of other assets are taxable as ordinary income.

Dividend income

Dividends received from Omani entities are exempt from taxation. Foreign-source dividends are taxable at the same rates as corporate income.

Stock dividends

There are no provisions in the tax law that address stock dividends.

Interest income

Interest income is taxable as business income.

Rent/royalty income

Rental income and royalties are taxed as business income.

Unrealised exchange gains/losses

Unrealised exchange gains are not taxable. Similarly, any unrealised loss is not deductible from the total taxable income.

Exempt income

The following income is exempt from income tax in Oman:

- Dividends received from an Omani company.
- Profits or gains on disposal of securities listed on Muscat Security Market.
- Omani marine companies, whether wholly owned by Omanis or with foreign and Omani ownership and registered in Oman, are exempt from tax. Foreign marine companies conducting activities in Oman through an authorised agent are exempted from tax with effect from the date of commencement of activity, provided that reciprocal treatment is afforded by the country of the foreign company.
- Income realised by foreign airlines carrying on business through PEs in Oman is exempt from tax. This exemption is limited to the extent of the income from operating airplanes for international transport, provided reciprocal treatment is accorded in the airline's home country.
- Income realised by investment funds established in Oman under the Capital Market Authority Law or established overseas for dealing in shares and securities listed on Muscat Security Market is exempt.
- Foreign companies engaged in oil and gas exploration activities, while taxable under the law, normally have their tax obligations discharged by the government under the terms of the Exploration and Production Sharing Agreement.
- Foreign companies working for the government in projects deemed to be of national importance may be able to negotiate a tax protection clause whereby any tax paid by them is reimbursed by the government.

See Exempt activities in the Tax credits and incentives section for a description of exemptions from tax for income from certain principal activities.

Foreign income

Worldwide income of an entity formed in Oman is taxed in Oman. Credit for foreign taxes paid is given under the law; however, this may not exceed the amount of Omani tax payable on such income.

The Oman tax law does not contain rules on deferral of foreign income.

Deductions

Depreciation

Depreciation is taken on a straight-line basis on the following classes of assets at the annual rates shown.

Asset	**Rate (%)**
Permanent buildings	4
Semi-permanent buildings	15
Docks, quays, jetties, sea barriers in ports, pipelines, roads, and railway lines	10
Aircraft and ships	15
Hospital buildings, educational establishments, and equipment for scientific research	100

The rate of depreciation allowed is doubled in the case of buildings used for industrial purposes.

The tax law also provides for calculation of depreciation on a net book value basis for the following classes of assets. A 'pooling' concept is permitted, whereby assets subject to the same rate of depreciation may be pooled together for purposes of depreciation.

Pool	Rate (%)
First pool is comprised of tractors, cranes, and other heavy machinery and equipment, including computer software installations, furniture and fixtures, vehicles, computer software, and intellectual property (IP) rights	33.33
Second pool is comprised of drilling equipment	10
Third pool is comprised of 'other machinery and equipment' not included above	15

Goodwill

Goodwill is amortisable for tax purposes, generally over the life assigned for International Financial Reporting Standards (IFRS) accounting purposes.

Start-up expenses

Expenses incurred before the commencement of business are allowed as a deduction in the first taxable year (or period).

Interest expenses

Deduction of expenses incurred for the purpose of earning income is generally allowed. Interest expense is allowed for loans from unrelated parties or on loans from banks. Interest paid to related parties is allowed only to the extent the loan terms are at arm's length and subject to satisfaction of the 2:1 debt-to-equity ratio (*see Thin capitalisation in the Group taxation section*).

Bad debts and other contingencies

Amounts charged to the profit and loss account for creating provisions in respect of bad debts, stock obsolescence, warranties, and similar types of contingencies are not tax deductible. Deduction is allowed only at the time of write-off. However, provisions created by licensed banks in respect of bad debts are allowable within the limits approved/required by the Central Bank of Oman.

Charitable contributions

Charitable donations (in cash or kind) are limited to specified institutions and organisations and are subject to an overall limitation of 5% of gross income.

Meals, entertainment, officers' compensation, etc.

All expenses incurred for the generation of gross total income are allowed. There are no specific restrictions on deduction for expenses like meals and entertainment, compensation for officers, and life insurance payments for employees. There are limits on the deductibility of directors' fees.

Social security payments

Social security contributions paid by employers in respect of employees may also be deducted.

Pension payments

Contributions to pension funds, domestic and foreign, are deductible, provided the fund is licensed (in Oman or the country where it was established) and complies with certain other specified conditions.

Illegal payments

Payments of bribes or kickbacks, and other illegal payments, are not deductible.

Fines and penalties

Civil fines and penalties are not deductible.

Taxes

Taxes on income, whether incurred in Oman or elsewhere, are not deductible in arriving at taxable income. A credit may be available for taxes paid in a foreign jurisdiction.

Other significant items/restrictions on allowable expenses

The tax law has imposed restrictions on the deductibility of certain other expenses. The principal items affected are the following:

- Sponsorship fees paid to Omani sponsors are restricted to 5% of net taxable income before sponsorship fees. Net taxable income is determined after offsetting any losses carried forward.
- Charges or expenses allocated from the head office or other group companies are limited to 3% of gross income (5% for banks and insurance companies, and 10% for high-tech industrial activities).
- Commissions paid by insurance companies are restricted to 25% of net premiums collected.
- Leasing companies are treated at par with banks as far as deduction for loan loss provision is concerned. Leasing companies are allowed deductions for loan loss provisions, subject to the limits or recommendations of the Central Bank of Oman.
- Losses arising on sale of investments listed on the Muscat Security Market are not allowed as a deduction from taxable income.
- Any expense or costs that have been incurred to generate income exempted from tax are not allowed as a deduction from taxable income.
- Amounts paid as tax consultancy or advisory fees are disallowed.

Net operating losses

Carryforward of losses is limited to five years, except in the case of companies that incurred losses during a mandatory tax-exempt period, where the net losses may be carried forward indefinitely for offset against future profits.

Carryback of losses is not allowed.

Payments to foreign affiliates

Payments to foreign affiliates normally receive in-depth scrutiny from the tax authorities. Accordingly, proper documentation should be obtained in order to establish that these transactions are made at an arm's-length basis.

Group taxation

Businesses are taxed as separate entities, and the tax law does not recognise group taxation.

Transfer pricing

Transactions between related parties must be valued at arm's length. There is no specific guidance on acceptable methods for determining an arm's-length price.

Inter-company payments

All inter-company payments are scrutinised in detail to ensure that the profits are not transferred to avoid payment of tax.

Thin capitalisation

If the debt-to-equity ratio exceeds 2:1 in the case of related-party debt, interest on the excess debt is not deductible for tax purposes. This rule does not apply to banks and insurance companies, PEs of foreign companies, or proprietary (Omani owned) establishments.

Controlled foreign companies (CFCs)

There is no CFC regime in Oman.

Tax credits and incentives

Foreign tax credit

A foreign tax credit is available to Omani companies or establishments (proprietorships) that suffer foreign taxes on income that is also taxed in Oman. The credit is limited to the amount of tax incurred in Oman. The taxpayer is required to submit an application to the Secretariat General for Taxation to claim such credit.

Exempt activities

Up to introduction of Royal Decree 9/2017 on 26 February 2017, income from the principal activities listed below was exempt from tax, provided an exemption was applied for and obtained.

- Industry and mining.
- Export of products manufactured or processed locally.
- Operation of hotels or tourist villages.
- Agriculture and animal husbandry and the processing of agricultural produce.
- Fishing and fish processing and aquaculture.
- University education, college or institutes of higher studies, private schools, nurseries, training colleges, and institutes.

The exemption is valid for a period of five years from the date of commencement of production or the practice of activities and may be made subject to such conditions as the Minister of Commerce and industry may specify. The exemption was renewable for a period not exceeding five years, subject to approval by the Financial Affairs and Energy Resources Council.

Effective for tax years beginning after 31 December 2016, tax exemptions are available only for industrial (manufacturing) activities. Exemptions are no longer available for mining, export of locally manufactured goods, operation of hotels and tourist villages, agriculture, fishing, or education.

In addition, new industrial exemptions are limited to the initial five-year period, with no renewal.

Existing tax exemptions are not impacted, but the changes will look to impact pending renewal applications.

See Exempt income in the Income determination section for a description of other income items exempt from tax.

Withholding taxes

Foreign companies that do not have a PE in Oman for tax purposes and that derive income from Oman in the nature of the following are subject to withholding tax (WHT) at 10% of gross income from such sources:

- Dividends.
- Interest.
- Royalties.
- Consideration for research and development.
- Consideration for the use of or right to use computer software.
- Management fees.
- Provision of services.

Such WHT is required to be withheld by the Omani-based company and paid to the tax department within 14 days of the end of the month in which tax is deducted or payments are due or made to the foreign company.

Under clarifications issued by Oman tax authorities, WHT on dividends applies only to dividends paid by joint stock companies, not LLCs.

As of 1 March 2018, WHT on services applies whether the services are performed in Oman or abroad. Previously, the tax authorities had taken a position that services performed entirely outside Oman were not subject to WHT.

The term 'royalty' has been defined under the law to include consideration for the use of IP, including computer software, cinematography films, tapes, discs, or any other media, patents, trademarks, drawings, etc. The term further includes consideration for using industrial, commercial, or scientific equipment and consideration for information concerning industrial, commercial, or scientific experience or consideration for granting rights to exploit mining or other natural resources.

Double tax treaties (DTTs)

The maximum WHT rates provided by the Oman DTTs are shown in the table below. There are also agreements with various countries that are not yet in force.

The table provides a summary of WHT rates under Oman tax treaties in force as of 1 March 2018. Under some treaties, dividends qualify for a reduced WHT rate if the beneficial owner is a corporation that owns a specified percentage of the voting power of the distributing corporation. Also, under some treaties, a lower WHT rate applies to interest on government debt or government-assisted debt.

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Services**
Foreign companies:				
Non-treaty	10	10	10	10
Treaty:				
Belarus	5	5	10	10 (6)
Brunei	5	10	10	10 (6)
Canada	5 (7)/15	10	0/10 (1)	0
China	5	10	10	0
Croatia	0	5	10	0
France	0	0	7	0
India	10 (7)/12.5	10	15	15 (6)
Iran	10	10	10	0
Italy	5 (8)/10	5	10	10 (6)
Japan	5/10	10	10	0
Korea	5 (7)/10	5	8	0
Lebanon	5 (9)/10	10	10	0
Mauritius	0	0	0	0
Moldova	5	5	10	10 (6)
Morocco	5 (7)/10	10	10	0
Netherlands	0/10	0	8	0
Pakistan	10 (7)/12.5	10	12.5	12.5 (6)
Portugal	5/10/15	10 (3)	8	0
Seychelles	5	5	10	10 (6)
Singapore	5	7	8	0
South Africa	5 (7)/10	0	8	0
Spain	0 (9)/10	5	8	0
Switzerland	0/5/15 (2)	0/5 (3)	8	0
Syria	5/7.5	10	18	0
Thailand	10	10/15 (4)	15	0
Tunisia	0	10	5	0
Turkey	10 (8)/15	10	10	0
United Kingdom	0/15 (5)	0	8	0
Uzbekistan	7	7	10	0
Vietnam	5 (10)/10 (11)/15	10	10	10 (6)

Notes

1. The 0% rate applies to literary, dramatic, and musical copyright royalties, computer software royalties, and to industrial, commercial, or scientific experience. The 10% rate applies in other cases.
2. The 0% rate applies if the beneficial owner of the dividends is: (i) the government, a political subdivision, or the central bank; (ii) a pension scheme; or (iii) in the case of Oman, the State General Reserve Fund, the Omani Investment Fund, and any other statutory body or institution wholly owned by the government of Oman. The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 10% of the capital of the payer company. The 15% rate applies in other cases.
3. The 0% rate applies to interest paid: (i) to the government, a political subdivision, or the central bank; (ii) in the case of Oman, to the State General Reserve Fund, the Omani Investment Fund, and any other statutory body or institution wholly owned by the government; (iii) on the credit sale of equipment, merchandise, or services; (iv) on a loan granted by a bank; (v) to a pension fund; or (vi) on inter-company loans. In other cases, the 5% rate applies.
4. The 10% rate applies to interest paid to financial institutions, including insurance companies. The 15% rate applies in other cases.

5. The 15% rate applies to dividends paid from profits derived directly or indirectly from immovable property by an investment company or investment fund, the income of which is subject to favourable tax treatment.
6. Applies to technical, managerial, or consultancy services rendered in Oman.
7. 10% minimum shareholding required.
8. 15% minimum shareholding required.
9. 20% minimum shareholding required.
10. 60% minimum shareholding required.
11. 25% to 60% minimum shareholding required.

Tax administration

Taxable period

The tax year is the calendar year. Assessments can be made on the basis of a year-end other than 31 December, provided permission is granted in advance by the Omani tax authorities and the company then adheres to the year-end on a consistent basis.

Tax returns

A provisional declaration of tax must be submitted in the prescribed form within three months from the end of the accounting period to which it relates. The final annual return of income should be submitted in the prescribed format within six months from the end of the accounting period to which it relates. Reasonable time extensions can be sought and are normally provided for filing the provisional and annual returns of income, but these do not defer payment of tax, which will be subject to additional tax at 1% per month from the due date to the actual date of payment.

In the case of companies having a paid-up capital in excess of OMR 20,000, the annual return of income should be accompanied by audited accounts signed by an auditor registered in Oman. The law requires accounts to be drawn up in accordance with IFRS or any similar standards as approved by the Secretary General of Taxation (SGT), consistently applied. It specifically provides for accrual accounting unless prior permission of the SGT has been obtained. The accounts must be submitted in local currency unless prior approval of the SGT has been obtained for submitting them in foreign currency.

In the case of SMEs falling in the category of the 3% tax rate, the tax returns must be filed and accompanied by a simplified income statement within three months of the year-end.

Delay or failure in submitting the provisional or annual returns may attract a penalty of not less than OMR 100 and not more than OMR 2,000.

Failure to file the provisional or annual returns of income may result in an estimated profit assessment by the SGT.

Failure to submit audited accounts as required under the Law is deemed to result in an incomplete annual return of income and may attract an estimated profit assessment. The requirement of submitting audited financial statements has been relaxed for SME taxpayers who fall in the category of the 3% tax rate.

The law confers wide powers on the SGT for requesting information. Experience has shown that, notwithstanding the presentation of audited accounts, the tax department requests very detailed information and supporting documentation relating to revenue and expenses. Failure to provide such information or the provision of incorrect information can result in an additional assessment by the SGT and/or various penalties on the company and/or the officer responsible for providing the information.

Payment of tax

Any tax estimated to be payable in respect of an accounting period should be paid with the provisional assessment and 'topped up' for any additional amount computed as payable following submission of the annual return of income. Failure to pay taxes by the due date attracts interest at the rate of 1% per month from the date on which such tax was due to the date of payment.

The difference between the amount paid and the amount assessed, subject to filing of an objection, should be paid within one month from the date of the assessment. The additional amount assessed attracts interest at the rate of 1% per month from the date on which such tax was due to the date of payment.

Under the Law, the SGT has the authority, with the approval of the Minister and the Tax Committee, to sequester and sell the assets of a taxable entity to recover the taxes due.

If decisive proof is presented to the SGT that any person has paid tax for any year exceeding the tax due and payable for such tax year as finally settled, such person has the right to recover the tax. However, if any tax has become payable by such person in respect of another tax year, the excess amount will be adjusted against the future tax liability. Any request for recovery must be presented within five years from the end of the tax year in which the right to refund arises; otherwise, such right shall lapse.

Where the taxpayer fails to declare correct income in the tax return for any tax year, the SGT may impose a fine in the range of 1% to 25% of the difference between the amount on the basis of the correct taxable income and the amount of tax as per the return submitted.

Objections and appeals

A company has a right to object to any assessment issued by the SGT. The objection document should be prepared in writing (in English and in Arabic) and filed with the office of the SGT within 45 days from the date of assessment. The SGT is required to give a judgment within five months, extendable up to another three months at the SGT's discretion, from the date of receiving the objection. The tax demanded may be kept in abeyance on request. No additional tax is payable until the SGT issues the judgment.

Statute of limitations

Prior to Royal Decree 9/2017, the tax authorities had a period of up to five years from the end of the year in which a tax return is submitted to complete the assessment for that tax year. However, where the entity has not submitted any tax return, the tax authorities had a period of ten years to complete the assessments.

Self-assessment regime

The Royal Decree 9/2017 introduced the self-assessment regime, where the assessments will be carried out on a sample basis and the statute of limitation will be only three years from the end of the year in which a tax return is submitted. Where the entity has not submitted the tax returns, the tax authorities have a period of five years to complete the assessments.

Maintenance of records

The Law requires accounting records and supporting documentation to be maintained for ten years after the end of the accounting period to which these records relate.

Topics of focus for tax authorities

Related-party transactions are likely to attract particular scrutiny by the tax authorities. Taxpayers should maintain extensive documentation that proves that transactions are carried on at arm’s length.

Pakistan

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Significant developments

- The generally applicable corporate tax rate of 30% (relevant for tax year 2018) will be reduced by 1% each year until a rate of 25% is applicable for tax year 2023 and onwards.
- The corporate tax rate for 'small companies', presently 25%, will also be reduced by 1% each year until a rate of 20% is applicable for tax year 2023 and onwards.
- Super tax, presently leviable at 3%, is to be gradually phased out in the case of persons (including companies, other than banking companies) by 1% each year, until tax year 2021.
- Tax on 'undistributed reserves' in case of public companies has been reduced from 7.5% to 5%. Previously, no tax was payable where a company distributed at least 40% of after tax profits. Such threshold is now being reduced to 20%. Moreover, issuance of bonus shares shall no longer be considered as distribution of profits for the purposes of these provisions.
- Tax at 5% earlier applicable on issue of bonus shares has been abolished.
- 'Fees for offshore digital services' received by non-resident persons have been made subject to final tax (like royalties and 'fees for technical services') at the rate of 5% of the gross amount.
- Income from turnkey contracts derived by non-resident persons and their affiliates, that form part of an overall arrangement for supply of goods, installation, construction, assembly, commission, guarantee, and supervisory activities, is to be considered as Pakistan-source income.
- Under the domestic law, scope of expression of 'permanent establishment' (PE) has been enhanced to include (i) fixed place of business used by non-resident persons/affiliates for execution of 'composite' contracts and (ii) those persons who are habitually engaged in execution of contracts on behalf of non-residents.
- The concept of controlled foreign company (CFC) has been introduced with the aim to bring into the tax net passive incomes earned by foreign companies, owned by residents, that are not repatriated into Pakistan.
- Gain derived outside Pakistan on disposal of a Pakistani asset, held by a non-resident company, has been included in the ambit of Pakistan-source income.
- Income from services rendered by PEs of non-resident persons have now also been made subject to 'minimum tax' (and thus brought on par with resident corporate service providers).
- Tax authorities have been empowered to disregard an entity/corporate structure having no economic substance or executed as part of a 'tax avoidance scheme'.
- Adjustment of unabsorbed depreciation/amortisation against taxable profits of subsequent years has been restricted to 50% of taxable profits in case of profits of

10 million Pakistani rupees (PKR) or more. The remaining amounts shall, however, remain eligible for carryforward/adjustment in future years.

- Gain on disposal of listed and other securities held for more than five years but less than six years were earlier taxable at 0%; however, now these have been made taxable at 15% (20% for non-filers).
- The rate of tax chargeable/deductible on dividends received by a company from collective investment schemes, real estate investment trust (REIT) schemes, or mutual funds (other than stock funds) has been reduced from 25% to 15%.
- 'Commercial importers', earlier subject to tax on a presumptive basis, have now been made subject to tax under the normal tax regime, with tax at 5% of the import value considered to be a minimum tax on related transaction.
- The exemption on income from export of computer software, information technology (IT) services, or IT-enabled services, has been extended to tax year 2025.
- The tax credit on investment in plant and machinery and newly established undertakings is extended for a period up to 30 June 2021.
- A one-time amnesty scheme has been announced for declaration of undisclosed domestic incomes/assets by 30 June 2018 for companies on the basis of payment of tax at 2% to 5% (depending on the category of such assets).

Taxes on corporate income

A resident company is taxed on its worldwide income. Non-resident companies operating in Pakistan through a branch are taxed on their Pakistan-source income attributable to the branch at rates applicable to a company.

The federal corporate tax rates on taxable income (for tax year 2018) are as follows:

Company type	Tax rate (%)
Banking company	35
Public company other than a banking company	30
Any other company	30
Small company (*see the Tax credits and incentives section for more information*)	25

The tax rates for 'companies' as well as 'small companies' will be reduced gradually from tax year 2019 in the following manner:

Tax year	Company (%)	Small company (%)
2019	29	24
2020	28	23
2021	27	22
2022	26	21
2023 and onwards	25	20

The term 'public company' implies a company listed on any stock exchange in Pakistan or one in which not less than 50% of the shares are held by the federal government or a public trust.

In the case of a *modaraba* (*see the Income determination section for a definition*), income, except relating to trading and manufacturing activities, is exempt from tax, provided that 90% of its profit is distributed to the certificate holders as cash dividends.

The final tax regime (FTR) for resident taxpayers, a presumptive tax scheme where taxes are withheld at the source on the sale of goods and execution of contracts, is considered the final tax liability in respect of income arising from the sale or contract.

In the case of exports, tax collected at the time of realisation of foreign-exchange proceeds is treated as the final tax for that income. The exporters can also opt out of such regime, subject to the condition that tax deducted on exports is offered as minimum tax.

The FTR is also applicable to non-resident taxpayers, at their option. However, it is only applicable in cases of receipts on account of the execution of a contract for construction, assembly, or installation, including a contract for the supply of management activities in relation to such project as well as certain contracts for services and contracts for advertisement services rendered by television satellite channels.

Commercial importers (persons engaged in the import of goods where the goods are sold in the same condition as they were when imported) were subject to tax on presumptive tax basis, though an option was provided for under the law to opt out of FTR. This regime has now been abolished, and commercial imports have been made taxable under the normal tax regime, with tax at 5% of import value (as increased by applicable duties/taxes) considered as a 'minimum tax' on such transaction.

Taxation of a PE

The following principles shall apply in computing taxable income of a PE:

- It is a distinct and separate entity dealing independently with the non-resident of which it is a PE.
- In addition to business expenditure, executive and administrative expenditure, whether incurred in Pakistan or elsewhere, will be allowed as deductions.
- Head office expenditure, including rent, salaries, travelling, and any other expenditure that may be prescribed, shall be allowed as a deduction in proportion to the turnover of the PE in the same proportion as the non-resident's total head office expenditure bears to its worldwide turnover.
- Royalties, compensation for services (including management services), and interest on loans (except in banking business) payable or receivable to or from a PE's head office shall be considered in computing taxable income of the PE.
- No deduction will be allowed for any interest paid on loans acquired by a non-resident to finance the operations of a PE (or for the insurance premium in respect of such loans).
- Income from rendition of services derived by a PE of a non-resident person has been made subject to 'minimum tax' at 8% (of the gross consideration).

Taxation of certain contracts executed by non-resident persons

Income derived by non-resident persons/their affiliates from turnkey contracts that are part of an overall arrangement for supply of goods, installation, construction, assembly, commission, guarantee, and supervisory activities, including offshore supply of goods, now constitutes Pakistan-source income.

Necessary amendments to this effect have also been made in the definition of a PE by way of introduction of the concept of 'cohesive business operations', which includes:

- an overall arrangement for the supply of goods, installation, construction, assembly, commission, guarantees, or supervisory activities, and all or principal activities are undertaken or performed either by the person or the associates of the person, and
- supply of goods include the goods imported in the name of the associate or any other person, whether or not the title to the goods passes outside Pakistan.

The objective of these amendments seems an attempt to tax income of a non-resident arising from transactions wholly undertaken outside Pakistan (such as income relating to supply of goods where the title is passed outside Pakistan) in case the same is part of a 'cohesive business operation'. It is, however, clear that the double tax treaty (DTT) provisions would override these provisions and thus the same would only apply in non-treaty cases.

Minimum tax on turnover

Where the tax payable by a company is less than 1.25% of the turnover, the company is required to pay a minimum tax equivalent to 1.25% of the turnover. Tax paid in excess of normal tax liability can be carried forward for adjustment against tax liability of a subsequent tax year. However, such tax can only be adjusted against tax liability of the five tax years immediately succeeding the tax year for which the amount was paid.

The minimum tax rate for companies providing services is 8% of the turnover, except for certain specified services sectors, which are allowed concessions, subject to fulfilment of certain conditions.

Alternate Corporate Tax (ACT)

Under the ACT, the minimum tax liability of a company is the higher of 17% of accounting income or the corporate tax liability determined under the Ordinance, including minimum tax on turnover. This concept is applicable for all companies except insurance companies, companies engaged in exploration and production of petroleum, banking companies, and companies enjoying a reduced rate of tax.

Exempt incomes, income taxable under the FTR, capital gain on disposal of specified listed securities, income entitled to 100% tax credit on account of equity investment, and income of non-profit organisations, trusts, and welfare institutions are not subject to levy of ACT.

Super tax

The levy of 'super tax' has been extended up to tax year 2021 in the case of banking companies and up to tax year 2020 in the case of other persons. The revised rates of super tax are as follows:

Tax year	Banking company (%)	Persons other than banking company (%)
2018	0	3
2019	4	2
2020	3	1
2021	2	0

Local taxes on income

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

Corporate residence

A company is resident in Pakistan if it is incorporated or formed by or under the law of Pakistan or if the control and management of its affairs is situated wholly in Pakistan in that year.

The term 'company' includes a trust, a cooperative society, a finance society, or any other society established or constituted by or under any law; a corporate body incorporated outside Pakistan; and any foreign association, incorporated or unincorporated, that the Central Revenue authorities may declare to be a company.

Permanent establishment (PE)

A PE is a place of business through which the business of a non-resident is wholly or partly carried out, including:

- A place of management, branch, office, factory or workshop, premises for soliciting orders, warehouse, permanent sales exhibition, or sales outlet, except a liaison office.
- An agriculture, pastoral, or forestry property.
- A mine, oil or gas well, quarry, or any other place of extraction of natural resources.
- A building site; a construction, assembly, or installation project; or supervisory activities connected with such site or project if such activity continued for more than 90 days within any 12-month period.
- The furnishing of services, including consultancy services, by any person through employees or other personnel engaged by the person for that purpose.
- A person acting in Pakistan on behalf of the person, other than an agent of independent status (excluding a person acting exclusively/almost exclusively on behalf of such person) in the ordinary course of business.
- Any substantial equipment installed, or other asset or property capable of activity giving rise to income.
- A person who habitually exercises authority to conclude contracts on behalf of another person or plays a principal role in execution of contacts that are concluded without any material variations and these contracts are:
  - in the name of the person
  - for the transfer of the ownership of or for the granting of the right to use property owned by that enterprise or that the enterprise has the right to use, or
  - for the provision of services by that person.
- A fixed place of business that is used or maintained by a person if the person or an associate of a person carries on business at that place or at another place in Pakistan and:
  - that place or other place constitutes a PE of the person or an associate of the person under this sub-clause, or
  - business carried on by the person or an associate of the person at the same place or at more than one place constitutes complementary functions that are part of a cohesive business operation.

The definition of a PE provided in a DTT will prevail in cases where a DTT is executed by Pakistan with the related country of origin of the PE.

Other taxes

Value-added tax (VAT)

VAT (locally termed as 'sales tax') is ordinarily levied at 17% on the value of goods, unless specifically exempt, after allowing related input credits. Export of goods is subject to sales tax at 0%.

Sales tax on services is levied by all four provinces, Islamabad Capital Territory, Gilgit-Baltistan, Azad Jammu, and Kashmir at rates ranging from 13% to 16%. Sales tax paid on services, federal sales tax on goods, and federal excise duty are adjustable against each other, with a few exceptions.

Significant zero-rated goods are as follows:

- Supplies and repair and maintenance of certain ships and aircraft.
- Supplies to diplomatic missions and diplomats.
- Supplies of raw materials, components, and goods for export processing zones.
- Supplies of locally manufactured plant and machinery to export processing zones and supplies of certain specified machinery to the exploration and production sector.
- Supplies to exporters.

Significant exemptions are as follows:

- Live animals and live poultry.
- Live plants.
- Vegetables, pulses, edible fruits (excluding imported fruits), certain spices, sugar cane, edible oils, etc.
- Milk preparations.
- Newsprints, newspapers, journals, periodicals, and books.
- Agricultural produce not subjected to any process.

Customs and import duties

Customs and certain other duties are collected at the import stage at varying rates classified under the Harmonized System (HS) Code.

Excise duty

Federal excise duty (FED) is leviable on certain types of manufacturing, import of goods, and rendering of services at varying rates. Sales tax on services, which is a replacement of FED, under the constitution, is to be levied and collected by the provinces on services rendered within their jurisdictions.

Property taxes

Property owners are required to pay property tax levied and collected by provincial governments through municipal governments at varying rates.

Stamp duty

In the case of sale or transfer of immovable property, stamp duty is payable (with varying rates on the basis of location of the property) on the value of the property.

Payroll taxes

Other than social security contributions (*see below*), employers are not responsible to pay any other tax in respect of their employees or their salaries.

Social security contributions

Nominal social security and Employees Old Age Benefit contribution is collected from the employers and the employees. Employers are responsible to collect and pay on a monthly basis.

Branch income

The rates of tax for a branch of a company incorporated outside Pakistan are the same as those applicable on resident companies, other than public and banking companies. Tax at the rate of 15% is levied on the transfer of after tax profits by a branch to the head office, with an exception for companies engaged in the oil and gas exploration and production business.

Payments to a branch in Pakistan of a non-resident are subject to deduction of tax at source on the same basis as a resident in the case of sale of goods, rendering of professional services, and execution of contracts. In other circumstances, a reduced/0% withholding tax (WHT) certificate can be obtained from the Commissioner of Income Tax.

Pakistan has presently executed agreements for avoidance of double taxation with 65 countries.

Income determination

Inventory valuation

Inventories are to be stated at the lower of cost or market. The first in first out (FIFO) and average methods are accepted. Conformity of methods used for book and tax reporting is desirable, and the method used should be consistently applied.

Capital gains

Capital gain on the sale of immovable property acquired on or after 1 July 2016, on which depreciation is not allowed, is taxed at the rate of 10% if disposed of within one year, 7.5% if disposed of within two years, and 5% if disposed of within three years. However, if the retention period is more than three years, such gain is not taxable. Capital gain on the sale of immovable property acquired before 1 July 2016 is taxed at 5% if disposed of within three years. No tax is payable if the retention period is more than three years.

Gain on the disposal of shares of a resident company or a non-resident company, whose assets wholly or principally consist of immovable property situated in Pakistan or rights to explore/exploit natural resources in Pakistan, shall be Pakistan-source income.

Tax rates on capital gains on the sale of shares of public companies, *modaraba*, and other specified 'securities' are exempt from tax if the date of acquisition of shares is before 1 July 2013. Capital gains on such instruments for tax years 2018 and 2019 are taxed as follows:

Pakistan

Holding period	Tax rates - Filers (%) Securities acquired before 1 July 2016	Tax rates - Filers (%) Securities acquired after 1 July 2016	Tax rates - Non-filers (%) Securities acquired before 1 July 2016	Tax rates - Non-filers (%) Securities acquired after 1 July 2016
Less than 12 months	15	15	18	20
12 months or more, but less than 24 months	12.5	15	16	20
24 months or more	7.5	15	11	20

Capital gain on future commodity contracts entered into by members of the Pakistan Mercantile Exchange is 5% for both filers and non-filers.

Capital gain, other than on statutory depreciable assets, realised within one year of acquisition is fully taxed; after one year, 75% of such gains are taxed and 25% are exempt.

Capital gains on statutory depreciable assets (other than immovable property) are chargeable to tax as normal business income in the year of sale. They are measured as the difference between the sale proceeds and the tax written-down value of the relevant asset sold.

In the case of an asset disposal transaction that is on a non-arm's-length basis, fair market value of the asset shall be taken to be the consideration received by the seller, as well as the cost for the buyer.

Where assets are transferred outside Pakistan, the original cost is treated as the sale price, which means that the entire depreciation is recaptured at the time of export, except if the assets are used in oil or gas exploration, in which case only the initial depreciation is recaptured.

No gain or loss shall be taken to arise on disposal of an asset by a resident company to another resident company, provided certain conditions are met. The required conditions include, *inter alia*, that the transferor is 100% owned by the transferee or *vice versa* or both companies are 100% owned by a third company, and the transferee income is not exempt in the year of transfer. The scheme of arrangement is approved by the Securities and Exchange Commission of Pakistan or State Bank of Pakistan.

Any distribution to the shareholders of a company, to the extent that it relates to undistributed profits, is treated as a dividend.

Capital loss can be offset only against capital gains. Unabsorbed capital loss (except that arising on disposal of listed securities) can be carried forward for adjustment against capital gains for six years.

Capital gain derived on disposal of assets by non-residents outside Pakistan

Gain on disposal/alienation of any asset derived outside Pakistan by a non-resident person in respect of any asset located in Pakistan now constitutes Pakistan-source income.

With respect to shares of a company, however, the asset shall be treated to be located in Pakistan if:

- the share or interest derives, directly or indirectly, its value principally or wholly from the assets located in Pakistan
- the share or interest representing 10% or more of the share capital of the non-resident company is disposed or alienated, and
- the share or interest, as mentioned above, derives its value principally from an asset located in Pakistan if on the last day of the preceding tax year the value of such asset exceeds PKR 100 million and represents at least 50% of value of total assets.

Where the entire assets of the non-resident company are outside Pakistan, a share or interest in such company will be treated as located in Pakistan to the extent of reasonable attribution.

The above gain is subject to income tax (with no further incidence of tax under any other provisions of law) at the higher of:

- 20% of the amount representing the difference between fair market value and cost of acquisition of the asset, or
- 10% of the fair market value of the asset.

Dividend income

Dividend income is subject to tax/WHT of 15% or a lower tax treaty rate. A rate of 20% is applicable for persons receiving dividend income but not filing income tax returns (non-filers).

The deduction at source shall be the full and final discharge of tax liability on dividend income. However, in case of non-filers filing a return of dividend income, they will be entitled to a refund of 5% of the 20% tax withheld on dividend income (over and above the applicable tax charging rate of 15% on such dividends).

Interest income

Interest earned by a company is taxed as its income from other sources. Interest earned by a non-resident company without a PE in Pakistan attracts WHT at the rate of 10%, except where a lower rate is provided in the related DTT, which is also the final tax on such income.

Income from royalties and fees for technical services/offshore digital services

Royalties received by non-residents are deemed to accrue or arise in Pakistan and are taxable if paid by a resident in Pakistan or borne by a PE of a non-resident in Pakistan.

Income from 'fees for technical services' and 'fees for offshore digital services' are deemed to accrue or arise in Pakistan if paid by a resident in Pakistan or borne by a PE of a non-resident in Pakistan.

'Fees for technical services' means any consideration for the rendering of any managerial, technical, or consultancy services (including the provision of the services of technical or other personnel), but does not include consideration for any construction, assembly, or like project undertaken by the recipient or consideration that would be income of the recipient chargeable under the head salary.

'Fee for offshore digital services' means consideration for rendering or providing services of online advertising and online collection of data processing or any facility for online sale of services.

Other significant items

Liabilities allowed as a tax deduction in a tax year and remaining unpaid for three subsequent years are deemed to be income in the first tax year following the said three years. Such items are then allowed as a deduction in the year the liability is discharged.

Agricultural income is exempt from income tax.

Foreign income

A resident company is taxed on its worldwide income and on its foreign income as earned. Double taxation of foreign income is avoided by means of foreign tax credits; this relief is allowed to the resident company on the doubly taxed income at the lower of the Pakistan or foreign tax rate.

Foreign loss can only be offset against foreign income and can be carried forward for six years.

Modaraba

Modaraba (profit sharing) is a financing vehicle that enables a management company to control and manage the business of a *modaraba* company with a minimum of 10% equity participation. The management company is entitled to remuneration based on an agreed percentage (but not exceeding 10%) of annual profits of the *modaraba* business. A *modaraba* can be for a specific purpose or many purposes and for a limited or unlimited period. The income of a *modaraba* not relating to trading or manufacturing activity is exempt from tax if 90% of its profits are distributed as cash dividend.

Deductions

Depreciation

Normal depreciation is allowed at the following prescribed rates by applying the reducing-balance method.

Assets	Depreciation rate (%)
Buildings	10
Furniture	15
Machinery and equipment, including motor vehicles and ships	15
Computer hardware, including monitors and printers	30
Aircraft and aero engines	30
Below-ground installations in mineral oil concerns	100
Offshore platform	20

All depreciable assets put into service for the first time in Pakistan during a tax year, other than road transport vehicles not plying for hire, furniture (including fixtures), plant and machinery used previously in Pakistan, or plant and machinery for which a deduction has been allowed under another section of this ordinance, for the entire cost of the asset, shall be entitled to an initial allowance at 25% of the cost of the asset.

Initial depreciation rate for buildings is 15%. First year depreciation allowance is available for specified assets.

Book depreciation need not conform to tax depreciation. Unabsorbed tax depreciation not set off against the income of the year is carried forward and added to depreciation of the assets of the same business in the following year. Tax depreciation can be carried forward for adjustment against income of future years for an unlimited period. However, such deprecation is only allowed to be set off to the extent of 50% of taxable profits of a particular (succeeding) tax year in cases where the same is PKR 10 million or more. The remaining amount can, however, still be carried forward/adjusted in future tax years.

Amortisation of intangibles

The cost incurred on acquisition of a patent, invention, design or model, secret formula or process, copyright, software, quota, licence, intellectual property (IP), or other like property or right, and any expenditure that provides an advantage or benefit for a period of more than one year, is allowed as a deduction on a straight-line basis over the useful life of the asset, but not exceeding a period of ten years.

Any payment made against acquisition of goodwill will also be amortised under these provisions.

Unabsorbed tax amortisation not set off against the income of the year is carried forward and added to amortisation of the assets of the same business in the following year. Tax amortisation can be carried forward for adjustment against income of future years for an unlimited period. However, such amortisation is only allowed to be set off to the extent of 50% of taxable profits of a particular (succeeding) tax year, in cases where the same is PKR 10 million or more. The remaining amount can be carried forward/adjusted in future tax years.

Organisational and start-up expenses

Expenditure incurred before the commencement of a business wholly and exclusively to derive income chargeable to tax can be deducted over a period of five years.

Interest expense

Interest expense is allowed as an expense if required WHT is deducted and deposited in the government treasury.

Bad debt

Bad debts are allowed as deductible expenditure if the following conditions are satisfied:

- Debts are included previously in the income chargeable to tax.
- Debts are written off in the financial statements.
- There are reasonable grounds for believing that the debt is irrecoverable.

Charitable contributions

See Charitable donations credit in the Tax credits and incentives section.

Fines and penalties

Fines or penalties that are not paid or payable for the violation of any law, rule, or regulation are allowable as tax deductible expenses.

Taxes

Taxes on income are not deductible. Sales tax and excise tax are tax deductible where these are to be absorbed by the business; otherwise, these are passed on to the consumer.

Other significant items

Expenditure on scientific research incurred in Pakistan wholly and exclusively for the purpose of deriving income chargeable to tax is an allowable expenditure.

Exchange gains and loss on foreign currency loans specifically obtained for acquiring an asset are adjusted against the depreciable cost of the asset.

Any lease rental incurred by a person in the tax year to a scheduled bank, financial institution, approved *modaraba*, or approved leasing company shall be a deductible expense. However, financial charges paid for the above-mentioned leases are added back into the taxable income of the company.

Net operating losses

Operating losses may be carried forward and set off against the profits of the succeeding six years of the same business in which the losses were incurred. Unabsorbed depreciation can be carried forward indefinitely.

Carried forward losses of an entity in the case of group relief cannot be utilised if the ownership of the holding company is reduced to less than 55% and 75% if one of the companies is a listed company or none of the companies is a listed company, respectively.

Business losses can be carried forward up to a period of six years in the case of the amalgamation of two companies, with the condition that the same business is continued for a minimum period of five years.

The carrying back of losses is not permitted.

Payments to foreign affiliates

The deductibility of a head office expenditure of a non-resident taxpayer is limited to the same proportion of total head office expenditure as the Pakistan turnover has with the total world turnover. However, such domestic rules are overridden if the branch is a tax resident of a country having an agreement for avoidance of double taxation (treaty) and that treaty provides a different basis.

Group taxation

A locally incorporated holding company and subsidiary of a 100% owned group may be taxed as one group by giving an irrevocable option for taxation as one fiscal unit. The relief is not available for losses prior to formation of the group. The group is available if the companies are designated as entitled to avail group relief by the Securities and Exchange Commission of Pakistan. Inter-corporate dividends are, however, exempt from levy of tax in case of entities availing group taxation and filing consolidated group returns.

Any company that is the subsidiary of a holding company may surrender its assessed loss for the year to its holding company or its subsidiary (in the proportion of the shareholding held by the holding company in the subsidiary), or between another subsidiary of the holding company, provided that the holding company directly holds 55% or more capital of the subsidiary if one of the companies is a listed company. However, if none of the companies is a listed company, the holding requirement is 75% or more. The loss can be surrendered for a maximum of three years, and the required holding is for at least five years.

Transfer pricing

The tax authorities have the power in respect of a transaction between associates to distribute, apportion, or allocate income, deductions, or tax credits between such associates to reflect the income that would have been realised in an arm's-length transaction. Companies are required to maintain specified records and documents for transactions between associates, and tax authorities can require information and documents for such transactions.

Transfer pricing documentation and country-by-country (CbC) reporting

Transfer pricing documentation requirements have also recently been introduced in law in order to comply with the requirements of various international Conventions/ Agreements executed by the government (*see Base Erosion and Profit Shifting [BEPS] in the Other issues section*), *inter alia*, including the following:

- Every taxpayer, being a constituent entity of a multinational entity (MNE) group having turnover of more than PKR 100 million, is required to keep, maintain, and make available a 'Master File', containing certain prescribed information.
- Every taxpayer entity in Pakistan that has undertaken transactions exceeding the monetary limit of PKR 50 million with related parties is required to keep, maintain, and make available a 'Local File', containing the prescribed information/details.

Every ultimate parent entity or surrogate parent entity in Pakistan that is part of an MNE group resident in Pakistan and whose consolidated group revenue is 750 million euros (EUR) or more during a fiscal year is required to file a CbC report for each country wherein the constituent entities of the MNE group operates.

A constituent entity (including a PE of a company) of an MNE group (not being the ultimate parent or surrogate parent) is also required to furnish a CbC report in case:

- The ultimate parent is not obligated to file such report in its country of residence (other than in cases where its consolidated group revenue is EUR 750 million or below).
- The ultimate parent is required to file a CbC report in its country of residence, but such country does not have any Competent Authority Agreement in place with Pakistan.
- There has been a systemic failure due to which such information cannot be exchanged.

The CbC report should contain the following information for each country wherein the constituent entities of the MNE group operates:

- Revenues from related and unrelated parties.
- Profit/loss before income tax.
- Income tax paid.
- Income tax accrued.
- Stated capital.
- Accumulated earnings.
- Number of employees.
- Tangible assets other than cash.
- Main business activities.

Thin capitalisation

Where a foreign-controlled resident company (other than a financial institution or a banking company) or a branch of a foreign company operating in Pakistan has a foreign-debt-to-foreign-equity ratio in excess of 3:1 at any time during a year, a deduction shall be disallowed for the profit on debt (interest) paid by the company in that year on that part of the debt that exceeds the 3:1 ratio.

Controlled foreign companies (CFCs)

The concept of taxation of incomes of CFCs has been introduced whereby attributable incomes of CFC that are retained and not repatriated to Pakistan have been brought into tax ambit and subjected to tax on the basis of the tax rate applicable to dividends (i.e. 15%).

A company shall be classifiable as a CFC if:

- more than 50% of its capital or voting rights are directly or indirectly held by Pakistani resident persons or if more than 40% of such capital or voting rights is held by a single Pakistani resident person
- tax paid in respect of income derived or accrued in a foreign tax year is less than 60% of tax payable on the said income under this Ordinance
- the non-resident company does not derive active business income (as defined in the provisions), and
- the shares of the company are not traded on any recognised stock exchange in the relevant jurisdiction.

There will be no tax incidence under these provisions in case the voting rights or capital held by the resident person is less than 10% or income of the CFC is less than PKR 10 million. Moreover, no further tax is payable at the time of actual distribution.

Tax credits and incentives

Tax credits are available to corporate taxpayers for employment generation, enlistment on a stock exchange, and making of investments in newly established undertakings, as well as those for extensions, expansion, balancing, modernisation, and replacements carried out in existing undertakings.

Tax exemptions

Profits and gains derived from an electric power generation project set up in Pakistan are exempt from tax.

Profits and gains derived by a company from the export of computer software, IT services, or IT-enabled services are exempt from tax up until 30 June 2025.

Profits and gains derived by refineries, which are setup between 1 July 2018 and 30 June 2023, have been granted exemption from tax for a period of 20 years, upon fulfilment of certain conditions.

Low-cost housing projects have been incentivised by allowing a reduction in tax liability (arising on profits and gains) by 50%, subject to fulfilment of certain conditions.

Profits and gains from new manufacturing units set up in Khyber Pakhtunkhwa and Baluchistan are exempt from tax for five years if set up between 1 July 2015 and 30 June 2018.

Profits and gains from electricity transmission projects are exempt from tax for ten years if set up between 1 July 2015 and 30 June 2018.

Income derived by an enterprise set up in 'special economic zones' is exempt from tax for a period of ten years, starting from commencement of commercial operations/ production, subject to certain conditions. These 'special economic zones' have been established in different territories of the country.

Profits and gains derived by liquefied natural gas terminal operators and terminal owners are exempt from tax for a period of five years beginning from the date of commercial production.

Small companies

Activities of small companies are encouraged with a reduced income tax rate of 25% (*see the Taxes on corporate income section*).

A small company has been defined to mean a company that:

- is registered on or after 1 July 2005 under the Companies Ordinance, 1984
- has a paid-up capital plus undistributed reserves not exceeding PKR 50 million
- has employees not exceeding 250 at any time during the year
- has an annual turnover not exceeding PKR 250 million, and
- is not formed by splitting up or the reconstitution of business already in existence.

Charitable donations credit

Companies are allowed a tax credit equivalent to 20% of their taxable income in respect of donations to:

- any board of education or university in Pakistan, established by or under federal or provincial law
- any educational institution, hospital, or relief fund established or run in Pakistan by federal government, provincial government, or local government, and
- any non-profit organisation.

Companies are also allowed a straight deduction against taxable income (up to 20% of taxable income) in case of donations made to certain approved institutions.

Foreign tax credit

Where a resident taxpayer derives foreign-source income on which foreign income tax is paid within two years from the year in which it is derived, the taxpayer is allowed a tax credit equal to the lower of (i) the foreign income tax paid or (ii) the Pakistan tax payable in respect of that income. However, foreign tax paid is not refundable.

Withholding taxes

WHT on payments of royalty and FTS, when royalty or FTS is not attributable to a PE in Pakistan, is 15% or a lower treaty rate of royalty or gross fees. The tax withheld is deemed to be the final tax liability of the non-resident. In the case of a non-resident where royalty or FTS is attributable to a PE in Pakistan, the amount of royalty/FTS shall be chargeable to tax as normal income, and withholding on payments can be avoided, subject to approval of the commissioner. If a reduced rate is available in a tax treaty, such rate would be applicable.

Resident corporations making certain types of payments must withhold tax as follows:

	WHT (%)		
Recipient (1, 2, 3)	**Dividends**	**Interest**	**Royalties**
Resident individuals	15	10	N/A
Resident corporations	15	10	0
Non-resident individuals:			
Non-treaty	15 (9)	10	15
Treaty	15 (9)	(4)	(4)
Non-resident corporations:			
Non-treaty	12.5	10	15
Treaty:	(5)	(6)	
Austria	10/15 (10)	15	10
Azerbaijan	10	10	10
Bahrain	10	10	10
Bangladesh	15	15	15
Belarus	10/15 (10)	10	15
Belgium	10 (11)/15	15	15/20 (12)
Bosnia and Herzegovina	10	20	15
Brunei Darussalam	10	15	15
Canada	15 (11)/20 (10)	25	15/20 (12)
China	10	10	12.5
Czech Republic	5/15 (10)	10	10
Denmark	10/15 (10)	15	12
Egypt	15/30 (20)	15	15
Finland	12/15/20 (10)	10 (13)/15	10
France	10/15 (10)	10	10
Germany	10/15 (10)	10 (13)/20	10
Hong Kong	10	10	10
Hungary	10/15/20 (10)	15	15
Indonesia	10/15 (10)	15	15
Iran	5	10	10

	WHT (%)		
Recipient (1, 2, 3)	**Dividends**	**Interest**	**Royalties**
Ireland, Republic of	5 (10)/10	10	10
Italy	15/25 (10, 11)	30	30
Japan	5/7.5/10 (10)	10	10
Jordan	10	10	10
Kazakhstan	12.5/15 (10)	12.5	15
Korea, Republic of	10 (11)/12.5 (10)	12.5	10
Kuwait	10	0 (21)/10	10
Kyrgyzstan Republic	10	10	10
Lebanon	10	10	7.5
Libya	(7)	(7)	(7)
Malaysia	15 (11)/20 (11)/10	15	15
Malta	15 (10)	10	10
Mauritius	10	10	12.5
Morocco	10	10	10
Nepal	10 (10)	10 (19)/15	15
Netherlands	10/20 (10)	10 (13)/15/20 (10)	5/15 (16)
Nigeria	10/12.5/15 (10)	15	15
Norway	15	10	12
Oman	10/12.5 (10)	10	12.5
Philippines	15/25 (10)	15	15 (14)/25
Poland	15 (10, 11)	(7)	15/20 (12)
Portugal	10/15 (10)	10	10
Qatar	5/10 (10)	10	10
Romania	10	10	12.5
Saudi Arabia	5 (15)/10	10	10
Serbia	10	10	10
Singapore	10 (11)/12.5/15	12.5	10
South Africa	10/15 (10)	10	10
Spain	5/7.5/10 (10)	10	7.5
Sri Lanka	15 (10)	10	20
Sweden	10/15 (10)	15	10
Switzerland	10/20 (10)	10	10
Syria	10	10	10/15/18 (17)
Tajikistan	5/10 (10)	10	10
Thailand	15 (11)/25 (10)	10 (13)/25	10/20 (18)
Tunisia	10	13	10
Turkey	10 (11)/15 (10)	10	10
Turkmenistan	10	10	10
Ukraine	10/15 (10)	10	10
United Arab Emirates	10/15 (10)	10	12
United Kingdom	10 (11)/15/20 (10)	15	12.5
United States	8.75	(7)	(8)
Uzbekistan	10	10	15
Vietnam	15	15	15
Yemen	10	10	10

Notes

1. This table is a summary only and does not reproduce all the provisions that may be relevant in determining the application of WHT in each tax treaty.

2. Resident and non-resident imply tax status.
3. Individuals and companies are required to render annual returns of income and pay tax at the applicable rates. Credit is given for WHT deducted.
4. WHT rates for interest and royalties given to non-resident corporations (treaty countries) also apply to non-resident individuals.
5. The following remarks for dividends should be noted:
   - The inter-corporate rate of tax on dividends received by a foreign corporation is 15%; corresponding treaty WHT rates in excess of 15% have been specified.
   - The rates given in the table for treaty countries relate to recipient corporations. The maximum rate, as stated above, in respect of inter-corporate dividends is 15%.
6. Certain treaties provide for tax exemption of interest paid to the government or the central bank of the contracting state and on foreign loans specifically approved by the federal government.
7. No concession is provided under the treaty.
8. Royalties are exempt from tax, provided the recipient does not have a PE in Pakistan.
9. Inter-corporate dividend where companies are entitled to group relief is exempt.
10. WHT rate depends on percentage of holding in the company.
11. This rate applies if the paying company is engaged in the industrial undertaking.
12. Consideration for technical know-how or information concerning industrial, commercial, or scientific experience.
13. This rate applies if the beneficial owner is a bank.
14. This rate applies if the paying company operates in preferred areas.
15. This rate applies if the company is owned by the government.
16. 5% is applicable for royalties payable for copyright of a literary, artistic, or scientific work, but excluding cinematograph films and tapes for television or broadcasting. All other royalties are taxable at 15%.
17. 18% is applicable for royalties payable for patent, trademark, design or model, plan, secret formula, or process of any industrial or scientific equipment, or for information concerning industrial and scientific experience; 15% for copyright of literary, artistic, or scientific work; and 10% for copyright of cinematograph films or tapes for television or radio broadcasting.
18. 10% is applicable for royalties payable for copyright of literary, artistic, and scientific work. All other royalties are taxable at 20%.
19. The rate applies if the beneficial owner is a financial institution, an insurance company, or investment company.
20. 15% applies if the beneficial owner of dividends is a company.
21. 0% applicable in case interest is being earned by the government, a company 51% or more shares of which are held by the government, or the loan is guaranteed by the government or any of its institutions.

Tax administration

Taxable period

The tax year is 1 July through 30 June. However, tax authorities are empowered to approve a special year-end.

Tax returns

All companies are required to file an income tax return each year by 31 December for the preceding financial year (1 July through 30 June) by accounting for business income on an accrual basis. If the special year granted by the tax authorities ends between 1 July and 31 December, then the tax return is required to be filed by 30 September following the year-end.

An across-the-board self-assessment scheme is in place whereby assessment is taken to be finalised upon filing of the return. The Commissioner, however, has powers to amend the assessment if it is believed that the Ordinance has been incorrectly applied or there is definite information that the assessment made is incorrect. These powers are to be exercised within a prescribed time frame. In the case of transactions between associates, the Commissioner can substitute the transaction value with the fair market consideration. The Commissioner is also empowered to determine tax liability according to the substance of the transaction, disregarding formal arrangements between the parties.

Tax authorities can require a non-filer to file income tax return for any of the last ten years.

Payment of tax

Companies are required to pay advance tax on the basis of tax liability of the immediately preceding tax year in respect of their income (excluding capital gains and presumptive income). The advance tax is to be paid after adjusting the taxes withheld at source (other than the tax withheld relating to FTR).

Advance tax is required to be paid in four quarterly instalments on or before 25 September, 25 December, 25 March, and 15 June in each financial year. Credit for tax paid in a tax year shall be allowed against tax liability of that year. However, in case of banking companies, such advance tax is payable on a monthly basis.

The total tax liability is to be discharged at the time of filing the return of income.

Advance taxes and taxes withheld are adjustable against the tax payable with the return of income.

Tax audit process

The Federal Board of Revenue (FBR) is authorised to prescribe criteria for selection of audit of taxpayers who have filed their returns for a tax year. Based on such criteria, cases are selected through computer ballot separately for income tax, sales tax, and federal excise duty (though recently, the concept of a composite tax audit has also been introduced). The returns are examined by tax authorities, and related documents and information are requisitioned. Show cause notices are then raised and, on receipt of explanations from taxpayers, income or loss is assessed. In case of disagreement with assessments, the taxpayer has the right to agitate the issues before appellate forums.

A taxpayer shall not be selected by the FBR and the Commissioner of Inland Revenue for a tax audit where its income tax affairs were already audited in any of the preceding three tax years. The Commissioner may, however, still select a taxpayer for audit with the approval of the FBR.

Statute of limitations

An audit of the tax return filed by a taxpayer can be conducted by the tax authorities within five years of the end of the financial year in which the return is filed.

Advance rulings

A non-resident not operating in Pakistan through a PE can apply to the FBR to issue an advance ruling setting out the Board's position regarding application of the provisions of the Income Tax Ordinance to a transaction proposed or entered into by the taxpayer. The tax ruling, once issued, is binding on tax authorities.

Topics of focus of tax authorities

Tax authorities focus on the following issues:

- WHT.
- Transfer pricing.
- Relationship of expenditure with the business of the taxpayer.
- Advance tax.
- Payment of tax due within the time prescribed.

- Audit of returns filed.
- Compliance by taxpayers.
- Collection of arrears.

Other issues

Special rules

Special rules are applicable for computation of income from exploration and production of petroleum, mineral deposits, insurance, and banking business.

United States (US) Foreign Account Tax Compliance Act (FATCA)

Pakistan is under active negotiation with the United States for executing an agreement for compliance with FATCA; however, banks and other entities affected by FATCA are required to register with the US Internal Revenue Service (IRS).

Base Erosion and Profit Shifting (BEPS)

On 12 September 2016, Pakistan signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ('Convention') under the aegis of the Organisation for Economic Co-operation and Development (OECD), as part of prevention of BEPS. BEPS refers to tax planning strategies that exploit gaps and mismatches in national tax laws to shift profits to low or no tax locations. Accordingly, on the recommendations of the BEPS Action Plan, amendments have also been introduced in the relevant fiscal laws in order to fulfil its obligations under the Convention.

Pursuant to the above Convention, the following agreements were signed by Pakistan:

- Automatic Exchange of Tax Related Information (dated 7 June 2017).
- Multilateral Competent Authorities Agreement (dated 21 June 2017).

Keeping in view these Conventions/Agreements, relevant fiscal laws have been amended/enacted to provide for the following:

- Transfer pricing documentation and country-by-country (CbC) reporting (*see Transfer pricing in the Group taxation section for more information*).
- Controlled foreign companies (*see Controlled foreign companies [CFCs] in Group taxation section for more information*).
- Treaty abuse/shopping (*see below*).
- Common Reporting Standard (*see below*).

Treaty abuse/shopping

Tax authorities have been empowered to disregard an entity or a corporate structure not having any economic substance or that entered into such as a part of a 'tax avoidance scheme', such expression being defined to mean a transaction entered into with the primary purposes of tax avoidance or 'reduction in tax liability'. 'Reduction in tax liability', *inter alia*, includes within its scope that achieved as a result of availing benefit under a DTT.

Further, provisions of law granting an overriding status to treatment provided for in DTTs have also been accordingly amended to the effect that any re-characterisation of income/transactions would not be ineffective on account of such provisions.

This amendment signifies that the substance of the transaction will form the basis of taxation and no rescue would be available on the basis of structure designed to avail treaty benefits.

Common Reporting Standard (CRS)

In order to implement the directives contained in the Convention, the FBR was earlier empowered to obtain information from banks/financial institutions regarding non-resident persons for the purposes of automatic exchange of information under bilateral agreements. Now, in exercise of these provisions, the CRS has also been made part of the income tax law, by way of insertion in the relevant Income Tax Rules.

Under the CRS, tax authorities of countries that are signatory to the Convention/ Information Exchange Agreements will share information with the FBR with respect to financial accounts (broadly meaning accounts maintained by banks/financial institutions, including custodial and depository accounts) in their jurisdiction held by Pakistani residents. Pakistan will also provide corresponding information to the foreign tax authorities on accounts held by residents of jurisdiction in Pakistan.

The CRS requires the banks and other financial institutions to provide certain information or to undertake certain due diligence with respect to certain financial accounts. The CRS is aimed to reduce tax evasion by taxpayers using offshore financial accounts held both directly and indirectly through enhanced information sharing and collaboration.

Panama

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Significant developments

There have been no significant corporate tax developments in Panama during the past year.

Taxes on corporate income

Panamanian income tax is levied based on the territoriality principle. Panamanian-source income is subject to taxation whether it is received by a resident or non-resident entity. Residency is only relevant to determine if the entity is subject to withholding tax (WHT) or not.

Corporations are subject to income tax at a fixed rate of 25%.

The tax base (i.e. amount to which the tax rate will apply) for companies whose taxable income is greater than 1.5 million United States dollars (USD) is the greater of:

- net taxable income calculated on the normal basis or
- 4.67% of the gross taxable income (excluding exempted and non-taxable income and foreign-source income); this is called the alternate calculation of income tax (*Calculo Alternativo del Impuesto sobre la Renta* or CAIR).

If the entity's tax year results in a loss due to the alternative calculation, the taxpayer may request to the tax administration (the General Directorate of Income, i.e. *Dirección General de Ingresos* or DGI) not to be subject to the CAIR.

The taxpayer may also request not to apply the CAIR if its effective income tax rate is higher than the applicable income tax rate (i.e. 25%). Here is an example of such an instance:

Net taxable income		**USD**
a	Total revenues	2,000.00
b	Deductible costs and expenses	1,950.00
c	Net taxable income	50.00

CAIR		**USD**
d	Presumptive net taxable income (4.67% x a)	93.40
e	Income tax (25% x d)	23.35

CAIR effective tax rate		
f	Presumptive income tax (e)	USD 23.35
g	Net taxable income (c)	USD 50.00
h	Effective tax rate (f/g)	46.70%

The DGI has a six-month period to reach a decision on such requests; otherwise, the petition will be considered as granted.

Local municipal tax

Local municipal tax is charged based on the gross income generated by the business through the corresponding accounting period; it also depends on the type of activity being conducted by the corporation. In most cases, it cannot exceed USD 2,000 per month for each activity performed.

An Annual Municipal Tax Return for the District of Panama or District of San Miguelito must be filed before the Municipal Authorities in the first 90 calendar days after the ending of the fiscal year. In case the taxpayer does not file the return before the deadline, a USD 500 penalty will be applicable.

Corporate residence

A company is considered as a tax resident when it has been incorporated in Panama and if Panama is regarded as the place where the central management is located. Entities incorporated abroad may also be registered with the tax administration in order to avoid WHT.

Permanent establishment (PE)

Panama follows the Organisation for Economic Co-operation and Development (OECD) PE rules.

The income referable to a PE or fixed place of business is the income obtained by the PE, as if it was an independent or different entity, taking into consideration the activities developed, assets used, and risks assumed.

Other taxes

Movable goods and services transfer tax (ITBMS)

The movable goods and services transfer tax (*Impuesto de Transferencia de Bienes Muebles y Prestación de Servicios* or ITBMS) is the Panamanian value-added tax (VAT).

The general tax rate is currently 7%.

Alcoholic beverages and hotel accommodation are taxed at 10%, and tobacco and tobacco-derived products are taxed at 15%.

ITBMS is calculated on the value-added through a method of tax credits (i.e. ITBMS paid on transactions to produce taxable transactions) and tax debits (i.e. ITBMS collected on transactions).

Exports are not taxed, and the ITBMS paid to generate the exports may be refunded. The sale of goods such as medicines, foods, and certain products for babies are not taxed and may allow the supplier to recover the ITBMS as an exporter if certain criteria is met.

Medical services and transportation, among other services, are not taxed but do not produce ITBMS credit for the supplier.

The statute of limitations is five years.

Customs duties

All goods introduced into the Panamanian territory from another country are subject to customs duties. The duty rates are provided by the Panamanian Customs and Tariffs Office.

Customs duties may only be assessed by authorised customs brokers.

Excise tax (selective consumption tax)

The selective consumption tax is applied to goods (e.g. jewellery, expensive automobiles, guns, tobacco, alcoholic beverages) and services (e.g. mobile, cable TV, satellite TV) that are considered as non-essential. The tax base is the cost, insurance, and freight (CIF) price plus import duties for imported items and sales price for all other activities. The tax is levied at only one stage: on the importation of the taxed products; on the sale of taxed goods produced in Panama; and, for services, when the service is invoiced, the service is completely rendered, or upon receipt of advance payments, whichever occurs first.

Different tax rates apply depending on the type of service or good, with a minimum of 5% on soft drinks and 100% on tobacco products.

Immovable Property Tax

In Panama, all owners of real estate should pay Immovable Property Tax annually at a rate between 0% and 2.10%, depending on the value of the property.

Starting 1 January 2019, new immovable property tax rates will apply between 0% and 1.0%, according to the value and type of property.

Stamp duty

Stamp duty is charged at a rate of USD 0.10 per USD 100 (or fraction thereof) only on certain commercial contracts.

Capital gains tax

In case of transfer of real estate property, a 2% real estate transfer tax plus a 3% income tax advance payment must be remitted (calculated over the gross transaction amount or the cadastral value, whichever is greater). The 3% may be deemed definitive; contrariwise, the tax will be assessed at 10% of the gain and the 3% of the advance payment will be credited. Any amount in excess may be subject to rebate.

The rates as described in the table below will be applicable to the transfer of real estate if:

- the transferor's core business is the sale of real estate with new constructions

- it is the first transfer of the real estate after the new construction is built, and
- the construction permit was issued after 1 January 2010.

New housing construction	Rate (%)
Up to USD 35,000	0.5
From USD 35,000 up to USD 80,000	1.5
Greater than USD 80,000	2.5
New commercial construction	4.5

When transferring new housing real estate, the real estate transfer tax (2%) does not apply if the transfer occurs within the next two years after an Occupancy Permit is issued.

The transfer of securities is subject to a 5% WHT, and the tax rate on capital gain is 10%. The law establishes the application of a 5% WHT that will be applied by the buyer. The seller may accept the WHT as definitive or perform the calculation of the gain, apply the rate of 10%, and deduct the applied WHT. In case the WHT is superior, the taxpayer can choose to claim the return of payments made in excess.

Example:

Sales price (a)	1,000
Cost (b)	900
Benefit (c)	100
WHT at 5% of (a)	50
Tax at 10% of (c)	10
Payment in excess	40

The sale of fixed assets is subject to 10% on the capital gain, and there is no WHT.

Franchise tax

Franchise tax must be paid by all corporations on an annual basis (USD 300 per year). The deadline for payment depends on the date of incorporation of the company. If the company was incorporated on any date during the first six months of the year, the due date for payment will be on 15 July of each year. If it was incorporated in the last six months, the due date will be 15 January of each year.

Non-profit organisations, cooperatives, and civil partnerships are not subject to franchise tax.

Operations Notice tax

The Operations Notice tax is an annual tax on equity at a rate of 2%, with a minimum tax amount of USD 100 and a maximum tax amount of USD 60,000. In case of free zones or special trade areas, the tax will be calculated at a rate of 1% with a minimum tax amount of USD 100 up to a maximum tax amount of USD 50,000.

The tax base is the outcome from total assets less total liabilities (excluding liabilities with related parties abroad). Special considerations apply under certain double tax treaties (DTTs).

Payroll taxes

In addition to social security tax (*see below*), the following payroll taxes are applicable.

Educational insurance tax

Educational insurance tax is assessed at the rate of 1.25% for employees and 1.50% for employers on salaries and wages paid. There is no maximum limit on the taxable amount.

Professional risk tax

Professional risk tax is an additional tax applicable to employers at 0.33% to 6.25% according to the type of industry.

Social security tax

Social security tax is assessed at a rate of 9.75% on wages and other compensation paid, including compensation in kind, for employees and 12.25% for employers. There is no maximum limit on the taxable amount.

Branch income

For tax purposes, branches are considered separate entities from the head office and must therefore keep accounts separately and will have separate tax liability.

Branches located within the Panamanian territory must pay dividend tax through definitive WHT of 10% of net taxable income generated by the Panamanian branch, less all income taxes paid by the same corporation in Panama. This amount will be paid jointly on filing the corresponding income tax return.

Income determination

Under the territoriality principle, the following will not be considered as taxable income:

- All income produced outside Panama.
- All income generated from operations or services performed outside the Panamanian territory.

Inventory valuation

Inventory should be valued at the start of any business and, subsequently, at least once every accounting period. All assets must be grouped, depending on their nature, with certain characteristics indicated (e.g. the unit of measurement, the name of the asset, the price of the unit, the total value of units). Reference to the accounting records should also be included.

Inventories are generally stated at cost and can be valued using the compound average cost method, first in first out (FIFO) method, retail method, or specific identification method. Since all entities must keep legal records, any adjustment resulting from using different methods of inventory valuation for tax purposes and financial purposes should be recorded and must be reported to the proper authorities. Once a taxpayer adopts a method, they must maintain it for at least five years.

Capital gains

See Capital gains tax in the Other taxes section for a description of how capital gains are taxed in Panama.

Dividend income

Panamanian legislation establishes that distribution of dividends of a Panamanian source are subject to definitive WHT, applied at the moment of distribution. Generally, dividends are subject to income tax at a rate of 10% without taking into consideration the way of payment, types of stock, assets, or money.

For companies with mixed-source income, dividend tax applies at a 5% rate on dividends paid from foreign-source income and from income derived from exports, as well as exempt income from banking account interests and interests and earnings derived from securities issued by the government.

Free zone users are taxed at a 5% rate as well for local-source income.

Loans to shareholders are deemed as dividend distributions, subject to a 10% withholding even in the cases where the 5% tax rate applies.

Notwithstanding the aforementioned, if the entity's shares are issued to bearer, they will be subject to dividend tax at a rate of 20%.

Dividend tax is levied if the entity meets one of the following criteria: (i) requires an operation permit to operate in Panama, (ii) requires an operation key to operate at the Colon Free Zone, (iii) is established in a Fuel Free Zone, (iv) is established in a free zone or special zone, or (v) produces Panamanian-source taxable income. Dividend tax also does not apply to dividends paid on income received as a dividend if the entity is not required to withhold dividend tax or if the entity withheld the tax.

A complementary tax applies each tax year that the entity distributes less than 40% of the net profits after income tax. The complementary tax is an advance payment of the dividend tax, calculated on the difference of the distributed dividends and 40% of the net profits after income tax, and applies the corresponding tax rate. If complementary tax is paid, then the entity may offset the paid complementary tax with the dividend tax when the corresponding dividend is decreed.

Inter-company dividends

The distribution of dividends derived from income received as dividends from other entities is not subject to income tax or dividend tax as long as the entity that paid the dividend in the first instance was exempt from withholding any dividend tax, or, if it was required to, made the corresponding withholding.

Interest income

Interest income is subject to income tax to the extent that it reflects operations carried out in Panama. Foreign beneficiaries are subject to WHT. The tax base will be 50% of the remittance, and the income tax rate applicable is 25%.

Royalty income

Royalty income is subject to income tax to the extent that it reflects operations carried out in Panama. Foreign beneficiaries are subject to WHT to the extent that the payer has a deduction. The tax base will be 50% of the remittance, and the income tax rate applicable is 25%.

Foreign income

Panamanian resident companies are taxed on their income generated within the Panamanian territory. Any other income generated abroad will be exempt from income tax payment but may be subject to dividend tax (*see above*).

Deductions

Taxable income is determined by deducting from the Panamanian-source income all costs, expenses, and non-taxable income applicable and permitted by law. The deductibility of costs and expenses depend on the relation of such costs and expenses with the generation or preservation of income source. Special restrictions apply to the following:

- Depreciation.
- Bad debt.
- Charitable contributions.

Costs and expenses related to non-taxable income are not considered as deductible. Thus, the taxpayer must split the expenses and costs related to taxable transactions from those related to non-taxable transactions. The expenses and costs allocated to taxed transactions may not exceed the amount from multiplying the portion of taxable income from the total income by the total costs and expenses.

Example:	**Taxable**	**Non-taxable**	**Total**
Income	100	50	150
	66.7%	33.3%	100%
Costs and expenses	83.38	41.62	125

Depreciation and depletion

The straight-line and sum-of-the-years-digits methods of depreciation are allowed, as well as any other method.

Assets	**Straight-line (%)**
Buildings	3⅓ as maximum
Machinery and equipment	33 as maximum
Furniture and fixtures	33 as maximum
Vehicles	33 as maximum

In the case of mines, depletion will be deductible during the useful life or depending on the state contract methodology.

Goodwill

Goodwill expenses are deductible only when the transferring agent declares them as income.

Start-up expenses

Start-up expenses are deductible through the amortisation process, over a maximum term of five years.

Interest expenses

Interest expenses are deductible only in cases where the interest relates to the generation or conservation of taxable income from a Panamanian source. No thin capitalisation rules are in force.

Bad debt

A taxpayer may deduct bad debts by opting for one of the following options:

- Deducting gains and losses annually to the value of such accounts in the fiscal year.
- Charging an annual profit and loss figure for the establishment of a reserve to meet contingencies of this nature.

Charitable contributions

Donations made in cash or in kind to the government, charitable or educational institutions, activities to promote HIV disease awareness, or political parties are deductible, with certain restrictions and limited to 1% of taxable income.

Fines and penalties

Fines and penalties are not deductible.

Taxes

The national and municipal taxes that affect capital, sales, and other operations related to taxable income producing activity are deductible.

Net operating losses

Losses incurred by common taxpayers may be carried forward and deducted from taxable profits for the following five years, at a rate of 20% each year, but limited to 50% of taxable income. Loss carrybacks are not allowed, and losses are not allowed for estimated income tax purposes.

Payments to foreign affiliates

A payment to a foreign entity (including affiliates) in a foreign country will be subject to WHT anytime it represents a deductible cost or expense for the payer. The tax base will be 50% of the remittance, and the income tax rate applicable is 25%.

Group taxation

In Panama, there are no group taxation rules.

Transfer pricing

Transfer pricing obligation is extended to all the transactions carried out with foreign-related parties, in case these operations have effect in determining the tax base. There is an obligation to file an annual Transfer Pricing Informative Statement (‘Form 930’), which includes all the operations carried out with foreign-related parties during the fiscal year under analysis. This report should be filed six months after the fiscal year has ended. Failure to submit or late submission of this Form will be penalised with a fine equivalent to 1% of the total sum of operations carried out with foreign-related parties and will never exceed USD 1 million.

Law established the formal requirement for the preparation of a Transfer Pricing Study. However, the taxpayer should only present the Study in case the Panamanian Tax Authority requires it, within 45 working days, starting a day after the notification. Tax Authorities are allowed to fine those taxpayers that fail to present the Transfer Pricing Informative Statement or any required documents before the deadline; fines ranging from 1,000 Panama balboas (PAB) to PAB 5,000 will be applied the first time, from PAB 5,000 to PAB 10,000 in case of recurrence, and the closure of the establishment for 2 to 15 days in case of non-compliance.

Thin capitalisation

There are currently no thin capitalisation rules in Panama.

Controlled foreign companies (CFCs)

There are no provisions regarding CFCs in Panama.

Tax credits and incentives

Foreign tax credit

Foreign tax credits are applicable only with countries with which Panama has signed a DTT (*see the Withholding taxes section for a list of countries with which Panama has signed a DTT*).

Free zones

Entities established in free zones may enjoy exemption from import duties on goods, income tax, sales tax, export tax, and selective consumption tax derived from royalties on exportation and re-exportation activities. Aside from trading activities, the following businesses may also apply for the regime: higher education centres, scientific research centres, specialised centres for health services, high technology businesses, assembling businesses, semi processed or finished products processing businesses, services businesses, environmental service businesses, general services, logistics services businesses, and manufacturing businesses.

Tourism, industry, and agriculture allowances

The Incentive Law for Tourism Development grants several tax benefits (e.g. exemption from import duties on certain tourism services and related goods for companies dedicated to tourism), but only for those corporations with a signed tourism agreement with the government. Income tax exemptions may apply in special cases.

In general, income from individuals or corporations that engage in agricultural production activities will be exempted from income tax if annual gross income is lower than USD 250,000.

Forestry plantations were totally exempted from income tax payment until 2018 if the lot planted had been duly registered at the Forestry Registry of the Environmental National Authority and resolution with approval from this authority had been issued.

Special laws

The Panamanian government has enacted special laws regarding tax exemptions for certain activities performed in Panama, such as call centres (Law No. 54 of 2001), and tax exemptions for certain appointed areas, such as the Panama Pacific Economic Zone (Law No. 41 of 2004) and Law No. 41 of 2007, which creates a special regime for the establishment and operation of regional headquarters in Panama (SEM Regime).

By means of Law No. 8 of 2010, Real Estate Investment Societies may deduct the profits distributed to their shareholders, provided that these Real Estate Investment Societies:

- raise long-term funds in a securities market
- are registered in the National Securities Commission
- distribute no less than 90% of their free cash flow
- register in the General Direction of Revenues, and
- withhold 20% of the profits distributed as an income tax advance payment on behalf of the shareholder, which may be deemed the definitive tax to be paid by the shareholder.

Withholding taxes

Royalties and commissions on services paid to foreign entities are taxed through the application of the corresponding tax rate (i.e. 25%) over 50% of remittance under the concept of WHT (effective tax rate is 12.5%). The taxpayer may decide not to withhold taxes and consequently not deduct the expense.

Payment of interest is also subject to income tax on 50% of the interest paid to a beneficiary abroad on loans invested in Panama, but the payer must proceed with the WHT even if one does not deduct the interest.

If the beneficiary is registered as a taxpayer in Panama before the tax administration, no WHT may be required.

If, according to a special law, the payment of interest, royalties, dividends, fees, etc. is exempt from WHT, said exemption will not apply if the beneficial owner of the payment can credit the taxes that would have been paid in Panama in its country of residence. In the event that the credit application is not allowed in the country of residence, the taxpayer must request a formal opinion from an independent expert stating the non-applicability of the tax credit in the country of residence.

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Foreign corporations	5/10/20*	12.5	12.5

** See the description of Dividend income in the Income determination section.*

In case of treaties, special rules are applicable in order to avoid double taxation.

	WHT (%)			
Recipient	Dividends	Interest	Royalties	Fees
Barbados	5/7.5 (1)	0/5/7.5 (2)	7.5	0/7.5 (3)
Czech Republic	10	0/5/10 (18)	10	0
France	5/15 (6)	0/5 (4)	5	N/A

Recipient	WHT (%) Dividends	Interest	Royalties	Fees
Ireland	5	0/5 (4)	5	N/A
Israel	5/15 (19)	0/15 (4)	15	N/A
Italy	5/10 (20)	5/10 (21)	10	10
Korea	5/15 (1)	0/5 (4)	3/10 (5)	0
Luxembourg	5/15 (6)	0/5 (4)	5	5
Mexico	5/7.5 (1)	0/5/10 (7)	10	0/12.5 (8)
The Netherlands	0/15 (9)	0/5 (4)	5	0
Portugal	10/15 (10)	0/10 (4)	10	0/10 (11)
Qatar	6	0/6 (4)	6	0
Singapore	4/5 (12)	0/5 (4)	5	0
Spain	0/5/10 (13)	0/5 (4)	5	7.5 (14)
United Arab Emirates	5	0/5 (4)	5	0/12.5 (17)
United Kingdom	0/15 (15)	0/5 (16)	5	N/A
Vietnam	5/7/12.5 (22)	10	10	7.5

Notes

1. Depending on the percentage of ownership held by the beneficial owner (at least 25% to apply the 5% rate).
2. Depending on the person or entity receiving the payment. If the beneficial owner is a bank, the 5% rate will apply; if the beneficial owner is the Central Bank of either state, the 0% rate will apply; in all other cases, the 7.5% rate will apply.
3. If the services are not rendered in any of the states, the income will only be taxed in the state where such income arose.
4. If paid to government financial institutions, the 0% rate will apply.
5. 3% for the use or right to use industrial, commercial, or scientific equipment.
6. Depending on the percentage of ownership held by the beneficial owner (at least 10% to apply the 5% rate).
7. Depending on the person or entity receiving the payment. If the beneficial owner is a bank, the 5% rate will apply; if the beneficial owner is the Central Bank of either state, the 0% rate will apply; in all other cases, the 10% rate will apply.
8. The 12.5% rate applies if the person rendering the services is in the other state for more than 60 days.
9. No WHT is levied if the foreign company (beneficial owner) receiving the dividends directly holds at least 15% of the shares of the company paying the dividends, provided that the shares of the foreign company are regularly traded on a recognised stock exchange or at least 50% of the shares of the foreign company is owned by residents of either contracting state or by companies the shares of which are regularly traded on a recognised stock exchange. Also, no WHT is levied if the foreign company is a bank or insurance company, a state or political subdivision, a headquarter owning at least 10% of the shares of the Dutch company, or a pension fund.
10. Depending on the percentage of ownership held by the beneficial owner (at least 10% to apply the 10% rate).
11. If the services are rendered in Panama, then the 10% rate will apply.
12. Depending on the percentage of ownership held by the beneficial owner (at least 10% to apply the 4% rate).
13. 5% WHT rate is levied if the recipient (excluding partnerships) is a shareholder with at least a 40% direct interest in the paying company; otherwise, a 10% rate is levied. No WHT is levied if the recipient is a shareholder with at least an 80% direct interest in the paying company, and (i) its shares are listed on a stock exchange, (ii) the recipient is at least 50% owned by residents from either of the two countries, (iii) the recipient is owned by shareholders resident for tax purposes in third countries by a proportion of less than 25%, and (iv) the recipient is owned (an interest of more than 25%) by residents in third countries, provided that a tax treaty for the avoidance of double taxation has been signed with the country of the company paying the dividends and that this tax treaty establishes the same or more favourable conditions. No WHT is levied for dividends paid to pension funds.
14. If the services are rendered in Panama, then the 7.5% rate will be applicable.
15. No WHT is levied if the foreign company (beneficial owner) receiving the dividends directly holds at least 15% of the shares of the company paying the dividends, provided that the shares of the foreign company are regularly traded on a recognised stock exchange or at least 50% of the shares of the foreign company is owned by residents of either contracting state or by companies the shares of which are regularly traded on a recognised stock exchange.
16. 5% but only if: (I) the interest is beneficially owned by: (i) an individual, (ii) a company with shares regularly traded on a recognised stock exchange, (iii) a financial institution or (II) the interest is paid by:

(i) a state, political subdivision, or local authority, (ii) a bank, or (iii) on a quoted eurobond. The 0% rate will apply if it is paid to the Central Bank of either state.
17. If the person is more than 90 days in Panama, then the 12.5% rate will apply.
18. 0% applies for sales on credit and payments to the Central Bank; 5% for payments to banks in general; and 10% for all other cases.
19. 5% if the beneficial owner is resident of a contracting state or the beneficial owner is a pension scheme.
20. 5% if the beneficial owner has contributed at least 25% of the stock capital; 10% for all other cases.
21. If paid to financial institutions, the 5% rate will apply.
22. 5% if the beneficial owner has contributed more than 50% of the capital stock; 7% if the beneficial owner has contributed between 25% and 50% of the capital stock; 12.5% for all other cases.

Tax administration

Taxable period

The accounting period is the period for which the company makes its accounts. Returns shall be made upon completion of the accounting period and may not exceed 12 months. For most companies, it is usually from 1 January to 31 December.

Tax returns

The due date for filing is three months after the end of the fiscal year, with the possibility for an extension of up to one additional month.

Payment of tax

Income tax payment shall be made depending on the income tax return and shall be made no longer than three months after closing of the corresponding accounting period.

Taxpayers must pay estimated taxes (usually the same amount as generated income) at the end of the sixth, ninth, and 12th month after the end of the corresponding accounting period.

Tax audit process

Tax authorities select the taxpayers subject to audit based on internal criterion.

Statute of limitations

The tax administration may audit the income tax returns filed within the last three years from the last day of the year on which the tax return was filed.

With regard to VAT, the tax administration has the authority to charge this tax within five years from the last day of the following month in which the tax was due to be paid.

Topics of focus for tax authorities

Among the topics of focus are non-deductible expenses, withholdings, and VAT.

Other issues

US Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)

Panama signed the Model 1 Intergovernmental Agreement (IGA) for FATCA purposes with the US Treasury in order for Panamanian Banks to subscribe to the terms of FATCA. For this purpose, Law 51 of 2016 and Executive Decree 124 of 2017 were created to complement the IGA and establish the procedures and deadlines for the financial institutions required to perform the due diligence and send the reports to the Tax Authority.

In 2016, Panama committed to automatically exchange information starting in 2018, according to the CRS. Same as the IGA-FATCA, the CRS also includes the automatic information exchange of financial information for tax purposes, based on the agreements signed by the Tax Authority (DGI) and the CAAs.

Papua New Guinea

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Significant developments

The 2018 National Budget was handed down in November 2017 and introduced a number of tax changes, including:

- removal of training levy and double deduction for staff training costs
- implementation of a pay now and litigate later policy
- the introduction of transitional provisions for exiting projects in respect of additional profits tax (rent tax), which, following an amended last year, is applicable to all resource projects in Papua New Guinea (PNG)
- making registering taxpayer identification numbers a legal requirement for operating a business
- removing the right to claim certain goods and services tax (GST) input tax credits for educational institutions
- simplifying the administration of non-resident insurer's tax, and
- making shareholders liable for tax liabilities of companies.

In some cases, the changes in the 2017 National Budget produced seemingly unintended consequences, and corrections of these unintended consequences were included in the 2018 Budget.

A comprehensive review of the tax system in Papua New Guinea was completed at the end of 2015, and Treasury continues to assess the recommendations from the review. It is expected that further reform of the tax system will be undertaken in the next few years.

Taxes on corporate income

PNG resident companies are liable for income tax on their worldwide income. Companies that are not resident in Papua New Guinea are only required to remit tax on income sourced in Papua New Guinea. A non-resident's PNG-sourced passive income, including dividends, interest, and royalties, may be subject to withholding tax (WHT). It is ordinarily the case that the payer of the dividend, interest, or royalty must withhold the relevant amount of the tax and remit this to PNG's Internal Revenue Commission (IRC).

Papua New Guinea levies corporate income tax (CIT) on companies on a flat rate basis.

Generally, trading profits and other income (except income that is specifically exempt) of resident companies in Papua New Guinea are assessed tax at a rate of 30%, whereas non-resident companies operating in Papua New Guinea are assessed tax at a rate of 48%.

Overseas shippers

Income derived by overseas shippers or charterers carrying passengers, livestock, mail, or goods out of Papua New Guinea is taxable in Papua New Guinea. The tax is calculated on a deemed taxable income equal to 5% of the gross income, which is taxable at the non-resident rate of 48% in the case of companies. The IRC may exempt the overseas shipper from tax if the shipper's home country exempts PNG shippers from a similar tax.

Local income taxes

There are no provincial or local income taxes in Papua New Guinea.

Corporate residence

A company will be deemed a resident for CIT purposes if it meets either the (i) incorporation test or (ii) the management and control test.

Incorporation test

A company incorporated in Papua New Guinea is automatically regarded as a PNG tax resident. However, the operation of the law of another country and a relevant double taxation treaty (DTT) may result in a company also being treated as resident in another country.

Management and control test

A company is a PNG tax resident if it is managed and controlled in Papua New Guinea, regardless of where it is incorporated. Generally, a company is managed and controlled in Papua New Guinea if key decisions affecting the company are made at directors' meetings held in Papua New Guinea. This also includes a company incorporated outside Papua New Guinea that trades in Papua New Guinea and has its voting power controlled by resident shareholders.

Dual residence

An entity may be a tax resident of both Papua New Guinea and another country by application of domestic legislation. A DTT entered into between Papua New Guinea and another country may contain a tiebreaker test to determine the country of residence for the purposes of the DTT.

Permanent establishment (PE)

The concept of 'permanent establishment' has limited significance in the domestic taxation law of Papua New Guinea and is defined to mean a place at or through which a person carries on any business. Under domestic taxation law, Papua New Guinea will seek to tax the PNG-sourced income of a non-resident irrespective of whether or not that income is derived at or through a PE in Papua New Guinea.

Where PNG has entered into a DTT, the concept of PE becomes more important as it will then be one of the factors determining Papua New Guinea's taxing rights over income sourced in Papua New Guinea, particularly with respect to the business profits of a non-resident company. In general terms, Papua New Guinea's DTTs:

- define a PE to be a fixed place at or through which the business of an enterprise is wholly or partly carried on, and
- deem a PE to exist in various circumstances, including those relating to the presence of substantial equipment in the contracting state and the time spent by personnel of an enterprise furnishing services in a contracting state.

Other taxes

Goods and services tax (GST)

The GST rate is 10% and applies to most goods and services supplied in Papua New Guinea. Exported goods and services attract a zero rate of GST. Goods and services, other than motor cars, supplied to mining, petroleum, or gas companies are also zero-rated. Some goods and services are exempt, including medical, educational, and financial services. Land is excluded from GST, but buildings and other improvements are subject to the tax.

An import GST deferral scheme is also available. Taxpayers wishing to participate in the import deferral scheme are required to apply for approval by the IRC and must have a good history of tax compliance in order to qualify.

Directors of companies that fail to comply with GST obligations are personally liable for a penalty equal to the outstanding tax liability that the company ought to have remitted to the IRC.

Customs duties

The majority of manufacturing inputs (including plant and machinery) attract no customs duties, and other customs duty rates are being progressively reduced. The remaining rates for customs duties vary depending on the nature of the good being imported and are assessed on the total value of the goods imported, including cost, insurance, and freight (CIF). Customs bonds may be issued for the temporary importation of goods that are to be re-exported within 12 months.

Excise taxes

Although customs duties are now minimal in many cases, some goods, most notably motor vehicles, now attract excise tax. Private motor vehicles generally attract excise tax at the rate of 60%, whereas work vehicles attract excise tax of 10%. Excise taxes can also apply to some domestically produced goods, including refined fuel products, alcohol, and tobacco. The tobacco excise tax is levied at 5% biannually (10% annually).

Land tax

Land tax is imposed annually by provincial governments on the unimproved value of the land, and the power to levy land tax is vested exclusively with the provincial governments. In Papua New Guinea, land tax is difficult to implement and faces major geographical and social problems.

Stamp duties

Stamp duty applies at varying rates on documents and certain transactions. Of particular note is duty charged on the conveyance of property, which rises to a maximum of 5% where the value of the property being transferred exceeds 100,000 PNG kina (PGK). The duty is payable by the purchaser, and a 5% duty on the unencumbered value of land may also be payable where there is a transfer of shares in certain landholding companies.

Other dutiable transactions include share transfers (including some share buy-backs), which are subject to a rate of 1%. The Collector of Stamp Duties has the power to amend assessments and refund overpayments of stamp duty.

The Stamp Duties Act was amended to implement a rental income compliance system. The amendment effectively makes it compulsory for a landlord to provide their Taxation Identification Number (TIN) on lease documents, as lease documents will not otherwise be stamped.

Stamp duty is payable on documents executed outside Papua New Guinea that relate to property or matters done or to be done in Papua New Guinea.

Export duties

Timber

Export duty on timber logs (not sawn timber or plantation logs) is calculated with reference to the freight on board (FOB) value per cubic metre of exported logs and rates that increase as the value of the exported logs increase.

Spices

Levies are imposed from time to time on the export of specified spices (e.g. vanilla).

Payroll taxes

Salary or wages tax (SWT)

Businesses paying salary or wages to employees are required to withhold SWT (calculated at the prescribed marginal rates) and remit to the IRC on the seventh day of the month following the month of payment.

Salary or wages is defined as remuneration paid to employees in cash or kind, including benefits such as accommodation and transportation.

Normal employment-related receipts and benefits also include any remuneration paid as consultancy fees or fees for professional services, where the remuneration is paid wholly or substantially for personal services performed in Papua New Guinea.

Directors are personally liable for any unpaid SWT obligations of their companies. Directors who fail to ensure their company complies with its SWT reporting obligations may be penalised at a rate of 20% of the unpaid tax liability *per annum*. After three months of non-payment of outstanding SWT, directors will not be able to obtain a remission of penalties imposed.

Contributions to employee superannuation funds

Contributions to employee superannuation funds are compulsory for entities with 15 or more permanent employees. The employer's compulsory contribution is 8.4% of each employee's gross basic salary. The employee's minimum contribution is 6.0%.

Membership is generally compulsory for citizens. Non-citizens are currently exempt; however, this is under continuing review.

Contributions must be paid to an authorised superannuation fund. Contributions paid to an authorised fund are tax-deductible to the extent that they do not exceed 15% of the relevant employee's gross taxable salary. Contributions to non-resident funds are not tax-deductible.

Training levy

The training levy is abolished effective from 1 January 2018.

Previously, all businesses whose annual payroll exceeded PGK 200,000 were subject to a 2% training levy, calculated on the sum of the taxable salaries, including benefits, of all personnel. Qualifying expenses incurred in training PNG citizen employees were creditable up to the actual amount of the levy. The training levy, if payable, was not tax-deductible.

Departure tax

A departure tax is collected by airlines issuing tickets for persons departing Papua New Guinea.

Gaming machine tax

Papua New Guinea imposes a 74% tax on gross revenue from gaming machines.

Resource project production levies

Production royalties of 2% are payable to the national government on the net smelter return from mining operations. These royalties are tax-deductible. A royalty, at the rate of 2% of the wellhead value, is also payable from the production of petroleum and gas operations. Holders of new petroleum development licences are entitled to treat royalties as income tax paid. However, new petroleum projects will also pay a tax-deductible development levy calculated at the same rate of 2% of the wellhead value.

Mining projects are also required to pay a production levy to the Mineral Resources Authority calculated at a rate between 0.25% and 0.5% of the assessable income from production.

Branch income

Income derived by a non-resident contractor for services in Papua New Guinea is usually subject to a WHT at the rate of 15% of gross income. The provisions extend to payments for the following:

- The installation, maintenance, and use in Papua New Guinea of substantial equipment or machinery.
- Construction projects.
- For the lease or charter of any industrial, commercial, or scientific equipment or any machinery or vehicle.
- Consultancy or management services.

Where the non-resident contractor rules do not apply, the non-resident company will be subject to income tax at the non-resident tax rate of 48% on its PNG-sourced taxable income (*see the Income determination section for a definition of taxable income*).

PNG branch remittances are not liable for dividend WHT or any branch profits or similar tax.

Income determination

Taxable income is defined as the sum of assessable income minus allowable deductions. In practice, profits are calculated for tax purposes by reference to the profits reported in the financial accounts. Accounts must be prepared in accordance with PNG accounting principles, which follow the International Financial Reporting Standards (IFRS).

Inventory valuation

There is no form of stock relief or trading stock valuation adjustment to recognise the effects of inflation in Papua New Guinea. There is a once-only option to adopt the lowest of the cost amount, the market selling value, or the replacement value (which, in practice, may mean that book and tax valuations for trading stock are not aligned). Where the option is not exercised, the value of the stock is deemed to be the cost price; however, neither the income tax law nor the associated regulations provide detailed guidance on what constitutes 'cost price' (the Commissioner General of Internal Revenue has not produced any related guidance to date). It will generally be the case that where a taxpayer has determined a cost price in accordance with IFRS, that cost price will also be accepted for income tax purposes.

In special circumstances, the Commissioner General of Internal Revenue may accept a lower valuation.

Capital gains

There is no general capital gains tax in Papua New Guinea. However, profits arising on the sale of property acquired for the purpose of resale at a profit, or from the carrying out of a profit-making scheme, are taxable as ordinary income.

Dividend income

Unless otherwise exempt from CIT, dividends are included in the assessable income of a shareholder.

Inter-company dividends

Dividends received by a resident company from other companies, whether resident or non-resident, while being assessable to tax, are generally subject to a full tax rebate and are effectively received tax-free. However, where a company has losses on other activities or losses carried over from earlier years, those losses are applied against dividend income before the calculation of the dividend rebate.

Stock dividends

In most cases, the payment of a dividend by way of the issue of shares is subject to the same taxation treatment as the payment of a dividend by way of cash or the distribution of other property. However, dividends paid by the issue of shares wholly and exclusively out of profits arising from the sale or revaluation of assets not acquired for the purpose of resale at a profit are exempt from income tax and dividends WHT.

Interest income

Unless exempt under specific provisions, interest paid or credited by a financial institution, the Central Bank, or a company to a person resident in Papua New Guinea is includable in income, and the person making the payment of or crediting interest in the account is liable to withhold and pay tax upon the amount.

Royalty income

Tax is imposed on royalties and similar payments made to non-residents who do not have a PE in Papua New Guinea. The tax must be withheld by the payer on behalf of the payee and remitted to the IRC. The tax payable on royalties paid to a party who is not an 'associated person' is the lesser of:

- 48% of the net royalty (i.e. gross royalty, less applicable expenses), and
- 10% of the gross royalty.

Royalty payments to a non-resident 'associated person' are liable for a WHT of 30% of gross payments (subject to any DTT), with no option to adopt the net income basis.

The definition of 'associated person' is detailed and widely drawn. Broadly, it encompasses relatives, partners, companies under effective common control, and related trust interests.

There is also a 5% WHT on mining, petroleum, timber, and fishing royalties to landowners.

Partnership income

A partner's share of the assessable income of the partnership less all allowable deductions to the partnership is includable in the partner's assessable income for the year of income. Likewise, the partner's individual interest in a partnership loss incurred in the year of income is an allowable deduction. Further, if income is exempt income to the partnership, this income will be exempt income to the individual partner relative to their individual interest.

Unrealised exchange gains/losses

Generally, foreign exchange gains realised and derived from debts made on or after 11 November 1986 or denominated in a currency other than the Papua New Guinea kina are included in assessable income.

Foreign income

PNG resident companies are liable for CIT on their income from all sources (i.e. including foreign-sourced income). A foreign tax credit may be available to offset foreign tax paid against PNG tax payable (*see the Tax credits and incentives section for more information*).

There are no provisions in Papua New Guinea that permit the deferral of the taxation of income derived outside Papua New Guinea. Subject to the operation of a DTT, foreign-sourced income derived by a resident of Papua New Guinea is subject to tax in Papua New Guinea in the year in which it is derived, irrespective of whether or not that income is repatriated to Papua New Guinea.

Deductions

General deduction provisions provide that all losses and expenditures, to the extent incurred in gaining or producing the assessable income or necessarily incurred in carrying on a business for the purpose of gaining or producing that income, are allowable deductions. However, the general deduction provisions do not allow a deduction to the extent a loss or expenditure is an outgoing of capital, or of a capital, private, or domestic nature, or incurred in relation to the gaining or production of exempt income.

Depreciation

Depreciation is allowed for equipment and other assets at prescribed rates. A taxpayer must use the diminishing-value method unless an election is made to use the prime-cost method. The applicable diminishing-value rates are 150% of the prime-cost rates.

Plant, machinery, and equipment

Plant, machinery, and equipment (including buildings) are depreciable at rates according to their estimated lives. A taxpayer other than a taxpayer who derives income from mining, petroleum, or gas operations may elect to claim special accelerated depreciation rates for certain capital items. For example, flexible depreciation rates (up to 100%) may be claimed on new industrial plant with a life exceeding five years that is used for manufacturing purposes. Other new plant and articles used in manufacturing, construction, transport, storage, communication, and agricultural production are eligible for an accelerated deduction equal to 20% of cost in the year of purchase. New plant and articles used for tourism are eligible for an accelerated deduction equal to 55% of cost in the year of purchase.

Motor vehicles

Motor vehicles are generally depreciable at 20% of prime cost. There is no upper limit in value for depreciation purposes.

Buildings

Buildings forming an integral part of plant, machinery, and equipment are depreciable at a prime-cost rate of up to 7.5%, depending on the construction materials. Buildings housing plants eligible for the one-year write-off deduction (*see comments on new industrial plant under Plant, machinery, and equipment above*) can be written off in the year of construction. Other income-producing buildings may qualify for the accelerated deduction of 20% in the year of purchase.

Agricultural and fishing plants

Most items of new agricultural and commercial fishing plants qualify for 100% depreciation, as do boats and ships, including ancillary equipment, used solely as dive boats or for scuba diving by accredited tour operators. Other new items having a life exceeding five years used by a person carrying on agricultural operations are eligible for accelerated depreciation in the initial year of use.

Goodwill

A deduction is not available for goodwill or the amortisation of goodwill in Papua New Guinea (this being an amount not deductible under ordinary concepts and an item for which there is no specific deduction provision).

Start-up expenses

It will generally be the case that start-up expenses will not be deductible in Papua New Guinea. Such expenses are generally either capital, or of a capital nature, or incurred prior to the derivation of assessable income. There is no specific deduction provision for the deductibility of start-up expenses.

Interest expenses

A deduction is generally available for interest incurred on an arm's-length basis, subject to meeting the general principles for deductibility and the requirements under the thin capitalisation rules (*see Thin capitalisation in the Group taxation section*). Where interest is incurred in connection with the construction or acquisition of a plant or capital asset, that interest is not immediately deductible. Rather, such interest is deemed to form part of the cost of that asset (and in the case of a plant will then form part of the base from which future depreciation deductions may be claimed).

Bad debt

Bad debts are deductible if they have previously been included in assessable income and written off by year-end or if the bad debt was in respect of money lent in the ordinary course of the taxpayer's business of money lending.

Double deductions

An additional amount equal to the actual amount of expenditure incurred is deductible in respect of certain expenditures (e.g. export market development costs, certain donations). In other words, a 'double deduction' is available with respect to these items.

Donations

It is considered that donations made by a corporate taxpayer meet the general principles for deductibility and hence will generally be deductible (notwithstanding the specific provision dealing with gifts to charitable bodies has no current effect as there are no charitable bodies approved by the Commissioner General of Internal Revenue for this purpose). There are specific provisions in Papua New Guinea's taxation law dealing with the deductibility of certain donations, some of which provide a deduction for up to 200% of the value of the amount donated.

Pension expenses

Contributions paid to an authorised superannuation fund are tax-deductible to the extent that they do not exceed 15% of the relevant employee's gross taxable salary. Contributions to non-resident funds are not tax-deductible. *See the Other taxes section for more information*.

Taxes

A deduction is not allowable in respect of payments of income tax. Other taxes may be deductible, subject to meeting the general principles for deductibility.

Net operating losses

Domestic

Trading losses may be offset against all income received in the same accounting period or carried forward and offset against future trading profits. The limitation period on the carryforward of losses is generally 20 years. Losses may not be carried back against prior years' profits. Primary production losses and resource project losses may be carried forward without a time limitation, although, again, they may not be carried back (*see the Tax credits and incentives section for more information*).

Note that the carryforward of losses is subject to a 50% or more continuity of shareholding and control test, or a continuity of business test where there is a breach of the ownership test.

Foreign

Losses incurred by a resident taxpayer from a source outside Papua New Guinea (other than in relation to export market development) are not deductible against assessable income derived within Papua New Guinea. In practice, overseas losses can be carried forward and offset against overseas income for up to 20 years.

Payments to foreign affiliates

The deduction available to a taxpayer for management fees paid to an associated person is limited to the greater of:

- 2% of assessable income derived from PNG sources by the taxpayer or
- 2% of the total allowable deductions, excluding management fees incurred by the taxpayer in Papua New Guinea.

The limitation applies to both resident and non-resident taxpayers. Special rules apply to mining, petroleum, and gas companies. These limits may not apply where the recipient of the management fee is resident in a country with which Papua New Guinea has a DTT or where it can be demonstrated that the management fee arrangements do not have the purposes or effect of avoiding or altering the income tax payable in Papua New Guinea.

Group taxation

Companies are assessed for CIT separately, regardless of whether they are part of a group of associated or related companies. Losses of one company within a group cannot be offset for tax purposes against the profits of another company within that group.

The Companies Act allows two or more companies to amalgamate and continue as one, and provisions are in place to allow this to occur without any adverse CIT consequences.

Transfer pricing

Papua New Guinea has transfer pricing provisions that require transactions with foreign affiliates to be conducted on an arm's-length basis. Disclosure of such transactions is done through an international dealings schedule (IDS). Corporate taxpayers (including companies, superannuation funds, and unit trusts) that have transactions or dealings with international affiliates that exceed PGK 100,000 in an income year or have aggregate loan balances with international affiliates in excess of PGK 2 million at any time during an income year are required to prepare and lodge an IDS with their income tax return for that year of income.

Thin capitalisation

Thin capitalisation rules apply to prevent taxpayers from incurring excessive levels of debt. By excessively gearing their investments, companies are able to claim greater tax deductions through the interest expense charged on such debt. Thin capitalisation rules typically feature a debt-to-equity ratio that governs the ratio by which companies can borrow from related parties relative to their equity. Any interest charged on debt that exceeds this ratio will not be deductible for CIT purposes.

Papua New Guinea's thin capitalisation rules apply a debt-to-equity ratio of 3:1 to PNG resource companies and 2:1 to all other PNG companies.

These rules do not apply to licensed financial institutions and do not apply to interest paid under domestic debt for non-resource companies. If the ratio is breached, a proportion of the interest on foreign debt will be denied as a tax deduction. For resource companies, a proportion of interest on all debt will be denied.

Controlled foreign companies (CFCs)

Papua New Guinea does not have CFC rules.

Tax credits and incentives

In this section, we comment on the more significant tax credits and incentives available in Papua New Guinea, followed by a summary of those with more limited application.

Foreign tax credit

A foreign tax credit may be available to offset foreign tax paid against PNG tax payable. The foreign tax credit is limited to either the foreign tax paid or the average PNG tax payable on that foreign income, whichever is less. There is no mechanism to carry forward excess foreign tax credits for utilisation in a subsequent year.

Primary production incentives

Key incentives that are available with specific application to primary production activities include:

- Outright deductions for certain capital expenditures, including clearing, preparing, or conserving land for agriculture; eradicating pests; providing labourers' accommodation; and for the conservation and conveyance of water.
- A 100% deduction is available for a new plant used directly for the purposes of agricultural production, and an initial 20% accelerated depreciation deduction is allowed for a new plant with a life exceeding five years.
- Losses incurred in carrying on a primary production business can be carried forward indefinitely; they are not restricted to the 20-year limit that generally applies to company tax losses.
- Agricultural companies may transfer to their shareholders the benefit of the outright tax deduction available for many types of capital expenditures. The total deduction available to shareholders may not exceed the amounts paid on their shares.
- As part of promoting investment in primary production, a 20% tax rate is prescribed in respect of 'incentive rate primary production income' derived by a company (as opposed to the normal 30% tax rate for a resident company or 48% for a non-resident company) for up to ten years.

Agricultural production extension services deduction

A 150% deduction is available for expenditure on services provided free of charge to smallholder growers, including the provision of advice, training, and technical assistance in relation to primary production to assist growers with production, processing, packaging, and marketing issues.

Double deduction for export market development costs

Expenditure incurred in the promotion for sale outside Papua New Guinea of goods manufactured in Papua New Guinea or tourism promotion is eligible for double deduction. The total tax saving cannot exceed 75% of the expenditure incurred.

Export incentives

Prior to 1 January 2015, the net export income from the export sale of certain types of goods was exempt for the first four years of income, with a partial exemption in the following three years. This exemption is not applicable from 1 January 2015 (except in respect of goods that qualified for the exemption prior to that date).

Tax credit for infrastructure development by agricultural, mining, petroleum, and gas companies

A tax credit is available to agricultural, mining, petroleum, gas, and certain tourism companies that incur expenditure on a prescribed infrastructure development. In the case of taxpayers engaged in mining, petroleum, and gas operations, the credit is limited to 0.75% of the assessable income or the amount of tax payable for the year (in respect of that mining, petroleum, or gas project), whichever is less. Excess expenditure over the 0.75% or tax payable may be included in the following year's rebate claim.

Unutilised credits or excess expenditure can generally only be carried forward for two years. In the case of taxpayers engaged in agricultural production, the credit is limited to 1.5% of the assessable income or the amount of tax payable for the year, whichever is less.

A prescribed infrastructure development includes a school, aid post, hospital road, and other capital assets that have been approved as such by the Department of National Planning and the IRC. It cannot be an expenditure required under the Mining Act or the Oil and Gas Act.

Other tax incentives in Papua New Guinea

Other tax incentives available in Papua New Guinea include:

- Manufacturers' wage subsidy.
- Immediate deduction for the costs of acquiring and installing solar heating plant.
- A ten-year tax exemption for qualifying new business located in prescribed remote areas of Papua New Guinea.
- A specific deduction for environmental protection and clean-up costs.

Incentives for petroleum, mining, and gas operations

Special incentives and rules apply to mining, petroleum, and gas exploration, extraction, and production activities. The main aspects are as follows:

Project basis of assessment

A project basis of assessment (ring-fencing) is adopted for all resource projects. This means losses from other operations, regardless of whether or not they are resource related, cannot generally be offset against resource project income from a particular ring-fenced project. However, there are some concessions to the ring-fencing principle in respect of exploration expenditure and expenditure in respect of discontinued projects and losses arising from site restoration costs.

In general, all costs incurred in the exploration and development phases of the project are accumulated and amortised over the life of the project. Once production starts, an immediate deduction is allowed for 'normal' operating and administration expenses. Capital expenditure incurred after the start of production are capitalised and amortised over the life of the project.

Rate of tax

A standardised rate of 30% applies to all companies resident in Papua New Guinea.

Interest deductions

Interest is not deductible prior to the commencement of a resource project. Following the issue of a resource development licence, a person carrying on a resource project or exploration in relation to a resource project may claim a deduction against resource income for interest on money borrowed for carrying on the relevant operations or exploration. This is subject to a number of conditions, including the resource company maintaining a debt-to-equity ratio of 3:1 (*see Thin capitalisation in the Group taxation section*).

Capital allowances

Allowable exploration expenditures (AEE) are amortised over the life of the resource project. The deduction is calculated by dividing the unamortised balance by either the remaining life of the project or four, whichever is less. The amount of the deduction is limited to the amount of income remaining after deducting all other deductions, other than deductions for allowable capital expenditure. In other words, the deduction cannot create a tax loss.

Allowable capital expenditures (ACE) are amortised over the life of the resource project. The ACE is split into two categories: capital expenditures with an estimated effective life of more than ten years (long-life ACE) and capital expenditures with an estimated effective life of less than ten years (short-life ACE).

The annual deduction for long-life ACE is claimed on a straight-line basis over ten years.

Where the remaining life of the project is less than ten years, the rate at which the deduction is allowed is calculated by referring to the remaining life of the project. For short-life ACE, the annual deduction is calculated by dividing the unamortised balance by either the remaining life of the project or four, whichever is less. For new mining projects, the deductions for both long-life ACE and short-life ACE are calculated by dividing the unamortised balance by either the remaining life of the project or four, whichever is less.

The amount of the deduction for ACE is limited to the amount of income remaining after deducting all other deductions. In other words, the deduction cannot create a tax loss.

Off-licence exploration expenditure

A major easing of the ring-fencing principle applies to taxpayers that are involved in a producing project where the taxpayer or a related party incurs exploration expenditure outside the area of the productive project. In this situation, the taxpayer can elect (whether or not it is currently involved in a producing project) to add such exploration expenditure to an exploration pool that can be amortised against income from the producing project.

The amount allowable as a deduction from this exploration pool in respect of resource operations carried on by the taxpayer or a related corporation is the lesser of:

- 25% of the total undeducted balance of expenditure in the exploration pool or
- such amount as reduces CIT (other than additional profits tax [*see below*]) that would, but for this deduction, be payable by the taxpayer and its related corporations in respect of those resource operations for that year of income, by 10% (or 25% for mining projects).

Management fees

Once a resource project derives assessable income, the deduction for management fees is restricted to 2% of operating expenses other than management fees. During the exploration phase of a project, the amount of management fees that can be treated as allowable exploration expenditure is limited to 2% of the exploration expenditure other than management fees. Furthermore, during the development phase, the amount of management fees that can be treated as allowable capital expenditure is limited to 2% of the allowable capital expenditure other than management fees.

Transfer of expenditure

When interests are transferred from one taxpayer to another, the vendor and purchaser can agree to transfer deduction entitlements for the unamortised balances of allowable exploration expenditure and allowable capital expenditure to the purchaser.

Liquefied natural gas (LNG) project

A number of provisions with specific application to the PNG LNG project have been included in the Income Tax Act, Stamp Duties Act, Goods and Services Tax Act, Customs Act, and Excise Act.

Additional profits tax

A modified additional profits tax applies to all resource projects (mining, petroleum, and gas). The additional profits tax applies a tax rate of 30% to returns in excess of a 15% hurdle rate.

Withholding taxes

Dividends, interest, royalties, and technical/management fees

The following WHT rates apply to dividends, interest, royalties, and technical fees under PNG domestic law and tax treaties. PNG domestic legislation provides an exemption from WHT for dividends and interest in certain circumstances. The higher rates quoted are the maximum rates allowable under the treaties.

	WHT (%)			
Recipient	**Dividends**	**Interest (1)**	**Royalties**	**Technical fees**
Resident company	0	15	0	0
Resident individual	15	15	0	0
Non-resident corporations and individuals	15	15	10/30 (2)	17
Treaty:				
Australia	15	10	10	0
Canada	15	10	10	0
China	15	10	10	0
Fiji	15	10	15	15
Germany (3)	15	10	10	10
Indonesia	15	10	10	10
Korea, Republic of	15	10	10	0
Malaysia	15	15	10	10
New Zealand	15	10	10	0
Singapore	15	10	10	0
United Kingdom	15	10	10	10

Notes

1. There is no WHT on interest when:
   - interest is paid or credited to a licensed financial institution in Papua New Guinea, the Bank of Papua New Guinea, or the state, or
   - the interest income is otherwise exempt income in the hands of the recipient.
2. A royalty paid to a non-resident associate of the payee will suffer a 30% WHT. Where the non-resident is not an associate of the payee, the WHT rate will be 10% (or 48% of the taxable income derived from the royalty if the non-resident chooses to lodge an income tax return in Papua New Guinea).
3. The treaty with Germany has not yet been ratified by Germany.

Business income WHT

Income derived by local contractors in certain industries is covered by the business income WHT regime. The industries affected include:

- Building and construction.
- Road transport.
- Motor vehicle repairs.
- Security.
- Equipment hire.

Businesses affected are required to have a certificate of compliance and to produce it when entering into contracts with their customers. Payers are required to file an annual income reporting statement where they make either an eligible payment of PGK 500 or more in relation to one contract or eligible payments for several contracts exceeding PGK 5,000 in the year of income in relation to a single payee. Payers are required to deduct a 10% WHT if payees do not produce a certificate of compliance.

Non-resident insurer WHT

Premiums paid to non-resident insurers in respect of insurance contracts on property situated in Papua New Guinea or insured events that can only occur in Papua New

Guinea are subject to tax in Papua New Guinea. The tax is calculated on a deemed taxable income equal to 10% of the gross premium, which is taxed at the non-resident tax rates of 48% (companies) or 30% (unincorporated associations). Tax treaties may limit the rate of tax applied.

Tax administration

Taxable period

The tax year is generally the period 1 January to 31 December; however, application may be made for a substituted tax year-end. These will normally be granted where the substituted tax year-end coincides with the accounting year-end of an overseas holding company. A company's tax year does not need to be the same as its accounting period.

Tax returns

Papua New Guinea operates on a full assessment basis, and companies are required to lodge an annual CIT return showing the calculation of taxable income for the year. In addition, the return must provide detailed disclosures in relation to income derived and expenses incurred during the year of income.

A company must file a tax return by 28 February in the year following the year of income to which the return relates. However, the following automatic extensions apply where the company lodges its return through a registered tax agent:

- Six months from the taxpayer's year-end for taxable returns and partnership returns.
- Eight months from the taxpayer's year-end for resource company returns in a tax payable position.
- Ten months from the taxpayer's year-end for non-taxable returns.

Payment of tax

CIT is collected under a provisional tax system. Under this system, tax is paid in respect of a company's current year profits (i.e. payments made in the year of income are in respect of income derived in the same year as the payment is due).

Provisional tax is assessed by the IRC based on the last return lodged. In the event that no tax was payable on the previous year's return, the Commissioner General has the right to estimate the amount of tax based on any other information available.

Provisional tax is payable in three equal instalments by 30 April, 31 July, and 31 October.

Applications may be made to reduce provisional tax assessed if the tax due for the year in question is expected to be lower than the provisional tax assessed. Where estimated provisional tax is less than 75% of the income tax ultimately assessed, additional tax may be levied. Additional tax at a rate of 20% will be assessed, based on the difference between the estimate lodged and the provisional tax originally determined, or the actual tax payable, whichever is less. The Commissioner General has the discretion to require payment of additional tax.

Mining, petroleum, and gas companies are subject to advance payments tax, a system that broadly mirrors the provisional tax system in place for non-resource companies. The main difference for resource companies is they have the option to lodge an estimate of their taxable income for the year prior to 30 April, 31 July, and 31 October each year, which the IRC uses to assess each advance payments tax instalment.

Following the lodgement of the CIT return, the IRC will serve a notice of assessment on the company. The balance of tax payable for a year of income, after the application of provisional tax (or advance payments tax in the case of a resource company) and other tax credits or rebates, is due to be paid within 30 days of the date of service of the notice of assessment.

Tax audit process

There is no prescribed tax audit process in Papua New Guinea, and resource constraints have limited the IRC's audit activities.

Period for amendment of assessments

Where the IRC considers that a taxpayer made a full and true disclosure of all the material facts necessary for assessing their returns as originally assessed, the IRC may only amend an assessment that increases the tax liability of the taxpayer within three years from the date that tax became due and payable under the original assessment.

Where the IRC considers that a taxpayer did not make a full and true disclosure of all the material facts necessary for the assessment of their returns, and there has been an avoidance of tax, then:

- the IRC may amend any assessments previously issued to the participants if the IRC is of the opinion that the avoidance of tax was due to fraud or evasion (i.e. no time limit applies), or
- in cases of tax avoidance due to reasons other than fraud or evasion, the IRC may amend an assessment within six years from the date that tax became due and payable under the original assessment.

Topics of focus for the Internal Revenue Commission (IRC)

In late 2011, the IRC issued Taxation Circular No 2011/2, which provided guidance on transfer pricing matters in Papua New Guinea. The IRC continues to consider transfer pricing as an area of focus.

The IRC has indicated an increased focus on the effective collection of taxes and tax compliance through the implementation of a new Standard Integrated Tax Accounting System (SIGTAS).

The IRC has not otherwise publicly announced areas of focus for audit programs.

Paraguay

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Significant developments

The tax authority (SET) issued a Decree on 27 September 2017 (N° 7795/17) including the creation of the National Electronic Invoicing System (SIFEN). This means that in the short-term the issuance of electronic invoices will be mandatory for local companies.

The SET will issue electronic invoicing regulations during the first semester of 2018, outlining the conditions and requirements to start the pilot project to implement the SIFEN. Further developments will be reported as they occur.

In addition to this, the Chamber of Senators approved the Law proposal regarding the elimination of bearer shares (equities without owner identification). According to this law, the companies' shares must be nominated within two years from the date of the law be acted by the government.

The government has announced the start of the process to apply to the Organisation for Economic Co-operation and Development (OECD) as a full member. This means that there is a significant trend towards establishing transfer pricing rules in the short term in Paraguay since it would be one of the OECD application requirements. In this context, Paraguay signed an Agreement to avoid Double Taxation with Uruguay on 8 September 2017. However, it is not enacted yet because it is pending approval by Congress.

Taxes on corporate income

Income is taxed in Paraguay according to the resource principle (i.e. the territorial system of taxation).

There are three tax systems in Paraguay, depending on the type of taxpayer, as follows:

- Commercial income tax (CIT): For income from commercial, industrial, and service activities, the general income tax rate of 10% applies. *See Capital gains and Dividend income in the Income determination section for a description of how such income is taxed*. Note that dividend distributions require an additional 5% tax that must be paid on the amount of dividend approved for distribution at the shareholder meeting.
- Agriculture income tax (AIT): For income from agricultural and cattle activities, the tax rate is 10% (determined by annual income).
- Little taxpayer income tax (LTIT): For those taxpayers with annual income of less than 100 million Paraguayan guaraníes (PYG), a single tax at a rate of 10% applies.

Local income taxes

There are no other income taxes (i.e. municipal tax on income, etc.) or patrimony taxes in Paraguay.

Corporate residence

Corporate legal residence is determined as the place where direction or central management takes place, unless the corporation's charter states otherwise.

Permanent establishment (PE)

The Paraguayan Tax Law establishes the definition of a PE.

The following activities may be considered as a PE in the country:

- Branches or agencies.
- A factory, industrial plant, or cattle ranch entity.
- Mine activities, or any other natural resources extraction activities.
- Civil construction or assemble activities that exceed 12 months.

If a person provides instructions related to the agreement of certain operations on behalf of a foreign entity, this operation may be considered as a PE in the country, except in cases where the mentioned instructions are related to the purchase of goods.

Other taxes

Value-added tax (VAT)

VAT applies to all corporations and to individuals or associations of individuals rendering personal services.

The general VAT rate is 10%, but a special VAT rate of 5% applies for selling and leasing real estate, basic groceries, farming products, and pharmaceutical products.

Customs taxes

As products are introduced into Paraguay directly by the local importer, the importer is responsible for payment of the related taxes (VAT on imports) before clearing the goods from Paraguayan customs, apart from customs tariffs. The other expenses involved in the import of products are the following:

- Port rates (between 0.65% and 1.50% of customs valuation).
- Customs valuation service (0.5% of customs valuation).
- Consular fee (approximately 50 United States dollars [USD] for each commercial document receiving a visa or legalisation from the Paraguayan consulate at the originating country).
- Indian contribution fee (7% on consular fee).
- IT system utilisation fee (between USD 15 and USD 50 according to importation value).

Other expenses should be added to the above, such as photocopying, handling fees, customs agent fees, etc.

Excise taxes

The excise tax, called the selective tax on consumption, is assessed on local goods and imported products listed, either specifically or generically, in the legislation. The importation of goods listed and the first sale of goods produced in Paraguay are taxed. The selective tax on consumption is collected independently of customs duty.

Some goods subject to this tax include whiskey and other alcoholic beverages, beer, tobacco products, petroleum, etc.

Real estate tax

Real estate tax is levied annually at 1% of the fiscal value of the property, which is generally less than actual value (or market value). A tax rate of 0.5% applies if the area of rural property is smaller than five hectares and is used for agricultural or cattle ranching. In certain areas, an additional tax is levied on the fiscal value of vacant and semi-vacant land when the area of the built-up portion falls within certain determined percentage limits. Large tracts of land in rural areas are subject to an additional tax determined on a percentage basis and to a proportional tax of 0.5% to 1% on the fiscal value of tracts with areas ranging from 10,000 to 60,000 or more hectares.

The 1992 Paraguayan Constitution established that municipalities and departments are entitled to the tax revenues directly related to real estate. Collection of these taxes is the responsibility of municipal governments.

Stamp taxes

There are no stamp taxes in Paraguay.

Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

However, although it is determined by Individual Income Tax Regulation (Decree 6560/16) Law that the employer must withhold the personal income tax (PIT) of employees, the application of this provision is not in force yet

Social security contributions

In Paraguay, there is a compulsory social security system through which it is required that the employers register their employees.

The calculation basis constitutes every wage item, in cash or goods, except the annual mandatory bonus and family allowance.

The monthly rates are as follows:

Contribution	Commercial entity (%)	Financial entity (%)
Employee	9.0	11
Employer	16.5	17
Total	25.5	28

The employee's contribution is withheld from salary by the employer, which is a designated withholding agent. The employer's contributions are computed on total payroll and are paid together with the employee's withholding to the Social Security Institute.

Branch income

Branches are taxed at the same rate as domestic corporations. Profits transferred or credited to the head office are subject to a 15% withholding tax (WHT) when remitted to the head office abroad.

Additionally, the payment of dividends (by the head office's instructions) is subject to a tax rate of 5%, which has to be paid at the time of the remittance and charged to the local entity.

Income determination

Inventory valuation

Taxpayers may adopt any method of inventory valuation, provided it is technically acceptable according to tax administration criteria (e.g. first in first out [FIFO], average cost). The valuation must be applied consistently and may be changed only with the prior approval of the Treasury Ministry.

Damaged, deteriorated, and obsolete inventories may be written down to fixed values by the taxpayer. The tax administration can reject valuations that are not realistic.

Capital gains

Gains on all assets, tangible and intangible, are taxable as part of profits and subject to income tax at a rate of 10%. Foreign currency exchange gains are also taxable at the same tax rate.

Dividend income

Dividends are taxable income when the recipient (or shareholder) is a non-resident, in which case a 15% WHT applies. An additional 5% tax is charged to local entities when the income or dividend is distributed to a local (resident) or foreign (non-resident) shareholder.

Stock dividends

Stock dividends are not taxable income, except when dividends represent more than 30% of the taxable income of an investor.

The mentioned exemption is not applicable in relation to the 15% WHT (in case of foreign shareholders) and 5% additional tax for dividend distribution (charged to the local entity that made the distribution).

Interest income

Interest income of a Paraguayan resident from capital abroad is subject to income tax. This case is the only exception to the resource principle rules enacted under Paraguay Tax Law.

Royalty income

It should be highlighted that the criterion to determine the source of royalties' income is the place where the rights are used, based on the terms agreed between the parties. Thus, in case of royalties' income from of a registered trademark where the use of it is in Paraguay, the royalties' income would be taxable.

However, royalties' income of a local taxpayer paid by a foreign entity would not be subject to tax in Paraguay as long as the goods commercialised are being sold abroad, in which case this income is considered as foreign-source income.

Foreign income

Foreign-source income is not taxable. However, interest, commissions, and capital gains are considered Paraguayan-source income and subject to CIT when the investor is resident in Paraguay.

Deductions

Depreciation and depletion

The maximum allowable depreciation rates range from 2.5% for urban buildings to 25% for computer equipment. Depreciation is calculated using the straight-line method based on the useful life of assets as determined by the Treasurer. The Treasurer may also authorise the use of other depreciation or depletion methods that are deemed to be technically justified and generally accepted.

Fixed assets must be revalued annually based on the increase of the price index. Capital gains derived from the revaluation of fixed assets are not taxable income.

Goodwill

Amortisation of goodwill is not deductible.

Start-up expenses

Amortisation of start-up expenses may occur over three to five years, depending on the taxpayer's decision.

Interest expenses

The interest expenses on loans taken for Paraguayan residents or Paraguayan taxpayers may be considered as deductible expenses.

Additionally, it is important to mention that certain investment projects may be subject to a special exemption of the taxes on the interest, commission, and other expenses for loans taken for banking entities abroad (*see Investment incentives in the Tax credits and incentives section*).

Extraordinary losses/bad debts

The deduction of extraordinary losses (theft and damage) and bad debts require the meeting of certain conditions (e.g. communication to the tax authority, evaluation of the actual loss in monetary terms, audit review). Regarding bad debts, they can be deductible three years from the date from which they arise.

Charitable contributions

The deduction of a donation is subject to formal registration of the beneficiary entity as a public benefactor before the Treasury Ministry.

Executive remuneration

The deduction of executive remuneration is limited to a percentage defined according to the enterprise's profits. However, in the event that the executive employees are subject to PIT, the deduction of their salaries is not limited for CIT purpose.

Fines and penalties

Fines and penalties are considered as non-deductible expenses for income tax purposes.

Taxes

In general, all taxes mentioned in the *Other taxes section are deductible. Income tax and any fiscal surcharges or fines are not deductible.*

Other significant items

General provisions for expenses or other potential losses are not deductible.

Other specific non-deductible items include:

- Interest on capital, loans, or any other investment by an owner, partner, or shareholder in a business.
- Personal expenses of an owner, partner, or shareholder, except when they are subject to PIT.
- Money drawn on account of future earnings.
- Direct expenses incurred in earning non-taxable income.
- Earnings from any fiscal period that are retained in the business as capital increases or reserve accounts.

Net operating losses

Net operating losses are not permitted to be carried forward and applied against future years.

Losses may not be carried back in Paraguay. However, a taxpayer may modify one's tax returns at a later date.

Payments to foreign affiliates

There are no limits on the deductibility of payments to foreign affiliates, including management fees, royalties, research and development (R&D), and general and administrative expenses, provided that the taxpayer maintains corresponding legal documentation that includes the country of origin and applies appropriate WHT. *See the Withholding taxes section for the applicable WHT rates*.

Group taxation

Group taxation is not permitted in Paraguay.

Transfer pricing

There are no transfer pricing rules in current Paraguayan legislation requiring compliance with certain conditions or minimum prices for the purpose of fiscal deductions, except for the following regulation applicable to importations and exportations:

"In the case of importers, it will be assumed that, in the absence of proof to the contrary, the cost of goods introduced to the country may not exceed the wholesalers price ruling in their place of origin plus freight and insurance costs and expenses to Paraguayan territory, and therefore, the excess of such value will constitute taxable income for the importers.

In the case of exporters, where a price has been fixed or the price declared is lower than the wholesalers price in Paraguay plus the freight and insurance costs and expenses to point of destination, this latter aggregate value shall be taken as the basis for determining the exporter's taxable income.

To this effect, the nature of the goods and the transaction mode adopted will be taken into account." (Section 16 of Law No. 2421/04).

Thin capitalisation

There are no thin capitalisation rules in Paraguay.

Controlled foreign companies (CFCs)

There are no provisions in Paraguay for CFCs.

Tax credits and incentives

Foreign tax credit

Foreign tax credits are not applied to local tax payments in Paraguay.

Investment incentives

The framework of economic investment was established in the Law No. 60/90, which offers some special tax exemption benefits to foreign and local investors.

The benefits of the Law No. 60/90 may be available for the following investments:

- Cash, financing, provision of credit, or other financial instruments, under the conditions established by the administration of the President of Paraguay and the corresponding ministries.
- Capital goods, raw materials, and inputs for local industry for the fabrication of capital goods.
- Transfers of licensing rights with respect to trademarks, industrial processes and models, and other technologies.
- Technically specialised services.
- Capital leases.
- Other forms that the administration of the President of Paraguay and the corresponding ministries determined by law.

The investment incentives included in Law No. 60/90 that remain enacted after tax law modification (Law No. 2421/04) are the exemptions from certain fiscal, municipal, and customs duties taxes.

When the amount of financing for an investment is equal to or greater than USD 5 million, it will be exempt from WHTs on interest, commissions, and capital that have to be paid to financial or banking entities abroad. This benefit is for five years.

If the investment is at least USD 5 million and the project is approved by the tax authorities, the dividends and profits derived from the project are tax exempt. The mentioned exemption is granted for five years and may be extended to ten years.

Maquila tax exemptions (Law No. 1064/97)

Under the 'Maquila' Regime, investors may import goods or products to be assembled, repaired, improved, worked on, or processed with the purpose of exporting such goods or products, prior to the addition of value or the 'Paraguayan component'. This regime is subject to a special tax treatment: a 1% tax rate applies to the value added within Paraguayan territory.

Innovative regulations allow for virtual commerce between *maquila* factories, which improve the utilisation of goods imported under the temporary regime (called 'virtual maquila').

This regime also establishes the service *maquila*, which enjoys the same tax benefits, and its main purpose is to provide support to entities abroad (currently, there are call centres that benefit from this regime).

Paraguayan legislation does not impose restrictions in terms of the types of products and services that the *maquila* industry may comprise. The *maquila* activity's national policy is regulated and supervised by the National Council of the *Maquila* Industry for Export (CNIME). Both individuals and legal entities domiciled in Paraguay, whether national or foreign, may take advantage of these regulatory benefits.

This industry has been receiving broad government support, given that it is considered an element of social interest in the strive to combat unemployment. There are currently over 130 *maquila* companies in the country.

Free trade zones (called 'zona franca' Law No. 523/95)

Free trade zones, where all types of commercial, industrial, and service activities may be carried out, constitute a relevant incentive for business.

The legal framework governing such zones offer several advantages in terms of tax exemptions, as well as a special tax regime with an income tax rate of 0.5%.

The main purpose of free trade zones is the development of activities in connection with foreign markets; however, operations within the country are also allowed.

Law No. 523/95, 'which authorises and establishes the Free Trade Zone Regime', and its regulatory Decree No. 15,554/96, 'which regulates the Free Trade Zone Law', among others, establish the guidelines related to activities within free trade zones.

The aforementioned regulation establishes two main entities, the 'concessionaire', responsible for providing the necessary infrastructure for freight operational management, and the user, responsible for carrying out the commercial, industrial, or service activity. The regulation therefore establishes the administrative measures that enable operations in free trade zones and its supervision, control, and development.

There are currently two free trade zones located in the Alto Paraná region (northeastern region, in close proximity to the border with Brazil and Argentina), in which national and international companies actively operate.

Other incentives

- Exports are exempt from certain customs duties and from VAT.
- A Capital Market Law (No. 1,284/98) established incentives for issuance of bonds abroad.
- Under the Export Incentives Regime, exports are VAT exempt. The legislation recognises a tax credit for pre-production stages. A Temporary or Provisional Admission Regime is also in place, which exempts imports from import tariffs and VAT.

Withholding taxes

In accordance with the regulations in force, foreign entities may be subject to income tax withholdings in respect of services rendered to them deemed to be of Paraguayan source, including payments made by the branch or affiliate of a foreign home office.

Business income tax regulations consider that branches, agencies, or PEs of foreign entities are taxpayers, independently from the foreign home office status.

The withholdings are to be made from the payments made by local entities for such services.

WHT on payments made by a domestic corporation

	WHT (%)				
	Dividends (1)				
Recipient	Portfolio	Substantial holdings	Interest (2)	Royalties (2)	Fees (2)
Non-resident corporations	15	15	6/15/30 (3)	15/30 (4)	15/30 (5, 6)
Non-resident individuals	10	10	10 (3)	10 (6)	10 (6)
Tax treaty with Chile:					
Non-resident corporations	10	10	10/15 (7)		
Non-resident individuals	10	10			

Notes

1. Local entities are required to pay an additional 5% WHT when the income or dividend is distributed.
2. In the case of financing operations (loans), royalties, and other services provided for non-resident corporations or individuals, the local taxpayer must withhold the VAT at a rate of 10%.
3. The WHT on interest is based on 100% of the amount paid when remitted to the head office abroad. The tax rate is 30%. In other cases, when the payment is not directly made to the head office or shareholders that have control of the local subsidiary, the WHT is based on 50% of the amount paid. The 'effective' tax rate is 15%. For financing loans, the WHT effective tax rate is 6%. Regarding individuals, considering that they will obtain income from Paraguayan sources, whether they will be subject to PIT or CIT depends on the kind of operations.
4. The WHT on royalties is based on 100% of the amount paid when remitted to the head office abroad. The tax rate is 30%. In other cases, when the payment is not directly made to the head office or shareholders that have control of the local subsidiary, the WHT is based on 50% of the amount paid. The 'effective' tax rate is 15%.
5. The WHT on fees is based on 100% of the amount paid when remitted to the head office abroad. The tax rate is 30%. In other cases, it is based on 50% of the amount paid. The 'effective' tax rate is 15%.
6. Fees for technical assistance services rendered by non-resident corporations are subject to WHT at a rate of 15% on the amount paid. In case the mentioned services are rendered by the head offices or direct shareholder, the tax rate is increased to 30%.

Fees for personal services rendered by non-resident individuals are subject to PIT. The withholding of PIT has to be made on 50% of the amount paid. The tax rate is 20% (effective tax rate of 10%).

7. In case of a loan to Chile, the WHT on the interest is 15% if the loan is provided by a bank or insurance company. On the other hand, if the loan is provided by an associated company or head office, the tax rate is 10%. Regarding VAT WHT, *see Note 2.*

Tax administration

Taxable period

For the CIT and LTIT, the taxable period is the calendar year. Regarding the AIT, the taxable period is as follows:

- In the event a taxpayer is subject to AIT exclusively, the tax period is from 1 July to 30 June of the following year.
- If a taxpayer is subject to AIT and CIT according to the activities performed, the taxable period is the calendar year.

Tax returns

Income tax returns are submitted on a fiscal-year basis as a self-assessment and must be filed by the fourth month following the end of the fiscal year.

Payment of tax

Income tax is due on varying days in the fourth month following the end of the fiscal year, depending on the taxpayer ID number, according to a calendar established by the Treasury Ministry. Four equal advance payments are made throughout the year, calculated based on 100% of the tax due in the previous year. Payments must be made in May, July, September, and November of each year after the due date for filing the income tax return, according to the calendar established by the tax authorities.

Penalties

Tax legislation provides the following penalties:

- Late payment of income tax is penalised by a fine varying from 4% to a maximum of 14%, plus interest at 0.116% per day.
- Tax fraud is punished by a charge of from one to three times the value of the tax in default.
- Tax law infringements are penalised through fines varying from the equivalent of USD 10 to USD 250.
- Omission of payment incurs a fine of 50% of the tax pending.

Tax audit process

The auditing process is performed by the tax authorities when there is a certainty or suspicion of tax evasion. Additionally, the taxpayer may be audited according to a draw process that is made by the tax authority.

The tax law also establishes an obligatory tax audit, which has to be made by external auditors, when the taxpayer obtains PYG 6 billion of gross income during the year. An annual audit report on tax compliance rules is presented to and reviewed by the tax authorities. When a tax issue is identified, the tax authority may apply a penalty to the taxpayer.

Statute of limitations

The tax authority may audit the last five fiscal years.

Topics of focus for tax authorities

The tax authority is focusing on purchases invoices. It is important to note, that in order to consider an expense as deductible for tax purposes, it must comply with the formal requirements established by Law.

In addition to this, these vouchers must also comply with the mentioned formal requirements in order to consider them as a part of the VAT credit.

While there are not transfer pricing rules in force in Paraguay, the government has announced the start of the process to apply to the OECD as a full member. This means that there is a significant trend towards establishing transfer pricing rules in the short term in Paraguay since it is one of the OECD application requirements.

Peru

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Significant developments

On 25 October 2017, Peru signed the Multilateral Convention on Mutual Administrative Assistance.

In March 2018, the official launch of the 'program of implementation of the recommendations of the Public governance study' was carried out. The aforementioned program aims to make progress in efficiency and effectiveness in public management, decentralisation, multilevel governance, open government, citizen participation, and accountability.

On 3 May 2018, the executive branch requested the Congress to delegate legislative faculties to legislate on tax and financial matters.

Taxes on corporate income

Companies incorporated in Peru are considered resident in Peru for tax purposes and thus subject to a corporate income tax (CIT) rate of 29.5% on worldwide net income.

For purpose of determining taxable income, such entities are allowed to deduct expenses to the extent that they are necessary to generate or maintain the source of taxable income. Requirements, limitations, and/or caps may apply to the deduction of certain expenses (thin capitalisation rules), bad debt provisions, salaries, travel expenses, gifts, donations, penalties, etc.

The Peruvian Income Tax Law (PITL) allows crediting for various payments against income tax, including income taxes paid in advance, amounts paid for certain other taxes, and income taxes paid in foreign tax jurisdictions, provided that the foreign country's tax rate is not higher than the Peruvian CIT rate and the taxable income qualifies as foreign-source income for Peruvian income tax purposes.

Dividends and any other type of profit distributions are taxed at a rate of 5% upon distribution, when the distribution is made to a non-resident entity (either individuals or legal entities) and to resident individuals, or when the distribution is agreed to by the shareholders, whichever happens first (resident legal entities are not subject to withholding tax [WHT] over dividends received from other Peruvian corporations). The entity distributing dividends or profits is liable for WHT at the aforementioned rates.

Nevertheless, enterprises are subject to an additional tax rate of 5% on every amount or payment in kind that, as result of a tax audit, is construed as taxable income to the extent that it is an indirect distribution of such income that escapes further control from the tax administration, including income that has not been declared.

On the other hand, companies incorporated abroad are considered as non-domiciled in Peru for tax purposes and thus subject, in most cases, to an income tax rate of 30% over the gross Peruvian-source income. As a general rule, foreign companies are not allowed to deduct expenses and are taxed on gross income.

Local income taxes

There are no local or provincial taxes on income in Peru.

Corporate residence

For income tax purposes, the following entities, among others, are considered as resident entities in Peru:

- Corporations duly incorporated in Peru.
- Branches, agencies, and permanent establishments (PEs) in Peru of non-resident individuals or entities.
- Partnerships and limited liability companies.

Permanent establishment (PE)

According to the PITL, a foreign company is considered to have a PE (i) if it has a fixed place of business through which it carries out business activities in whole or in part; (ii) if an individual has a power of attorney of a foreign entity and uses it on a regular basis to sign agreements on behalf of the foreign entity; and (iii) if the person with powers of attorney of the foreign entity keeps in Peru inventory and/or goods to be negotiated in Peru on behalf of the foreign entity.

The consequence of a PE presence in Peru is that the PE will be obligated to comply with all the formal and substantial tax obligations of any domiciled taxpayer, meaning that it will have to be registered before the tax administration (get a tax identification [RUC] number), issue/receive invoices, keep full accounting books, file monthly and yearly tax returns, withhold taxes, allocate a reasonable income for its Peruvian source activities, etc. If a PE presence is determined, then the tax contingency will have to be quantified by calculating the taxes, fines, and interest accrued as from the moment in which the PE presence can be deemed, except for the period barred by statute of limitations.

Other taxes

Value-added tax (VAT)

The general rate of VAT is 18% (16% of VAT itself plus 2% of municipal promotion tax). VAT is applicable to the following operations:

- Sale of goods within the country.
- Rendering or first use of services within the country.
- Construction contracts.

- The first sale of real estate made by constructors.
- Import of goods.

For all transactions, the vendor is subject to VAT, except in the case of importation of goods or services rendered abroad, but economically used within Peru, for which VAT is self-assessed by the importers and users, respectively.

The VAT law follows a debit/credit system, and input VAT may be offset by output VAT. Should excess input VAT be obtained in a particular month, it shall offset output VAT obtained during the following months, until it is exhausted.

The export of movable goods (including the sale of goods in the international zone of ports and airports) is not subject to VAT, nor is the exportation of the services that meet concurrently with the four requirements that the VAT law states. Thus, VAT paid upon the acquisition of goods, rendering of services, construction agreements, and the importation of goods related to exported goods or services creates a positive VAT export balance.

The positive balance may offset output VAT, income tax, or any other outstanding tax debt in favour of the central government. If the positive balance is not completely offset, as the amount of the aforementioned tax obligations is insufficient, the taxpayer may apply for a refund.

Tax Obligatory Payment System (SPOT)

The SPOT is applicable to the sale of certain goods and the rendering of services subject to Peruvian VAT. The main purpose of the SPOT is to generate funds to enable the payment of tax obligations by the VAT payer.

According to the SPOT, all the sales of goods listed in the appendices of the Resolution that are levied with VAT will be subject to withholding, applying the rates established for each kind of good (1.5%, 4%, 10%, or 15%).

Since 1 April 2018, the services subject to VAT are subject to the SPOT with a withholding rate of 4%, 10%, or 12%.

The purchaser or service recipient must withhold a percentage of the transaction price and deposit such amount within the seller's or service provider's State Bank (*Banco de la Nación*) account. It is important to note that the right of the purchaser or user of the service to offset input VAT related to such goods and services may be exercised only after the deposit with the State Bank has been executed.

The amount deposited is applied towards the payment of the seller's or service provider's Peruvian tax obligations (not just VAT). If after three consecutive months such amount is not used, the seller or service provider may request a refund or use the amount to pay withholdings applicable to purchasers or services recipients.

Customs duties

Customs duties applied to imports are linked to their classification under the Customs Tariff, given by NANDINA subheading that is determined by the information provided by the importer (through the invoice and other complementary information), as well as the physical recognition by the Customs Officer at the time of customs clearance.

As such, the taxes required are:

- *Ad valorem* customs duty (rates of 0%, 6%, and 11%, as the case may be).
- VAT (16%).
- Municipal promotion tax (2%).

Other taxes that may apply, depending on the equipment, include the following:

- Selective consumption tax.
- Specific duties.
- Antidumping and compensatory.
- VAT perception.

There are no restrictions on imports and exports, although there is a limited list of products that cannot be imported or exported. Exports are not subject to any taxes. The importation of most capital goods is subject to the 0% rate.

The government is empowered to grant duty exemptions under certain circumstances and also to temporarily suspend the assessment of duties on certain products. Customs duties are imposed on an *ad valorem* basis (the carriage, insurance, and freight [CIF] value of the imported goods). Goods are classified for customs duty purposes under the Harmonized System.

Pursuant to the drawback regime, an exporter may apply for a refund of customs duties paid upon: (i) the importation of goods contained in exported goods or (ii) the importation of goods that are consumed during the production of exported goods.

The refund rate is currently 4% of the freight on board (FOB) value of the exported good, provided such amount does not exceed 50% of the good's production cost. The refund will proceed for each type of good exported and for the first 20 million United States dollars (USD) worth of goods exported per year (the excess will not be subject to refund).

For such purposes, the beneficiaries of the drawback regime are the manufacturer/ exporter companies whose cost of production has been increased by the customs duties paid upon the importation of: (i) raw material, (ii) intermediate products, or (iii) pieces incorporated or consumed in the production of exported goods. Note that fuel or any other energy source used to generate heat or energy for purposes of obtaining the exported good is not considered as raw material.

Excise tax

The sale of specific goods, including fuel, cigarettes, beer, liquor, and vehicles, is subject to excise tax.

Excise tax rates, and the manner on which the tax is applied, depend on the type of goods or services.

Since May 2018, the tax rate for the aforementioned products has increased, based on the argument that their production has the highest negative incidence on health and on the environment. For example, liquors with 20% or more alcohol have a new tax rate of 40%. In addition, sugary drinks, such as soda, with 6 grams or more per 100 millilitres are subject to a rate of 25%.

Real estate property tax

The real estate property tax is levied on the value of urban and rural real estate property. Individuals and legal entities owning the referred real estate properties are considered taxpayers for such purposes. The taxable base is calculated taking into account the value of all the properties owned in a specific local district, as reflected in the internal records of the corresponding local authorities.

The tax is calculated and paid on an annual basis applying the following progressive cumulative scale:

Real estate's value	Real estate property tax rate (%)
Up to 15 tax units	0.2
For the excess of 15 tax units and up to 60 tax units	0.6
Over 60 tax units	1.0

Real estate transfer tax

The real estate transfer tax is levied on all transfers of urban and rural real estate property. The taxpayer is the purchaser of the property. The taxable base is equivalent to the consideration agreed upon by the parties to the transaction, provided it is higher than the property's value (in the relevant year for purposes of the real estate property tax) as reflected in the internal records of the corresponding local authorities.

The tax rate is 3% and must be borne exclusively by the buyer, regardless of whatever the parties agree. The first ten tax units (approximately USD 12,461) of the taxable base are exempt from this tax.

Stamp taxes

There are no stamp taxes in Peru.

Payroll taxes

Payroll taxes in Peru are only those characterised as social security contributions (*see below*).

Social security contributions

Health contributions

Employers shall make monthly health contribution payments equal to 9% of the compensation paid to employees.

Employees shall be affiliated either to the National Health System (EsSalud) or the Private Health System (EPS), according to what option they choose. In the latter, a portion (25%) of the amount paid to the EPS may be used by the employer as a credit to be offset against EsSalud contributions.

Insurance for high-risk work

Employees who perform high-risk activities established in Law 26790, such as mineral extraction and iron and steel smelting, among others, must have a complementary insurance for high-risk work, which provides coverage such as health care, temporary or permanent disability pensions, and burial expenses relating to work accidents or professional diseases. This insurance is compulsory and must be paid for by the employer.

Pension funds contributions

Employers shall apply monthly withholdings for pension funds contributions equal to 13% of the remuneration received by the employee in cases where the employee is affiliated with the National Pension System (ONP) or approximately 12.4% in cases where the employee is affiliated with the Private Pension System (AFP). In this last case, 10% corresponds to the personal pension account and almost 2.4% to insurance and commissions for managing the fund.

Regarding the termination of employment of foreign individuals who leave the country, their pension funds in an AFP may be wired to an account of the employee in a foreign bank (the aforementioned 10%).

Financial transactions tax (FTT)

FTT is applied at a rate of 0.005% on all debits and/or credits on bank accounts held by the taxpayers.

The following operations, among others, are exempted from the FTT:

- Operations made between accounts of the same holder.
- Credits to bank accounts for payment of salaries.
- Credits and debits to bank accounts of diplomatic representations and international organisations recognised in Peru.

Payments of FTT are deductible as expenses for income tax purposes.

Temporary net assets tax (TNAT)

Companies subject to income tax are obligated to pay TNAT, except for companies that are in preoperative stages or that commenced business on 1 January of the fiscal year in which TNAT must be paid.

The taxable basis is the value of the assets set forth in the taxpayer's balance sheet as of 31 December of the year prior to that of the tax payment, adjusted for deductions and amortisations accepted by the Peruvian law.

The amount of TNAT is determined by applying the following rates on the taxable basis:

- Up to 1 million Peruvian soles (PEN): 0%.
- Excess of PEN 1 million: 0.4%.

The amount paid for TNAT may be credited against the taxpayer's income tax. If not totally used, the remaining TNAT may be refunded by the tax administration.

Special taxation on mining industry

The new mining royalty (NMR) regime, special mining tax (SMT), and special mining contribution (SMC) are economic considerations paid to the Peruvian government for the exploitation of mineral resources. The NMR applies to metallic and non-metallic mineral resources, while the SMT and SMC only apply to metallic mineral resources.

The SMC is only applicable to mining companies with projects with tax stability agreements in force. Such companies have voluntarily entered into agreements with the Peruvian government with the purpose of paying this contribution. This special contribution is determined for each stability agreement entered into.

In all three cases, the tax basis is the operating profit of the company, and the special rates and considerations are explained below:

	New mining royalty (NMR)	Special mining tax (SMT)	Special mining contribution (SMC)
Concept	No tax stability	No tax stability	With tax stability
Regime	Previous mining royalty modified	New	New
Cumulative progressive scale based on operating margin	1% to 12%	2% to 8.4%	4% to 13.2%
Minimum payment	1% of the sales revenue	N/A	N/A

The amounts paid will be deductible for income tax purposes as long as they are actually paid during the fiscal year.

Energy and Mining Investment Regulatory Agency (OSINERGMIN) contribution

The basis for calculating the OSINERGMIN contribution is the monthly invoicing of activities directly related to OSINERGMIN's regulatory scope (mining activities), after deducting the VAT. The applicable rate is 0.14% in 2018.

Agency for Environmental Assessment and Enforcement (OEFA) contribution

The basis for calculating the OEFA contribution is the monthly invoicing of activities directly related to OEFA's regulatory scope (mining activities), after deducting the VAT. The applicable rate is 0.11% in 2018.

Branch income

Branches, agencies, and PEs of non-resident companies or entities incorporated in Peru are subject to income tax at a rate of 29.5% on their Peruvian-source income.

For tax purposes, branches or subsidiaries are subject to the same obligations applicable to all companies in Peru, including income tax, VAT, FTT, filing of the corresponding income tax and VAT returns, issuance of invoices, etc.

Nevertheless, the following important differences between subsidiaries and branches resident in Peru must be taken into account:

- Branches are subject to income tax only for their Peruvian-source income, while subsidiaries are subject to income tax on their global-source income (both Peruvian and foreign income).
- For branches, the WHT on profit for distribution is applied on the date the annual income tax return is submitted. Subsidiaries are subject to the WHT on the date in which the corresponding shareholders agreement took place or the date when the beneficiary receives the dividends, whichever occurs first. For non-domiciled shareholders, the withholding will be applied whenever the dividend is actually

paid, without taking into account the moment in which the shareholder agreement is executed.

Income determination

Inventory valuation

The first in first out (FIFO), average, specific-identification, retail, and normal or base-stock methods are allowed for inventory valuation. The last in first out (LIFO) method is not permitted.

Capital gains

Capital gains are taxed as ordinary income. However, capital gains derived from the sale of stock issued by a Peruvian company through the Lima Stock Exchange are taxed at a 5% rate, provided that the seller is a non-domiciled party.

An exemption has been granted as of January 2016 until December 2019 for the sale of shares performed through the Lima Stock Exchange as long as these requirements are met:

- No more than 10% interest is transferred.
- The stock has market presence.

Dividend income

Cash dividends distributed to resident corporations are not subject to any taxes.

Interest income

The PITL establishes that the WHT rate on interest arising from loans for non-resident corporations is 4.99%, provided the following requirements are met:

- In case of cash loans, the entrance into Peru of the foreign currency must be duly accredited.
- The credit must not accrue an effective interest that surpasses the preferential rate prevailing in the place where it comes from, plus three points.
- If the credit proceeds from the United States or from Europe, the company shall apply the preferential rate to the London Interbank Offered Rate (LIBOR) plus four points.
- The loan must be destined to finance business or taxable activities.
- The parties involved must not qualify as related parties for tax purposes.

Royalty income

Royalties paid to non-domiciled parties are subject to a 30% withholding rate, to the extent that the goods or rights generating royalties are economically used in the country or the royalties are paid by a domiciled taxpayer.

Foreign income

A Peruvian corporation is taxed on Peruvian and foreign-source income. For active income of foreign source, the company must pay taxes in the fiscal year in which the earned income is accrued. For passive income, the company must pay taxes in the fiscal year in which the income is perceived.

Deductions

Acceptable payment methods

Obligations that are fulfilled through cash payments exceeding PEN 3,500 must be made via bank account deposits, wire transfers, payment orders, credit cards, non-negotiable cheques, or other means of payment provided by entities of the Peruvian financial system. Failure to use one of these payment methods when such an obligation exists will result in the disallowance of deductions for any expenses or costs for income tax purposes and the disallowance of a credit for the corresponding VAT.

Expenses derived from transactions entered into with entities resident in tax havens

Certain expenses are not tax-deductible, including expenses incurred with respect to transactions with (i) entities resident in tax havens on the list attached to the PITL regulations, (ii) PEs located in tax havens, or (iii) entities that generate revenues or income through tax havens.

Nonetheless, expenses incurred from the following transactions are excluded from the above-mentioned limitations, provided the consideration paid falls within market value:

- Interest on loans.
- Insurance premiums.
- Leases of aircraft or ships.
- Maritime freight.
- Fees for passing through the Panama Canal.

Depreciation

Assets may be depreciated for tax purposes via the straight-line method, capped at the following rates, but without exceeding the amount of the financial depreciation:

Assets	Depreciation rate (%)
Cattle (both labour and reproduction) and fishing nets	25
Vehicles (except trains) and any kind of ovens	20
Machines and equipment used for mining, oil and construction activities, excluding furniture, household, and office goods	20
Equipment for data processing	25
Machines and equipment acquired as of 1 January 1991	10
Other fixed assets	10

Buildings must be subject to a flat 5% depreciation rate, regardless of the financial depreciation.

Amortisation of intangible assets

The amortisation of property rights, trademarks, patents, and manufacturing procedures, as well as other similar intangible assets, are not deductible for income tax purposes. However, the price paid for intangible assets of a limited duration, at the taxpayer's choice, may be considered as an expense and applied to the results in a single year or amortised proportionally over a ten-year term.

The Peruvian tax administration, prior to an opinion from the corresponding technical organism, is permitted to determine the real value of those intangible assets for tax purposes when the price does not reflect the real one.

Organisational and start-up expenses

Organisation expenses, pre-operating expenses (including initial operations and further expansion of operations), and interest accrued during the pre-operating period may be expensed in the first period of operation or amortised using the straight-line method over a maximum of ten years. However, once a company has elected to recover start-up costs via the straight-line method, it may revoke such election only upon receiving approval of the tax authorities.

Interest expenses

In general terms, interest on loans and related expenses are deductible, provided they are related to the acquisition of goods or services incurred, or to be incurred, in order to obtain or produce taxable income or to maintain the source of such income.

In the case of loans entered into between related parties, the amount of interest to be deducted is limited to interest from indebtedness not exceeding three times the net equity of the debtor as of the end of the previous fiscal year (*see Thin capitalisation in the Group taxation section*).

Bad debts

Write-offs of bad debts and equitable provisions are deductible, provided that the accounts to which they belong are determined. For the provisions of bad debts, it is necessary that:

- there is a debt due and the taxpayer can provide evidence of the financial difficulties of the debtor that could foresee a risk in the collection of the debt, and
- the provision is registered separately in the inventory and balance book at the fiscal year closing. In this sense, a generic bad debt provision will not be deductible in the assessment of the net taxable income, nor will bad debts whose terms have not yet elapsed.

Bear in mind that the following debts are not considered bad debts:

- Debts incurred between related parties.
- Debts guaranteed by banks or financial companies by means of rights over real property, money deposits, or purchase-sale agreements with reservation of right of legal ownership.
- Debts that have been subject to renewal or express extension.

Charitable contributions

Donations made to entities of the public sector, except companies, and to non-profit associations with certain purposes are deductible, provided that the receiver of the donation is duly qualified by the tax administration.

The deduction will be limited to 10% of the net income of the donor and only during the fiscal year in which it is granted (carryforward of the donation is disallowed). This means that if the donor does not obtain taxable income in the fiscal year in which the donation is made, no deduction will be available.

In addition, companies can deduct the expenses for the food they donate. This donation requires the food to no longer have commercial value and be apt for human consumption. The deduction cannot exceed 1.5% of the total sales that the donor makes.

Profit sharing

Entities with more than 20 employees, provided they obtain taxable income during the fiscal year, must distribute a percentage (5%, 8%, or 10% depending on the industry) of their profits (the basis is the tax profit of the fiscal year) among their employees. The amount of distribution for each employee depends on the effective working days during the year and annual remuneration.

Employee's retributions and health insurance premiums

Employee's retributions paid during a fiscal year may be deducted in such year, provided the payments are made by the employer before the term to file its annual income tax return expires. Likewise, health insurance premiums for employees, their spouses, and children are deductible.

Vehicle expenses deductions

Vehicle expenses may be deducted, provided the vehicles are essential to a company's business activities and are continually used for such purpose. There is a limitation on the tax deductibility of car expenses used for administrative of representation purposes, depending on the amount of income generated by the company. The number of company cars assigned to directors, managers, and representatives of a company may not exceed five under any circumstances.

Fines and penalties

Fines and penalties are not deductible for income tax purposes.

Taxes

Other taxes assessable on properties and activities generating taxable income are deductible for income tax purposes.

Net operating losses (NOLs)

Tax losses may be offset according to either of the following systems:

- Against net income generated within the following four fiscal years after the year in which the loss is incurred. Any losses that are not offset within such period may not be carried forward to any future year.
- Against 50% of the net income generated in the following fiscal years after the year in which the loss was generated. Under this system, there is no time limitation for carrying forward the losses.

After choosing one of the aforementioned systems, the taxpayer will not be able to change the system until the accumulated tax losses from prior fiscal years are exhausted. Losses will not be carried back to years prior to the year in which the loss is generated.

Payments to foreign affiliates

Payment of royalties to non-resident affiliates is permitted and deductible from gross income.

Group taxation

Group taxation is prohibited in Peru.

Transfer pricing

The rules related to market value and transfer pricing establish that, in any kind of transaction, the value assigned to the goods and services must be the market value for tax purposes. If such value differs from the market value, either by overvaluation or sub-valuation, the tax administration will proceed to adjust it for both the purchaser and the seller, even when one of them is a non-domiciled entity, provided that the value agreed to results in a lower tax than the one that would have applied if transfer pricing rules had been applied. The adjustment will be imputed in the taxable period in which the operations with related parties were performed.

In case of transactions between related parties or those entered with tax havens, the market value will be equivalent to the value agreed with independent parties in similar transactions, being mandatory to support such value with a transfer pricing study.

The law states that transfer pricing rules will not apply for VAT purposes.

Benefit test requirement

For inter-company services, the benefit test must be accomplished as of 2017. Such test is considered accomplished when the service rendered provides economic or commercial value to the recipient of the service, improving or maintaining its commercial position.

The providers cost structure must be proved. Low-value services must not exceed a margin of 5%.

Formal obligations

New formal obligations have been approved. Such obligations are the following:

- Informative tax return - Local report: Mandatory for taxpayers with profits higher than 2,300 tax units. They must report their transactions that generate taxable income and deductible costs/expenses. In force as of 2017.
- Informative tax return - Master report: Mandatory for companies that are part of a group with profits higher than 20,000 tax units. They must report the organisational structure of the group, description of their business, their transfer pricing policies for intangibles and financing, and their financial and tax status. In force as of 2018.
- Informative tax return - Country-by-country (CbC) report: Mandatory for companies within a multinational group. They must report the global distribution of profits, taxes paid, and their business activities for each entity in the group in any country. In force as of 2018.

Tax price adjustments

Adjustments to prices are only required whenever the price paid generates a higher tax deduction or a lower income tax in Peru; consequently, the existence of a tax prejudice will be required for an adjustment to be requested.

Adjustments are performed individually (on each operation) and not in an overall or global manner.

The adjustment of the value assigned by the tax administration or the taxpayer will be effective for both the transferor and the purchaser or transferee, without any constraints. In the case of non-domiciled parties, the bilateral adjustment will only proceed on transactions that could trigger taxable income in Peru and/or deductions for determining the income tax in Peru.

The adjustments are attributed to the corresponding tax period, according to the attribution rules depicted in the PITL (accrual regime for corporate taxpayers). However, when, under such rules, the adjustment cannot be attributed to a particular period, the adjustment will be allocated among all tax periods where income or expense has been allocated, in proportion.

Operations where no consideration has been paid are subject to transfer pricing rules. In this kind of transaction, the adjustment shall be allocated to the period or periods in which revenue would have accrued if consideration had been paid and the income was to be acknowledged by a domiciled taxpayer. On the other hand, if the income were to be recognised by a non-domiciled taxpayer, it would be attributed to the period or periods where the expenses accrued, even if it was a non-deductible expense, and the domiciled taxpayer would be responsible for payment.

Commodities

There is a specific methodology for determining prices in the sales of internationally traded commodities to tax havens or intermediaries.

In this methodology, it is required to determine the price of the specified operation based on the international price without taking into account the particularities of each case.

Thin capitalisation

In the case of loans entered into between related parties, the amount of interest to be deducted is limited to interest from indebtedness not exceeding three times the entities net equity as of the end of the previous fiscal year. In this connection, even though Peruvian corporate law has no requirements as to a minimum amount of share capital to incorporate a legal entity, it should be noted that having a small share capital may jeopardise the deductibility of interest payable for loans granted by related entities since, in case of newly incorporated entities, the share capital (equity) to be considered for calculating the thin capitalisation limit is the original one (this is, the one with which the entity was incorporated). In any case, this will only trigger a deductibility problem for the fiscal year in which the entity is incorporated, since for the following fiscal year the thin capitalisation rule will be calculated on the basis of the net equity at the end of the prior fiscal year (which, at that moment, may have already been increased through new contributions or capitalisations).

Controlled foreign companies (CFCs)

CFC rules are in force in order to avoid the deferral of income tax on passive income obtained from CFCs (defined as at least 50% of ownership, voting rights, or gains) by domiciled taxpayers, provided such companies are situated in tax havens or jurisdictions with nil or reduced tax rates.

Taxation of indirect disposal of shares in Peruvian entities

The indirect transfer of Peruvian shares of a foreign entity that, in turn, owns (directly or indirectly through other entities) shares of a Peruvian entity is levied with income tax, provided that both of the following conditions are met:

- During the 12 months prior to the transfer, the market value of the Peruvian entity's shares owned by the foreign entity equals 50% or more of the market value of the foreign entity's shares.
- During any given 12-month period, shares representing 10% or more of the foreign entity's share capital are transferred.

Tax credits and incentives

Foreign tax credit

Pursuant to the PITL, taxpayers may deduct the foreign income taxes paid due to their foreign-source income levied by the PITL, provided that it doesn't exceed the amount that results from applying the average rate of the taxpayer to the incomes obtained abroad, or the tax paid abroad. The amount that, for any circumstance, is not used in the corresponding fiscal year cannot be set off (or compensated) in others fiscal years or be refunded.

Also, the following will be taken into account:

- Tax credit will be granted for the entire tax paid abroad that falls upon income taxed by the PITL.
- Taxes paid abroad, whatever its denomination, shall bear the characteristics of income taxes.
- Tax credit will only be granted when the payment of the foreign income tax is supported by reliable documentation.

Special deduction regime for projects related to scientific research, technological development, and technological innovation

A special deduction regime has been established for projects related to scientific research, technological development, and technological innovation. According to this incentive, taxpayers investing in these projects will be able to deduct 175% or 150% of the expenses incurred in them.

In that sense, the taxpayer may have the following deductions:

- 175% of the expenses incurred if the project is executed directly by the taxpayer or through centres of scientific research, technological development, and technological innovation domiciled in Peru.
- 150% of the expenses incurred if the project is executed by non-domiciled centres of scientific research, technological development, and technological innovation.

There are some requirements that must be fulfilled in order to access the benefit.

Early recovery of VAT

Companies in a preoperative stage with large projects in process may apply for early recovery of VAT prior to commencing operations. An investment agreement with the government (the Ministry of its sector) is required.

Stability agreement

Investors may enter into stability agreements with the government, either under the general regime or specific regimes (i.e. mining and petroleum).

Under the general regime, investors may enter into Juridical Stability Agreements that guarantee the following advantages for a ten-year period:

- Stability of the income tax regime in force at the time the agreement is entered into with respect to dividends and profit distribution.
- Stability of the Peruvian government monetary policy, according to which there is a complete absence of exchange controls, foreign currency can be freely acquired or sold at whatever exchange rate the market offers, and funds can be remitted abroad without any previous authorisation.
- Right of non-discrimination between foreign and local investors.

Under the mining regime, local mining companies may enter into stability agreements of guarantees and investment promotion measures that guarantee the following for 10, 12, or 15 years:

- Stability of the overall tax regime.
- Stability of the overall administrative regime.
- Free disposition of funds (foreign currency) arising from export operations.
- No exchange rate discrimination.
- Free trade of products.
- Stability of special regimes for tax refunds, temporary importation, etc.

Oil and gas companies may enter into stability agreements that guarantee the following for the term of the contract:

- Stability of the overall tax regime.
- Free disposition of funds (foreign currency) arising from export operations.
- Free convertibility of its funds.
- Free trade of products.

Investment promotion in the Amazon

Certain tax benefits with regard to VAT and income tax have been established for taxpayers located in the area designated by the law as the 'Amazon' and that are engaged in the following activities:

- Agriculture and livestock enterprises.
- Aquaculture.
- Fishing.
- Tourism.
- Manufacturing activities linked to the processing, transformation, and commercialisation of primary products originating in the activities listed above and in forest transformation, provided these products are produced in the area.

Special zones - Centres of Export, Transformation, Industry, Commercialisation, and Services (CETICOS)

CETICOS are geographical areas duly delimited with customs primary zone status and special treatment, destined to generate development poles through industrial, *maquila*, assembling, or storage activities. CETICOS are located in Paita, Ilo, and Matarani cities.

Agribusiness and agro-exporting activities may be performed within a CETICOS. Agribusiness activity is primarily the transformation of agro-farming products produced in the country. Such transformation must be carried out at CETICOS.

Companies engaged in industrial, *maquila*, or assembling activities, established or set up in the CETICOS, until 31 December 2022, are exempt from income tax, VAT, excise tax, municipal promotion tax, as well as from any other taxes, fees, contributions levied by the Central Administration, and even taxes that require express exempt regulation.

Withholding taxes

Domestic corporations are required to withhold income tax with respect to income paid to non-resident entities at the following rates:

Type of payment	WHT (%)
Dividends or profit distributions	5
Interest on non-related party loans, provided certain requirements are fulfilled	4.99
Interest on related party loans	30
Interest paid by Peruvian financial entities or banks to foreign beneficiaries for credit lines used in Peru	4.99
Royalties	30
Digital services	30
Technical assistance	15
Lease of vessels or aircraft	10
Other income	30
Sale of securities within Peru (Lima Stock Exchange)	0 or 5
Sale of securities outside Peru	30

Note that resident taxpayers may not deduct the WHT of a third party, except in the case of loans provided by non-resident creditors, to the extent that the debtor has contractually assumed the obligation of bearing the WHT cost.

If the retribution for technical assistance exceeds 140 tax units, a report issued by an audit firm will be required, in which is stated that the technical assistance has been effectively rendered in order to apply the 15% WHT rate; otherwise, a WHT rate of 30% will apply.

Capital gains derived from the sale of stocks issued by a Peruvian company through the Lima Stock Exchange are taxed at a 0% or 5% rate. *See Capital gains in the Income determination section for a description of an exemption granted as of January 2016 until December 2019*.

In the case of the services mentioned below that entail the execution of activities both in Peru and abroad, non-resident entities are subject to a 30% WHT (except for the lease of vessels and aircraft, which are subject to a 10% WHT) on deemed Peru-source income determined by applying the following percentages to gross income:

Type of payment	Deemed Peruvian-source income (%)
Insurance	7
Lease of vessels	80
Lease of aircraft	60
Air transport	1
Maritime transport	2
Telecom services	5
International news services	10
Distribution of movies, records, and similar products	20
Supply of containers	15
Demurrage of containers	80
Rights for broadcasting live foreign TV shows within Peru	20

Tax treaties

Peru has entered into treaties with Brazil, Canada, Chile, Korea, Mexico, Portugal, and Switzerland regarding double taxation on income tax under the Organisation for Economic Co-operation and Development (OECD) Model. Double taxation treaties (DTTs) with Spain and Thailand are not in force, as ratification by the Peruvian Congress is still pending. In addition, Peru, as a member of the Andean Community, which also includes Bolivia, Colombia, and Ecuador, is subject to a double-taxation standard (based in source income and not on the OECD Model).

Please see the chart below for the reduced WHT rates that apply under DTTs in force.

	WHT (%)				
Recipient	**Dividends**	**Interest**	**Royalties**	**Technical assistance**	**Digital services**
Non-treaty	5	4.99/30	30	15	30
Treaty:					
Brazil	10/15 (1)	15	15	15	15
Canada	10/15 (1)	15	15	N/A	N/A
Chile	10/15 (1)	15	15	N/A	N/A
Korea	10	15	15	10	N/A
Mexico	10/15 (1)	15	15	N/A	N/A
Portugal	10/15 (1)	10/15 (2)	15	10 (3)	N/A
Switzerland	10/15 (1)	10/15 (2)	15	10	10

Notes

1. The lower rate applies in case the beneficial owner is a company that controls at least 20% (Brazil), 10% (Canada, Portugal, and Switzerland), or 25% (Chile and Mexico) of the voting power in the company paying the dividends.
2. The lower rate applies to loans from banks (Portugal and Switzerland) and sale on credit of industrial, commercial, and scientific equipment (Switzerland).
3. The treaty rate applies to technical assistance in connection with copyrights, goods, or rights that generate royalties.

Tax administration

Taxable period

According to law, the fiscal year is the calendar year.

Tax returns

The filing deadline for the income tax return is generally the first week of April. The system is one of self-assessment, but the tax return filed with the tax authorities is subject to review.

Payment of tax

Income tax payments are due in 12 monthly instalments. The due date for the final income tax payment for a year is generally the first week of April.

The estimated payment calculation system has been established, and the amount of the estimated payment will be the greater of the result of multiplying the net revenue of the month by (i) 1.5% or (ii) the applicable coefficient. The coefficient is calculated by dividing the income generated in the previous fiscal year by the income tax that was determined.

Tax authority

The National Superintendency of Customs and Tax Administration (SUNAT) is responsible for administering all of the aforementioned taxes (income tax, VAT, etc.). Companies resident in Peru must be registered with the tax administration (Taxpayer's Registry).

The Tax Court is a specialised administrative tribunal, which depends on the Ministry of Economy and Finance, but is otherwise autonomous regarding its specific functions. Its mission is to rule over tax controversies that may arise between the tax administration and the taxpayers, by interpreting and applying the corresponding tax legislation, issuing mandatory observance jurisprudence, and establishing homogenous criteria that continue to support the progress of the tax system.

Finally, taxpayers are entitled to file an appeal before the Judiciary (Court) against resolutions issued by the Tax Court, but payment of the tax debt must be performed or guarantees must be provided.

Tax audit process

The tax audit performed by the SUNAT includes all the aspects of the tax and period being subject to review. The tax audit is formal, and the process is fully regulated.

The SUNAT is also able to conduct partial audits of limited scope.

Statute of limitations

Pursuant to the Peruvian tax legislation, the SUNAT is entitled to audit taxpayers in order to assess their tax liabilities, request the payment of any due tax, and assess any applicable penalty for up to (i) four years from 1 January of the year following the date the corresponding tax return had to be filed, (ii) six years to the extent that the corresponding tax return was not filed, and (iii) ten years when the tax withheld by the taxpayer has not been paid to the SUNAT.

Topics of focus for tax authorities

The SUNAT mainly focuses on the following topics:

- Deduction of expenses, including cost share expenses.
- Market value of transactions between related parties.
- Peruvian source income WHT.
- Income tax advance payments.

General Anti-avoidance Rule (GAAR)

The GAAR (provision XVI of the Tax Code) allows the SUNAT to consider the acts, situations, and economic activities performed, established, or desired by the taxpayers in order to determine the real nature of the taxable event. To this extent, provision XVI establishes that when tax evasion is detected, the SUNAT is entitled to collect the tax debt and fines; reduce the amount of balances due, NOLs, or tax credits; or eliminate any tax advantage, without prejudice, to recover any amount that was wrongfully reimbursed.

While interpreting the tax legislation, substance should be selected over a legal form. The fact that a taxpayer's transactions are legal does not imply that they are acceptable with reference to the underlying meaning embedded in the tax rules. Thus, where there is no business purpose except to obtain a tax benefit, the SUNAT should challenge such transactions as artificial and apply the corresponding tax rules.

However, the faculty of the SUNAT to apply provision XVI of the Tax Code has been suspended, with the exception of the first and last paragraphs of said provision.

Other issues

Foreign Account Tax Compliance Act (FATCA)

A Model 1 Intergovernmental agreement (IGA) is treated as 'in effect' by the United States (US) Treasury as of 1 May 2014. The US and Peruvian governments have reached an agreement in substance, and Peru has consented to disclose this status. In accordance with this status, the text of such IGA has not been released, and financial institutions in Peru are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

Peru as a full member of the OECD

Victor Shinguiyama, the national Superintendent of the Peruvian tributary administration, pointed out that Peru will initiate the exchange of financial and tributary information with more than 100 countries from 2020.

Philippines

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Significant developments

Tax Reform for Acceleration and Inclusion (TRAIN)

On 19 December 2017, the President signed into law Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) law. The law amends several provisions of the National Internal Revenue Code of 1997 on individual income taxation, passive income taxation for corporations, estate tax, donor's tax, value-added tax (VAT), excise tax, and documentary stamp tax, among others.

The TRAIN law took effect on 1 January 2018, following its complete publication in the Official Gazette on 27 December 2017. The affected sections of this summary were updated accordingly.

Reinstatement of Notice of Informal Conference in the tax audit process

Revenue Regulation No. 7-2018 reinstated the issuance of a Notice of Informal Conference during tax audits.

Under this Revenue Regulation, the taxpayer shall be informed, in writing, by the concerned tax office of the discrepancy in the taxpayer's payment of one's internal revenue taxes for the purpose of an Informal Conference to afford the taxpayer with an opportunity to present one's side.

The Informal Conference must be held within 30 days from receipt of the notice. If it is found that the taxpayer is still liable for deficiency taxes, and the taxpayer is not amenable, the tax office shall proceed to issue a deficiency tax assessment.

Reversion of authority to accredit and register customs brokers and importers to the Bureau of Customs (BOC)

This Order was issued to revert the authority to accredit and register customs brokers and importers to the Bureau of Customs (BOC) for purposes of simplifying the process. The Importer's Clearance Certificates (ICC) and Broker's Clearance Certificates (BCC) are no longer pre-requisites in securing accreditation from the BOC since the Bureau of Internal Revenue (BIR) will no longer accept ICC and BCC applications effective 1 March 2018.

Pending legislation

Please note this information is current as of 1 June 2018. Any changes in current legislation will be announced after 1 June 2018. Please visit the Worldwide Tax

Summaries website at *www.pwc.com/taxsummaries* to see any significant corporate tax developments that occurred after 1 June 2018.

Taxes on corporate income

A domestic corporation is subject to tax on its worldwide income. On the other hand, a foreign corporation is subject to tax only on income from Philippine sources (*see the descriptions of Resident foreign corporations and Non-resident foreign corporations below*).

Domestic corporations

The following corporate income tax (CIT) rates apply to domestic corporations:

Income	CIT rate (%)
In general, on net income from all sources.	30
Minimum corporate income tax (MCIT) on gross income, beginning in the fourth taxable year following the year of commencement of business operations. MCIT is imposed where the CIT at 30% is less than 2% MCIT on gross income.	2
Proprietary educational institutions and non-profit hospitals, on net income if gross income from unrelated trade, business, and other activities does not exceed 50% of the total gross income from all sources.	10
Non-stock, non-profit educational institutions (all assets and revenues used actually, directly, and exclusively for educational purposes) and other non-profit organisations.	Exempt

Certain passive income from domestic sources is subject to final tax rather than ordinary income tax (*see the Income determination section*).

Improperly accumulated earnings tax

An improperly accumulated earnings tax of 10% is imposed on improperly accumulated income. The tax applies to every corporation formed or used for the purpose of avoiding income tax with respect to its shareholders, or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed. Exceptions are made for publicly held corporations, banks and non-bank financial intermediaries, and insurance companies.

Resident foreign corporations

Resident foreign corporations (i.e. foreign corporations engaged in trade or business in the Philippines through a branch office) are taxed in the same manner as domestic corporations (except on capital gains on the sale of buildings not used in business, which are taxable as ordinary income), but only on Philippine-source income.

International carriers are subject to an income tax of 2.5% on their gross Philippine billings unless a lower rate is available under an existing tax treaty. Exemption from this tax is also available under international agreements to which the Philippines is a signatory or on the basis of reciprocity in cases where the home country of the international carrier grants income tax exemption to Philippine carriers.

Income of offshore banking units (OBUs) and foreign currency deposit units (FCDUs) of depository banks from foreign currency transactions with non-residents, other OBUs, or FCDUs and local commercial banks (including branches of foreign banks) authorised by the *Bangko Sentral ng Pilipinas* (BSP; central bank) to transact business with OBUs and FCDUs are exempt from all taxes except net income specified by the Secretary of Finance upon recommendation of the Monetary Board. Interest income from foreign currency loans granted to residents other than OBUs or local commercial banks shall be subject to a 10% final income tax.

Regional or area headquarters of multinational corporations that do not earn or derive income from the Philippines, and that act as supervisory, communications, and coordinating centres for their affiliates, subsidiaries, or branches in the Asia-Pacific region and other foreign markets are not subject to CIT.

Regional operating headquarters (ROHQ) pay a tax of 10% on their taxable income. An ROHQ is a branch established in the Philippines by a multinational company that is engaged in any of the following services: general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistic services, research and development services and product development, technical support and maintenance, data processing and communication, or business development.

Non-resident foreign corporations

In general, non-resident foreign corporations are taxed on gross income received from sources within the Philippines at 30%, except for reinsurance premiums, which are exempt. Interest on foreign loans is taxed at 20%. Dividends from domestic corporations, however, are subject to a final withholding tax (WHT) at the rate of 15% if the country in which the corporation is domiciled does not impose income tax on such dividends or allows a tax deemed paid credit of 15%.

Lower rates or exemption on the above income may be available under an applicable tax treaty.

Rentals and charter fees payable to non-resident owners of vessels chartered by Philippine nationals are subject to a final tax of 4.5%. Rentals, charters, and other fees derived by non-resident lessors of aircraft, machinery, and other equipment are subject to a final tax of 7.5%.

Local income taxes

See Local government taxes in the Other taxes section for a description of local taxes on sales or receipts.

Corporate residence

A domestic corporation is a corporation that is created or organised under Philippine laws. A foreign corporation that is duly licensed to engage in trade or business within the Philippines is referred to as a 'resident foreign corporation'.

Permanent establishment (PE)

The business profits provision in most Philippine treaties permits the Philippines to tax only those profits attributable to a PE. While Philippine treaties adopt the United Nations (UN) Model Convention, Organisation for Economic Co-operation and Development (OECD) commentaries have often been cited by tax authorities to support their interpretation of treaty provisions. The main implication is that most

Philippine treaties contain a rule deeming a PE to arise when services are performed in the Philippines for a specified period of time.

Other taxes

Value-added tax (VAT)

VAT applies to practically all sales of services and imports, as well as to the sale, barter, exchange, or lease of goods or properties (tangible or intangible). The tax is equivalent to a uniform rate of 12%, based on the gross selling price of goods or properties sold, or gross receipts from the sale of services. On importation of goods, the basis of the tax is the value used by the Bureau of Customs (BOC) in determining tariff and customs duties plus customs duties, excise taxes, if any, and other charges. Where the valuation used by the BOC is by volume or quantity, the VAT basis is the landed cost plus excise taxes, if any.

Certain transactions are zero-rated or exempt from VAT. Export sales by VAT-registered persons are zero-rated.

Certain sales of services exempt from VAT, including services provided by financial intermediaries, are subject to percentage taxes based on gross sales, receipts, or income. A 3% percentage tax also applies to persons who are not VAT-registered because their annual sales or receipts do not exceed the VAT threshold of 3 million Philippine pesos (PHP), as increased by the TRAIN law.

Some of the VAT rules that were amended under the TRAIN are as follows:

- VAT exemption for lease of a residential unit increased from PHP 12,800 to PHP 15,000 and is no longer subject to automatic adjustment.
- Beginning in 2021, the threshold of the VAT-exempt sale of a house and lot and other residential dwellings will be reduced to PHP 2 million and sale of a residential lot will be subject to VAT.
- Upon establishment of an enhanced VAT refund system, 12% VAT will apply on:
  - Sales of raw materials or packaging materials to a non-resident buyer for delivery to resident local export-oriented enterprises.
  - Sales of raw materials or packaging materials to export-oriented enterprises whose export sales exceed 70% of total annual production.
  - Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.
  - Processing, manufacturing, or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.
  - Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed 70% of total annual production.
- Additional VAT exemptions:
  - Sale or lease of goods and services to senior citizens and persons with disabilities as provided under relevant laws.
  - Sale of drugs and medicines for diabetes, high cholesterol, and hypertension starting in 2019.
  - Sale of gold to the BSP (previously VAT zero-rated).

- Transfers of property pursuant to Section 40(C)(2) of the Tax Code.
- Association dues, membership fees, and other assessments and charges collected by condominium corporations.

Customs duties

Applicable customs duties are determined based on the tariff classification of the import product. As with the rest of the Association of South East Asian Nations (ASEAN) countries, tariff classification in the Philippines is based on the ASEAN Harmonised Tariff Nomenclature (AHTN), which is patterned after the Harmonised Commodity Classification and Coding System (HS) Convention and its 2002 revisions. The latest edition, HS Code 2012, entered into force on 1 January 2012. With HS Code 2012, the overall AHTN tariff lines were reduced by 247, or an approximately 4% cut in the number of AHTN tariff lines in 2010. Although 267 classification rulings were issued to address commonly raised valuation and tariff classification, it is still advisable that tariff classification rulings from the Philippine Tariff Commission be secured prior to importation into the Philippines in case of uncertainty as to the correct classification of a product. Note that while the tariff classification rulings issued by the Philippine Tariff Commission do not prevent the BOC from conducting its own verification, these rulings carry persuasive reference in support of the classification and duty rate used by an importer.

The Philippines adopts the World Trade Organization (WTO) Valuation Agreement, where the declared invoice price is used as the basis for determining customs duties.

As a protective measure, the Philippines retains higher tariff rates (20% to 50%) on sensitive agricultural products, such as grains, livestock and meat products, sugar, certain vegetables, and coffee. A few agricultural commodities are subject to minimum access volumes, but these represent less than 1% of all tariff lines.

In view of the existing free trade agreements in the region, such as the ASEAN Free Trade Area (AFTA), the ASEAN-China Free Trade Area (ACFTA), the ASEAN-Korea Free Trade Area (AKFTA), the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), the ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEPA), the ASEAN-INDIA Free Trade Area (AIFTA), the European Free Trade Association (EFTA), and the Philippine-Japan Economic Partnership Agreement (PJEPA), the Philippines has taken steps to progressively eliminate tariffs. Tariff reductions for the Philippines range from 10% to 35% for most products included in the Normal Track list.

Excise taxes

Excise taxes apply to services and to goods manufactured or produced in the Philippines for domestic sales, consumption, or for any other disposition and to things imported.

Below is the new excise tax schedule under the TRAIN law:

Manufactured oils and other fuels

Description	Units	2018 (PHP)	2019 (PHP)	2020 (PHP)
Lubricating oils and greases	Per litre	8.00	9.00	10.00
Processed gas	Per litre	8.00	9.00	10.00
Waxes and petrolatum	Per kilo	8.00	9.00	10.00
Denatured alcohol	Per litre	8.00	9.00	10.00

Description	Units	2018 (PHP)	2019 (PHP)	2020 (PHP)
Naphtha	Per litre	7.00	9.00	10.00
Unleaded premium gasoline	Per litre	7.00	9.00	10.00
Aviation turbo jet fuel	Per litre	4.00	4.00	4.00
Kerosene	Per litre	3.00	4.00	5.00
Diesel fuel oil	Per litre	2.50	4.50	6.00
Liquefied petroleum gas	Per kilo	1.00	2.00	3.00
Asphalts	Per kilo	8.00	9.00	10.00
Bunker fuel oil	Per litre	2.50	4.50	6.00
Petroleum coke	Per ton	2.50	4.50	6.00

Automobiles

Automobile (PHP)		
Over	**Up to**	**Excise tax rate (%)**
0	600,000	4
600,000	1,000,000	10
1,000,000	4,000,000	20
4,000,000		50

Hybrid vehicles shall be subject to 50% of the applicable excise tax rates.

Purely electric vehicles and pick-ups shall be exempt from excise tax.

Sweetened beverages

Description	Excise tax (PHP/litre)
Using purely caloric sweetener, purely non-caloric sweetener, or mixture of both	6.00
Using purely high-fructose corn syrup	12.00
Using purely coconut sap sugar / purely steviol glycosides	Exempt

Cigars and cigarettes

Effective date	Excise tax (PHP/pack)
1 January 2018	32.50
1 July 2018	35.00
1 January 2020	37.50
1 January 2022	40.00

Cosmetic procedures

5% excise tax is imposed on gross receipts from invasive cosmetic procedures and surgeries directly and solely towards altering or enhancing the patient's appearance for aesthetic purposes. However, this will not cover procedures necessary to ameliorate a deformity arising from, or directly related to, a congenital or developmental defect or abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease, tumour, virus or infection.

Documentary stamp tax (DST)

DST is payable at varying rates on various documents and transactions. The following table contains selected examples as revised under the TRAIN law:

Taxable document/transaction (tax base)	DST rate
Original issue of shares	PHP 2.00 for every PHP 200 of the par value or actual consideration for no-par shares
Sale, barter, or exchange of shares of stock listed and traded through the local stock exchange	Exempt
Other sales agreement, agreement to sell, memoranda of sales, delivery or transfer of shares or certificates of stock	PHP 1.50 for every PHP 200 of the par value or 50% of the DST paid upon original issuance of no-par shares
Certificate of profits, interest in property or accumulations	PHP 1.00 for every PHP 200 of the face value
Non-exempt debt instruments	PHP 1.50 for every PHP 200 of the issue price.
Bank check, draft, certificate of deposit not bearing interest, other instruments	PHP 3.00 for each instrument
Deed of sale, conveyance of real property	PHP 15 for each PHP 1,000 of consideration/ value or fractional part thereof
Bills of exchange or drafts	PHP 0.60 on each PHP 200 of the issue price
Acceptance of bills of exchange and others	PHP 0.60 on each PHP 200 of the face value
Foreign bills of exchange and letters of credit	PHP 0.60 on each PHP 200 of the face value
Policies of annuities or other instruments	PHP 1.00 on each PHP 200 of premium or instalment payment
Pre-need plans	PHP 0.40 on each PHP 200 of the premium or contribution collected
Certificates	PHP 30.00 per certificate
Warehouse receipts	PHP 30.00 per warehouse receipt (valued at PHP 200 or more)
Jai-alai, horse race tickets, lotto, or other authorised number games	PHP 0.20 on every PHP 1.00 cost of the ticket
Bills of lading or receipts	Exempt if bill/receipts not exceeding PHP 100; PHP 2.00 for bill/receipts not exceeding PHP 1,000; or PHP 20.00 for bill/receipts exceeding PHP 1,000
Proxies	PHP 30.00 on each proxy of voting
Powers of attorney	PHP 10.00 on each power of attorney; except acts connected with claims due to/from the government
Leases and other hiring agreements	PHP 6.00 for the first PHP 2,000 + PHP 2.00 for every PHP 1,000 thereafter
Mortgages, pledges, and deeds of trust	PHP 40.00 for the first PHP 5,000 + PHP 20.00 on every PHP 5,000 thereafter

DST on life insurance policies

Life insurance policy (PHP)	DST (PHP)
Does not exceed 100,000	Exempt
Exceeds 100,000 but does not exceed 300,000	20.00
Exceeds 300,000 but does not exceed 500,000	50.00
Exceeds 500,000 but does not exceed 750,000	100.00
Exceeds 750,000 but does not exceed 1,000,000	150.00
Exceeds 1,000,000	200.00

DST on charter party and similar instruments

Registered tonnage	DST rate
Does not exceed 1,000 tons	PHP 1,000 + an additional tax of PHP 100 for each month or fraction of a month in excess of 6 months

Registered tonnage	DST rate
Exceeds 1,000 tons and does not exceed 10,000 tons	PHP 2,000 + an additional tax of PHP 200 for each month or fraction of a month in excess of 6 months
Exceeds 10,000 tons	PHP 3,000 + an additional tax of PHP 300 for each month or fraction of a month in excess of 6 months

Capital gains tax

Capital gains arise from the sale or exchange of 'capital assets'. Capital assets are property held by the taxpayer (whether or not connected with its trade), other than the following:

- Inventories or property held primarily for sale to customers in the ordinary course of business.
- Real property or depreciable property used in trade or business.
- Property of a kind that would be included in the inventory of the taxpayer if on hand at the close of the taxable year.

Capital losses are deductible only to the extent of capital gains.

There are no holding period requirements for capital assets of corporations.

A 6% final tax is imposed on the higher of the gross selling price or fair market value upon the sale, exchange, or disposition of land or buildings not actually used in the business of a corporation. The tax is withheld by the buyer at the time of sale.

Net capital gains derived from the sale, exchange, transfer, or similar transactions of shares of stock not traded through a local stock exchange are now taxed at a flat 15% rate under the TRAIN law. This new rate only applies to domestic corporations. For foreign corporations, the old rates are applicable (i.e. 5% on the first PHP 100,000 of gains, and 10% on gains in excess of PHP 100,000). Sales of shares of stock listed and traded on a local stock exchange, other than the sale by a dealer in securities, are subject to a stock transaction tax of 0.5% based on the gross selling price, provided the listed corporation observes a minimum public ownership of at least 10% based on the company's issued and outstanding shares, exclusive of any treasury shares or such percentage as may be prescribed by the Securities and Exchange Commission (SEC) or Philippine Stock Exchange (PSE), whichever is higher; otherwise, the 5%/10% tax shall apply.

Capital gains from the sale of bonds, debentures, or other certificates of indebtedness with a maturity of more than five years are exempt from tax.

A tax is levied on every sale, barter, exchange, or other disposition through an initial public offering (IPO) of shares of stock in closely held corporations. A 'closely held corporation' is any corporation of which at least 50% in value of the total outstanding capital stock, or at least 50% of the total combined voting power of all classes of stock entitled to vote, is owned directly or indirectly by, or for, not more than 20 individuals. The tax rates provided hereunder are based on the proportion of the gross selling price, or gross value in money, of the shares of stock sold, bartered, exchanged, or otherwise disposed of to the total outstanding shares of stock after listing on the local stock exchange.

Proportion of sale to total shares	Tax rate (%)
25% or less	4
Over 25% but not over 33.33%	2
Over 33.33%	1

Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

Social security contributions

Corporations doing business in the Philippines must be registered with social institutions, such as the Social Security System (SSS), Home Development Mutual Fund (HDMF), and Philippine Health Corporation (PHIC), upon employment of any employee and prior to the due date of the remittance of any social contributions.

Employee contributions for social security are deducted from the employee's salary payments. For 2018, the maximum monthly deductions remain at PHP 581.30 for SSS, PHP 100 for HDMF, and PHP 550.00 for PHIC.

Employers are also required to make contributions. Employers' maximum contribution for each employee is PHP 1,178.70 per month for SSS. Employer contributions for HDMF and PHIC are generally of the same amount as the employee contributions.

Fringe benefits tax

Under the TRAIN law, a final tax of 35%, payable by the employer, is imposed on the grossed-up monetary value of fringe benefits (e.g. housing, expense accounts, vehicles of any kind, household personnel, interest on loans at lower than market rates [the current benchmark rate is 12%], membership dues for social and athletic clubs, foreign travel expenses, holiday and vacation expenses, educational assistance, insurance) furnished or granted to managerial or supervisory personnel by the employer. An exception is for fringe benefits required by the nature of or necessary to the trade, business, or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

The following fringe benefits are not subject to the tax:

- Those authorised and exempted from tax under special laws.
- Contributions of the employer for the benefit of the employee to retirement, insurance, and hospitalisation benefit plans.
- Those granted to rank-and-file employees (however, the employees may be subject to WHT on compensation).
- Those of relatively small value or *de minimis* benefits.

The fringe benefits tax is payable on a calendar quarter basis and is an additional deductible expense for the employer. Fringe benefits already subjected to fringe benefits tax will no longer form part of the employee's taxable income.

The grossed-up monetary value of the fringe benefit is generally computed by dividing the actual monetary value of the benefit by 65%.

Donor's taxes

Donor's tax is a tax on a donation or gift, and is imposed on the gratuitous transfer of property. It shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Under the TRAIN law, the donor's tax rate is fixed at 6% based on total gifts in excess of PHP 250,000 made during the calendar year whether the donee is a stranger or not.

Local government taxes

Local government units impose local business taxes, which are generally based on the gross sales or gross receipts of the prior year, and real property taxes, which are levied annually on the basis of a fixed proportion of the value of the real property (taxable value). The local business tax rate varies depending on the location of the business, but generally shall not exceed 3%. Real property located in a province may be subject to real property tax of not more than 1% of its taxable value, while real property in a city (or municipality in Metro Manila) may be subject to real property tax of not more 2% of its taxable value.

Branch income

The income tax rate on branch profits is the same as on corporate profits. In general, profits remitted abroad by a branch office are subject to a 15% tax rate, based on the total profits applied or earmarked for remittance, without any deduction for the tax component thereof. A lower rate may apply under certain tax treaties. Profits from qualified activities remitted by a branch registered with the Philippine Economic Zone Authority (PEZA) are tax exempt.

Income determination

Inventory valuation

Inventories are generally stated at cost or at the lower of cost or market. Last in first out (LIFO) is not allowed for tax purposes. Generally, the inventory valuation method for tax purposes must conform to that used for financial reporting purposes.

Capital gains

Capital gains are not generally subject to CIT, but may be subject to capital gains tax. *See Capital gains tax in the Other taxes section for more information.*

Dividend income

Dividends received by a domestic or resident foreign corporation from another domestic corporation are not subject to tax. These dividends are excluded from the taxable income of the recipient.

Dividends received by a non-resident foreign corporation from a domestic corporation are subject to a general final WHT at the rate of 30%. A lower rate of 15% applies if the country in which the corporation is domiciled either does not impose income tax on such dividends or allows a tax deemed paid credit of 15%. Treaty rates ranging from 10% to 25% may also apply if the recipient is a resident of a country with which the Philippines has a tax treaty (*see the Withholding taxes section*).

Stock dividends

A Philippine corporation can distribute stock dividends tax-free, proportionately to all shareholders.

Interest income

Interest on bank savings, time deposits, deposit substitutes, and money market placements received by domestic or resident foreign corporations from a domestic corporation are subject to a final tax of 20%, while interest income derived from FCDU deposits is subject to a final tax of 15% under the TRAIN law. Such income is excluded from gross income reportable in CIT returns.

Interest income of OBUs and FCDUs from foreign currency loans granted to residents other than OBUs or local commercial banks shall be subject to 10% tax.

Royalty income

Royalties received by domestic or resident foreign corporations from a domestic corporation are subject to a final tax of 20%.

Other significant items

Other items exempt from CIT include the following:

- Proceeds of life insurance policies.
- Return of policy premium.
- Gifts, bequests, and devises.
- Interest on certain government securities.
- Income exempt under a treaty.
- Gains from sale, exchange, or retirement of bonds.
- Gains from redemption of shares of stock in mutual fund companies.

Foreign income

A Philippine (domestic) corporation is taxed on its worldwide income. A domestic corporation is taxed on income from foreign sources when earned or received, depending on the accounting method used by the taxpayer.

Income earned through a foreign subsidiary is taxed only when paid to a Philippine resident shareholder as a dividend. Meanwhile, income earned through a foreign branch is taxed as it accrues. The losses incurred by the foreign branch are deductible against other income earned by the Philippine corporation.

Double taxation is generally relieved through a credit for foreign taxes. However, a taxpayer can take a deduction for foreign taxes instead, if that leads to a more favourable outcome.

Deductions

Corporate taxpayers can avail themselves of the optional standard deduction computed at 40% of gross income. The optional standard deduction is *in lieu* of the itemised operating expenses.

Depreciation and depletion

Depreciation is generally computed on a straight-line basis, although any reasonable method may be elected if the aggregate amount of depreciation, plus salvage value at the end of the useful life of the property, will equal the cost of the property. Gain on the sale of depreciated property is taxable as ordinary income. Generally, tax depreciation should conform to book depreciation, unless the former includes incentives.

Properties used in petroleum operations may be depreciated over a period of ten years using the straight-line or declining-balance method, at the option of the service contractor. Properties used in mining operations with expected life of more than ten years may be depreciated over any number of years between five years and their expected life.

A cost depletion allowance is available as follows:

- For oil and gas wells, depletion is based on actual reduction in flow and production ascertained, not by flush flow, but by the settled production or regular flow.
- For mines, depletion is allowable up to an amount not to exceed the market value, as used for purposes of imposing the mining *ad valorem* taxes, of the products mined and sold during the year.

Goodwill

Goodwill is not deductible for tax purposes.

Start-up expenses

Start-up expenses are deductible when incurred.

Interest expenses

The allowable deduction for interest expense is reduced by an amount equal to 33% of interest income that is subject to final tax.

Bad debts

Bad debts are deductible expenses when written-off, subject to certain requirements.

Charitable contributions

The deduction for charitable contributions ordinarily may not exceed 5% of taxable income. However, contributions to certain institutions are 100% deductible, subject to certain conditions.

Entertainment expenses

Entertainment, amusement, and recreation expenses should not exceed 0.5% of net sales for taxpayers engaged in the sale of goods or properties, or 1% of net revenue for taxpayers engaged in the sale of services, including professionals and lessors of properties.

Special deductions

Special deductions are allowed for certain businesses (e.g. insurance, mining, petroleum, and real estate investment trust).

Fines and penalties

Fines and penalties are deductible as necessary and ordinary business expenses. Surcharge and compromise penalty imposed for non-payment or late payment of taxes is not deductible for tax purposes.

Taxes

Corporate taxpayers can claim a deduction for all taxes paid or accrued within the taxable year in connection with their trade or business, except for the following:

- Philippine CIT.
- Income taxes imposed by authority of any foreign country, unless the taxpayer elects to take a deduction *in lieu* of a foreign tax credit.
- Donor's taxes.
- Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

In the case of a foreign corporation, deductions for taxes are allowed only if they are connected with income from sources within the Philippines.

Net operating losses

A net operating loss for any taxable year immediately preceding the current taxable year, which had not been previously offset as a deduction from gross income, may be carried over as a deduction from gross income for the next three consecutive taxable years immediately following the year of this loss (except losses during the period when the taxpayer was tax-exempt), provided there has been no substantial change in the ownership of the business or enterprise.

For mines, other than oil and gas wells, a net operating loss calculated without the benefit of incentives provided for under Executive Order (EO) No. 226, or the Omnibus Investments Code of 1987, as amended, incurred in any of the first ten years of operation may be carried over as a deduction from taxable income for the next five years immediately following the year of such loss.

Loss carrybacks are not allowed.

Payments to foreign affiliates

A Philippine corporation can claim a deduction for royalties, management service fees, and interest charges paid to foreign affiliates, provided such amounts are equal to what it would pay an unrelated entity, and the appropriate WHTs are withheld and remitted.

The registration of licensing and management agreements, now known as technology transfer arrangements (TTAs), has been liberalised. Only TTAs not conforming to certain provisions of the Intellectual Property Code require approval by, and registration with, the Documentation, Information, and Technology Transfer Bureau of the Intellectual Property Office (formerly Bureau of Patents, Trademarks, and Technology Transfer) to render the contracts enforceable.

Head office expense allocations

A resident foreign corporation is allowed to claim allocated head office expenses as a deduction, subject to certain requirements.

Group taxation

There is no group taxation in the Philippines.

Transfer pricing

Transfer Pricing Regulations govern the cross-border and domestic transactions between associated enterprises. The Regulations state that the 'arm's-length principle' shall be adopted in determining the transfer price in related-party transactions. The application of the arm's-length principle may follow a 'three-step' approach prescribed by the BIR under the Regulations, to wit: (i) the conduct of a comparability analysis, (ii) the identification of the tested party and the appropriate transfer pricing method, and (iii) the determination of the arm's-length results.

Taxpayers must keep adequate documentation supporting their transfer prices so that they can defend their transfer pricing analysis, mitigate the risk of transfer pricing adjustments arising from tax examinations, and support their applications for Mutual Agreement Procedure (MAP). There is also a 'contemporaneous' requirement that transfer pricing documents must exist or be brought into existence at the time the taxpayers develop or implement any arrangements that may raise transfer pricing issues. This can generally mean that while transfer pricing documentation is not required to be submitted together with the tax returns, such documents should be retained and submitted to the BIR when required or requested. There is no prescribed period within which such documentation may be made available, but it should be available in cases of audit/investigation.

An Advance Pricing Arrangement (APA) is an agreement entered into between the taxpayer and the BIR to determine in advance an appropriate set of criteria (e.g. method, comparables, appropriate adjustments thereto) to ascertain the transfer prices of controlled transactions over a fixed period of time. It is currently available to taxpayers, but the BIR is still in the process of drafting more detailed guidelines. The APA is not mandatory, but may be advisable since the purpose of the APA is to reduce the risk of transfer pricing re-examination and double taxation.

Transactions entered into prior to the Transfer Pricing Regulations becoming effective in February 2013 shall be governed by the laws and other administrative issuances prevailing at the time the controlled transactions were entered into.

Thin capitalisation

There are generally no thin capitalisation rules in the Philippines.

Controlled foreign companies (CFCs)

There are no CFC rules in the Philippines.

Tax credits and incentives

Foreign tax credit

Domestic corporations are allowed to claim a credit for any income taxes paid to a foreign country, provided that the taxes are not claimed as deductions. Foreign corporations are not allowed foreign tax credits.

Credits for foreign taxes are determined on a country-by-country basis. The amount of foreign tax credit in respect of the tax paid in a country shall not exceed the same proportion of the tax against which the tax credit is taken, which the taxpayer's income from the country bears to its entire taxable income. There is, however, a further limitation based on the total amount of foreign-sourced income that the taxpayer earns. The total amount of foreign tax credits shall not exceed the same proportion of the tax against which the tax credit is taken that the taxpayer's foreign-sourced income bears to its entire taxable income.

Export incentives

Tax incentives available to export enterprises registered with the Board of Investments (BOI) are as follows:

- Income tax holiday (ITH) giving full exemption from CIT for six years for pioneer firms and those locating in less-developed areas and four years for non-pioneer firms. The ITH period starts to run from the date of commercial operation, or target date of operation, whichever is earlier. If prescribed conditions are met, the ITH period may be extended by up to three years. In no case, however, can the total ITH period exceed eight years. Expanding export-oriented firms are also allowed a three-year ITH on the incremental income. Subject to certain exceptions, new and expansion projects located in the National Capital Region (NCR) or Metro Manila are no longer entitled to ITH.
- Tax and duty exemption on imported spare parts and supplies for export producers with a customs bonded manufacturing warehouse exporting at least 70% of annual production, if foreign-owned, or 50%, if Filipino-owned.
- Full deduction of the cost of major infrastructure undertaken by enterprises in less-developed areas.
- Additional deduction of 50% of the incremental labour expense if the prescribed ratio of capital assets to annual labour is met and 100% of the incremental labour if located in less-developed areas within five years from date of registration (this incentive cannot be availed of simultaneously with the ITH).
- Ten-year exemption from taxes and duties on importation of breeding stock and genetic materials.
- Tax credit on domestic breeding stocks and genetic materials (ten years).
- Exemption from wharfage, any export tax, duty, impost, or fees.
- Tax credits equivalent to taxes and duties paid on purchases of raw materials, supplies, and semi-manufactured products forming part of the products for export.

Other incentives

Export and free-trade enterprises, information technology (IT) enterprises, and special economic zone developers/operators (including IT buildings located in Metro Manila and IT parks) registered with PEZA are entitled to an ITH of six years for pioneer firms and four years for non-pioneer firms. Foreign articles brought into the zones will be exempt from import duties and taxes. Local purchases of goods from VAT-registered suppliers outside the economic zones are zero-rated. After the lapse of the ITH period, enterprises registered and operating within special economic zones/export processing zones will pay only a 5% special tax on gross income earned from registered activities *in lieu* of all local and national taxes.

A regional or area headquarters established in the country as a supervisory, communications, and coordination centre for a corporation's subsidiaries, affiliates, and branches in the Asia-Pacific region, and whose headquarters do not derive income from the Philippines, are not subject to any CIT nor VAT and are entitled to certain non-tax incentives.

An ROHQ that is allowed to derive income in the Philippines by performing qualifying business services to its affiliates, subsidiaries, or branches in the Philippines, in the Asia-Pacific Region, and other foreign markets may avail itself of the following incentives:

- Income tax at the preferential rate of 10% of its taxable income.
- Exemption from all kinds of local taxes, fees, or charges imposed by a local government unit, except real property tax on land improvements and equipment.
- Tax and duty-free importation of equipment and materials for training and conferences that are needed and used solely for its functions as an ROHQ and are not locally available, subject to the prior approval of the BOI.
- Importation of new motor vehicles, subject to the payment of corresponding duties and taxes.
- Exemption from travel tax, specific immigration fees, and requirements, subject to certain conditions.

The following are the incentives granted to exporters under the Export Development Act (Republic Act [RA] No. 7844):

- Exemption from Presidential Decree No. 1853 (requiring 100% of Letter of Credit), provided that the importation shall be used for the production of goods and services for export.
- Tax credit for incremental export performance. The tax credit for increase in current export revenues shall be computed as a percentage to be applied on the incremental export revenue converted to pesos at the current rate. The percentages or rates are as follows:
    - For the first 5% increase in annual export revenues over the previous year: 2.5%.
    - For the next 5% increase: 5.0%.
    - For the next 5% increase: 7.5%.
    - In excess: 10%.

  Note that this incentive is not available for exporters enjoying ITH or VAT exemption or whose local VAT is below 10%.

- In addition to the above incentives, all existing incentives being enjoyed by the enterprise if registered with the BOI, PEZA, Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), or other ecozone regulating agencies.

Withholding taxes

Corporations and individuals engaged in business are required to withhold the appropriate tax on income payments to non-residents, generally at the rate of 30% in the case of payments to non-resident foreign corporations or 25% for non-resident aliens not engaged in trade or business. *For WHT on resident corporations, see the discussions in the Income determination section*.

Tax treaty rates

For countries with which the Philippines has concluded tax treaties, the maximum rates of taxes to be withheld are as follows:

As of 16 March 2018:

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties**
Non-treaty	15/30 (12)	30	30
Treaty:			
Australia	15/25 (3, 4)	10/15 (5)	15/25 (6)
Austria	10/25 (7)	10/15 (5, 8)	10/15 (6, 9)
Bahrain	10/15 (7)	10	10/15 (10)
Bangladesh	10/15 (11)	15	15
Belgium	10/15 (7)	10	15
Brazil	15/25 (25)	10/15 (5)	15/25 (6)
Canada	15/25 (3, 7)	10/15 (5)	25 (9)
China, People's Republic of	10/15 (7)	10	10/15 (13)
Czech Republic	10/15 (7)	10	10/15 (14)
Denmark	10/15 (11)	10	15
Finland	15 (3, 7)	10/15 (5)	15/25 (15)
France	10/15 (3, 7)	10/15 (5)	15
Germany	5/10/15 (11, 24)	10	10
Hungary	15/20 (3, 11)	15	15 (9)
India	15/20 (3, 7)	10/15 (5, 17)	15/30 (6)
Indonesia	15/20 (3, 11)	10/15 (5)	15/25 (6)
Israel	10/15 (7)	10	15 (9)
Italy	15	10/15 (5)	15/25 (6, 18)
Japan	10/15 (3, 7)	10	10/15 (19)
Korea, Republic of	10/25 (11)	10/15 (5)	10/15 (6)
Kuwait	10/15 (7)	10	20
Malaysia	15/25 (26)	15	15/25 (6, 18)
Netherlands	10/15 (7)	10/15 (5, 16, 17)	10/15 (6)
New Zealand	15	10 (5)	15
Nigeria	12.5/15 (7)	15	20
Norway	15/25 (3, 7)	15	7.5/10/25 (9, 20)
Pakistan	15/25 (3, 11)	10/15 (5)	15/25 (6)
Poland	10/15 (11)	10	15
Qatar	10/15 (7)	10	15
Romania	10/15 (11)	10/15 (5, 16, 17)	10/15/25 (21)
Russia	15	15	15
Singapore	15/25 (3, 22)	10/15 (5)	15/25 (6, 18)
Spain	10/15 (7)	10/15 (5, 16)	10/15/20 (23)
Sweden	10/15 (11)	10	15
Switzerland	10/15 (7)	10	15
Thailand	15	10/15/25 (5)	15/25 (6, 18)
Turkey	10/15 (11)	10	10/15 (13, 19)
United Arab Emirates	10/15 (7)	10	10
United Kingdom	15/25 (3, 7)	10/15 (5)	15/25 (6, 19)
United States	20/25 (3, 7)	10/15 (5)	15/25 (6, 9)
Vietnam	10/15 (11)	15	15

Notes

1. The lower rate generally applies if the beneficial owner of the dividends is a company with a substantial ownership in the dividend paying company.
2. Interest derived by a foreign government or its agencies is typically exempt from Philippine tax. Many treaties also contain special rules for both Philippine and home country taxation of interest paid on instruments secured by a government agency of one of the countries. Such provisions have been excluded from the analysis.
3. A 15% rate applies under domestic law if the home country exempts the dividend from tax or permits a 15% or greater credit for corporate taxes paid by the company paying the dividend.
4. Entitlement to the lower rate depends on how the dividend will be taxed in Australia.
5. The 10% rate applies to interest paid in respect of the public issues of bonds, debentures, or similar obligations.
6. The lower rate applies to royalties paid by an enterprise registered with the Philippine BOI and engaged in preferred areas of activity.
7. The threshold for substantial ownership is 10%.
8. The 10% rate also applies to interest paid by a company registered with the BOI and engaged in preferred pioneer areas of investment in the Philippines.
9. The treaty also contains a most-favoured-nation rule, limiting the Philippine tax on royalties to the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid in similar circumstances to a resident of a third state.
10. The 15% rate applies to royalties arising from the use of, or the right to use, any copyright of literary, artistic, or scientific work including cinematograph films or tapes for television or broadcasting.
11. The threshold for substantial ownership is 25%.
12. *For a description of when each rate applies, see Dividend income in the Income determination section.*
13. The 10% rate applies to the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience. Strictly, application of the rate is generally at the discretion of the Philippine Competent Authorities, but the BIR has never raised this as an issue.
14. The 10% rate applies to royalties arising from the use of, or the right to use, any copyright of literary, artistic, or scientific work (other than copyright of cinematograph films), any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
15. The 15% rate applies to royalties paid by an enterprise registered and engaged in preferred areas of activities, and to royalties in respect of cinematographic films or tapes for television or broadcasting, and for the use of, or the right to use, any copyright. The 25% rate applies to other royalties.
16. The 10% rate also applies to interest paid in connection with the sale on credit of any industrial, commercial, or scientific equipment.
17. The 10% rate also applies to interest paid on any loans granted by a bank.
18. The 15% rate also applies to royalties in respect of cinematographic films or tapes for television or broadcasting.
19. The 15% rate applies to royalties paid for the use of, or the right to use, cinematographic films and films or tapes for radio or television broadcasting.
20. The 7.5% rate applies to the lease of containers. The 10% rate applies to royalties paid by an enterprise registered with the BOI. The 25% rate applies to other royalties.
21. The 10% rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred pioneer areas of activity. The 15% rate applies to rentals from cinematographic films and tapes for television or broadcasting. The 25% rate applies to all other royalties.
22. The threshold for substantial ownership is 15%.
23. The 10% rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred pioneer areas of activity. The 20% rate applies to rentals from cinematographic films and tapes for television or broadcasting. The 15% rate applies to all other royalties.
24. The threshold for substantial ownership is 70% for the 5% rate to apply.
25. The 15% rate applies if the recipient is a company, including a partnership.
26. The 15% rate applies if the recipient is a company.

Tax administration

Taxable period

The accounting period must follow a 12-month fiscal period but may or may not follow the calendar year. Most Philippine companies have a fiscal year that ends in December or March.

Tax returns

Corporations should file their returns and compute their income on the basis of an accounting period of 12 months.

Corporate taxpayers file self-assessed returns. Electronic filing and payment of taxes are available under the Electronic Filing and Payment System (eFPS) of the BIR.

The following corporate taxpayers who are not covered by eFPS are required to use Electronic BIR Forms (eBIRForms) in filing their tax returns:

- Accredited tax agents/practitioners and all their client-taxpayers who authorised them to file on their behalf.
- Accredited printers of principal and supplementary receipts/invoices.
- One-time transaction taxpayers.
- Those who shall file a 'No Payment' return, except senior citizens or persons with disabilities filing their own return, employees deriving purely compensation income and the income tax of which has been withheld correctly, employees qualified for substituted filing but opted to file for an income tax return and are filing for purposes of promotion (Philippine National Police and Armed Forces of the Philippines), loans, scholarships, foreign travel requirements, etc.
- Government-owned or controlled corporations.
- Local government units, except barangays.
- Cooperatives registered with the National Electrifications Administration and Local Water Utilities Administrations.

Taxpayers who are required to file their returns using eFPS or eBIRForms but fail to do so shall be subject to a penalty of PHP 1,000 per return and civil penalties equivalent to 25% of the tax due.

A domestic or resident foreign corporation is required to file income tax returns on a quarterly basis. Within 60 days from the close of the first three quarters of its taxable year, the corporation must file a return summarising its gross income and deductions for the year to date. A final annual income tax return must be filed on or before the 15th day of the fourth month following the close of the taxable year.

Corporate taxpayers must file their income tax returns using one of three different forms, depending on their tax regime (i.e. subject only to the regular income tax, tax exempt, or with mixed income subject to multiple tax rates or special/preferential rates).

Payment of tax

Every corporation files cumulative quarterly income tax returns for the first three quarters and pays the tax due within 60 days after each quarter. A final adjustment return covering the total taxable income of the preceding taxable year must be filed on the 15th day of the fourth month following the close of the taxable year. The balance of the tax due after deducting the quarterly payments must be paid, while the excess may be claimed as a refund or tax credit. Excess estimated quarterly income taxes paid may be carried over and credited against estimated quarterly income tax liabilities for succeeding taxable years. Once the option to carry over has been made, such option is irrevocable, and no cash refund or tax credit certificate (TCC) is allowed, except upon liquidation of the company.

Since additional modes of payment of taxes are now available through credit, debit, and prepaid cards under recently issued Revenue Regulations, taxpayers may choose from the available online payment facilities provided by the Electronic Payment Service Provider (EPSP) to process tax payments. However, only accredited Authorised Agent Banks (AABs) may accept such payments, and accreditation of AABs is subject to compliance with certain conditions under existing Regulations.

Payment of taxes through the Card Payment Facility shall be deemed made on the date and time appearing in the system-generated payment confirmation receipt issued to the taxpayer-cardholder by the AAB-acquirer, provided that the payment was actually received by the BIR. The taxpayer is not relieved of, and has a continuing liability for, such taxes until the payment is actually received by the BIR.

Annual statutory audit

An annual statutory audit is required for all corporations with authorised capital stock or paid-up capital exceeding PHP 50,000, including branches of foreign corporations. It is also required for any corporation whose gross sales or earnings exceed PHP 150,000 in any quarter.

Statute of limitations

There is no statutory obligation on the Tax Commissioner to make an assessment for internal revenue taxes, and most taxes are collected based on the taxpayer's self-calculation. If an assessment is to be issued, however, it must be done within three years from the deadline or the date of actual filing of the return, whichever is later. The taxpayer and the Commissioner can, however, agree in writing to extend this period.

In the case of a false or fraudulent return or of failure to file a return, the tax may be assessed or a proceeding in court for collection may be commenced without assessment at any time within ten years from the discovery of the falsity, fraud, or omission.

Any internal revenue tax that has been assessed within the period of limitation may be collected by distraint or levy or by a proceeding in court within five years following the assessment of the tax.

The prescription periods are suspended in certain circumstances, such as when the offender is absent from the Philippines, when the Commissioner grants a taxpayer's request for a reinvestigation, or when the taxpayer and the BIR agree to extend the prescriptive period for assessment through a written waiver.

In the case of overpayment of tax, a claim for refund or credit may be filed with the BIR within two years from the date of erroneous payment of the tax. If the claim is denied or no decision is received from the BIR, a petition for review may be filed with the Court of Tax Appeals (CTA). This must be filed before the two-year period expires, and in the case of a denied claim, within 30 days from the receipt of the denial.

Topics of focus for tax authorities

During audits, the BIR generally covers all applicable internal revenue taxes. With the issuance of certain regulations in recent years, assessment issues involving transfer pricing, inter-company advances, donor's tax, and improperly accumulated earnings tax have become more prevalent.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

Under FATCA, financial institutions outside the United States shall report each year to the US Internal Revenue Service (IRS) information about accounts held by US citizens. The said financial institutions that fail to comply with FATCA are subject to a 30% WHT on US-sourced 'fixed, determinable, annual, or periodic income', which shall be withheld by their counterparties in the United States.

In the absence of an intergovernmental agreement (IGA), participating foreign financial institutions (FFIs) in the Philippines individually signed an FFI Agreement with the IRS.

Under Model 1 of the IGA, FFIs will provide information on US accounts to the BIR, which information will be relayed to the IRS.

Currently, Model 1 of the IGA is treated as 'in effect' by the US Treasury as of 30 November 2014. The United States and the Philippines have reached an agreement in substance, and the Philippine government has consented to disclose this status. In accordance with this status, the text of such IGA has not been released and financial institutions in the Philippines are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

On 1 December 2016, President Duterte ratified the agreement that was then transmitted to the Senate on 6 December 2016 for concurrence but with no available status to date.

Poland

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Significant developments

Changes in corporate income tax (CIT) regulations

As of 1 January 2018, separation of income/loss sourced from capital transactions from other income/loss sources has been introduced. Taxpayers now have to recognise revenues and costs related to each 'basket' separately. There is no possibility to set-off income derived from one 'basket' with loss borne in the other 'basket'. Income in both baskets is taxed at 19% CIT. Apart from share/capital transactions, the capital basket includes royalties, license fees, and similar rights.

A limitation of deductibility of financial costs has also been introduced. Deductibility restrictions are applicable both to internal and external financing costs (not only interest). The deductibility limit for the excess of financing costs over financing revenue is set at 30% of tax earnings before interest, taxes, depreciation, and amortisation (EBITDA). The limit will apply if the excess is over 3 million Polish zloty (PLN).

A 'minimum income tax level' for taxpayers holding substantial real estate, which has initial value over PLN 10 million, has been introduced. 'Minimum tax' is payable monthly at 0.035% of the excess of the initial value of the building over PLN 10 million (0.42% annually). Consequently, tax will be due regardless of the level of actual income derived by the taxpayer. This minimum tax can be set-off against CIT if CIT is higher.

There are further changes in CIT deductibility rules, as follows:

- Deductibility of interest from debt push-down structures is excluded.
- Deductibility of costs in sale and lease-back transactions is limited at the level of prior revenues.
- A one-off write-down for fixed assets of small value is possible for assets worth up to PLN 10,000 (previously PLN 3,500).

Changes in transfer pricing rules

As of 1 January 2018, there is a decrease of the minimal revenue-to-income ratio of the tax group from 3% to 2%. The tax group will lose the status of taxpayer retroactively (from the date of registration as a tax group) in case of breach of certain conditions, and companies forming the tax group will be obligated to reconcile for CIT purposes as independent taxpayers retroactively for prior years. Group members will be obligated to set intra-group transaction terms at arm's length. However, there will be no formal obligation to prepare statutory transfer pricing documentation for such transactions.

Costs from related parties, including advisory, management, data processing, marketing, market research, insurance, guarantees, royalties, and transfer of risk connected with bad loan receivables (e.g. via insurance, derivatives, guarantees), will be limited to 5% of tax EBITDA.

Excluded from the above are accounting, legal, and recruitment services, and all services covered with advance pricing agreements (APAs), as well as costs of intangible services directly related to production of goods/provision of services. A limit will apply if the excess is over PLN 3 million.

Poland to start publishing largest companies' tax data

The amendment of 24 November 2017 to the Polish Corporate Income Tax (CIT) Act provided for an annual publication by the Ministry of Finance (MoF) of individual tax data of CIT payers with the highest revenues and all Tax Capital Groups. This took effect 1 January 2018, with the first tax data for the years 2012 to 2017 being published in April 2018 for the years 2012 to 2016 and in July 2018 for year 2017.

The individual tax data to be published by the MoF includes information on:

- Taxpayer's name.
- Tax identification number (NIP).
- Revenues.
- Tax-deductible costs.
- Income or incurred loss.
- Tax base.
- Tax due.

In addition, the published information may be extended with data on the effective tax rate.

New controlled foreign companies (CFC) rules

As of 1 January 2018, there is a change of criteria for qualifying a foreign company as subject to CFC rules (i.e. change of shareholding levels from 25% to 50%, focus on effective tax rate as opposed to nominal tax rate). The catalogue of revenue deemed as 'passive' for the purpose of CFC rules has also been broadened, and the 'passive income' ratio has decreased from 50% to 33%.

Multilateral Instrument to Modify Bilateral Tax Treaties (MLI)

On 14 November 2017, the Act on ratification of the MLI was published in the official Journal of Laws. The MLI globally implements mechanisms created to prevent international profit shifting to locations where they are subject to reduced taxation or non-taxation. Poland is the third country (after Austria and Isle of Man) to ratify the MLI. Poland declared 78 double taxation treaties (DTTs) for the MLI's purposes. Among declared DTTs, there are, *inter alia*, DTTs with Austria, Belgium, Canada, Cyprus, Denmark, France, Holland, Ireland, Luxembourg, Malta, Mexico, Norway, Sweden, and the United Kingdom. At the moment of signing the MLI, Poland has declared 77 DTTs in which the method of avoiding double taxation used to this point (i.e. the tax exemption method) may be replaced by the tax credit method.

Retail tax

On 1 September 2016, the Retail Tax Act of 6 July 2016 entered into force, but was quickly suspended for 2016 and 2017 due to European Commission (EC) investigation into the Polish tax on the retail sector. As a result, the new retail tax was postponed until 1 January 2019.

Standard Audit File for Tax (SAF-T)

From 1 July 2016, taxpayers are obligated to implement a SAF-T. The new legislation obligates the value-added tax (VAT) registered taxpayers (except those exempt from VAT) to keep computerised records of all data required to fill out tax returns and recapitulation statements. Taxpayers are obligated to transmit details of VAT records as a SAF-T without any additional request from the tax authorities. The data have to be filed monthly by the 25th day of the next month.

A new obligation to file documents in the SAF-T format, both in the case of an inspection and with respect to the VAT records, was imposed on large enterprises from 1 July 2016. Micro, small, and medium enterprises are given the choice to transmit their data during a tax inspection in the SAF-T format or not. As of July 2018, these three groups will be obligated by law to transmit data in the SAF-T format during tax inspection.

Small and medium enterprises are obligated to file VAT records in the SAF-T format from 1 January 2017. Micro enterprises are obligated to start filing VAT data in the SAF-T format from the beginning of 2018.

The obligation to transmit data in the SAF-T format also applies to companies whose fixed establishment is outside Poland but which are registered for VAT in Poland.

Taxes on corporate income

The CIT is the only tax levied on corporate income. The standard CIT rate is 19%.

As of 1 January 2017, a lowered 15% CIT rate was introduced for so-called ‘small taxpayers’ (i.e. entities whose sales revenue, including output VAT, for the previous year didn’t exceed the equivalent in Polish zloty of 1.2 million euros [EUR] and for taxpayers starting business activity, in their first tax year).

Polish tax residents are subject to tax on their worldwide income. Non-residents are taxed only on their Polish-sourced income. The tax authorities’ right to tax a non-resident is further limited if the non-resident’s country of residence concluded a DTT with Poland. In this case, the Polish tax authorities are, as a rule, entitled to tax only the portion of the non-resident’s income that may be attributed to a permanent establishment (PE) located in Poland if such income has arisen in Poland for the foreign tax resident. Exceptions relate to specific types of income, such as royalties, interest, dividends, and capital gains, which may be in Poland even if no PE exists.

As of 1 January 2018, separation of income/loss sourced from capital transactions from other income/loss sources has been introduced. Taxpayers now have to recognise revenues and costs related to each ‘basket’ separately. There is no possibility to set-off income derived from one ‘basket’ with loss borne in the other ‘basket’. Income in both baskets is taxed at 19% CIT. Apart from share/capital transactions, the capital basket includes royalties, license fees, and similar rights.

Polish companies with foreign participation may be set up as either limited liability companies or joint-stock companies. There is no limitation on the percentage of foreign participation. Both types are subject to the general CIT rules, including the standard 19% tax rate (and other rates, depending on the type of revenue sourced in Poland).

The same rate applies to branches of foreign companies (*see the Branch income section for more information*).

Certain entities are explicitly excluded from the group of taxpayers under the CIT law (e.g. Treasury, National Bank of Poland). Polish and European Union (EU)/European Economic Area (EEA) based investment funds are also exempted on the grounds of such provision.

As of 1 January 2018, the 'minimum income tax level' for taxpayers holding substantial real estate, which has initial value over PLN 10 million, has been introduced. 'Minimum tax' is payable monthly at 0.035% of excess of the initial value of the building over PLN 10 million (0.42% annually). Consequently, tax will be due regardless of the level of actual income derived by the taxpayer. This minimum tax can be set-off against CIT if CIT is higher.

Local income taxes

There are no provincial or local income taxes in Poland.

Corporate residence

A company is considered to be a resident in Poland if its registered office or management is located in Poland.

Permanent establishment (PE)

PE under Polish CIT law

According to Polish CIT law, the following are understood to be a PE:

- A permanent place of business through which a non-Polish tax resident conducts its business activities, in whole or in part, within the territory of Poland; in particular, a branch, agency, office, factory, workshop, or place of extraction of natural resources.
- A construction site, construction, assembly, or installation works carried on within the territory of Poland by a non-Polish tax resident.
- A person who, on behalf and for the benefit of a non-Polish tax resident, operates in Poland, provided such person holds and exercises a power of attorney to enter into agreements on one's behalf.

We note that Polish CIT law:

- does not encompass any provisions concerning the period required for construction works to create a PE
- does not include provisions indicating that an independent agent does not create a PE, and
- does not include provisions indicating that actions of an auxiliary or preparatory character do not lead to creation of a PE in Poland.

PE from a DTT perspective

In general, the provisions of DTTs concluded by Poland are based on the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital (OECD Model), except for provisions related to taxation of royalties, which are based on the United Nations (UN) Model Double Taxation Convention.

As a principle, treaties based on the OECD Model provide for the following concepts, which determine whether activities of a foreign entrepreneur constitute a PE (usually in Article 5):

- Fixed place of business concept.
- Dependent agent concept.
- Construction PE concept.

Note that some DTTs concluded by Poland also encompass other PE concepts (e.g. service PE concept or offshore PE concept).

Other taxes

Value-added tax (VAT)

Polish VAT applies to the following activities:

- Supplies of goods and services within the territory of Poland.
- Exports of goods outside the territory of the European Union.
- Imports of goods from countries that do not belong to the European Union.
- Intra-Community acquisitions of goods (imports from countries belonging to the European Union).
- Intra-Community supplies of goods (exports to the countries belonging to the European Union).

VAT rates

The VAT rates are 23% (standard rate), 8%, 5%, 0%, and exemption.

The standard 23% VAT rate generally applies to the supply of all goods and services, except for those that are covered by special VAT provisions that provide other rates or treatments.

Supplies covered by a reduced rate of 8% include, among others, supplies of pharmaceutical products and passenger transport services and also supply of goods for the Social Housing Programme (no greater than 150 square metres).

Supplies covered by a reduced rate of 5% include books and journals, unprocessed food, and basic food.

Zero-rated activities include, among others, exports of goods to countries outside the European Union.

VAT-exempt supplies include, among others, certain financial, insurance, and educational services.

Basic calculation rules

In general, the VAT due equals the VAT on outputs decreased by the VAT on inputs (in other words, input VAT is deducted from output VAT). Input VAT may be deducted from output VAT when a business (with a VAT payer status) receives an invoice for goods or services purchased. Input VAT may not be deducted unless a purchased supply is linked to the VATable activities. Furthermore, the deductibility of input VAT is restricted by the VAT law with respect to the purchase of certain goods and services. In addition, subject to numerous conditions, output VAT may be reduced when receivables, resulting from VATable sales, become uncollectible.

VAT split payment from 2018

Poland is proposing to introduce an anti-VAT fraud split payment regime from 1 July 2018. Split payment will be applied on a voluntary basis. The purchaser will be entitled to choose the split payment mechanism or to pay the total invoice amount directly to the supplier of the goods or services. Under this split VAT payment mechanism, the supplier should issue an invoice for the net and VAT amounts; however, the customer will only pay the net amount to the supplier. The VAT share should be paid directly to the tax authorities, hence eradicating the 'collection' role of the suppliers. This system will only apply on domestic transactions and will not affect invoice requirements.

VAT refunds

The Polish VAT law allows direct refunds when input VAT (available for deduction) exceeds output VAT.

A Polish business may also be entitled to the VAT refund owed by another country under certain circumstances. Likewise, a foreign business having seat or fixed place of business for VAT purposes outside of Poland may be, in most cases, entitled to the refund of Polish VAT. If the respective countries belong to the European Union, the procedure is substantially simplified due to the EU Directive, which provides favourable rules for businesses based in EU countries that are seeking VAT refunds in other EU countries (i.e. electronic VAT refunds are possible).

International services

The treatment of international services largely depends on the place of supply since it is determinative of whether particular services are subject to the Polish VAT. The Polish VAT applies only to those services that are supplied within Poland.

Reporting rules

Generally, the VAT reporting period is one month. VAT returns should be submitted by the 25th day of the month following the VAT reporting period. Legislation obligates the VAT-registered taxpayers (except those exempt from VAT) to keep computerised records of all data required to fill out tax returns and recapitulation statements. Documents must be filed in the SAF-T format, both in the case of an inspection and with respect to the VAT records.

Customs duties

As a member of the European Union, Poland belongs to a customs union, thus only goods imported from non-EU countries or exported from Poland to non-EU countries are subject to customs duties and formalities. Moreover, all the Community customs regulations are directly applicable in Poland. The most important act is the Community Customs Code and its implementing provisions, as well as the Community Customs Tariff.

These regulations are supplemented with certain Polish national rules, especially in respect to procedures and specific areas that are not defined in the Community customs law (e.g. strict regulations concerning the export of works of art and animals, limits on the amount of cash that may be brought from Poland to non-EU countries).

Excise duties

Excise duties are levied on the production, sale, import, and intra-Community acquisition of 'excise goods', which are listed in the excise duty law and include (among others) alcohol, cigarettes, energy products (e.g. petrol, oils, gas), passenger cars, and electricity.

Depending on the excise goods in question, one of four methods of calculating excise tax may be applicable:

- A percentage of the taxable base.
- An amount per unit.
- A percentage of the maximum retail price.
- An amount per unit and a percentage of the maximum retail price.

The excise rate for car petrol is PLN 1,540 per 1,000 litres.

Passenger cars are subject to the following excise rates:

- 3.1% for cars with engine cubic capacity that does not exceed 2,000 cc.
- 18.6% for cars with engine cubic capacity that exceeds 2,000 cc.

Notwithstanding the above, Polish excise duty law provides for a wide system of excise duty exemptions as well as 0% taxation. Under specified circumstances, such preferential treatment may apply to specified goods that are otherwise taxed based on general rules. This concerns, for example, specific energy products used for other purposes than as a fuel or for heating.

There is also an excise duty placed on coal. Depending on the type of coal product, the excise rates are PLN 30.5 per 1,000 kg of coal, PLN 11 per 1,000 kg of lignite, and PLN 35.2 per 1,000 kg of coke. In practice, there are a wide range of excise duty exemptions (practically, Poland has used all the exemption options provided in the EU Directive); nevertheless, many new administrative obligations have been set for entities producing, distributing, and using coal. The fulfilment of those obligations is necessary in order to apply an excise duty exemption.

Property taxes

Property tax rates are fixed by municipalities within limits set in the Law on Local Taxes and Fees. In 2018, land used for business purposes is subject to a rate limit of PLN 0.91 per square metre. Buildings used for business purposes are subject to a rate limit of PLN 23.10 per square metre.

Transfer taxes

A transfer tax may apply to certain civil law transactions, determined as a percentage of the transaction (i.e. such as sale, loan, donation). A tax obligation on civil law transactions does not arise when one of the parties of the transaction is a VAT payer.

Stamp duty

In Poland, some activities are charged a stamp duty. Payment is required, for example, in connection with the submission of a power of attorney, after completion of an official act, or the issue of a certificate or permit.

Capital tax

A share capital increase (in case of corporations) and contribution/contribution increase (in case of partnerships) is subject to a 0.5% capital tax, payable by a company or partnership that receives a capital contribution. This tax applies equally to limited liability companies as well as joint-stock companies. A merger, division, or transformation of a corporation into another corporation is not subject to capital tax, even if the transaction results in a share capital increase. A similar exemption applies to a capital increase resulting from (i) an in-kind contribution of an enterprise or its organised part or (ii) contribution of shares of the other corporation giving the majority of votes in this corporation or contribution of additional shares in case the corporation to which the shares are contributed already has the majority of votes.

Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

Social security contributions

Both the employer and the employee are obligated to contribute to the Polish social security system. Apart from paying its own share, the employer is obligated to withhold the employee‘s share of the social security contributions and remit them to the Social Security Authorities (ZUS). In both cases, the relevant payments shall be made monthly.

The employer pays total contributions in a range of 19.48% to 22.14% of the employee's gross salary (the employer's contribution rate includes an accident insurance element that varies according to the number of employees insured and the business sector). The contribution rate for the employee is 13.71% of gross salary. The social security shares payable by the employer and the employee are tax-deductible items in their respective income tax settlements.

The rates apply to salaries below the cap of PLN 133,290 in 2018. The cap changes every year. After exceeding this cap, the salary is subject to a contribution rate of 3.22% to 6.41% payable by the employer and 2.45% payable by the employee.

Tax on certain financial institutions

A tax on certain financial institutions (so-called 'banking tax') is levied on:

- Banks, branches of foreign banks, branches of credit institutions, and credit unions.
- Insurance companies, reinsurance companies, branches of international insurance companies and international reinsurance companies, and main branches of international insurance companies and international reinsurance companies.
- The lending institutions within the meaning of the Consumer Credit Act.

Tax at the rate 0.44% per year (0.0366% per month) is levied on the assets of the taxpayers less (i) PLN 4 billion in case of banks, (ii) PLN 2 billion in case of (re-) insurance companies, and (iii) PLN 200 million in case of lending institutions. In case of (re-)insurance companies and lending companies, tax is levied on the consolidated assets of the capital group companies.

Retail tax

On 1 September 2016, the Retail Tax Act of 6 July 2016 entered into force, but was quickly suspended until 1 January 2019 due to an EC investigation into the Polish tax on the retail sector (*see below*).

Based on the Retail Tax Act, retailers are to be taxed on the revenues achieved on retail sales, which should be understood as sales of goods to consumers for remuneration, in case an agreement is concluded on the business premises or away from business premises of the given taxpayer. Thus, e-commerce sales should not be subject to this tax. In this context, the services associated with retail sales should also be subject to taxation, unless they are recorded separately than the sale of goods.

Retail tax rates

The retail tax should be imposed on the excess of revenues over the amount of PLN 17 million, calculated, in principal, based on the turnover registered by the cash registers. The Act introduces two tax rates: 0.8% of the tax base for the given month, in the part not exceeding the amount of PLN 170 million, and 1.4% of the excess of the tax base, in the part exceeding the amount of PLN 170 million.

The retailers shall be obligated to submit tax returns and calculate and pay retail tax in the monthly settlement periods. However, no tax return must be submitted in case the revenues in the given month do not exceed the value of PLN 17 million.

Retail tax exemptions

The Retail Tax Act includes certain exemptions from taxation, among others, in respect of:

- energy, water, natural gas, and heat supply to consumers made by network utilities
- supply of some fuels designated for heating fuel purposes, and
- supply of medicines, special purpose nutrition, and reimbursed or partially-refunded medical products.

Retail tax postponed until 2019

On 19 September 2016, the EC opened an in-depth investigation into the Polish tax on the retail sector. The EC has concerns that the progressive rates based on turnover give companies with a low turnover a selective advantage over their competitors in breach of EU state aid rules. The EC has also issued an injunction, requiring Poland to suspend the application of the tax until the EC has concluded its assessment. At this stage, the EC has concerns that the application of progressive rates based on turnover confers a selective advantage on companies with low turnover and therefore involves state aid within the meaning of the EU rules. This progressive rate structure has the effect that companies with low turnover either pay no retail tax or pay substantially lower average rates than companies with high turnover.

As a result, the new retail tax was postponed until 1 January 2019. This means retailers are not obligated to pay tax in years 2016 to 2018.

Branch income

Foreign businesses are allowed, under certain conditions, to establish their branch offices (exclusively within the scope of their 'foreign' business activity) and representative offices (exclusively with regard to promotion and advertising) in Poland.

A branch office almost always has PE status in Poland. Once a branch is established, the foreign company pays CIT at the standard rate of 19%, based on the income attributable to the operations of the Polish branch. For this purpose, as well as for accounting purposes, a branch is obligated to keep accounting books that include all the data necessary to establish the taxable base. In this respect, general income determination rules relevant to Polish companies apply to branches as well. In the few cases in which a branch can demonstrate, based on a DTT, that its business presence in Poland does not constitute a PE, its profits are not subject to Polish CIT.

Income determination

The tax base for CIT purposes is the overall income, which is the difference between aggregated taxable revenue and aggregated tax-deductible costs. A tax-deductible cost is defined as a cost incurred for the purposes of deriving revenues, as well as for the purpose of securing or preserving a source of revenue.

Subject to numerous exemptions, the tax base includes all sources of income. Consequently, there is no special treatment for income such as capital gains or interest.

In practice, taxable income is calculated by adjusting the profit reported for accounting purposes. The relevant adjustments are necessary due to differences between tax and accounting treatment of numerous revenue and cost items. As a result, the taxable base is usually higher than the accounting profit.

As of 1 January 2018, there is a separation of income/loss sourced from capital transactions from other income/loss sources. Taxpayers now have to recognise revenues and costs related to each 'basket' separately. There is no possibility to set-off income derived from one 'basket' with loss borne in the other 'basket'. Income in both baskets is taxed at 19% CIT. Apart from share/capital transactions, the capital basket includes royalties, license fees, and similar rights.

Inventory valuation

Generally, the value of inventory shortages may be included as a tax-deductible cost. Other write-offs in the value of inventory are not recognised for tax purposes until the inventory in question is sold.

When inventory is lost or sold, a tax deduction is allowed for the costs incurred when the inventory was purchased. The methods acceptable for inventory valuation for tax (and accounting) purposes are standard cost, average (weighted) cost, first in first out (FIFO), and last in first out (LIFO).

Capital gains

There is no separate capital gains tax. Capital gains or losses are aggregated with an entity's other taxable income or losses. Capital losses are tax-deductible.

Dividend income

Domestic dividend income

Dividends received from Polish residents (domestic dividends) are excluded from overall income. Instead, such dividends are subject to a 19% withholding tax (WHT), which is withheld and remitted to the tax office by the payer of dividends. Based on a participation exemption, however, domestic dividends are not subject to the 19% WHT if the Polish beneficiary holds at least a 10% share in the paying company for at least two years.

The revenue arising from voluntary redemption of shares is not treated as a dividend for tax purposes and does not enjoy the benefits of the participation exemption (i.e. the method of redemption, whether voluntary or automatic, will matter).

Dividend income from abroad

Generally, dividends received by a Polish corporate tax resident from a non-resident are treated as regular income and taxed at the standard CIT rate. CIT on such dividends paid in other countries may be credited proportionately against Polish CIT.

Additionally, dividends received from entities seated in the European Union (including Poland), EEA member states, or Switzerland can benefit from CIT exemption if the Polish company owns, respectively, at least 10% (in respect to companies seated in the EU/EEA member states) or 25% (in respect to companies seated in Switzerland) in the share capital of the payer for two consecutive years (and certain other conditions are met).

Dividends received from non-EU/non-EEA member states may benefit from underlying tax credit. If a Polish company or a PE of a company from an EU/EEA member state located in Poland receives a dividend from a company seated in a non-EU/non-EEA country, it may deduct the tax paid by the payer on profits out of which the dividend was paid. The deduction is only possible if the Polish company/company from EU/EEA, which PE is located in Poland, holds (for two consecutive years) at least 75% of shares of the dividend payer. The tax may be deducted in an appropriate proportion. Furthermore, the deduction is possible if there is a DTT. Based on the provisions of the relevant DTT or other agreement concluded by Poland, the Polish tax authority may exchange tax information with its counterparty.

Anti-avoidance regulations

The participation exemption on dividends and other profit-sharing payments does not apply to the legal transaction or series of legal transactions that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage, are not genuine, having regard to all relevant facts and circumstances.

Based on the introduced provisions, a 'not genuine' legal transaction is such transaction that is undertaken in order to benefit from the tax exemption but does not reflect economic reality (i.e. it is not conducted for valid commercial reasons and its result is, in particular, transfer of shares' ownership of the company paying the dividend or achieving, by this company, income [revenue] paid in the form of a dividend).

Interest income

Interest income is aggregated with an entity's other taxable income.

Royalty income

A 20% WHT is imposed on royalties paid to non-residents. Royalties paid to resident companies are taxed as ordinary income at the level of the beneficiaries of the royalties. There is no WHT on royalties if the conditions for the application of the EU Interests & Royalties Directive are met.

Only a beneficial owner is able to apply exemption from WHT on royalties.

Foreign income

Resident corporations are taxed on their worldwide income unless there is an applicable DTT in place between Poland and the relevant country that provides that the foreign income shall be exempt from taxation in Poland (*see Foreign tax credit in the Tax credits and incentives section*).

CFC rules entered into force as of 1 January 2015 (*see Controlled foreign companies [CFCs] in the Group taxation section for more information*).

Deductions

Generally, a tax-deductible cost is defined as a cost incurred for the purposes of deriving revenues, as well as for the purpose of securing or preserving a source of revenue. The last element of the definition of a tax-deductible cost was added to reduce uncertainties surrounding the deductibility of business expenses that do not directly generate revenue.

The CIT law provides a list of items that are not deductible for tax purposes, even if the items meet the general conditions described above. This list contains over 60 items including, among others, the following:

- Written-off, lapsed accounts receivable.
- Entertainment costs.
- Accrued but unpaid interest.
- Accounting and comparable provisions.
- Tax penalties and penalty interest.
- A portion of the insurance premium paid on a passenger car (i.e. the portion calculated on the excess of the car value over EUR 20,000).
- A portion of the depreciation write-offs made on a passenger car (i.e. the portion calculated on the excess of the car value over EUR 20,000).

As of 1 January 2018, there are further changes in CIT deductibility rules, as follows:

- Deductibility of interest from debt push-down structures is excluded.
- Deductibility of costs in sale and lease-back transactions is limited at the level of prior revenues.
- A one-off write-down for fixed assets of small value is possible for assets worth up to PLN 10,000 (previously PLN 3,500).

There is also a limitation of deductibility of costs from certain intangible services and royalties. Costs from related parties, including advisory, management, data processing, marketing, market research, insurance, guarantees, royalties, and transfer of risk connected with bad loan receivables (e.g. via insurance, derivatives, guarantees), are limited to 5% of tax EBITDA under new rules.

Excluded from the above are accounting, legal, and recruitment services, and all services covered with APAs, as well as costs of intangible services directly related to production of goods/provision of services. A limit will apply if the excess is over PLN 3 million.

A limitation of deductibility of financial costs has also been introduced by new rules. Deductibility restrictions are applicable both to internal and external financing costs (not only interest). The deductibility limit for the excess of financing costs over financing revenue is set at 30% of tax EBITDA. The limit applies if the excess is over PLN 3 million.

Furthermore, expenses incurred in connection with the acquisition of fixed and intangible assets (e.g. licences, trademarks, know-how) are not directly deductible. Instead, the acquired assets are subject to depreciation. If such assets are sold, a business is entitled to deduct the net value (cost of acquisition reduced by the overall value of the tax depreciation allowances made). Similar treatment relates to the acquisition of shares or land, except that these particular assets are not depreciable. Therefore, the full cost of an acquisition of shares or land may be deducted when such assets are sold.

Depreciation

Depreciation write-offs are treated as a tax-deductible cost. Generally, depreciation allowances are calculated based on the straight-line method and the maximum annual rates provided in the CIT law. If this is the case, a taxpayer deducts equal annual write-offs, calculated by multiplying the maximum rate of depreciation by the asset's initial value until the total value of write-offs equals the initial value (typically, the initial value equals the purchase price).

For certain categories of machinery and vehicles (but not passenger cars), the reducing-balance depreciation method may be applied. Under this method, the tax depreciation may be accelerated during the initial period of the asset's use by multiplying the statutory maximum rate by two. The rate is then applied to the net value of fixed assets (i.e. initial value reduced by earlier annual write-offs). The reducing-balance method is applied until the annual depreciation write-off equals the hypothetical write-off that would be made under the straight-line method. From this point, the depreciation allowance is taken based on the straight-line method for its remaining useful life.

The main categories of assets and the related statutory annual tax depreciation rate are as follows:

Assets	Depreciation rate (%)
Various buildings and constructions	1.5 to 10
Machinery and equipment (general)	7 to 20
Machinery for road building and construction	18 to 20
Machinery for paper industry	14
Office equipment	20
Computers	30

Apart from the above, the Polish CIT law includes provisions for accelerated depreciation (within specified limits) for assets used in deteriorated conditions and for second-hand assets.

Goodwill

Under the provisions of CIT law, goodwill is subject to tax amortisation if it is created as a result of acquisition of an enterprise, or its organised part, made in one of the following ways: (i) purchase; (ii) payable use, provided that the user of such enterprise/organised part of an enterprise makes the depreciation write-offs; or (iii) contribution to a company based on commercialisation and privatisation regulations. The goodwill is amortised for tax purposes for a minimum period of five years.

Start-up expenses

There are no specific provisions in the Polish CIT law relating to start-up expenses; the general rules of tax deductibility described above apply.

Interest expenses

Accrued interest on loans and credit that were paid or capitalised are deductible for CIT purposes. Polish CIT law provides some exceptions, such as instances where costs are not associated with earning revenue.

In Poland, there are also some limitations of interest tax deductibility connected with thin capitalisation regulations. *See Thin capitalisation in the Group taxation section for more information.*

Bad debt

As a general rule, debts written off as uncollectable cannot be considered as tax deductible. However, in certain situations, the provisions of Polish CIT law provide some exceptions. According to these provisions, only strictly defined uncollectable debts (which based on the CIT law were booked as taxable revenues) may be considered by the taxpayer as a tax-deductible cost, provided that their uncollectability was properly documented (e.g. by a court decision). In some cases, uncollectability may be considered probable (e.g. debtor's death).

Charitable contributions

Companies are entitled to deduct donations for the purposes of public benefit and to volunteer activity organisations up to a total amount not exceeding 10% of income; however, deductions may not be made for donations to:

- natural persons or
- legal persons or organisational units having no legal personality who carry on economic activity consisting in the production of electronic goods; fuel; tobacco; spirits, wines, beers, and other alcohol beverages containing over 1.5% alcohol; products made of noble metals or containing such metals; or incomes received from trading in such goods.

Donations for religious practice purposes can be deducted up to a total amount not exceeding 10% of income.

Additionally, the donations of food products made for the purposes of so-called public benefit constitute tax deductible costs in the amount of production costs or purchase price.

Fines and penalties

Fines and penalties can be recognised as tax deductible items if they meet the general conditions. However, the Polish CIT law provides some exceptions, which include contractual penalties and indemnities for defects in supplied goods, works, and services performed; delayed supply of non-defective goods; and delay in the elimination of defects in goods, works, and services performed.

Taxes

Income tax, certain industry-specific taxes (e.g. banking tax), and, in most cases, VAT incurred on purchases are not deductible. However, as a rule, VAT is deductible for CIT purposes if it cannot be offset against the company's output VAT. Other taxes, if paid in the course of business activities, are generally deductible in full.

Net operating losses

A tax loss reported in a tax year may be carried forward over the next five consecutive tax years; however, in any particular tax year, the taxpayer may not deduct more than 50% of the loss incurred in the year for which it was reported. For example, a taxpayer that incurred PLN 100 annual loss in 2017 may carry it forward to 2018 through 2022. However, the maximum loss deduction in any of these years may not exceed PLN 50 (assuming that there are no other losses available for deduction).

Currently, there is no possibility to carry back tax losses in Poland.

Payments to foreign affiliates

Deductions may be claimed for royalties, management services, and interest charges paid to foreign affiliates. However, note that interest expenses are subject to the thin capitalisation restrictions (*see Thin capitalisation in the Group taxation section for more information*). Furthermore, note that transactions with related companies should be made according to the market conditions. Where a company shifts income to another entity (especially a foreign entity), the tax authorities may adjust the taxable base upward (*see Transfer pricing in the Group taxation section for more information*).

The Polish CIT Law also includes a so-called 'beneficial owner' clause with respect to interests and royalties. In line with the relevant provisions, similarly as in many DTTs, only the beneficial owner (i.e. not an agent, representative, trustee, etc.) can benefit from WHT exemptions under the Polish CIT Law.

Cash payments

The Polish CIT Law provides for a cash expense value limit, in line with which transactions having value over PLN 15,000 can only be recognised as tax deductible costs if settled using a bank transfer.

Group taxation

The CIT law includes provisions on group taxation (i.e. in theory, a group of companies). If a group of companies meets certain conditions, it can be treated as a single taxpayer. However, the required conditions are extremely demanding and very few taxpayers of this type exist.

As of 1 January 2018, there has been a change of rules regarding CIT groups. Since 1 January 2018, there is a decrease of the minimal revenue-to-income ratio of the tax group from 3% to 2%. The tax group will lose the status of taxpayer retroactively (from the date of registration as a tax group) in case of breach of certain conditions, and companies forming the tax group will be obligated to reconcile for CIT purposes as independent taxpayers retroactively for prior years. Group members will be obligated to set intra-group transaction terms at arm's length. However, there will be no formal obligation to prepare statutory transfer pricing documentation for such transactions.

Transfer pricing

Transactions between related parties should be conducted in accordance with the arm's-length principle. The tax authorities may increase the taxable base if the pricing method applied between related parties differs from what would have been applied between unrelated parties in a similar business transaction and the difference results in income being understated by a Polish taxpayer. The regulations apply to domestic transactions as well as cross-border ones. Similar rules also apply to transactions between Polish residents and the residents of tax havens. These transactions may be subject to the transfer pricing principles even if the parties thereto are not related. The CIT law also contains detailed requirements for transfer pricing documentation.

Transfer pricing regulations are currently undergoing major changes resulting from implementation of the Base Erosion and Profit Shifting (BEPS) Action 13 in Poland.

The biggest Polish capital groups (with consolidated revenues exceeding EUR 750 million) are obligated to provide, in Poland, information on their taxable income, tax paid, and their place of business unless the consolidating entity is a subsidiary of a foreign party. In this case, the obligation is shifted abroad.

Taxpayers are also obligated to prepare transfer pricing documentation in an extended format covering not only the description of a transaction but also 'other events included in the accounting books' if they were agreed to by related parties and influence the taxpayer's taxable income or loss. If the taxpayer's revenue or expenses exceed EUR 10 million in the preceding financial year, the requirements increase. The taxpayer is obligated to provide a benchmarking study verifying the arm's-length character of related-party transactions. Furthermore, taxpayers whose annual revenues or expenses exceed EUR 20 million in the preceding financial year are also obligated to provide group transfer pricing documentation (master file) presenting the character of settlements from the group perspective. Finally, taxpayers whose revenue exceeds EUR 10 million are obligated to attach to their tax return a summary of their related-party transactions using a special form.

The taxpayers are obligated to submit a statement alongside their CIT return, confirming that complete local transfer pricing documentation and benchmarking studies, as required by the transfer pricing regulations, have been prepared.

Although the regulations are generally in line with the OECD recommendations, the transfer pricing documentation and benchmarking studies required by the Polish transfer pricing regulations must meet certain specific Polish requirements as well.

Taxpayers can mitigate the transfer pricing risk by applying for an APA. The tax authorities may not challenge the methodology agreed upon, but may verify whether the methodology is followed in practice.

Country-by-country (CbC) reporting

The Act of 9 March 2017 r. on the exchange of tax information with other states (Journal of Laws from 2017, No. 648) introduces a comprehensive regulation concerning the international exchange of tax information within a single legal Act.

In particular, this Act contains regulations requiring the taxpayers belonging to a group with consolidated net turnover exceeding EUR 750 million in the previous financial year to provide additional information about entities that form part of a group of entities (CbC report).

Information about entities that form part of a group of entities

The obligation to file a CbC report applies to entities operating in groups that:

- prepare consolidated financial statements,
- conduct cross-border operations, and
- earned consolidated net turnover for the previous financial year exceeding EUR 750 million.

The obligation is effective for the reporting financial year beginning after 31 December 2015.

The Act provides that, as a rule, a CbC report is to be provided by the ultimate parent company in the group (in Poland: if it has its registered office or seat of management here).

Additional obligations for the Polish taxpayers

However, a Polish taxpayer that is not an ultimate parent company may be obligated to submit a CbC report if:

- the ultimate parent company is not under such obligation in the state in which its registered office or seat of management is located
- the authorities of the state in which the ultimate parent company's registered office or seat of management is located did not conclude an agreement on the exchange of information with Poland within 12 months from the end of the reporting year
- the state in which the ultimate parent company's registered office or seat of management is located has suspended the automatic exchange of information, or
- no other group entity has been designated to prepare such information.

In addition, each Polish entity that belongs to a group obligated to submit a CbC report will have to:

- notify that it is an ultimate parent company, or
- specify the reporting entity and the state in which the information will be provided.

This information must be submitted to the Chief of the National Fiscal Administration (*Krajowa Administracja Skarbowa* or KAS).

A CbC report should, as a rule, be provided within 12 months from the end of a reporting year (i.e. for 2017: by the end of 2018).

If the ultimate parent company does not prepare information about the group, the Polish company is obligated to prepare and provide such information on its own no earlier than for the year beginning after 31 December 2016. However, the Polish taxpayer may voluntarily file such information also for the year beginning after 31 December 2015.

Taxpayers will have to notify of the entity responsible for preparing the CbC report by the end of the group's financial year.

Thin capitalisation

As of 1 January 2018, new thin capitalisation rules entered into force. Previously, the amount of tax-deductible interest on intra-group loans was correlated with the level of equity. New rules introduced deductibility restrictions:

- applicable both to internal and internal financing, and
- correlated with tax EBITDA.

Tax deductibility of interest is disallowed to the extent: (the excess of interest costs over interest revenue) exceeds 30% * ((taxable revenues - interest revenues) - (tax deductible costs - depreciation of fixed assets and intangibles - interest cost))

However, the new rules should provide for a 'safe harbour' of PLN 3 million of tax deductible interest per year. The amount of interest non-deductible in a given tax year may be carried forward and deducted in five subsequent years (still subject to general limitations of 30% EBITDA).

Restrictions are not applicable to financial entities (e.g. banks, credit institutions, as well as open-end and closed-end investment funds).

Under the grandfathering rules, loans granted and effectively disbursed by the moment of entry of the amendments into force are still subject to previously binding thin capitalisation rules; however, no longer than by 31 December 2018.

Controlled foreign companies (CFCs)

An additional income tax is imposed on direct and indirect shareholders (Polish tax residents) of a company/PE from the EU/EEA (or other country that concluded a DTT with Poland) if the following conditions are jointly met:

- Polish company has 50% direct or indirect participation in foreign company's income, voting rights, or capital for at least 30 consecutive days.
- Foreign company derives its income mainly (i.e. at least 33%) from so-called 'passive' sources (e.g. dividends [with an exception for dividends exempt under the Parent-Subsidiary Directive], interest, royalties, capital gains).
- Foreign company's/PE's income is subject to taxation at nominal rates lower than 14.25% (calculated as 75% of the 19% CIT rate applicable in Poland), is not subject to taxation at all, or is exempt from taxation.

The tax regime also affects taxpayers that are owners of foreign companies located in countries recognised as applying harmful tax competition or countries not participating in exchange of tax information with the European Union or Poland under a certain treaty.

Under the regime, income earned by the CFCs is subject to the 19% CIT rate. As a general rule, taxpayers are allowed to decrease the tax due in Poland by the amount of tax already paid abroad by the CFCs. The tax base is to cover the whole amount of income earned by the CFCs (including the passive income and the income earned on the actual business) that can be allocated to the Polish shareholders. The tax base is calculated proportionally to the period in which particular taxpayers were foreign entity's shareholders. If the CFCs are located in tax havens, the shareholders are to pay the tax on the whole amount of income earned by the CFCs (independently of their actual share in the income).

In certain cases, tax on income from the CFCs will not be levied if the CFC performs actual economic activity, defined as below, *inter alia*:

- Incorporation must correspond with an actual establishment intended to carry on genuine economic activities. In particular, the CFC should physically exist in terms of premises, staff, and equipment.
- The CFC does not create an artificial arrangement without a link with the economic reality.
- There is proportionality between the actual economic activities carried out by the CFC and the extent to which the CFC exists in terms of premises, staff, and equipment.
- Agreements concluded by the CFC have business justification and are in line with its economic interest.

Furthermore, certain administrative and reporting obligations have been introduced with CFC rules (e.g. obligation to maintain a register of the CFCs, filing separate tax returns presenting the amount of income generated through the CFC).

Tax credits and incentives

Foreign tax credit

Resident corporations are taxed on their worldwide income unless there is an applicable DTT in place between Poland and the relevant country that provides that the foreign income shall be exempt from taxation in Poland. In all other cases (in particular, when the income is not covered by any treaty), Poland uses the ordinary credit method to avoid double taxation. Therefore, a Polish resident is liable for income tax imposed on its worldwide income, but the tax is proportionately reduced by the income tax paid abroad.

Special Economic Zones (SEZs)

Polish legislation provides investment incentives related to business activities carried out in 14 zones defined as SEZs. A business entity can benefit from tax incentives, provided that the entity obtains a permit from the Ministry of Economic Development to conduct business activities there and meets other legal requirements. Note that a CIT credit applies only to income earned on activity conducted within the territory of SEZs and covered by permit.

In general, the amount of the tax incentive depends on project location and size of the enterprise. For large enterprises, it can be 15% to 50% of eligible expenditures (i.e. investment expenditures or two-year labour costs). In other words, the CIT credit allows the investor to avoid paying income tax up to the limit calculated on the basis of eligible expenditures and state aid intensity (percentage as above). In case of investment valued PLN 20 million and intensity aid of 40%, the investor would be entitled not to pay tax due up to PLN 8 million. If the available limit of the tax credit exceeds the annual tax due generated on SEZ activity, the excess may be utilised in the following tax years. Consequently, in the case of significant investments, it is possible for businesses that run activities in the SEZs to enjoy exemption from income tax for a considerable period. According to current regulations, the deadline for utilising the available tax credit is the end of 2026 (previously 2020).

Note that in the case of small enterprises, the limit of the tax credit may be increased by 20%. In the case of medium-sized enterprises, the limit of the tax credit may be increased by 10%.

Tax relief for research and development (R&D)

Entrepreneurs have the possibility of a tax deduction of costs incurred for R&D. The value of the deduction varies depending on the size of the company and type of eligible costs.

Eligible costs include the following six categories of R&D expenditures:

- Employees' wages and social contributions.
- Purchase of commodities and raw materials.
- Expertise, research, and opinions bought from scientific units.
- Payments for use of research equipment.
- Amortisation of intangible assets and fixed assets, excluding passenger cars, buildings, and constructions.
- Costs of obtaining intellectual property (IP) protection.

To benefit from the tax relief, each entity needs to perform R&D works and prepare a record of the eligible costs incurred in relation to R&D works in a given year. It is not important whether the R&D works end with success or the level of innovativeness of future effects of those works. Tax relief is also allowed for qualifying projects in progress (e.g. projects launched in previous years).

As of 1 January 2018, there is an increase of the existing deductions in income taxes from 50% and 30% (depending on the category of eligible costs and the size of the taxpayer) to 100% of qualified costs, irrespective of their category and size of the taxpayer (which has hitherto differentiated the allowed deduction limits). This means that all taxpayers benefiting from R&D tax relief will be able to save in income tax PLN 19 on every PLN 100 of qualified costs starting from 2018.

As of 1 January 2018, taxpayers may deduct expenditure incurred on employees that covers the costs of staff hired by taxpayers for R&D purposes under selected civil law contracts (previously only on an employment contract basis).

The new regulations also clarify that R&D tax relief is available to taxpayers who, during the tax year, have operated in an SEZ on the basis of a permit, regarding eligible costs that were not recognised as costs of running the activity covered by the SEZ's permit.

Withholding taxes

Domestic provisions: General rules

The general domestic WHT rate for dividends is 19%. Dividends also encompass income from liquidation of a company and the income from the redemption of shares (with the exception of gain from voluntary redemption, which is treated as a capital gain subject to the 19% CIT rate in Poland if the gain is realised by a taxpayer from a non-treaty country or the treaty includes a so-called ‘real estate clause’).

The general WHT rate on interest and royalties paid to non-residents is 20% (10% regarding services of sea or air transportation). These WHT rates may be reduced by DTTs.

There is also a 20% WHT on payments made to non-residents for intangible services (such as consulting services). However, if a payment is made to a country that has a DTT with Poland, this tax may be avoided with the completion of certain minimal administrative formalities. Few treaties treat payments for technical services as royalties (e.g. India).

The ‘beneficial owner’ definition determines that entities receiving royalties and interests must constitute the beneficial owner in order to apply the exemption from WHT tax on interest and royalties.

Special treatment: EU Directives

The CIT law provisions and certain EU Directives provide special treatment for dividends, interest, and royalties paid to numerous European countries.

In general, the transitional rules on interest and royalty payments paid by Polish corporate residents to associated EU or EEA companies, as well as the full exemption after 1 July 2013, only apply to interest and royalty payments between associated companies (parent-subsidiary relationships or sister-sister relationships) in which capital involvements are significant, i.e. the paying company owns or is owned at least 25% by the company receiving interest or the company that pays interest and the company that receives interest are owned at least 25% by the same parent company. Shareholding should be kept for a minimum of two consecutive years.

Dividends paid to corporate residents of EU and EEA countries are exempt from WHT, subject to certain conditions specified in the CIT law. The basic requirement is that the foreign beneficiary holds at least 10% of the shares in the Polish company for a minimum of two consecutive years.

In relation to all given payments (i.e. dividends, interest, royalties), the condition regarding holding shares is also fulfilled if two years passes after the day of the dividend/interest/royalty payment. If the period is interrupted afterwards, the company is obligated to pay the tax at the standard rate with interest.

Note that several additional conditions have to be met for the reduced rate/exemption from the WHT based on the Directive to be applied (e.g. the company receiving the dividend/interest/royalty cannot be exempt from tax on all its income, regardless of its source; the recipient has to have ownership title to the shares in the Polish company).

Additionally, the CIT law states that in order to enjoy the exemption from WHT on dividends and decreased WHT rate on interest and royalties, based on the Directives’ provisions, the relevant DTT or other agreement concluded by Poland should allow exchange of tax information between the tax authorities of Poland and the country of the payment recipient.

Given the fact that Poland did not conclude a DTT with Liechtenstein, payments made to tax residents of Liechtenstein should not benefit from the Directive.

Treaty rates

If EU special rules do not apply, the domestic WHT rates can be decreased by a DTT concluded between Poland and the payment recipient's country of residence if certain administrative conditions are met (i.e. the payer obtains a valid certificate of a fiscal residence of the payment recipient/beneficial owner).

The following table lists the WHT rates as provided in the treaties concluded by Poland. Notably, the following table shows only rates that result from general treaty provisions; the treaties themselves occasionally include special provisions (applicable in special circumstances or to special entities) that provide lower WHT rates than the ones listed.

Furthermore, if a treaty rate is higher than a domestic one, the latter should apply.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	19	20	20
Treaty:			
Albania	5 (1)/10	10	5
Armenia	10	5	10
Australia	15	10	10
Austria	5 (3)/15	0 (4)/5	5
Azerbaijan	10	0 (2)/10	10
Bangladesh	10 (5)/15	0 (6)/10	10
Belarus	10 (7)/15	10	0
Belgium	5 (8)/15	0 (9)/5	5
Bosnia & Herzegovina (Yugoslavian Treaty)	5 (1)/15	10	10
Bulgaria	10	0 (10)/10	5
Canada	0/15	0 (11)/15	0 (12)/10
Chile	5 (13)/15	5/15 (85)	5 (14)/10/15 (86)
China, People's Republic of	10	0 (15)/10	10 (16)/10 of 70 (14)
Croatia	5 (1)/15	0 (15)/10	10
Cyprus	0 (17)/5	0 (79)/5	5 (87)
Czech Republic	5	0 (80)/5	10 (81)
Denmark	0 (19)/5 (20)/15	0 (21)/5	5
Egypt	12	0 (22)/12	12
Estonia	5 (23)/15	0 (24)/10	10
Finland	5 (23)/15	5	5
France	5 (3)/15	0	0 (25)/10
Georgia	10	0 (26)/8	8
Germany	5 (3)/15	0 (27)/5	5
Greece	19 (73)	10	10
Hungary	10	0 (10)/10	10
Iceland	5 (23)/15	0 (10)/10 (74)	10
India	15	0 (28)/15	22.5
Indonesia	10 (13)/15	0 (10)/10	15
Iran	7	0 (29)/10	10
Ireland, Republic of	0 (30)/15	0 (31)/10	0 (82)/10

	WHT (%)		
Recipient	Dividends	Interest	Royalties
Israel	5 (32)/10	5	5 (14)/10
Italy	10	0 (33)/10	10
Japan	10	0 (34)/10	0 (35)/10
Jordan	10	0 (10)/10	10
Kazakhstan	10 (36)/15	0 (37)/10	10
Korea, Republic of	5 (3)/10	0 (38)/10	5 (39)
Kyrgyzstan	10	0 (40)/10	10
Kuwait	0 (41)/5	0 (42)/5	15
Latvia	5 (23)/15	0 (43)/10	10
Lebanon	5	0 (37)/5	5
Lithuania	5 (23)/15	0 (10)/10	10
Luxembourg	0 (88)/15	0 (44)/5	5
Macedonia	5 (23)/15	0 (10)/10	10
Malaysia	0 (45)	0 (46)/15	0 (47)/15
Malta	0 (77)/10 (76)	0 (2)/5	5 (78)
Mexico	5 (23)/15	0 (48)/5 (49)/15	10
Moldova	5 (23)/15	0 (37)/10	10
Mongolia	10	0 (10)/10	5
Montenegro (Yugoslavian Treaty)	5 (23)/15	10	10
Morocco	7 (18)/15	10	10
Netherlands	5 (3)/15	0 (75)/5	5
New Zealand	15	10	10
Norway	0 (50)/15	0 (4)/5	5
Pakistan	15	0 (51)/20	15 (52)/20 (53)
Philippines	10 (23)/15	0 (54)/10	15
Portugal	10 (55)/15	0 (56)/10	10
Qatar	5	0 (84)/5	5
Romania	5 (23)/15	0 (43)/10	10
Russia	10	0 (57)/10	10
Saudi Arabia	5	0 (83)/5	10
Serbia (Yugoslavian treaty)	5 (23)/15	10	10
Singapore	5 (58)/10	5	2 (14)/5
Slovak Republic	5 (18)/10	0 (43)/10	5
Slovenia	5 (23)/15	0 (60)/10	10
South Africa	5 (23)/15	0 (10)/10	10
Spain	5 (1)/15	0	0 (35)/10
Sri Lanka	15	0 (61)/10	0 (62)/10
Sweden	5 (23)/15	0	5
Switzerland	0 (20, 50)/15	5	5
Syria	10	0 (63)/10	18
Taiwan	10	10	3 (89)/10
Tajikistan	15	0 (40)/10	10
Thailand	20	0 (59)/10	0 (64)/5 (65)/15
Tunisia	5 (1)/10	12	12
Turkey	10 (23)/15	0 (10)/10	10
Ukraine	5 (23)/15	0 (37)/10	10
United Arab Emirates	0 (66)/5	0 (10)/5	5
United Kingdom	0 (67)/10	0 (68)/5	5
United States	5 (69)/15	0	10

Poland

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Uzbekistan	5 (70)/15	0 (71)/10	10
Vietnam	10 (23)/15	10	10 (72)/15
Zimbabwe	10 (23)/15	10	10

Notes

1. When the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
2. When interest is paid to the government, the central bank of the state, including local authorities or other government bodies.
3. When the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
4. When interest is paid to the government, a political subdivision, or a local authority in connection with:
   - a loan granted, insured, or guaranteed by a governmental institution for the purposes of promoting exports
   - a sale on credit of any industrial, commercial, or scientific equipment, or
   - any loan granted by a bank.
5. When the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends.
6. When the interest is paid:
   - to the Central Bank of Poland
   - to the Central Bank of Bangladesh
   - to the government of the Republic of Poland or the government of the Republic of Bangladesh, or
   - in respect of a loan made or guaranteed or insured by the government of the other state, or any agency including a financial institution owned or controlled by the government.
7. When the beneficial owner is a company (other than a partnership) that directly holds at least 30% of the capital of the company paying the dividends.
8. When the beneficial owner is a company (other than a partnership):
   - that directly holds at least 25% of the capital of the company paying the dividends or
   - that directly holds at least 10% of the capital of the company paying the dividends, and the value of investments in the company is at least EUR 500,000 or is equal to the amount in the other currency.
9. When interest is paid:
   - on a loan granted, guaranteed, or insured, or a credit granted, guaranteed, or insured, by a general system organised by the state, including political subdivisions or local authorities for purposes of promoting exports
   - on a loan of whatever kind, except in the form of bearer securities, granted by a banking company, or
   - to other states, including political subdivisions and local authorities.
10. When interest is paid to the government, including local authorities, to the central bank or any financial institution controlled by that government, or on loans guaranteed by that government.
11. When interest is paid in respect of a loan made, guaranteed, or insured by the state or agreed public body.
12. Copyright royalties and other similar payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work (not including royalties in respect of motion picture films and works on film or videotape for use in connection with television).
13. When the beneficial owner is a company that directly controls 20% of the voting stock of the company paying the dividends.
14. For the use of, or the right to use, any industrial, commercial, or scientific equipment.
15. When interest is paid:
    - to the government, a local authority, and the central bank or any financial institution wholly owned by that government or
    - to the other resident of the other state with respect to debt-claims indirectly financed by the government of the other state, a local authority, and the central bank or any financial institution wholly owned by the government.
16. For the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, or any patent, know-how, trademark, design or model, plan, secret formula, or process.
17. The Protocol of 22 March 2012 has entered into force. The Protocol introduces a maximum 5% rate of WHT on dividends and exempts dividends paid to an immediate parent company (other than partnership) that owns at least 10% of the capital of the company paying the dividend.
18. When the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends.
19. When the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends, where such holding is being possessed for an uninterrupted period of no less than one year and the dividends are declared within that period.

20. When the beneficial owner is a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, when such pension fund or other similar institution is established, recognised for tax purposes and controlled in accordance with the laws of the other state.
21. When interest is paid:
    - on a loan of whatever kind granted, insured, or guaranteed by a financial institution owned or controlled by the state
    - in connection with the sale on credit of any industrial, commercial, or scientific equipment
    - in respect of a bond, debenture, or other similar obligations of the government of the state, or of a political subdivision or local authority, or
    - to the other state, or to a political subdivision or local authority.
22. When interest is paid to the government of the other state, including local authorities and the central bank.
23. When the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
24. When interest is paid to the government of the other state, including political subdivisions and local authorities, the central bank, or any financial institution owned by the government or on loans guaranteed by the government.
25. From copyright of literary, artistic, or scientific work.
26. When the beneficial owner is the government of the other state or central bank.
27. When the interest, subject to certain exceptions related to silent shareholders, is paid:
    - to the government of Poland or Germany on a loan of whatever kind granted, insured, or guaranteed by a public institution for purposes of promoting exports
    - in connection with the sale on credit of any industrial, commercial, or scientific equipment
    - in connection with the sale on credit goods between companies, or
    - on any loan of whatever kind granted by a bank.
28. If the following conditions are met:
    - Interests paid to:
        - the government, a political sub-division, or a local authority of the other contracting state or
        - the central bank of other contracting state.
    - When the beneficial owner is a resident of the other contracting state and is derived in connection with a loan or credit extended or endorsed by:
        - Bank Handlowy (in scope of financing export and import) - for Poland
        - the Export-Import Bank of India (in scope of financing export and import) - for India
        - any institution in the other contracting state in charge of public financing of external trade, or
        - any other person, provided that the loan or credit is approved by the government of the first mentioned contracting state.
29. When the beneficial owner is the government, ministry, other governmental institution, municipality, central bank, or any other bank wholly owned by the government of the other contracting state.
30. When the beneficial owner is a resident of the other contracting state and directly holds at least 25% of the voting power of the company paying the dividends.
31. Interest paid in connection with:
    - the sale on credit of any industrial, commercial, or scientific equipment
    - the sale on credit of any merchandise by one enterprise to another, or
    - on any loan of whatever kind granted by the bank.
32. When the beneficial owner is a company that directly holds at least 15% of the capital of the company paying the dividends.
33. If the following conditions are met:
    - When the payer of interests is the government or contracting state or a local authority of thereof.
    - Interest is paid to the government of other contracting state or local authority thereof (including financing institutions) wholly owned by other contracting state or local authority thereof.
    - Interest is paid to any other entity, including financial institutions, in relation to loans made in application of an agreement concluded between governments of contracting states.
34. When beneficial owner is the government of other contracting state, including local authorities thereof, the central bank, any financial institutions controlled by that government or any resident of the other contracting state with respect to debt-claims, guaranteed or indirectly financed by institutions mentioned above.
35. For payments connected with copyrights, literary, artistic, and scientific activity, including payments connected with films for cinemas and films and tapes for TV.
36. When the beneficial owner is a company that directly or indirectly holds, at least 20% of the capital of the company paying the dividends.
37. When interest is paid to the government or local authorities.
38. Interest arising in a contracting state in respect of loans or credits made, insured, or guaranteed:
    - in the case of Korea, by the Export-Import Bank of Korea, Korea Development Bank, Korea Finance Corporation (KoFC), Korea Trade Insurance Corporation (K-sure), Korea Investment Corporation, and any other financial institution, performing similar functions of a governmental nature, established and owned by the government of Korea, and
    - in the case of Poland, by the *Korporacja Ubezpieczeń Kredytów Eksportowych* S.A (KUKE S.A.), Bank *Gospodarstwa Krajowego* (BGK), and any other financial institution, performing similar functions of a governmental nature, established and owned by the government of Poland, and
    - paid to a resident of the other contracting state shall be taxable only in that other state.
39. If the recipient is the beneficial owner.

40. Interest paid to government or central bank.
41. When the beneficial owner is:
    - the government of the other contracting state, entity, or any governmental institution or
    - a company that is a resident of the other contracting state and at least 25% of its capital is directly or indirectly owned by the entities mentioned above.
42. If the following conditions are met:
    - When the beneficial owner is:
        - the government of the other contracting state, entity, or governmental institution or
        - a company that is a resident of the other contracting state and at least 25% of its capital is owned directly or indirectly by the entities mentioned above.
    - When interest is paid in connection with loans guaranteed by the entities mentioned above.
43. When interest is paid:
    - to the government, including the local authorities, to the central bank or any financial institution controlled by that government, or on loans guaranteed by that government or
    - to the resident in the other contracting state.
44. If the following conditions are met:
    - When the beneficial owner is other contracting state.
    - When interest is paid in connection with loans and credits granted by bank.
45. Dividends paid by:
    - a resident of Poland to a resident of Malaysia who is subject to Malaysian tax in respect thereof or
    - a resident of Malaysia to a resident of Poland who is subject to Polish tax in respect thereof.
46. Interest paid to resident of Poland on an approved loan or a long-term loan.
47. Royalties paid to resident of Poland by resident of Malaysia and approved by the competent authority of Malaysia.
48. If the following conditions are met:
    - When the beneficial owner is:
        - a contracting state, a political subdivision, or a local authority, or The National Bank of Poland or Banco de Mexico or
        - a recognised pension or retirement fund provided that its income is generally exempt from tax in this state.
    - When interest:
        - is paid by any of entities mentioned above
        - arises in Poland and is paid in respect of a loan for a period not less than three years granted, guaranteed, or insured by Banco de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco National de Obras y Servicios Publicos S.N.C., or
        - arises in Mexico and is paid in respect of a loan for a period not less than three years granted, guaranteed, or insured by PKO S.A., Corporation of Credit Insurance, and Bank Handlowy in Warsaw.
49. If the following conditions are met:
    - When the beneficial owner is a bank or insurance company.
    - When interest is derived from bonds and securities that are regularly and substantially traded on a recognised securities market.
50. When dividends are paid to the company that directly holds at least 10% of the capital paying the dividends on the day they are paid and has done (or will do) so for an interrupted 24-month period from which that date falls.
51. When interest is paid:
    - by a resident of Pakistan to a Polish company or enterprise on loans approved by the MoF of the government of Pakistan
    - to the State Bank of Pakistan from sources in Poland, or
    - to Bank Handlowy in Poland from the sources in Pakistan.
52. For payments of any kind received in consideration for the use of, or the right to use:
    - any copyright, patent, trademark, design or model, plan, secret formula, or process
    - an industrial, commercial, or scientific equipment, or
    - motion picture films, and works on films and videotapes for use in connection with television.
53. For payments received in consideration of technical know-how concerning industrial, commercial, or scientific experience.
54. Interests paid in respect of:
    - a bond, debenture, or other similar obligations of the government, state, political subdivision, or local authority thereof or
    - a loan or credit extended, guaranteed, insured, or refinanced by:
        - Central Bank of Philippines - for Philippines
        - Central Bank of Poland - for Poland, or
        - other lending institutions as specified and agreed in letters of exchange between competent authorities of the contracting states.
55. When dividends are paid to the company that directly holds at least 25% of the capital stock of the company paying the dividends for an uninterrupted 24-month period prior to the payment.
56. If the following conditions are met:
    - When the debtor of such interests is the government, a political subdivision, or local authority.
    - When the interest is paid to the government of other contracting state, a political subdivision, or local authority thereof, or an institution or body in connection with any financing granted by them under an agreement between the governments of the contracting states.

- Loans or credit made on central banks of contracting states and any other financial institution controlled by the state and financing external business that may be agreed upon between the competent authorities of the contracting states.

57. Interests paid to government, administrative, territorial, or the central bank.
58. Dividends paid by:
    - the company that is a resident of Singapore to a resident of Poland (as long as Singapore does not impose a tax on dividends in addition to the tax chargeable on the profits or income of a company) or
    - to government of either contracting state with respect to shares in joint stock companies of that other state.
59. Interest paid to government.
60. Interests paid to government, local authorities, or the central bank.
61. Interests:
    - received by any banking institution that is a resident of contracting state
    - derived from contracting state of the other contracting state either directly or through any agency, or
    - accruing to any company, partnership, or other body of persons resident in the contracting state for any loans in money, goods, and services or in any other form, granted by them to the government of the other contracting state, or to a state corporation, or to any state institution, or to any other institution, to the capital of which, the other contracting state has made any contribution, or to a credit agency, or an undertaking in that other contracting state with the approval of the government of the same state.
62. For payment in consideration, for the use of, or the right to use, any copyrights or cinematograph films.
63. If the following conditions are met:
    - When recipient is a contracting state, or one of its local authorities, or the statutory body of either, including the central bank; or when interests are paid by a contracting state, or one of its local authorities, or the statutory body of either.
    - Such interest is paid in respect of any debt-claim or loan guaranteed, insured, or supported by a contracting state or another person acting on state's behalf.
64. Payments payable to contracting state or a state owned company in respect of tape or films.
65. Royalties made as consideration, for the alienation, or the use of, or the right to use, any copyright of literary, artistic, or scientific work, excluding cinematographic films or tapes for television or broadcasting.
66. When the beneficial owner is the government or a government institution.
67. When dividends are paid to a company that is the resident of the other contracting state and that directly holds at least 10% of the capital, paying the dividends on the day they are paid and has done (or will do so) for an uninterrupted 24-month period from which that date falls.
68. When interests are paid to the government, a political subdivision, or a local authority in connection with:
    - a loan granted, insured, or guaranteed by a governmental institution for the purposes of promoting exports
    - the sale on credit of any industrial, commercial, or scientific equipment, or
    - any loan granted by a bank.
69. When the beneficial owner is a company that directly holds at least 10% of the outstanding shares of the voting stock of the company paying the dividends.
70. When the beneficial owner is a company that directly holds at least 20% of the capital of the company paying the dividends.
71. When the beneficial owner is:
    - the government or a local authority or
    - the National Bank of Poland or the Central Bank of Uzbekistan Republic.
72. For payment of any kind, received in consideration, for the use of, or the right to use:
    - any patent, design or model, plan, secret formula, or process or
    - any information concerning industrial or scientific experience.
73. Treaty allows application of the domestic tax rate.
74. As long as Iceland does not levy tax at source of income, interest is taxable only in the contracting state of which the beneficial owner of the interest is a resident.
75. When interest is paid to the government, a political subdivision, or a local authority in connection with:
    - a loan granted, insured, or guaranteed by a governmental institution for the purposes of promoting exports
    - a sale on credit of any industrial, commercial, or scientific equipment
    - any loan granted by a bank
    - in respect of a bond, debenture, or other similar obligations of the government of a contracting state, or of a political subdivision or local authority thereof, or
    - to the other contracting state, or to a political subdivision or local authority thereof.
76. When the tax is charged by Poland.
77. When the dividends are paid by a company resident of Poland to a resident of Malta that directly holds at least 10% of the capital company paying the dividends on the date they are paid and has done so or will have done so for an uninterrupted 24-month period in which that date falls.
78. When the recipient is the beneficial owner.
79. According to the Protocol of 22 March 2012, which has entered into force, the maximum WHT rate on interest paid is 5%. However, when interest is paid to the government, including political sub-divisions and local authorities, the central bank, or any statutory body of the state with respect to loans or

credits made or guaranteed by the government of the other state, including political sub-divisions and local authorities, the central bank, or any statutory body of the other state, it shall be exempt from tax in the first mentioned contracting state.

80. There is a WHT exemption on interest payable: (i) on any loan or credit granted by a bank; (ii) to the government of the other contracting state, including any political subdivision or local authority thereof, the central bank, or any financial institution owned or controlled by that government; or (iii) to a resident of the other state in connection with any loan or credit guaranteed by the government of the other state, including any political subdivision or local authority thereof, the central bank, or any financial institution owned or controlled by that government. The maximum rate of WHT on interest is 5%.
81. The maximum WHT rate on royalties is 10%.
82. The lower rate applies to fees for technical services.
83. When interest is paid: (i) by the government of a contracting state, administrative subdivision, or local authority thereof; (ii) to the government of the other contracting state, administrative subdivision, or a local authority thereof; or (iii) to the central bank of the other contracting state or a corporate body (including financial institution) controlled or owned by that state, a political or administrative subdivision, or local authority thereof.
84. If the recipient of the interest is the beneficial owner and interest is paid: (i) to the Republic of Poland or the State of Qatar; (ii) on a loan of whatever kind granted, insured, or guaranteed by a public institution for purposes of promoting exports; (iii) in connection with the sale on credit of any industrial, commercial, of scientific equipment; or (iv) on any loan of whatever kind granted by a bank.
85. The treaty rate is 15% for all types of interest. However, by virtue of a most-favoured-nation clause of the protocol (and since the Chile-Spain treaty provides a reduced rate), the rate is reduced to 5% in respect of interest (i) paid to a bank or insurance company or (ii) derived from bonds or securities that are regularly and substantially traded on a recognised securities market.
86. The general treaty rate is 15%. However, by virtue of a most-favoured-nation clause of the protocol (and since the Chile-Spain treaty provides a reduced rate), the rate is reduced to 10%.
87. The Protocol of 22 March 2012 has not changed the WHT rate in relation to royalties; however, the beneficial owner clause was introduced. Additionally, the new DTT amends the definition of 'royalties'.
88. When the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends, where such holding is being possessed for an uninterrupted period of no less than two years and the dividends are declared within that period.
89. When royalties are paid for the use of, or right to use, industrial, commercial, or scientific equipment.

Tax administration

Taxable period

The taxable period is the calendar year (between 1 January and 31 December). Companies are entitled to choose another (than calendar) fiscal year (e.g. between 1 April and 31 March).

Tax returns

The annual CIT return should be submitted to the tax office within three months following the end of the tax year.

Payment of tax

The same deadline as the CIT return applies to the settlement of the annual CIT liability. In financial terms, the final settlement is not significant since most of the annual liability is paid by CIT advances throughout the tax year.

The CIT advances should be paid for each month by the 20th day of the following month. Entities that started business activities (except for companies organised as a result of certain transformations) and entities whose gross sales revenue (including VAT) in the prior tax year did not exceed EUR 1.2 million are entitled to opt to make advance settlements on a quarterly basis (instead of a monthly basis).

Tax audit process

The tax authorities generally shall notify its intention to initiate a tax audit. The inspection shall be initiated not earlier than after seven days and not later than 30 days from the receipt of the notice.

The duration of all audits in one calendar year may not exceed the following:

- For micro entrepreneurs: 12 working days.
- For small entrepreneurs: 18 working days.
- For medium entrepreneurs: 24 working days.
- For large entrepreneurs: 48 working days.

The rules mentioned above do not apply to the inspection commenced by the customs and revenue office. This kind of tax inspection is initiated without issuing a notification and in practice there is a possibility to prolong the inspection without any specific time limits.

Statute of limitations

Tax liability expires five years after the end of the calendar year in which the tax payment deadline passed. There are also situations when the statute of limitations can be suspended or interrupted (e.g. litigation).

Topics of focus for tax authorities

According to recent statements from the MoF, the focus of the tax audit authorities is on transactions between related parties (transfer pricing issues), VAT frauds, and tax restructuring. Moreover, traditionally, tax audits usually cover:

- Validity of the VAT refund.
- Possibility to correct excise duty resulting from post-transaction rebate.
- Correctness of settlements concerning the use of a trademark.

General anti-abuse rule (GAAR)

According to amendments to the Tax Ordinance Act and certain other acts, legal transactions with the main purpose of obtaining a tax advantage contrary to the tax regulations shall not result in tax benefit. Tax consequences of such transactions will be assessed as if an alternative 'appropriate' transaction had taken place. Furthermore, if transactions carried out by a taxpayer do not have any real economic or business rationale other than tax avoidance, tax authorities may completely disregard them.

The GAAR will be applied to the tax benefits received after the amendments were introduced (i.e. 15 July 2016). This means that the sole fact that the transaction was carried out before the amendments entered into force may not exclude application of the regulations in case the taxpayer obtains a tax benefit after the GAAR is introduced.

Other issues

United States Foreign Account Tax Compliance Act (US FATCA)

On 2 April 2014, the US Treasury announced that an intergovernmental agreement (IGA) was 'in effect' and, on 7 October 2014, the US Treasury and Poland signed and released the IGA. As of 4 May 2015, the President has signed the bill, which confirmed IGA ratification.

National Fiscal Administration introduced

As of 1 March 2017, the National Fiscal Administration (*Krajowa Administracja Skarbowa* or KAS) was introduced. The KAS is a specialised government administration engaged primarily with tasks related to obtaining revenues from taxes, duties, fees, and non-tax budget receivables.

The following offices were created as part of the KAS:

- The Head of the National Fiscal Administration (*Szef Krajowej Administracji Skarbowej*).
- Director of the National Fiscal Information (*Dyrektor Krajowej Informacji Skarbowej*).
- Directors of chambers of fiscal administration (*dyrektorzy izb administracji skarbowej*).
- The heads of customs and revenue offices (*naczelnicy urzędów celno-skarbowych*).
- The heads of tax offices (*naczelnicy urzędów skarbowych*).

Multilateral Instrument to Modify Bilateral Tax Treaties (MLI)

On 14 November 2017, the Act on ratification of the MLI was published in the official Journal of Laws. The MLI globally implements mechanisms created to prevent international profit shifting to locations where they are subject to reduced taxation or non-taxation. Poland is the third country (after Austria and Isle of Man) to ratify the MLI. Poland declared 78 DTTs for the MLI's purposes. Among declared DTTs, there are, *inter alia*, DTTs with Austria, Belgium, Canada, Cyprus, Denmark, France, Holland, Ireland, Luxembourg, Malta, Mexico, Norway, Sweden, and the United Kingdom. At the moment of signing the MLI, Poland has declared 77 DTTs in which the method of avoiding double taxation used to this point (i.e. the tax exemption method) may be replaced by the tax credit method.

Portugal

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Significant developments

January 2018: Jersey, Isle of Man, and Uruguay are back on the Portuguese black list

Following the publication of the 2018 State Budget Law, Jersey, Isle of Man, and Uruguay have been placed, once again, on the Portuguese black list. This measure is effective 1 January 2018.

December 2017: 2018 State Budget Law published

Law 114/2017, dated 29 December, was published in the Official Gazette, having approved the 2018 State Budget Law. The measures became effective on 1 January 2018. The main tax measures included are the following:

Corporate income tax (CIT)

- Capital gains: The territorial scope of liability to tax in Portugal has been extended, leaving capital gains liable to taxation when they result from the transfer of share capital in non-resident entities, provided those shares grant rights, at any given time in the previous 365 days, to immovable property in Portugal (in line with Base Erosion and Profit Shifting [BEPS] Action 6, preventing the granting of treaty benefits in inappropriate circumstances).
- Limitation on the tax deductibility of financing expenses: It is approved that the option for the computation of the limitation to the deductibility of financing expenses at a group level under the special regime of group taxation is automatically renewed for periods of one year after the minimum maintenance period of three years, unless a statement of changes is submitted communicating its waiver.
- State surtax: Increased from 7% to 9% when the taxable profit is over 35 million euros (EUR).
- Tax benefits:
  - All types of credits for share capital increases are now eligible for the purposes of the conventional remuneration of share capital tax benefit.
  - Regarding the tax benefit for the reinvestment of retained earnings (DLRR), the reinvestment term is extended to three years (previously two). It was also approved that the maximum amount of retained earnings that may be used per tax year for the purposes of this tax benefit is increased to EUR 7.5 million (instead of the previous EUR 5 million). Additionally, the deduction can be made up to 50% of the CIT due for micro and small enterprises (previously 25%).
  - The request for the application of the incentive regime for research and development (SIFIDE) shall be submitted up to the end of May (previously the end of July), and a fee can be charged for its evaluation.

- Some tax benefits, such as the net job creation, swaps and loans of non-resident financial entities, deposits of non-resident credit institutions, savings plans in shares, among others, were not renewed and will expire on 1 July 2018 if no additional legislation is published.

Value-added tax (VAT) and excise duties

- It is approved that the taxpayers who benefit from a deferral scheme for the payment of VAT due on previous imports may still opt to self-assess the VAT due on imports, as the deferral schemes no longer prevent the applicability of this regime.
- The excise duties on oil and energetic products, tobacco, alcohol, and alcoholic beverages have increased.

Stamp duty

- The taxation on consumer credit will increase to 0.12% for credits with undetermined term or determined under one year (previously 0.105%) and to 1.5% for credits with determined term over one year.
- There is a new tax compliance obligation of reporting monthly the transactions subject to stamp duty (even if exempt).

Property transfer tax

- The statute of limitations for the property transfer tax is increased to 12 years (previously eight years) for taxpayers that are resident for tax purposes in territories or countries with a more favourable tax regime.
- The property transfer tax, stamp duty, and emoluments exemptions in connection to restructuring operations become automatic (previously a request had to be submitted and the exemption granted by the Ministry of Finance [MoF]) unless the operations require the approval of the Competition Authority. This is not applicable to some demerger operations.

Property tax

- Historical stores of social, cultural, or historical relevance, recognised as such by the municipalities are exempt from property tax. Expenses incurred with the maintenance and preservation of these historical stores are accepted as cost with a 10% mark-up.

General tax law

- The communication to the tax authorities regarding the transfers and remittances of funds to entities located in a country or territory with a favourable tax regime is anticipated to March (previously July).
- From 2018 onwards, taxpayers may use tax credits due by the tax authorities to make payments to third parties, provided that this operation is previously authorised by the tax authorities and the taxpayers.

December 2017: Amendment to the protocol of the tax treaty between Portugal and France

An amendment to the protocol of the tax treaty between Portugal and France has been approved and ratified. The protocol entered into force on 1 December 2017 and is applicable from 1 January 2018 onwards.

The amendment concerns new procedures and mechanisms for the exchange of information and mutual assistance on tax matters. It also introduces a limitation on benefits clause (beneficial ownership).

August 2017: Transposition of European Union (EU) Directives on matters of central register of beneficial ownership, record retention, reporting obligations and mandatory automatic exchange of information on advance cross-border rulings, advance pricing agreements (APAs), and country-by-country (CbC) reporting

Law 89/2017, dated 21 August, approved the regime of central register of beneficial ownership, regarding corporate and other legal entities incorporated in Portugal, including details of the beneficial interests held in those entities. The regime results from the transposition of Chapter III of Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Law 98/2017, dated 24 August, amends several legal diplomas (among others, the General Tax Law, the CIT Code, and the Regime of Tax Penalties). This law regulates mandatory automatic exchange of information in case of advance cross-border binding rulings and advance tax and transfer pricing agreements, as well as CbC reporting, transposing Directive (EU) 2015/2376 of 8 December and Directive (EU) 2016/881 of 25 May, both regarding mandatory automatic exchange of information in the field of taxation.

July 2017: Entry into force of tax treaties with the Republic of Vietnam, the Kingdom of Bahrain, and the Sultanate of Oman

Following publication of the respective Notices in the Official Gazette, the tax treaties concluded between Portugal and the Republic of Vietnam, between Portugal and the Kingdom of Bahrain, and between Portugal and the Sultanate of Oman have entered into force. All the tax treaties apply from 1 January 2017. Both the Kingdom of Bahrain and the Sultanate of Oman are included in the Portuguese black list.

June 2017: Portugal signs the Multilateral Convention (MLI) to implement tax treaty related measures to prevent base erosion and profit shifting (BEPS)

Portugal signed the MLI on 8 June 2017 aiming at implementing tax treaty related measures to prevent BEPS. The provisional list of reservations and notifications to the MLI was also published. The MLI is not yet in force.

May 2017: Publication of data regarding transfer to offshores and end of bearer shares

The Portuguese tax authorities are required to publish on their website, on an annual basis, all transfers, including respective amount and reason, made to offshores, as well as statistics about such transfers, and, among other matters, the outcome and number of tax audits, as well as corrections to the taxable income and additional assessments of tax raised. This is established under Law 14/2017, dated 3 May.

Following the publication of Law 15/2017, dated 3 May, the issuance of bearer securities is no longer allowed. Further regulation is still expected.

Taxes on corporate income

Resident companies in Portugal are taxed on their worldwide income.

There is an optional regime to exclude from taxation the profits and losses allocated to a foreign permanent establishment (PE) of a Portuguese company. The regime applies provided that (i) the profit allocated to that PE is subject to and not exempt from a tax foreseen in Article 2 of the EU Parent/Subsidiary Directive (Council Directive 2011/96/EU), or a tax similar to the Portuguese CIT where the legal rate is not lower than 60% of the standard CIT rate, and (ii) the PE is not located in a black-listed jurisdiction. The regime is not applicable to the profit allocated to the foreign PE up to the amount of the losses attributable to that PE that have been taken into account by the Portuguese taxpayer when computing the respective taxable income of the previous five tax years (12 tax years in case of small and medium-sized enterprises [SMEs]). This is an optional regime that must cover, at least, all the PEs located in the same jurisdiction, and is mandatory for a minimum three-year period.

CIT is also applicable to Portugal-source income attributable to a PE of a non-resident company in Portugal. Special withholding tax (WHT) rates apply to income generated in Portugal that is attributable to non-residents without a PE in Portugal (*see the Withholding taxes section for more information*).

A flat CIT rate of 21% applies on the global amount of taxable income realised by companies resident for tax purposes in the Portugal mainland or in the Autonomous Region of Madeira (also applicable to Portuguese PEs of foreign entities).

A reduced CIT rate of 17% (16% in case of the Autonomous Region of Madeira) applies to SMEs on the first EUR 15,000 of taxable income (the standard CIT rate shall apply on the excess). Additionally, SMEs that are located in Portuguese inland regions benefit from a rate of 12.5% on the first EUR 15,000 of the taxable amount, also being subject to the standard CIT rate on the excess. In both cases, reference is made to the concept of micro, small, and medium-sized companies as foreseen in the EU Commission Recommendation 2003/361, concerning the definition of micro, small, and medium-sized enterprises.

Entities that do not carry out a commercial, industrial, or agricultural activity as their main activity are subject to a 21% CIT rate on the global amount of their taxable income.

A lower CIT rate of 16.8% applies to companies that are tax resident in the Autonomous Region of the Azores, including PEs of foreign entities registered therein.

Surtaxes

The following surtaxes may also apply:

- A local surtax (*Derrama*) of up to 1.5% of taxable income, prior to the deduction of any available carryforward tax losses, is levied in certain municipalities. The local surtax is assessed and paid when filing the CIT return.
- A state surtax (*Derrama Estadual*) applies (prior to the deduction of any available carryforward tax losses) at the following rates:
  - 3% applicable to the taxable profit exceeding EUR 1.5 million and up to EUR 7.5 million.

- 5% applicable to the taxable profit exceeding EUR 7.5 million and up to EUR 35 million.
- 9% applicable to the taxable profit exceeding EUR 35 million.

The state surtax is levied on resident taxpayers carrying on commercial, industrial, or agricultural activity and by non-residents with a PE in Portugal. The state surtax is paid in three instalments.

A regional surtax (*Derrama Regional*) applies in the Autonomous Region of Madeira on the same terms as the state surtax. In the Autonomous Region of the Azores, a reduction of 20% of the above rates shall be applicable.

Autonomous taxation

Autonomous taxation applies at different rates on certain expenses incurred by entities subject to CIT. It is self-assessed in addition to CIT (even if no CIT is due) at the following rates:

- Representation and entertainment expenses: 10%.
- Mileage allowance: 5%.
- *Per diem* allowance: 5%.
- Non-documented expenses: 50% (70% for partially or fully exempted taxpayers).
- Company car expenses (including depreciation, rentals, leasing, insurance, maintenance, repairs, fuel, and taxes), except fully electric cars, vehicles allocated to public transport, or vehicles that are taxed as income in kind for personal income tax (PIT) purposes, depending on the acquisition cost and regardless of the year of acquisition:
  - Acquisition cost lower than EUR 25,000: 10%.
  - Acquisition cost between EUR 25,000 and EUR 35,000: 27.5%.
  - Acquisition cost of EUR 35,000 or more: 35%.
- Dividends distributed to wholly or partially exempt taxpayers regarding participations held for less than one year: 23%.
- The total amount of the expenses incurred with any compensation paid as a result of the termination of functions of managers or board members if not related to the productivity targets previously established under the existing labour relation; or the amount that exceeds the remuneration that would be received by the manager or the board member until the term of the labour agreement, in case of redundancy prior to that term; or, in all cases, if the liability for the payment is shifted to another entity: 35%.
- The total amount of the expenses incurred with bonuses paid to managers or board members if the respective amount corresponds to more than 25% of the annual salary and exceeds EUR 27,500: 35%.
- Payments made to open accounts of financial institutions in a jurisdiction with a clearly more favourable tax regime, unless proof is made that the operations effectively took place and do not have abnormal conditions or exaggerated amounts: 35%.

All of the above-mentioned rates of autonomous taxation are increased by 10% if the taxpayer has tax losses in the tax year in which the expenses are incurred.

Corporate residence

A resident company is one whose head office or effective management is located in Portugal.

Permanent establishment (PE)

Under Portuguese tax law, any fixed place of business in Portugal through which the business of an enterprise is wholly or partly carried on is deemed to constitute a PE in Portugal.

A fixed place of business comprises, among others, a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources, and also a building site or a construction or installation project if it lasts more than six months (time period may differ considering the applicable tax treaty).

A PE may also be deemed to exist in case of a person (a dependent agent), which is not an independent agent, acting, in the Portuguese territory on behalf of a company, with powers to intermediate and conclude binding contracts for that company, within the scope of its business activity.

No PE should exist where a fixed place of business in Portugal is used solely for carrying out ancillary or preparatory activities, or, in the case of a company, carries out its activities in Portugal through a broker, general commission agent, or other agent of an independent status, acting in the normal course of its business, bearing all related business risks.

Additionally, the term PE shall be deemed not to include the following actions:

- Use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise.
- Maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery.
- Maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise.
- Maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise.
- Maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
- Maintenance of a fixed place of business solely for any combination of activities mentioned above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

Other taxes

Value-added tax (VAT)

VAT rates

There are three VAT rates: the standard rate of 23% (22% in the Autonomous Region of Madeira; 18% in the Autonomous Region of the Azores), the intermediate rate of 13% (12% in Madeira; 9% in the Azores), and the reduced rate of 6% (5% in Madeira; 4% in the Azores).

The intermediate rate applies to supplies of some foodstuffs and to admissions to concerts, shows, theatre, cinemas, circus, and bullfighting. The intermediate rate is also applicable to pre-cooked meals, in ready-to-eat and take away or home delivery regimes, and to food and beverage services rendered, excluding alcoholic beverages, soft drinks, juices, nectars, and carbonated water, or added carbon dioxide or other substances.

The reduced rate applies to the supplies of some basic foodstuffs, periodical publications, books, pharmaceutical products, hotel accommodation, agricultural goods, and passenger transport.

Exports and intra-EU supplies of goods are zero-rated.

Supplies of goods

Supplies of goods are subject to VAT in Portugal if the goods are located in Portugal at the moment their transport or dispatch to the customer begins. If the goods are located in Portugal and there is no transport or dispatch, then supplies of the goods are subject to VAT at the moment they are put at the disposal of the customer.

Supplies of services

Supplies of services are subject to VAT in Portugal whenever: (i) acquired by taxable persons that have their business, a fixed establishment, domicile, or residence in Portugal to which the services are provided (B2B rule) or (ii) supplied to non-taxable persons if the provider has established its business, a fixed establishment, domicile, or residence in Portugal from where these services are provided (B2C rule).

Regardless of the place where the service provider and the acquirer are established, and of the acquirer being a taxable person, the supply of the following services is subject to VAT in Portugal if physically carried out in Portugal:

- Services connected with immovable property in Portugal.
- Passenger transport for the distances covered in Portugal.
- Admission to cultural, artistic, scientific, sporting, educational, entertainment, or similar events in Portugal.
- Restaurant and catering services in Portugal.
- Short-term hiring of a means of transport (up to 30 days, for boats up to 90 days) if the means of transport are put at the disposal of the customer in Portugal.

The supply of the following services is subject to VAT in Portugal if physically carried out in Portugal and if the acquirer is a non-taxable person:

- Transport of goods, other than intra-Community transport of goods, for the distances covered in Portugal.
- Intra-Community transport of goods if the place of departure is Portugal.
- Valuations of and work on movable property.
- Services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment, or similar activities, such as fairs and exhibitions, including the supply of services of the organisers; and hiring of a means of transport, other than short-term hiring, when the acquirer is established, has one’s permanent address, or usually resides in Portugal.

Telecommunications, broadcasting, television, and electronic services supplied to non-taxable persons are taxed in Portugal when the customer, a non-taxable person, is established, has one's permanent address, or usually resides herein.

Customs duties

Customs duties are regulated by the Community Customs Code. Therefore, the rules foreseen for the import and export of goods in Portugal are similar to the rules applicable in other EU member states.

The customs duties' rates applied in Portugal vary according to the origin of the goods. There are several origin agreements that exempt from customs duties the importation of goods from certain countries or that determine reduced rates.

Excise duties

There are different types of excise duties, such as petroleum and energy products tax, alcohol and alcoholic beverages tax, tobacco tax, and vehicle tax.

The tax applicable to petroleum and energetic products depends on the goods supplied, and it varies for leaded petrol between EUR 359 and EUR 650 per 1,000 kg.

Due to the Green Tax Reform, there is a CO2 adding factor to excise duties on petroleum and energetic products, which, in 2018, is 2.271654 for gasoline and 2.474862 for diesel. The adding factor is extensive to petroleum, coal, natural gas, coke, liquefied petroleum gas (LPG), and fuel oil.

The excise duty applies on the supply of natural gas when used for carbonate fuel final consumers at the rate of EUR 0.303307/GgJ and when used as propellant at the rate of EUR 1.15/GJ.

The tax applicable to alcohol and alcoholic beverages also depends on the type of good supplied, varying between EUR 8.34 per hectolitre for a certain type of beer and EUR 1,386.93 per hectolitre for spirits.

Non-alcoholic beverages with added sugar are also liable to excise duties of EUR 16.69 or EUR 8.34 per 1,000 litres, depending on whether the added sugar amounts exceed the 80g/litre amount or not.

The tax applicable to tobacco (*ad valorem*) also varies in accordance with the type of product supplied, namely it varies between 15% of the sale price for cigarettes, 16% for fine-cut tobacco for rolling, 25% for cigars and cigarillos, and 50% of the sale price for tobacco used in a water pipe.

The tax applicable to vehicles varies in accordance with the type of vehicle, the fuel used, and the cylinder of the vehicle. The higher taxation is applicable for cars used for the transport of passengers using petrol as fuel and the lower taxation is applicable for motorcycles.

An excise duty on consumption of electricity is due by producers, traders, self-producers, and consumers that buy electricity in organised markets. The tax applicable to electricity varies between EUR 1/kw to EUR 1.1/kw.

Property tax (Imposto Municipal sobre Imóveis or IMI)

IMI is a municipal property tax computed on the tax registration value (TRV) of urban and rural properties located in Portuguese territory. For urban properties, the TRV is determined by means of a valuation, based on the type of property, calculated by reference to a formula based on objective criteria, such as the construction cost per square metre, area, age, construction quality, and comfort indexes. IMI is due by the real estate owner, the usufructuary, or the holder of the surface right of a real estate unit with reference to 31 December of the year that it concerns.

IMI is levied at the following rates, in addition to corporate or individual tax assessed on actual income generated by real estate:

Real estate type	IMI (%)
Urban real estate	0.3 to 0.45
Rural real estate	0.8
Real estate owned by residents in a black-listed jurisdiction (except individuals)	7.5

The list of countries, territories, and regions that provide a more favourable tax regime ('black-listed jurisdictions') is presented below:

- American Samoa
- Andorra (1)
- Anguilla (1)
- Antigua and Barbuda (1)
- Aruba
- Ascension Island
- Bahamas
- Bahrain
- Barbados
- Belize (1)
- Bermuda (1)
- Bolivia
- British Virgin Islands (1)
- Brunei
- Cayman Islands (1)
- Channel Islands (1, 2)
- Christmas Island
- Cocos (Keeling)
- Cook Islands
- Costa Rica
- Djibouti
- Dominica (1)
- Falkland Islands or Malvinas
- Fiji Islands
- French Polynesia
- Gambia
- Gibraltar (1)
- Grenada
- Guam
- Guyana
- Honduras
- Hong Kong
- Isle of Man (1)
- Jamaica
- Jordan
- Kingdom of Tonga
- Kiribati
- Kuwait
- Labuan
- Lebanon
- Liberia (1)
- Liechtenstein
- Marianas
- Marshall Islands
- Mauritius
- Monaco
- Montserrat
- Nauru
- Netherlands Antilles
- Niue Island
- Norfolk Island
- Pacific Islands
- Palau Islands
- Panama
- Pitcairn Island
- Puerto Rico
- Qatar
- Queshm Island
- Saint Helena
- Saint Kitts and Nevis (1)
- Saint Lucia (1)
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- San Marino
- Seychelles
- Solomon Islands
- Sultanate of Oman
- Svalbard
- Swaziland
- The Maldives
- Tokelau
- Trinidad and Tobago
- Tristan da Cunha
- Turks and Caicos (1)
- Tuvalu
- United Arab Emirates
- United States Virgin Islands
- Uruguay
- Vanuatu
- Western Samoa
- Yemen Arab Republic

Notes

1. The Portuguese authorities have signed tax information exchange agreements (TIEAs) with these jurisdictions (in case of the Channel Islands, only with Guernsey and Jersey). The following TIEAs are in force: Andorra, Bermuda, Cayman Islands, Gibraltar, Isle of Man, Jersey, and Saint Lucia.
2. Alderney, Brechou, Great Sark, Guernsey, Herm, Jersey, Jethou, Lihou, and Little Sark.

IMI rates are annually increased three times when urban real estate is vacant or in ruins for a period of over one year.

IMI exemptions and reductions

Urban real estate subject to urban rehabilitation

There is an IMI exemption available to urban real estate subject to urban rehabilitation for a three-year period, renewable for an additional five-year period in case of buildings intended for lease for permanent abode or main permanent abode.

This exemption is only available to buildings located in urban rehabilitation areas or buildings built more than 30 years ago.

Historical stores

Historical stores, recognised by the municipalities as establishments of historical, cultural, or social interest and that integrate the national inventory, will be exempt from IMI from the year in which these situations occur.

Real estate part of a tourism complex granted with tourism utility

Real estate that is part of a tourism complex granted with tourism utility benefits from IMI exemption for a period of seven years.

Urban real estate intended for the production of energy from renewable sources

Urban real estate exclusively intended for the production of energy from renewable sources benefits from a 50% reduction of the IMI rate.

Other benefits of environmental nature attributed to real estate

By resolution of the municipal assembly, municipalities may determine a reduction of up to 25% of the IMI rate, applicable to urban real estate with energy efficiency.

Tax incentives for forestry activity

IMI exemption is applicable to rural real estate corresponding to forest areas covered by a forest intervention zone and to rural real estate intended for forestry exploitation under a forest management plan.

Tax regime for investment promotion (RFAI)

Companies with investments that qualify for the RFAI can benefit from an exemption or reduction from IMI for a period of up to ten years regarding real estate acquired and regarded as an eligible investment.

Additional to the IMI (AIMI)

AIMI is due by individuals and corporations, as well as by structures or collective bodies without autonomous legal personality and undivided inheritances, that are owners, usufructuaries, or have the surface right of urban properties located in Portugal.

Urban properties classified as 'trade, industry, or services' and 'others' are excluded from AIMI.

The taxable basis corresponds to the sum of the TRV of all the urban properties held by each taxpayer, reported as of 1 January of each year.

Properties that benefited from IMI exemption in the previous year are excluded from the taxable basis.

The applicable rates are 0.4% for corporations and 7.5% for urban properties owned by entities in tax havens.

AIMI is assessed by the Portuguese Tax Authority (PTA) in June of each year, with the respective payment made in September.

Construction and housing cooperatives are no longer exempt from AIMI when they are the owners, have the right of surface, or the usufruct, exclusively, of properties intended for social housing or controlled-costs.

On the other hand, it is foreseen the exclusion of taxation of properties that are exclusively intended for the construction of social housing or controlled-costs owned by construction and housing cooperatives or residents' associations.

The properties owned by construction and housing cooperatives, as well as residents' associations, will be excluded from taxation.

Properties owned by condominiums regarding which their tax registration value does not exceed 20 times the annual value of the Social Support Index (EUR 120,092) will also be excluded from taxation.

CIT credit

Taxpayers have the option to deduct the AIMI paid, limited to the fraction of the tax corresponding to the income generated by properties subject to AIMI, in the scope of lease or accommodation activities. This deduction option (deduction to the CIT fraction) jeopardises the deduction of AIMI in the determination of CITable income.

Property transfer tax (Imposto Municipal sobre as Transmissões Onerosas de Imóveis or IMT)

IMT is a municipal tax levied on the transfer for consideration of real estate located in the Portuguese territory. The tax is due by the acquirer at the rates shown below, and the taxable basis is the same as for IMI or the price agreed upon by the contracting parties, whichever is higher. Note that the acquisition of more than 75% of the share capital of a company incorporated as a limited liability company (*Sociedade por quotas*), which owns real estate located in Portugal, is also subject to IMT.

Real estate type	IMT (%)
Rural real estate	5.0
Urban real estate (for residential purposes)	up to 6.0
Other urban real estate and other acquisitions for consideration	6.5
The acquirer is a tax resident in a black-listed jurisdiction (except individuals)	10.0

IMT exemptions

- Acquisition of properties for resale by real estate trading companies.
- Acquisition of properties intended for urban rehabilitation.
- Acquisition of property or autonomous fraction of urban property intended to install a tourism complex to which has been attributed tourism utility.
- Acquisition of real estate by Real Estate Investment Funds for Residential Letting (REIFRLs).
- Restructuring operations or cooperation arrangements.
- Acquisition of buildings individually classified as of national/public/municipal interest.
- Exemption or reduction of the IMT rate, regarding the acquisition of property that constitutes eligible investment under the RFAI.

Stamp duty

Stamp duty is payable on a wide variety of transactions and documents, at rates that may be set in specific amounts or on a percentage basis. Important examples include the following:

Item	Stamp duty (%)
Loans (on the principal) (1):	
With determined term, over one year	0.5 to 0.6
Current account/overdraft/credit with undetermined term or determined term under one year	0.04 per month or fraction
Guarantees:	
Undetermined/five or more years	0.6
Over one year	0.5
Under one year	0.04 per month or fraction
Operations of financial institutions:	
Interest and commissions charged	4
Commission on banking guarantees	3
Commission for insurance brokers	2
Insurance premiums	3 to 9
Real estate transfer for consideration or donation	0.8
Letting or sub-letting (applied on the amount of a month of rent)	10
Donations and inheritances	10
Sale of business as a going concern	5
State's social gambling, included in the bet price	4.5
State's social gambling exceeding EUR 5,000	20
Collective Investment Vehicles (CIVs) investing in money market instruments and deposits (quarterly, on net asset value)	0.0025
Other CIVs (quarterly, on net asset value)	0.0125
Repos	0.5

Notes

1. In case of loans to consumers, tax rates are increased by approximately 90%.

Stamp duty exemptions

Some acts are exempt from stamp duty, such as the ones mentioned below (the exemption may depend on certain requirements):

- Guarantees on stock exchange dealings regarding securities and derivatives.

- Transactions between financial institutions, when directly related to lending/ security operations.
- Short-term treasury needs (less than one year) granted by venture capital companies to companies in which they hold a participation, as well as granted by any company to companies dominated by them or with a shareholding with voting rights of at least 10% or with a purchase price of at least EUR 5 million, as well as to financing between companies in a dominant or group relationship.
- Short-term shareholders' loans (less than one year) in case of direct shareholding of 10% or more, held for one year or more.
- Shareholders' loans, including the respective interest, not reimbursed before one year, when provided by shareholders, of at least 10%, of the share capital and as long as the shareholding is maintained for a consecutive period of one year, or since the incorporation of the subsidiary, provided that, in this case, the participation has been maintained during that period.
- Interest on loans for permanent housing.
- Free transfer of property to spouse, or *de facto* spouse, descendants, and ascendants.
- Mergers or cooperation operations.
- Warranties provided in favour of the state in the management of its direct public debt, and in favour of the Institute for the Management of Social Security Capitalization Funds, in its own name or on behalf of the funds under its management, for the exclusive purpose of covering its exposure to credit risk.
- Warranties provided in favour of the state or social security institutions upon the payment of debt by instalments under enforcement procedures or relating to the recovery of tax and social security credits.
- Under the RFAI, companies are exempt from stamp duty on the acquisition of real estate property that constitutes relevant investment, according to the terms of this regime.
- Securities repos or similar rights exchanged in stock markets, as well as repo and fiduciary sales in guarantee, performed by financial institutions and intermediated by central counterparts, are also exempt from stamp duty.
- Report agreements traded in an exchange stock.

Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

Social security contributions

Employers are required to make monthly social security contributions at the standard rate of 23.75% on the monthly gross remuneration of their employees.

Social security contributions are deductible for CIT purposes.

Financial sector contribution

Portuguese headquartered credit institutions, Portuguese subsidiaries of foreign credit institutions, as well as branches in Portugal of foreign credit institutions, including EU residents, are subject to a financial sector contribution, applicable on a taxable base composed as follows:

- Base I: Liabilities less the amount of the deposits covered by deposit guarantee schemes, such as the Deposit Guarantee Fund, the Mutual Agricultural Credit Guarantee Fund, or other officially recognised deposit guarantee scheme under the EU Directives. For this purpose, liabilities are defined as the set of elements accounted for in the balance sheet representing liabilities towards third parties,

irrespective of their form or nature (excluding, amongst others, items accounted for as equity, liabilities for defined benefit retirement plans, provisions, liabilities concerning the revaluation of financial derivatives).
- Base II: The notional amount of off-balance sheet financial derivatives, excluding hedging derivatives and back-to-back derivatives.

The financial sector contribution is applicable at a maximum of 0.11% on Base I and at 0.00030% on Base II.

Branch income

The profits of a Portuguese branch are taxed on the same basis as corporate profits. Income remitted by a Portuguese branch to the foreign head office is not subject to taxation in Portugal.

Income determination

Taxable profit is based on accounting income adjusted according to specific provisions of the tax legislation, when applicable.

Inventory valuation

Inventories are valued at the lower of the following values: cost or net realisable value. The first in first out (FIFO) and average-cost methods of valuation are accepted. The last in first out (LIFO) method is not allowed.

Inventory adjustments are deductible for tax purposes on the amount accounted for in the tax year, capped at the difference between the acquisition or production value and, if lower, the net realisable value (duly documented) with reference to the balance sheet.

Capital gains

Under the participation exemption regime, capital gains and capital losses realised on the transfer of shares can be exempt from taxation. This rule applies to all types of Portuguese companies (holdings and operational companies) and includes capital gains on the transfer of shares derived from a non-tax-neutral merger, division, transfer of assets, or exchange of shares, and also in case of a transfer of supplementary capital entries. The regime applies provided that, at the date of the transaction, the following requirements are met:

- The shares are held for a consecutive period of at least one year.
- The taxpayer directly, or directly and indirectly, holds at least 10% of the share capital or voting rights in the entity from which the shares are transferred.
- The taxpayer is not covered by the tax transparency regime (i.e. imputation of profits to individual or corporate shareholders, regardless of effective distribution).
- The entity from which shares are transferred is not resident in a black-listed jurisdiction.

- The assets of the entity from which shares are transferred are not directly or indirectly comprised of more than 50% of real estate located in Portugal and acquired on or after 1 January 2014 (except real estate allocated to an agricultural, industrial, or commercial activity that does not consist of buying and selling real estate).

This regime also applies to capital gains and capital losses realised by a Portuguese PE of:

- An EU resident entity, which complies with the requirements foreseen in Article 2 of the EU Parent/Subsidiary Directive.
- A European Economic Area (EEA) resident entity, subject to tax cooperation obligations similar to the ones established within the European Union, provided that the entity complies with requirements that are comparable to those foreseen in Article 2 of the EU Parent/Subsidiary Directive.
- An entity resident in a state with which Portugal has concluded a double tax treaty (DTT) (except if resident in a black-listed jurisdiction) that foresees exchange of information and is subject to and not exempt in its state of residence from an income tax similar to the Portuguese CIT, which legal rate is not lower than 60% of the standard Portuguese CIT rate (meaning 12.6%).

Where the participation exemption regime on the transfer of shares does not apply, the positive net difference between capital gains and capital losses arising from the transfer of shares is taxed as part of normal income. The same applies on the disposal of tangible fixed assets, intangibles, biological assets, and investment properties. In certain circumstances, only 50% of the net gains on disposal of tangible fixed assets, intangibles, and biological assets (investment properties are not covered) is taxed as part of normal income, provided the sales proceeds are reinvested.

The regime also applies to capital gains and capital losses realised and related with shares held by a company with head office or place of effective management in Portugal that transfers its tax residence to another EU member state or to an EEA member state.

Capital gains and capital losses are determined by the difference between the sales proceeds, net of related costs, and the acquisition value, net of impairment losses and tax deductible depreciation or amortisation, adjusted by the inflation index (in the case of at least two years of ownership).

Dividend income

Under the participation exemption regime, profits distributed to a Portuguese parent company are exempt from taxation, provided that the following requirements are met:

- The taxpayer directly, or directly and indirectly, holds at least 10% of the share capital or voting rights in the subsidiary.
- The shares are held for a consecutive period of at least one year (or maintained for that period).
- The taxpayer is not covered by the tax transparency regime.
- The subsidiary is subject to and not exempt from CIT, an income tax mentioned in Article 2 of the EU Parent/Subsidiary Directive (Council Directive 2011/96/EU), or a tax similar to CIT with a legal rate that is not lower than 60% of the standard CIT rate.
- The subsidiary is not resident in a black-listed jurisdiction.

This regime also applies to profits distributed to a Portuguese PE of:

- An EU resident entity, which complies with the requirements foreseen in Article 2 of the EU Parent/Subsidiary Directive.
- An EEA resident entity, subject to tax cooperation obligations similar to the ones established within the European Union, provided that the entity complies with requirements that are comparable to those foreseen in Article 2 of the EU Parent/Subsidiary Directive.
- An entity resident in a state with which Portugal has concluded a DTT (except if resident in a black-listed jurisdiction) that foresees exchange of information and is subject to and not exempt in its state of residence from an income tax similar to the Portuguese CIT.

The participation exemption regime on profits is denied in case of an arrangement or series of arrangements which main purpose or purposes is to obtain a tax advantage that defeats the object and purpose of eliminating double taxation on profits, in case such arrangement or series of arrangements is not regarded as genuine, all facts and circumstances considered. For completeness, an arrangement or series of arrangements is not regarded as genuine if it is not based on valid economic reasons and has no economic reality.

Interest income

Interest income obtained by Portuguese taxpayers is taxed as part of normal income and taxed at the standard CIT rate. Any WHT incurred in interest income received is treated as a payment on account of the final CIT liability, refundable even if no CIT is due, in case of domestic interest income.

Royalty income

Royalty income obtained by Portuguese taxpayers is taxed as part of normal income and taxed at the standard CIT rate. Any WHT incurred in royalty income received is treated as a payment on account of the final CIT liability, refundable even if no CIT is due, in case of domestic royalty income.

Certain royalty income may benefit from the patent box regime (*see the Tax credits and incentives section*).

Foreign income

A Portuguese company is taxed on all its foreign income; however, there is an optional regime to exclude from taxation the profits and losses allocated to a foreign PE (*see the Taxes on corporate income section for more information*).

Taxes paid abroad can be offset against corresponding Portuguese tax (*see Foreign tax credit in the Tax credits and incentives section for more information*).

There are no provisions concerning tax deferral of income earned abroad.

Deductions

Depreciation and amortisation

The qualifying cost of an asset for tax purposes is the acquisition or production cost.

Depreciation must be computed by using the straight-line method or the declining-balance method. The latter cannot be applied to buildings, passenger vehicles, furniture, social welfare equipment, or second-hand assets.

Straight-line rates of depreciation are normally consistent with rates privately used by business and industry and are increased, for the purposes of applying the declining-balance method, by coefficients of:

- 1.5 if assets have a useful life of less than five years.
- 2 if useful life is five or six years.
- 2.5 for useful lives in excess of six years.

Different depreciation methods may be applied without previous approval from the PTA (annual depreciation cannot, however, exceed the depreciation resulting from using either the straight-line or declining-balance methods).

Some examples relating to the maximum straight-line depreciation rate are as follows:

Type of asset	Depreciation rate (%)
Office building	2
Industrial building	5
Electronic equipment	20
Computers	33.33
Ordinary tool and paintings	25
Engines and machine tools	12.5
Office equipment	20
Furniture	12.5
Software	33.33
Passenger vehicles	25

Rates can be reduced by 50% in any one year at the taxpayer's option. If the reduction is more than 50%, the difference is not allowed for tax purposes at a future date. A total of 60% of additional depreciation on revaluation of fixed assets, as permitted by law from time to time, is allowed for tax purposes.

Depreciation rates of tangible assets may be increased by 25% in the case of companies with a schedule of two shifts (for three shifts, 50%), given the faster deterioration of those assets.

Assets with an acquisition value lower than EUR 1,000 can be depreciated in the acquisition year, unless the assets are part of a set of elements that should be depreciated as a whole.

Depreciation of yachts and airplanes that are not essential for business activities is not allowed as a cost for tax purposes.

Depreciation of passenger cars and certain other vehicles on the part of their cost of acquisition that exceeds certain amounts (as defined by law), with reference to their acquisition value, is also disallowed as a cost for tax purposes. The following caps apply (i.e. disallowed cost above the values below):

- EUR 29,927.87 of acquisition cost in the case of vehicles acquired until 31 December 2009.
- EUR 40,000 of acquisition cost in the case of vehicles acquired between 1 January 2010 and 31 December 2010.
- EUR 30,000 of acquisition cost in the case of vehicles acquired between 1 January 2011 and 31 December 2011 (EUR 45,000 in the case of electric vehicles).
- EUR 25,000 of acquisition cost in the case of vehicles acquired between 1 January 2012 and 31 December 2014 (EUR 50,000 in the case of electric vehicles).
- EUR 25,000 of acquisition cost in the case of vehicles acquired from 1 January 2015 onwards (EUR 62,500 in the case of fully electric vehicles; EUR 50,000 in the case of hybrid plug-in vehicles; EUR 37,500 in the case of vehicles that use LPG or compressed natural gas).

Development expenses, patents, trademarks, licences, and similar rights may be amortised for tax purposes if acquired for a limited period of time.

The cost of acquisition of certain intangibles with unlimited life (i.e. trademarks, permits, production processes, models, and other industrial property rights) can be amortised for tax purposes over a period of 20 years.

Depreciation of non-consumable biological assets is tax deductible.

Expenses relating to assets generated internally are deductible for tax purposes in the tax year in which the cost is incurred.

Goodwill

Goodwill acquired as a result of a taxable corporate restructure or business combination can be amortised for tax purposes over a 20-year period, except if related with shareholdings.

Start-up expenses

Start-up and research expenses are deductible for tax purposes in the respective tax year.

Limitation on the deductibility of financing expenses

Companies may only deduct net financing expenses up to the higher of the following limits:

- EUR 1 million or
- 30% of the earnings before depreciations, amortisation, taxes, and net financing expenses, adjusted for tax purposes.

In the cases where the taxable year is less than a calendar year, the EUR 1 million limit is reduced proportionally to the duration of the taxable year.

Besides Portuguese tax resident entities, PEs of non-resident entities are also covered by the scope of this rule. Entities subject to the supervision of the Portuguese Central Bank (*Banco de Portugal*) and the Portuguese Insurance and Pension Fund Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*), as well as Portuguese branches of financial entities or insurance companies resident for tax purposes in the European Union, are excluded from this rule.

No distinction is made between bank and intra-group financing, domestic or foreign financing (EU or non-EU).

Financing expenses considered as excessive (not deductible) in a certain fiscal year may be deductible in the following five fiscal years, provided that, together with the net financing expenses of that year, the above-mentioned limits are not exceeded.

Additionally, where financing expenses do not exceed 30% (or the applicable percentage) of the earnings before depreciation, net financing expenses, and taxes, the unused difference is added to the maximum deductible amount in the following five tax years, until its total deduction.

For the purposes of the regime, net financing expenses consist of, among others, any amounts due in connection to the remuneration of financing, including interest on overdraft facilities, short-term loans, bonds, financial expenses related to financial leases, or exchange losses, deducted from the profits or gains of the same nature.

Where the special regime of group taxation applies, there is the option to make the calculation considering the net financial expenses of the group and the sum of all the respective earnings before interest, taxes, depreciation, and amortisation (EBITDA) adjusted for tax purposes.

Interest on shareholder loans

If the rate applicable to interest and other compensation regarding loans provided by the shareholders to the company is higher than the Euro Interbank Offered Rate (EURIBOR) 12-month rate rounded up with a spread of 2% (at the date the loan was granted), the amount paid in excess is not tax deductible. This rule does not apply when the shareholder is a resident of a tax treaty country or when the interest rate is at arm's length under the transfer pricing provisions.

In the case of SMEs, shareholders' loans with an interest rate of the EURIBOR 12-month rate plus a spread up to 6% are tax deductible.

Bad debt

Impairment losses on doubtful debts are deductible for tax purposes when an insolvency or recovery has been requested or the credits have been claimed in court.

The annual amount of accumulated impairment losses on doubtful debts due for more than six months, with evidence that measures towards its recovery were taken, is capped at the following percentages of the debts:

- More than 6 and less than 12 months: 25%.
- More than 12 and less than 18 months: 50%.
- More than 18 and less than 24 months: 75%.
- More than 24 months: 100%.

Amounts guaranteed by insurance or mortgage, or due or secured by the state, autonomous regions, or municipalities, or due by related parties (e.g. 10% shareholding) are not considered as doubtful debts, and the respective impairment loss is disallowed for tax purposes. Credits due by related parties may still be considered as doubtful debts, provided the recovery of those credits is challenged in court.

The ageing of bills of exchange is calculated from the date when the respective payment is due.

Uncollectable debts are allowed as tax deductible costs if supported under insolvency, recovery enforcement, or in an out-of-court conciliation procedure for the viability of insolvent companies or companies in a difficult economic situation (mediated by the Institute for the Support of Small and Medium-Sized Enterprises or IAPMEI). This rule applies to the amount of the uncollectable debts that were not deducted for tax purposes as impairment losses (or for which the amount was insufficient).

Charitable contributions

Donations to authorised charitable institutions are allowable at up to 0.8% of turnover, with the possibility of the cost being raised up to 150%. Donations to authorised educational, sport, and environmental institutions are allowable at up to 0.6% of turnover, with the possibility of the cost being raised up to 140%.

Donations to the state, municipalities, and foundations where the state or municipalities participate in the initial capital are fully deductible, with the possibility of the cost being raised up to 140%. Special application may be made by certain entities in order to be included under the referred regime.

Donations of computers, software equipment, training, and consultancy in the area of computers granted to the state, municipalities, foundations, and museums, as well as to authorised charitable and cultural institutions, are allowable at up to 0.8% of turnover, with the possibility of the cost being raised up to 140%.

Vacation accrual

Vacation allowance is tax deductible in the year in which the benefit accrues, regardless of the year in which payment is made.

Pension expenses

Contributions to pension, invalidity, and health schemes are tax deductible up to a rate of 15% of annual staff expenses, provided that, among other conditions, they are available to all employees and the management and disposition of the benefits are outside the control of the taxpayer, such as under an insured scheme with vested benefits.

Fines and penalties

Fines and penalties for infractions that do not have a contractual nature, including late assessment interest, are disallowed for CIT purposes.

Taxes

All taxes other than CIT, autonomous taxation, state surtax (*Derrama Estadual*), and local surtax (*Derrama*) constitute a normal business expense.

Other significant items

The costs borne from the acquisition of social passes are regarded as tax-deductible costs to the extent the employer attributes them on a general basis.

Uninsured losses, including indemnities to third parties, are disallowed unless the risk could not be insured.

Non-documented expenses are not tax deductible and are subject to a 50% autonomous taxation for fully taxable entities.

Net operating losses

Tax losses generated in tax years starting on or after 1 January 2017 can be carried forward for five years, except for SMEs that may still benefit from the 12-year carryforward period. Tax losses generated in tax years starting on or after 1 January 2014, and until those assessed with the 2016 fiscal year, can be carried forward for 12 years. As of 1 January 2017, there is no obligation to use the FIFO method when using carried forward tax losses, meaning taxpayers may opt to use first the losses with the smaller carryforward period. The deduction of carried forward tax losses is capped at 70% of the taxable income.

Carryback of losses is not allowed.

The tax losses carried forward are lost in case of a change in direct ownership of the company of at least 50% shareholding or voting rights (not applicable in case of changes within the same group of companies, under certain conditions).

In special cases of economical merits, the MoF may authorise the use of tax losses upon a request filed by the taxpayer up to 30 days after those changes occur.

Payments to foreign affiliates

A Portuguese corporation is allowed to deduct royalties, interest, and other costs paid to foreign affiliates, provided the amounts are at arm's length. Service fees paid are allowed if there is adequate proof that the service was effectively rendered (an invoice is required in cases where the supplier of the goods or services is obligated to issue such document; otherwise, other supporting documents are required) and has economic substance, as well as if the amount is at arm's length.

Payments to entities resident in a black-listed jurisdiction

Payments made or due, indirectly, to entities resident in a black-listed jurisdiction, when the taxable person has or should have had knowledge of the final purpose given to such payments, will be non-deductible for tax purposes, except if the taxpayer demonstrates that such charges relate to genuine transactions and are not of an abnormal or exaggerated amount. Such knowledge is presumed whenever there are special relations between the taxpayer and the entities in a black-listed jurisdiction or between the taxpayer and the legal representative, fiduciary, or intermediary.

Group taxation

Special regime for group taxation

Taxation under the special tax regime for groups of companies is available, upon the filing of a special form with the PTA, to companies with head office and effective management in Portugal.

The group taxation regime may apply, provided one of the companies directly or indirectly holds 75% or more of the statutory capital of the others and more than 50% of the voting rights.

Tax grouping generally enables the group companies to offset losses incurred by one company against profits of another company.

Tax losses obtained prior to the beginning of the tax grouping can be carried forward and offset only up to the particular company's taxable income (*for the carryforward of tax losses regime, see Net operating losses in the Deductions section*).

To be taxed under this regime, the group companies must meet the following conditions:

- Must be tax resident in Portugal (even if held through an EU or EEA group company).
- Must be subject to the normal regime of taxation at the highest corporate tax rate.
- Must maintain a minimum holding participation of 75%.
- All companies must be held by the parent company for more than one year (excluding newly incorporated companies).
- Cannot be dormant for more than one year.
- Cannot be dissolved or insolvent.
- Cannot have tax losses in the three years prior to the regime application, unless the companies have been held by the parent company for more than two years.
- Cannot have a tax period different from that of the parent company.

Additionally, the parent company:

- should not be controlled by any other Portuguese-resident company that fulfils the requirements to be the parent company and
- should not have opted out from this regime in the three previous years.

When the regime comes to an end or when one company ceases to qualify for this regime, the tax losses obtained during the regime cannot be carried forward and deducted against future individual taxable income of the companies. The parent company is responsible for demonstrating that the requirements for the application of the group taxation regime are met.

It is possible to apply the group taxation regime if the dominant company has its registered head office or place of effective management in an EU or EEA country (in the later case, provided there is administrative cooperation on tax matters similar to the one in place with the European Union). In addition, among others, the following requirements must be met:

- The dominant company owns the dominated companies for more than one year with reference to the date at which the regime starts to apply.
- The dominant company is not directly or indirectly 75% held by a Portuguese dominant company.
- The dominant company is subject to and not exempt from a tax as per Article 2 of Council Directive 2011/96.
- The dominant company is incorporated as a limited liability company.

Transfer pricing

The PTA is entitled to adjust taxable income if the taxpayer and another individual or entity, due to their special relationship, have established particular conditions that diverge from the conditions normally agreed upon between independent entities and distort the results that would arise if those relations were at arm's length. Portugal's transfer pricing legislation broadly follows the Organisation for Economic Co-operation and Development (OECD) guidelines.

Companies with sales and other profits higher than EUR 3 million are required to prepare transfer pricing documentation, which should be filed with the PTA if requested. Penalties arise from non-compliance with this obligation.

An advance pricing agreement (APA) mechanism allows taxpayers and the PTA to establish agreements on a taxpayer's future transfer pricing policy. This aims to guarantee compliance with the arm's-length principle. This regime applies to transactions carried out with related parties and between a PE and the respective head office.

The conclusion of an APA implies the payment of a charge calculated with reference to the taxpayer's turnover, capped at EUR 35,000. This charge is reduced by 50% in the case of a renewal or revision of an existing APA. The duration of these agreements is established in the agreement itself; however, they cannot exceed three years, but can be revised or renewed.

The assessment of an APA procedure takes 180 days for unilateral APAs, and 360 days for bilateral or multilateral APAs. This period is reduced to 100 business days for APAs concluded in connection with a relevant investment project in Portugal, as foreseen in the Tax Investment Code (*Código Fiscal do Investimento*).

For the PTA to confirm compliance of the transfer pricing method(s) with the terms and conditions set out in the APA, the taxpayer must prepare an annual report. The report must be made available to the PTA before the last business day of May in the year following that in which the transactions took place (i.e. when the tax year corresponds to the calendar year). Failure to comply invalidates the APA.

Country-by-country (CbC) reporting

Taxpayers are required to submit the CbC report, which applies to entities belonging to an economic group with an annual consolidated revenue in the preceding tax year of at least EUR 750 million. The report should be filed by the end of the 12th month following the end of the tax year to which it relates (starting in 2016).

Additionally, taxpayers need to communicate to the PTA, until the last day of the fifth month following the end of the Portuguese entity's tax year, which of the group entities is responsible for the CbC report for that year, as well as its fiscal jurisdiction and its tax ID.

Thin capitalisation

Thin capitalisation rules have been revoked following the adoption of rules for the limitation on the deductibility of financing expenses. *See Limitation on the deductibility of financing expenses in the Deductions section for more information.*

Controlled foreign companies (CFCs)

Profits or income derived by an entity resident in a black-listed jurisdiction, or in a jurisdiction where it is subject to an effective tax rate equal to or lower than 60% of the Portuguese standard CIT rate, exempt, or not subject to a tax similar to the Portuguese CIT, are imputed to the Portuguese taxpayer, provided it holds, directly or indirectly, at least 25% of the share capital, voting rights, or rights on income or assets of that entity

(10% if more than 50% of the capital, voting rights, or rights on income or assets of that entity is held by Portuguese taxpayers). Upon distribution of the profits, a deduction is available for previously imputed income.

CFC rules also apply if the controlled entity (*as defined above*) is held by a Portuguese entity through a legal representative, fiduciary, or intermediary.

CFC rules do not apply if the CFC is resident in another EU country or in an EEA member state (bound to administrative cooperation on tax matters), provided that there are valid economic reasons underlying the incorporation and running of such company and it carries out agricultural, commercial, industrial, or services activities.

Upon a dividend distribution by the CFC, the tax credit of the tax paid abroad, which is not used, cannot be carried forward to subsequent tax years.

Tax credits and incentives

Foreign tax credit

International juridical double taxation

Taxes paid abroad can be offset against corresponding Portuguese tax, capped at the lower of (i) the tax liability corresponding to the foreign income, net of costs directly or indirectly incurred, or (ii) the foreign tax paid. In both cases, it is limited to the foreign tax as foreseen in the applicable DTT. This foreign tax credit can be carried forward for five years. The computation of the amount of the tax credit is determined per jurisdiction, considering the total amount of the respective income, except in relation to income obtained by foreign PEs (the deduction in this case is assessed individually).

International economic double taxation

Taxpayers may opt to apply a tax credit (underlying tax credit) for international economic double taxation regarding profits or reserves received, to which the participation exemption regime on profits does not apply, and provided that the taxpayer holds (or becomes the holder of) at least 10% of the share capital of the subsidiary for a period of one year.

When choosing the above-mentioned option, the taxpayer shall add to the taxable income the amount of the income tax related to the distributed profits or reserves that has been effectively paid abroad by the subsidiary.

General tax benefits and incentives

Contractual tax incentives

Relevant investment projects up to 2020 (minimum investment of EUR 3 million) that qualify for strategic economic interest and promote the creation of jobs are eligible for tax incentives, as foreseen in the Tax Benefits Code and the Investment Tax Code. These are granted on a case-by-case basis under a government contract for a period not exceeding ten years and include a tax credit of 10% to 25% of the investment in addition to exemptions or reductions from property transfer tax, property tax, and stamp duty.

Patent box regime

Industrial property rights registered on or after 1 July 2016

The new patent box regime is in line with BEPS Action 5 (Authorised Nexus Approach) and foresees a 50% deduction of the total income derived from the sale or granting of the temporary use of industrial property rights (i.e. patents and industrial drawings and models), limited by the ratio between the eligible expenses and the total expenses incurred in developing or using the intellectual property (IP)-protected assets. The new regime also foresees a 30% mark-up of the eligible expenses incurred with the development of the assets with IP protection, capped at the amount of the total expenses incurred with the development of those assets. The regime continues to be applied to income derived from industrial property rights derived from research and development (R&D) developed internally. Transactions with associated enterprises, including entities resident in black-listed jurisdictions, are excluded.

Costs/expenses not directly connected with the activities of R&D are excluded from the computation, such as interest or real estate depreciation.

The applicability of this regime will require a clear distinction in the accounting records in respect of profits, as well as expenses, associated with the IP in order to be able to distinguish them from other source profits and expenses.

This new regime applies only to patents and other industrial models or drawings registered on or after 1 July 2016 and will be in force until 30 June 2021.

Industrial property rights registered on or after 1 January 2014 and up to 30 June 2016

Income derived from the sale or granting of the temporary use of industrial property rights (i.e. patents and industrial drawings and models) is 50% exempt. The regime applies to income derived from industrial property rights derived from R&D developed internally or contracted from third parties. Transactions with associated enterprises, including entities resident in black-listed jurisdictions, are excluded. The regime applies to the above-mentioned industrial property rights registered on or after 1 January 2014 and until 30 June 2016, and is in force until 30 June 2021.

Collective Investment Vehicles (CIVs)

CIT

The taxable profit of a CIV corresponds to the net income of the period, computed in accordance with the applicable accounting standards, while disregarding the following:

- Investment income, rental income, and capital gains (unless if derived from ‘offshore’ entities).
- Expenses related to the income referred to above.
- Non-deductible expenses under article 23-A of the CIT Code.
- Income and expenses related to management fees and other commissions reverting to the CIV.

Tax losses generated by the CIV follow the regime foreseen in the CIT Code, with the necessary amendments.

The taxable profit assessed by a CIV is subject to the standard CIT rate. CIVs are exempt from municipal and state surtax; however, they are subject to autonomous taxation rates as foreseen in the CIT Code.

CIT due by a CIV is assessed in the periodical CIT return. Respective payment should be made until the last day of the time limit foreseen for the submission of the form.

Stamp duty

Stamp duty is also levied on the net asset value of the CIV, as follows:

- For CIVs investing exclusively in money market instruments and deposits, at a rate of 0.0025%.
- For other CIVs, at a rate of 0.0125%.

The tax is assessed quarterly, in March, June, September, and December of each year, and should be paid by the CIV by the 20th day of the month following the end of the quarter.

Taxation of a CIV's investors

Regarding the taxation of income obtained by holders of participation units/ shareholdings in the CIV, the taxation 'at exit' rule is applicable.

Income obtained by resident investors is subject to taxation at the PIT level (generally, at the rate of 28%) and CIT level (being considered in the taxable profit of the investors).

Income obtained by non-resident investors without PE benefit from a favourable tax regime:

- Taxation at the rate of 10% in case of income arising from Real Estate Investment Funds (REIFs) and Real Estate Investment Companies.
- Exemption in case of income arising from Securities Investment Funds and Securities Investment Companies.

This regime does not apply, being instead applicable the PIT and CIT regime foreseen for resident investors, whenever the investors are tax residents in 'offshore' jurisdictions or, as a general rule, are held more than 25% by tax residents in Portugal.

Pension funds

Pension funds are exempt from CIT and IMT.

The CIT exemption is applicable to pension funds incorporated under the Portuguese law as well as to pension funds established in another EU country or in an EEA member state (bound to administrative cooperation on tax matters) that cumulatively fulfil the following requirements:

- Exclusively assure the payment of retirement pensions granted from elderly, handicapped, surviving, pre-retired, health, and post-employment benefits, as well as death benefits when complementary and ancillary to the previously mentioned.
- Are managed by pension funds professional institutions to which Directive 2003/41/ EC, of the European Parliament and Council, applies.
- Are the effective beneficiaries of the income.

- In the case of dividend distributions, the related shareholding should have been held for a consecutive one-year period.

Contractors for North Atlantic Treaty Organization (NATO) infrastructures

Contractors for NATO infrastructures are exempt from CIT.

Net young employment creation

150% of the costs related to net increase job creation, under labour contracts without term, for employees up to 35 years (including) of age and for long-term unemployed individuals may be deducted from taxable income. For this purpose, the fixed remunerations paid and the contributions made by the employer to social security should be considered. The maximum amount of annual increase on deductible costs for each eligible employee is 14 times the national minimum retribution (EUR 580 in 2018).

The increase in 50% of the expenses incurred with the same employer is applicable to more than one employee, provided that there are no special relations.

This tax benefit is not cumulative with any tax benefits or other incentives (e.g. social security) concerning the same employee.

This deduction applies for a period of five years for each employee.

Research and development (R&D) (Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial or SIFIDE II)

Portuguese tax resident companies carrying out commercial, industrial, or agricultural activities, and non-resident companies with a PE in the Portuguese territory, are allowed to deduct from the CIT due, up to the respective amount, the value of eligible expenses incurred with R&D, in a double percentage as follows:

- Base rate: 32.5% of the R&D expenses incurred; this rate is increased by 15% in case of SMEs that do not benefit from the incremental rate of 50% (applicable to entities that had completed two years of activity).
- Incremental rate: 50% of the difference between the R&D expenses made in the tax year and the average amount of the R&D expenses made in the previous two years, up to the limit of EUR 1.5 million.

Expenses that, due to insufficient tax due, cannot be deducted in the tax year they were incurred can be carried forward for eight years.

Eligible expenses related to allowances paid to personnel directly involved with R&D tasks are capped at 55% of the operational expenses incurred.

Expenses incurred in connection with projects that include, exclusively, third parties, including contracts and R&D services, are not considered.

Expenses relating to staff with a minimum academic qualification of level 8 of the National Qualifications Framework are considered at 120% of their amount.

Expenses related to the making of eco-design products will be increased by 10%. This increase will depend on the submission and approval of the project to the Portuguese Environment Agency.

Expenses related to demonstrations are eligible for the SIFIDE II regime, provided they are notified up front.

Expenses incurred with the acquisition, registration, and maintenance of patents, essential for the performance of R&D activities and audits, are accepted only for micro, small, or medium-sized companies.

The deduction of R&D expenses requires that the entity develops agricultural, industrial, or commercial activities or services as its main business activity.

The applications should be submitted by the end of May of the year following the year in which the investment was made, and applications referring to years previous to that fiscal year will not be accepted.

The regime applies until 2020.

Incentives for the acquisition of companies in a difficult economic situation

The regime of incentives applicable to the acquisition of companies in a difficult economic situation may also apply to cases approved by IAPMEI within the scope of the Incentive System for the Revitalization and Modernization of Companies (SIRME). Under this regime, the acquiring company may deduct tax losses assessed but not yet used by the acquired company for a period of five years in proportion of its participation in the share capital of the acquired company, capped at 60% of the taxable income.

Tax regime for investment promotion (Regime Fiscal de Apoio Ao Investimento or RFAI)

RFAI establishes several tax incentives to investment realised within specific business sectors.

Among other incentives, companies that invest in certain regions can benefit from a deduction against CIT otherwise payable (capped at 50% of the CIT due) of 25% (for qualified investments lower than EUR 10 million) or 10% (for the part of qualified investments exceeding that limit) of the qualified investment. Companies are also able to carry forward any unused credit for ten years and may benefit from exemptions or reductions from property transfer tax (IMT), property tax (IMI), and stamp duty on the acquisition of real estate for investment purposes. IMT exemptions are subject to the approval of the municipality where the real estate is located and where the investment is made.

Loan interest and lease rentals on imported equipment

When paid by the state, regional authorities, and public services, loan interest and lease rentals on imported equipment can qualify for partial or full exemption from tax upon an appropriate application.

Real Estate Investment Fund for Residential Lease (REIFRL)

A regime is applicable to REIFRL and to Real Estate Investment Companies for Residential Lease (REICRL) incorporated in accordance with the Portuguese law until 31 December 2014.

The following benefits are established for this tax regime:

- CIT exemption on income obtained by REIFRLs.
- CIT exemption for the income obtained by participation unit holders, except for the capital gains arising from the sale of such participation units.

The above-referred tax regime and respective exemptions are not applicable to entities resident in a black-listed jurisdiction.

Incentives to urban rehabilitation

Incentives are applicable to real estate property covered by rehabilitation projects undertaken until 2020.

REIFs that have been incorporated between 2008 and 31 December 2013 may benefit from:

- CIT: The income obtained by REIFs is tax exempt when the funds are incorporated in accordance with the Portuguese law, and respective assets are comprised of at least 75% real estate subject to rehabilitation projects in qualifying areas.
- Property transfer tax: The available tax benefits will cover only buildings located in urban rehabilitation areas or buildings built more than 30 years ago, as follows:
  - IMT exemption on the acquisition of buildings, provided that the rehabilitation works are initiated within three years.
  - IMT exemption on the first transfer of buildings intended for lease for permanent abode and, in case of buildings located in an urban rehabilitation area, buildings intended for main permanent abode.
  - The granting of the above-mentioned exemptions depends on a decision in this respect of the municipality of the area of the real estate property.
- Property tax: There is an IMI exemption available for urban properties subject to rehabilitation works for a period of three years, renewable for an additional five-year period in case of buildings intended for lease for permanent abode or main permanent abode. Again, the granting of this exemption depends on a decision in this respect of the municipality of the area of the real estate property.

Conventional remuneration of share capital/notional interest deduction

This regime foresees a deduction of 7% of credits or the current year profits, up to EUR 2 million, upon the incorporation of an entity or on capital increases. The deduction is made in the tax period where the entries are made and in the following five tax periods.

This benefit is applicable to all entities and is not limited to the *de minimis* rule.

This tax benefit will not be applicable when it is or has been applied, in the same tax period or in the previous five tax periods, to entities that hold, directly or indirectly, a shareholding in the beneficiary entity, or are held, directly or indirectly, by the same entity, to the extent of the amount of the capital contributions of the entities that have benefited from this regime.

For the taxpayers that use this benefit, the limitation of the net financing expenses will be the higher value between EUR 1 million and 25% of the income before depreciation, amortisation, net financing expenses, and taxes (instead of the standard 30%).

Tax benefits and incentives for non-resident corporate entities

Capital gains

Capital gains on the sale of shares and quotas held in a Portuguese company by a non-resident company may be tax exempt. However, there are some important exceptions, such as:

- Where the non-resident shareholder (without a PE in Portugal) is owned more than 25%, directly or indirectly, by a Portuguese resident company, except when the following cumulative conditions are met in respect of the non-resident shareholder:
  - Is resident in an EU member state, an EEA member state (bounded by an agreement for administrative cooperation in tax matters similar to the EU's), or a state that has a tax treaty in force foreseeing exchange of information.
  - Is subject to and not exempt from corporation tax as foreseen in EU Council Directive (Directive 2011/96/EU, dated 30 November) or a tax similar to the Portuguese CIT (in the latter case, provided that the legal rate is not lower than 60% of the standard Portuguese CIT rate that now stands at 21%).
  - Directly, or directly and indirectly, holds at least 10% of the share capital or of the voting rights of the Portuguese resident entity being sold for a minimum holding period of one consecutive year.
  - Is not part of an artificial scheme which purpose or main purpose does not aim at obtaining a tax advantage.
- Where the non-resident shareholder is located in a black-listed jurisdiction.
- Where the assets of the company sold consist in more than 50% of immovable property located in Portugal or, in case of a holding company, if it is in a control relationship with a Portuguese resident company whose assets consist in more than 50% of immovable property located in Portugal.

Capital gains arising from the transfer of equity or similar rights in non-resident entities shall also be subject to taxation in Portugal when, in any moment of the previous 365 days, the value of such equity or rights derives, directly or indirectly, in more than 50% from immovable properties located in Portuguese territory (except if these immovable properties are allocated to agricultural, industrial, or commercial activities other than the buying and selling of real estate).

Government and corporate bonds

Interest and capital gains on government and corporate bonds are tax exempt (where held by entities not located in black-listed jurisdictions) under certain conditions.

Interest paid by resident credit institutions

Interest paid by resident credit institutions to non-resident financial companies deriving from loans as well as gains arising from swap transactions are tax exempt.

Tax regime applicable to external loans

Interest derived from *Schuldscheindarlehen* loan agreements signed by the Public Treasury Institute (IGCP), on behalf of the Portuguese Republic, is tax exempt, provided the creditor is not resident in Portugal and has no PE herein to which the loan can be allocated to.

Special tax regime applicable to debt securities issued by non-resident entities

Income from debt securities representing public and non-public debt issued by non-resident entities is tax exempt, provided that the income is considered to be obtained in Portugal, under Portuguese tax rules, and paid by the Portuguese state as a guarantor of the obligations undertaken by the entities in which it owns a participation, together with other EU member states.

Repo operations

Gains obtained by non-resident financial institutions on securities' repo operations undertaken with resident credit institution are exempt from CIT, provided that such gains are not attributable to Portuguese PEs of non-resident financial institutions.

Securities repos or similar rights exchanged in stock markets, as well as the repo and fiduciary sales in guarantee, performed by financial institutions intermediated by central counterparties, are also exempt from stamp duty.

Madeira International Business Centre (MIBC)

Entities licensed to operate in the MIBC until 31 December 2020 benefit from a special tax regime, which is applicable until 31 December 2027.

The MIBC special tax regime provides a reduced CIT rate of 5% on qualifying foreign-source income, based on thresholds of taxable income and job creation requirements. MIBC-licensed entities also benefit from an 80% exemption from stamp duty, property taxes, and municipal and regional surtaxes.

Non-resident shareholders (except if domiciled in black-listed jurisdictions) of MIBC-licensed entities benefit from an exemption from WHT on dividend distributions, regardless of the percentage of ownership or holding period, and shareholders' loans.

Other non-resident entities, regardless of their tax residence, that carry out business with MIBC-licensed entities benefit from an exemption from WHT on interest, royalties, technical assistance, and service income received, regardless of their tax domicile, provided that the income received is related with the activity of the MIBC-licensed entity.

MIBC-licensed companies generally benefit from Portugal's network of DTTs. EU laws and regulations apply to Madeira.

The MIBC special tax regime is not available to entities pursuing intra-group services (head office activities and business and management consulting), financing, and insurance activities. Certain productive activities are also excluded.

Tax benefits and incentives to investment in the Autonomous Region of Madeira

The Investment Tax Code applicable to the Autonomous Region of Madeira adapts the tax benefits and incentives foreseen for the mainland to the Autonomous Region of Madeira.

The main adjustments are made in the following tax benefits and incentives:

- Contractual tax benefits regime: Investment projects in Madeira Island amounting to EUR 1.5 million and EUR 500,000 in Porto Santo Island in the sectors foreseen under the EU guidelines for regional aid are consider as eligible. The CIT credit is available at up to 35% of the relevant investment, provided some conditions are met. Exemptions or reductions from property taxes and exemptions from stamp duty are also available.
- Tax regime for investment support: Investments in specific business sectors are eligible for a CIT credit of up to 35% of the relevant investments until EUR 1.5 million of investment and up to 15% for the relevant investments above that amount. The unused credit can be carried forward for a ten-year period. Exemptions or reductions from property taxes and exemptions from stamp duty are available.
- Reinvestment of retained earnings: Micro, small, and medium-sized companies in Madeira that reinvest up to 15% of their retained earnings, capped at EUR 1.5 million, are eligible for a CIT credit of up to 25% of the tax due.
- R&D incentives: 32.5% of R&D expenses, including acquisition of assets, costs with qualified staff and board members involved in the R&D activities, among others, might be deductible to the taxable amount in the period they are incurred or in the following eight years. An additional 50% deduction might be available for increases in the average R&D expenses in comparison with the two previous years, limited to EUR 1.5 million.

Investment projects developed in 'Brava Valley' will benefit from an additional deduction of 10% in all the tax benefits and incentives available. The above incentives are subject to the *de minimis* rule within the context of European Union Commission's (EC) Regulation 651/2014 of 16 June.

Withholding taxes

General WHT rates

Recipient	Residents (%) (1)	Non-residents (%) (1)
Dividends	25 (2)	25 (3, 4)
Interest	25	0 (5)/25 (4)
Royalties	25	0 (5)/25
Banks deposits	25 (6)	25 (4, 6)
Property income	25	25
Service charges	0	25 (7)
Remuneration of board members	21.5	21.5
Other	25	25

Notes

1. For residents, tax withheld constitutes a payment on account of final corporate or individual income tax due. For non-residents, tax withheld is the final tax, except for property income, in which case it is a payment on account.
2. Not subject to WHT in the case of holdings of at least 10% owned for at least one year.
3. Not subject to WHT if the non-resident entity meets the following requirements (the rule also applies to a PE in another EU or EEA member state of an entity that meets the following requirements):
   - Directly, or directly and indirectly, holds at least 10% of the share capital or of voting rights in the Portuguese subsidiary (25% in the case of a parent company resident for tax purposes in Switzerland), for a minimum period of one year (two years in the case of a parent company resident for tax purposes in Switzerland).
   - Is resident in an EU member state, an EEA member state (bounded to administrative cooperation in tax matters similar to the EU's), or a state with which Portugal has concluded a tax treaty that foresees exchange of information.

- Is subject to and not exempt from an income tax mentioned in Article 2 of Council Directive 2011/96/EU, dated 30 November, or a tax similar to CIT, and in case of a resident in a tax treaty state, the applicable legal rate is not lower than 60% of the standard CIT rate.

4. WHT rate is increased to 35% when the income is paid or due to entities resident in black-listed jurisdictions.
5. Not subject to WHT if the EU Interest & Royalty Directive 2003/49 applies.
6. WHT rate is increased to 35% when the income is paid in bank accounts open in the name of one or more account holders but on behalf of non-identified third parties.
7. Not subject to WHT if a tax treaty is applicable.

Tax treaty rates

Tax treaties reduce the above-mentioned rates as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Algeria (3)	10/15	15	10
Andorra (13)	5/15	10	5
Austria (1, 2)	15	10	5/10
Bahrain, Kingdom of (3)	10/15	10	5
Barbados (3, 12)	5/15	10	5
Belgium (2)	15	15	10
Brazil (3)	10/15	15	15
Bulgaria (3)	10/15	10	10
Cabo Verde	10	10	10
Canada (3)	10/15	10	10
Chile (3, 9, 10)	10/15	5/10/15	5/10
China, People's Republic of	10	10	10
Colombia	10	10	10
Croatia (13)	5/10	10	10
Cuba (3)	5/10	10	5
Cyprus	10	10	10
Czech Republic (3)	10/15	10	10
Denmark (2)	10	10	10
East Timor (3, 12)	5/10	10	10
Estonia	10	10	10
Ethiopia (3)	5/10	10	5
Finland (2, 3)	10/15	15	10
France (2, 4, 5)	15	10/12	5
Georgia (3)	5/10	10	5
Germany (2, 6)	15	10/15	10
Greece (2)	15	15	10
Guinea Bissau	10	10	10
Hong Kong (13)	5/10	10	5
Hungary (3)	10/15	10	10
Iceland (3)	10/15	10	10
India (3)	10/15	10	10
Indonesia	10	10	10
Ireland, Republic of (2)	15	15	10
Israel (11)	5/10/15	10	10
Italy (2)	15	15	12
Ivory Coast (17)	10	0/10	5
Japan (6, 13)	5/10	5/10	5
Korea, Republic of (3)	10/15	15	10

Portugal

Recipient	WHT (%) Dividends	Interest	Royalties
Kuwait (13)	5/10	10	10
Latvia	10	10	10
Lithuania	10	10	10
Luxembourg (2, 6)	15	10/15	10
Macau	10	10	10
Malta (3)	10/15	10	10
Mexico	10	10	10
Moldova (3)	5/10	10	8
Montenegro (12, 21, 22)	5/10	10	5/10
Morocco (3)	10/15	12	10
Mozambique	10	10	10
Netherlands (2)	10	10	10
Norway (14)	5/15	10	10
Oman, Sultanate of (17, 19)	5/10/15	0/10	8
Pakistan	10/15	10	10
Panama (13)	10/15	10	10
Peru (16, 17, 18)	10/15	10/15	10/15
Poland (3)	10/15	10	10
Qatar (13)	5/10	10	10
Romania (3)	10/15	10	10
Russia (3)	10/15	10	10
San Marino (3)	10/15	10	10
São Tomé e Príncipe, Republic of (3, 17)	10/15	0/10	10
Saudi Arabia (13, 17)	5/10	0/10	8
Senegal (3)	5/10	10	10
Singapore	10	10	10
Slovakia (3)	10/15	10	10
Slovenia (3)	5/15	10	5
South Africa (3)	10/15	10	10
Spain (2, 3)	10/15	15	5
Sweden	10	10	10
Switzerland (3, 15)	5/15	10	5
Tunisia	15	15	10
Turkey (3, 8)	5/15	10/15	10
Ukraine (3)	10/15	10	10
United Arab Emirates (13)	5/15	10	5
United Kingdom (2, 3)	10/15	10	5
United States (3)	5/15	10	10
Uruguay (3)	5/10	10	10
Venezuela (7)	10	10	10/12
Vietnam (7, 17, 20)	5/10/15	0/10	7.5/10

Notes

1. The lower of the listed rates applies to royalties when the beneficiary holds 50% or less of the paying company's share capital.
2. There is no WHT on dividends if the EU Parent/Subsidiary Directive applies.
3. The lower of the listed rates applies to dividends when the beneficiary directly holds 25% or more of share capital. Depending on each DTT, a two year holding period may be required.

4. The lower rate applies to interest on debentures raised in France after 1 January 1965 or on significant loans or debentures raised in Portugal or abroad under major development projects listed in the treaty annex.
5. The lower of the listed rates applies to bank loans, but if interest is payable from Portugal, the bank loans must qualify as being of economic or social interest or fall under an approved development plan.
6. The lower of the listed rates applies to interest received by financial institutions.
7. The lower of the listed rates applies to technical assistance.
8. The lower of the listed rates applies on interest related to loans with a minimum maturity of two years.
9. The rate of 5% regarding interest applies to bonds interest or other securities transacted in the stock market. The rate of 10% applies to loans from banks or insurance companies or credit selling of equipment.
10. The rate of 5% regarding royalties applies to equipment lease.
11. The rate of 10% applies if the company that is paying the dividends is a resident of Israel and the dividends derive from profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israel company tax. The rate of 5% applies if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
12. The treaty is signed but not yet in force.
13. The lower of the listed rates on dividends applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends. Depending on each DTT, a one year holding period may be required. In the case of Saudi Arabia, the 10% minimum holding requirement is waived in case the beneficial owner is the state or a public entity.
14. The rate of 5% on dividends applies if the beneficial owner is a company (other than a partnership) that for an uninterrupted period of at least 12 months prior to the payment of the dividends or if the company paying the dividends has existed for less than 12 months, during the lifetime of the company, directly holds at least 10% of the capital of the company paying the dividends, or if the beneficial owner of the dividends is: (i) in the case of Portugal, the state, a political or administrative subdivision, or a local authority thereof, or the Bank of Portugal; and, (ii) in the case of Norway, the government of Norway, a political or administrative subdivision, or a local authority thereof, or the Central Bank of Norway.
15. A WHT rate of 5% on dividends applies in case of shareholdings of at least 25% on the company distributing the dividends, as well as for an exemption on dividends, in case of shareholdings of at least 25% held for at least two years. An exemption from WHT is also foreseen regarding interest and royalties, when paid between associated companies (shareholdings of at least 25% held for at least two years), in line with the Agreement between the European Community and the Swiss Confederation.
16. The lower of the listed rates applies to dividends if the beneficial owner is a company (other than a partnership) that (i) directly holds at least 10% of the capital of the Portuguese company paying the dividends or (ii) directly controls at least 10% of the voting rights of the Peruvian company paying the dividends.
17. The lower of the listed rates applies to interest related to credits of any nature granted by a financial institution or, in the case of the Ivory Coast, Saudi Arabia, the Sultanate of Oman, Vietnam, and São Tomé and Principe, when the beneficial owner or the entity paying the interest is the state or other public body (including the central bank) of the contracting states.
18. The lower of the listed rates applies to royalties paid for technical assistance provided in connection with the use of, or the right to use of, author's rights, or information concerning industrial, commercial, or scientific experience.
19. The rate of 5% on dividends applies if the beneficial owner is: (i) in the case of Portugal, the state, a political or administrative subdivision, or a local authority thereof, or the Bank of Portugal; (ii) in the case of the Sultanate of Oman, its government, the Central Bank of Oman, the state's general reserve fund, or the Omani Investment Fund. The rate of 10% applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
20. The rate of 5% on dividends applies if the beneficial owner is a company (other than a partnership) that directly holds at least 70% of the capital of the company paying the dividends. The rate of 10% on dividends applies if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
21. The lower rate on dividends applies if the beneficial owner holds, directly or indirectly, at least 5% of the capital of the company paying the dividends.
22. The rate of 5% applies to royalties paid in connection with the use of, or the right to use of, author's rights.

Tax administration

Taxable period

The tax year is, as a general rule, the calendar year. A different tax year is allowed in the case of companies obligated to accounting consolidation and of PEs of non-resident entities, which can adopt the tax period of the non-resident company. The different tax year should, however, coincide with the period to which the financial statements concern. If the option of a tax year different from the calendar year is taken, the new tax period must be maintained for a minimum of five years. The five-year minimum period is not applicable if the taxpayer is transferred to a group of companies that are subject to consolidation of financial statements and the holding company has a fiscal year different from the one that was being adopted by the taxpayer.

Tax returns

The annual CIT return must be submitted by electronic data transmission by the last day of May of the year following the year of income. Whenever the tax year ends on a date other than 31 December, the annual CIT return shall be submitted by electronic data transmission by the last day of the fifth month following the year-end. The system is one of self-assessment.

Payment of tax

Tax is paid in instalments. Three payments on account are due in July, September, and up to 15 December of the year in which taxable income arises corresponding to 95% of the previous year's corporate tax assessment (for taxpayers with a turnover above EUR 500,000; 80% if below this amount). Payments on account are not required if the previous year's corporate tax assessment is less than EUR 200. The third payment may be suspended upon declaring that no further tax is due in respect of the current year. However, interest is assessed at a rate of 4% if this results in postponing more than 20% of the tax that would otherwise have been paid.

A last instalment is paid (or received) through self-assessment upon filing the annual tax return in May of the following year.

If the tax year ends on a date other than 31 December, interim payments take place in the seventh, ninth, and up to the 15th of the 12th month of the tax year.

Filing of the annual tax return together with the final payment is in the fifth month following the close of the tax year.

Three additional payments on account of *Derrama Estadual* are due on the same dates as the interim payments mentioned above. The additional payments on account correspond to 2.5% of the taxable profit above EUR 1.5 million and up to EUR 7.5 million, 4.5% of the taxable profit above EUR 7.5 million and up to EUR 35 million, and 8.5% of the taxable profit above EUR 35 million, assessed in the previous year.

In particular situations, a special payment on account is due of a minimum of EUR 850 up to EUR 70,000, paid in March, or in March and October (the third or the third and tenth month of the tax year if it ends on a date other than 31 December).

Interest and penalties

Late assessment interest is due in case of delay on the assessment of taxes due. Late assessment interest is computed on a daily basis. The current rate of late assessment interest is 4% (year).

Late penalty interest is due in case of delay in the payment of the tax assessed. The current rate is 4.857%. Late penalty interest is computed on a daily basis. Tax penalties for companies are capped at EUR 165,000 in the case of intention and EUR 45,000 in the case of negligence. In general, in case of failure or late payment of CIT, companies are liable to a penalty varying between 30% and 100% of the tax due, capped at EUR 45,000 (in case of negligence).

Specific tax penalties apply regarding transfer pricing documentation (including CbC reporting) and the CFC regime (between EUR 1,000 and EUR 10,000 for companies) and regarding omissions or inaccuracies regarding ruling requests (between EUR 750 and EUR 22,500 for companies in the case of urgent rulings or 25% of the previous amounts in the case of non-urgent rulings).

There is the possibility of applying for penalty reduction, provided certain requirements are met (e.g. regularisation of the tax situation/payment of the tax due; situation where there was no damage to the Revenue).

Tax audit process

Taxpayers are audited by the PTA based on several criteria, as detailed in a specific document prepared by the PTA.

The PTA must notify the taxpayers of the preliminary conclusions reached in cases where these may lead to tax assessment acts unfavourable to the taxpayers, further to which taxpayers may present their argumentation.

The PTA must then prepare a final report of the tax audit performed, identifying the facts detected.

Tax audits may be initiated within the statute of limitations (*see below*).

Tax audits must be concluded within six months. A prorogation of the deadline to one year may apply under certain conditions (e.g. complexity of the facts involved, necessity to make use of mechanisms of mutual assistance on tax matters, additional/new information being provided by the taxpayer).

The PTA releases, on a periodical basis, a list of taxpayers that, due to the nature of their activities, their turnover, or other criteria, are subject to regular monitorisation. There is also a specific department for large taxpayers.

Statute of limitations

The statute of limitations period is four years, but can be extended in case of tax losses. Regarding facts involving black-listed jurisdictions, the statute of limitations for the right to assess taxes is extended to 12 years while the time period allowed to collect taxes is extended to 15 years. The statute of limitations period is also increased from four to 12 years in case of facts related to deposit and securities accounts in financial institutions outside the European Union.

When a tax inspection is legally suspended, the statute of limitations period is also suspended.

Topics of focus for tax authorities

Currently, the PTA has been exhibiting a more aggressive approach, especially with regards to the fight against tax fraud and evasion, mainly by aggravating taxation in fields where tax avoidance is significant and by introducing additional compliance and reporting obligations.

Increased focus has also been verified on transfer pricing matters, mainly on the transfer pricing policies in transactions with non-resident entities and especially in case of payments made to entities that are resident in black-listed jurisdictions. In this regard, cooperation on transfer pricing matters with other tax administrations has been strengthened.

Situations of recognition of PEs in Portugal, usually triggered by inspections to VAT registers, are recurrent.

Anti-avoidance

A general anti-avoidance provision is in force, pursuant to which contracts and other acts are ineffective whenever it is demonstrated that they were tax driven to reduce taxation that would be due under contracts bearing a similar economic effect, in which case taxation would be based on the latter.

The anti-avoidance procedure is initiated within the general term foreseen (statute of limitations) and is flexible in terms of proof by the PTA.

Anti-avoidance rules are not applicable in cases where a request for obtaining binding information is not answered by the PTA within 150 days.

Binding rulings

Binding rulings can be:

- Urgent: A decision should be taken in 75 days; these are subject to the payment of a fee ranging between EUR 2,550 and EUR 25,500, depending on the complexity of the matter; if no decision is taken within the deadline established, there is a tacit approval of the taxpayer's understanding of the tax matter.
- Non-urgent: A decision should be taken in 150 days; no fees are charged; a decision is required (no tacit approval, as in case of an urgent ruling).

Fight against tax fraud and evasion

It is mandatory that payments above EUR 1,000 are made by a means that allows the identification of the recipient of the income (e.g. bank transfer, nominative cheque, direct debit).

Council Directive 2011/16/EU, on the matter of administrative cooperation in the field of taxation, has been transposed to the Portuguese legislation, reviewing the exchange information mechanisms between tax authorities and aiming at a more effective action against tax evasion and fraud at an international level.

Other issues

Portuguese base erosion and profit shifting (BEPS) inspired measures

The Portuguese tax legislation includes the following provisions that are in line with BEPS:

- Anti-hybrid rules, very much in line with BEPS Action 2.
- CFC rules, very much in line with BEPS Action 3.
- Interest deduction limitation rules, very much in line with BEPS Action 4.

- Exchange of information, with the conclusion of agreements with black-listed jurisdictions, transposition of Council Directive 2011/16/EU, introduction of exchange of information clause in existing tax treaties and in the new tax treaties signed, amendment of patent box regime, very much in line with BEPS Action 5.
- Anti-treaty shopping and limitation on benefits clauses in tax treaties, very much in line with BEPS Action 6.
- Mandatory disclosure of aggressive tax planning schemes, very much in line with BEPS Action 12.
- Mandatory CbC reporting, in line with BEPS Action 13.

Portugal was one of the signatory countries of the Multilateral Instrument (MLI) in June 2017

Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS)

Since 2014, Portugal has embraced and implemented the FATCA and the global CRS for Automatic Exchange of Financial Account Information (the AEOI standard).

The implementation of the FATCA was made on an intergovernmental basis, through a Model 1 FATCA Intergovernmental Agreement. In 2014, the FATCA obligations were introduced in the Portuguese legal system, through the approval of the Financial Information Reporting Regime (FIRR). Two years later (2016), additional FATCA Complementary Regulations were approved, laying down rules on due diligence procedures and deadlines.

Also, Portugal is one of the CRS's early adopters. On 29 October 2014, it signed the Multilateral Competent Authority Agreement (MCAA) for the CRS, formally reaffirming its commitment to start exchanging financial information automatically under the AEOI standard from 2017.

In October 2016, Portugal introduced into its domestic legal system a mechanism for reciprocal automatic exchange of information, with respect to residents in other EU member states and any other CRS participating jurisdictions, through the enactment of the Decree-Law No.64/2016, of 11 October. This law also transposed the Council Directive 2014/107/EU, of 9 December 2014 (also known as DAC2), amending the Council Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

With the adoption and implementation of these mechanisms, Portugal became part of the first set of jurisdictions that are exchanging financial account information with other jurisdictions committed to the CRS, on an automatic basis and at a global and multilateral level.

Transfers to offshores

Under Law 14/2017, the Portuguese tax authorities are required to publish on their website, on an annual basis, all transfers, including respective amount and reason, made to offshores, as well as statistics about such transfers.

Puerto Rico

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Significant developments

There have been no significant corporate tax developments in Puerto Rico during the past year.

Pending legislation

Please note that this summary is current as of 1 June 2018. Significant tax reform is expected after June 2018. Please visit the Worldwide Tax Summaries website at *www.pwc.com/taxsummaries* to see any significant corporate tax developments that occurred after 1 June 2018.

Taxes on corporate income

A domestic corporation is taxable in Puerto Rico on its worldwide income. A foreign corporation engaged in trade or business in Puerto Rico is taxed at the regular corporate tax rates on income from Puerto Rico sources that is effectively connected income and at a 29% withholding tax (WHT) rate on its Puerto Rico-source gross income not effectively connected with that business.

The current corporate income tax (CIT) rate is comprised of a 20% normal tax and a graduated surtax (computed on the 'surtax net income').

The 'surtax net income' is basically the net taxable income subject to regular tax less a surtax deduction in the amount of 25,000 United States dollars (USD). The graduated surtax rates are as follows:

- 5% for surtax net income up to USD 75,000.
- USD 3,750 plus 15% of surtax net income from USD 75,001 to USD 125,000.
- USD 11,250 plus 16% of surtax net income from USD 125,001 to USD 175,000.
- USD 19,250 plus 17% of surtax net income from USD 175,001 to USD 225,000.
- USD 27,750 plus 18% of surtax net income from USD 225,001 to USD 275,000.
- USD 36,750 plus 19% of surtax net income in excess of USD 275,000 for a maximum nominal tax rate of nearly 39%.

The determination of the applicable surtax rate is made on a consolidated basis for controlled groups and related companies, so the net taxable income of all the entities subject to tax in Puerto Rico within said groups has to be combined for the determination of the applicable surtax rate.

Alternative minimum tax (AMT)

The AMT includes various AMT adjustments in order to calculate the tentative minimum tax. Such minimum tax is subject to a 30% flat rate.

For AMT purposes, expenses paid or incurred for services performed by a related party outside Puerto Rico are considered a permanent adjustment in the determination of the alternative minimum net income (i.e. non-deductible for AMT purposes).

In determining the alternative minimum net income, the net operating loss (NOL) is limited to 70% of the alternative minimum net income. Also, the amount of the tax credit available with respect to the AMT paid in prior years that may be claimed against the current year regular tax is limited to 25% of the current net regular tax over the AMT for such taxable year. The AMT credit can be carried forward indefinitely.

Tax on deemed dividends

A 10% tax is imposed on certain corporation on the deemed dividend amount attributable to a foreign owner. A foreign owner is defined as any non-resident person (or entity not engaged in a trade or business in Puerto Rico) who directly owns 50% or more of the corporation’s stocks. The deemed dividend amount is computed using the lesser of the average value of the total foreign assets or the accumulated earnings and profits of the corporation.

Tax on improper accumulation of income

A surtax of 50% is imposed on corporations that improperly accumulate earnings to prevent the imposition of tax on shareholders or partners rather than paying the earnings out as dividends. The tax is not imposed on accumulated earnings and profits but is imposed on the net income for the year computed without taking capital loss carryover or NOL carryover deductions, and reduced by the following items: Puerto Rico income taxes paid or accrued, disallowed net capital losses, and charitable contributions in excess of the deductible amount. The net income does not include industrial income exempted from income taxes under Industrial Incentives Acts. However, an exempt business can be subject to the penalty tax on non-exempt income.

Corporate residence

A corporation organised or created under the laws of Puerto Rico is a domestic corporation. A domestic corporation is a resident corporation even if it does not conduct business operations in Puerto Rico. A corporation created elsewhere is considered a foreign corporation.

Permanent establishment (PE)

The Puerto Rico Tax Code does not provide specific guidance on PE. Facts and circumstances need to be analysed in order to determine if a corporation has created a PE in Puerto Rico or not. However, having an office or fixed place of business in Puerto Rico may deem the corporation to be engaged in a trade or business in Puerto Rico (i.e. having a PE).

Sourcing rules pursuant to Act No. 154

Act No. 154’s source rules are segregated into two parts. The first part treats a non-Puerto Rico resident manufacturing entity as having an office or fixed place of business in Puerto Rico merely as a result of engaging in transactions above a certain threshold with a related Puerto Rico entity. The second part treats a portion of the income earned by a non-Puerto Rico resident entity as Puerto Rico-source income.

Act No. 154's source rule applies where a non-Puerto Rico resident purchases goods and services from a related company that manufactures personal property or performs services in Puerto Rico that account for 10% or more of the total gross receipts of the seller from sales of such property or services in Puerto Rico, or at least 10% of the purchase cost of personal property and services acquired by the purchaser, for the taxable year or any of the three prior taxable years.

Where Act No. 154's source rule applies, a portion of the income of the non-Puerto Rico resident purchaser from the sale outside of Puerto Rico of personal property manufactured or produced in whole or part in Puerto Rico by the related Puerto Rico seller will be treated as Puerto Rico-source income that is effectively connected with the conduct of a Puerto Rico trade or business. The portion of the non-Puerto Rico resident's income that is treated as Puerto Rico source is determined under an equally weighted, four-factor (i.e. purchases, sales, property, and payroll) formulary apportionment method. Where the purchaser fails to provide adequate documentation regarding the formulary apportionment factors, 50% of the income of the non-Puerto Rico resident purchaser from the sale outside of Puerto Rico of personal property manufactured or produced in whole or part in Puerto Rico by the related Puerto Rico seller will be treated as sourced where the property is manufactured or produced (i.e. Puerto Rico). The source rule also will apply to agency and commissionaire arrangements, in addition to buy-sell transactions involving related parties. In addition, the source rule contains an anti-abuse provision that disregards a transaction, for purposes of the source rule, where one of the principal purposes of the transaction is avoidance of the source rule.

Other taxes

Sales and use tax (SUT)

As a general rule, the SUT shall be applied, collected, and paid on all transactions of taxable items in Puerto Rico. Taxable items consist of tangible personal property, taxable services, admissions, and what is known as bundled transactions. Excluded from this definition are professional associations and certain membership fees; stamps issued by professional associations, the Commonwealth of Puerto Rico, or the federal government; human blood, tissue, and organs; maintenance fees paid to resident associations; air and maritime tickets; real property; and bingos, raffles, and lottery. Other transactions that are exempt from SUT include export transactions; duty-free stores located at airport or maritime ports; prescription medicines; insulin; taxable items acquired for certain manufacturing operations (e.g. raw materials); and food and ingredients for food (except for prepared food, diet supplements, sweets, and carbonated beverages).

The SUT rate is imposed at 10.5% at the state level and an additional 1% at the municipal level, for an aggregate 11.5%. Designated professional services and business-to-business (B2B) services are taxed at a 4% SUT rate.

Taxable services that are excluded from SUT include, among others, the following:

- Services rendered by merchants with annual volume of business of less than USD 50,000.

- Services rendered by a non-resident to a related party that is engaged in a Puerto Rico trade or business and holds a tax grant pursuant to Act No. 73-2008, Act No. 83-2010, Act No. 20-2012, or any similar act.
- Intangible rights.
- Advertising and promotion services.
- Construction subcontracted services and subcontracted telecommunication services.
- Toll manufacturing services or contract manufacturing services.
- Repair, maintenance, and conditioning of aircraft provided by a merchant that holds a tax grant pursuant to Act No. 73-2008 or any other similar act.

SUT should be remitted to the Puerto Rico government as 10.5% or 4% to the Puerto Rico Treasury Department (PRTD) and the remaining 1% to the corresponding municipality.

Tangible personal property introduced into Puerto Rico is subject to use tax upon importation, holding the release on the ports until the use tax is satisfied, unless the taxpayer is a bonded merchant or an eligible reseller. The use tax paid upon importation of the merchandise can be claimed as a credit on the SUT return.

Every natural or juridical person who does or wishes to do business of any kind in Puerto Rico shall request registration in the Merchant's Registry of the PRTD at least 30 days before starting operations. Once the registration application is filled out and approved, the Secretary of the Treasury will grant a Merchant's Registration Certificate. This certificate constitutes the merchant's authorisation to do business in Puerto Rico and confirms the merchant's obligation as a withholding agent. The Merchant's Registration Certificate shall be displayed, at all times, in a visible place for the general public in the commercial establishment for which it was issued. Please note that if a merchant is doing business in one or more of the 78 municipalities in Puerto Rico, the merchant only needs to register with the PRTD.

Unless specifically exempted, all persons selling taxable items are required to file a monthly SUT return. This return shall be filed electronically with the PRTD no later than the 20th day of the calendar month following the month during which the sales occurred. Also, all persons that import tangible property to Puerto Rico must file a use tax on imports return no later than the tenth day of the calendar month following the import.

There is a credit for purchases of products manufactured in Puerto Rico for purposes of SUT. In general, the credit will be 10% of the excess of the purchases of eligible products over the average of the purchases of eligible products for three out of ten prior taxable years. This credit can be carried forward until exhausted. It is important to note that the credit used will be considered taxable income for income tax purposes of the year the credit is taken.

Customs duties and import tariffs

Puerto Rico does not have customs duty and import tariff provisions. Since Puerto Rico is a Commonwealth of the United States, it follows the United States' customs duties and import tariffs.

Excise taxes

There are certain articles subject to a special excise tax, such as cigarettes, fuels, crude oils, vehicles, alcoholic beverages, cement, sugar, and plastic products, among others.

Act No. 154's excise tax

Companies with manufacturing operations in Puerto Rico may be subject to an excise tax on goods or services provided to offshore-related entities under Act No. 154 of 2010, as amended. This Act created an excise tax that works in tandem with Act No. 154's source rules. Where the excise tax applies, it is in lieu of the tax that otherwise would arise from the application of Act No. 154's source rules. Under this excise tax rule, offshore purchasers that acquire goods from Puerto Rico sellers with gross receipts in excess of USD 75 million for any of the three preceding taxable years and that otherwise meet the source-of-income rule thresholds (set forth above) are subject to this excise tax equal to the 'applicable percentage of the value' of such personal property or services, which is essentially a scaled-back percentage. The excise tax rate phases out as follows:

- 3.75% between 1 January 2012 and 31 December 2012.
- 4.00% between 1 January 2013 and 31 December 2027.

Various tax credits are provided to offset the excise tax mentioned above.

The excise tax is collected by the Puerto Rico seller on receipts from the sale of personal property or services rendered to a related offshore purchaser. The tax has to be deposited with the Secretary of the Treasury on or before the 13th day of the month following the sale. Each person required to collect the excise tax must file a quarterly excise tax return on 30 April, 31 July, 31 October, and 1 January and pay any remaining tax liability not deposited on a monthly basis, as outlined above.

Act No. 154 sets forth the process for which a credit may be claimed for (i) taxes paid to any of the states of the United States on the acquisition of personal property and services and (ii) taxes paid to Puerto Rico by another member of the taxpayer's controlled group on a series of purchases.

Personal property taxes

Every corporation engaged in a trade or business in Puerto Rico that on 1 January of each year owns personal property used in its trade or business within Puerto Rico, whether it is leased to another entity or not, is subject to tax on such property. The tax is self-assessed by the corporation, and it is paid together with the filing of an annual return. The tax ranges between 5.80% and 9.83%, depending on the municipality.

The tax return must be filed electronically through the Municipal Revenue Collection Center (MRCC) website (*www.crimpr.net*). In order to file the return, every taxpayer with over USD 3 million in volume of business and specialist who had prepared more than five returns for the prior taxable year need to register using this website. The signature and certification of the return will be satisfied by virtue of the electronic filing. Also, all returns filed electronically should be accompanied by the corresponding payment due on or before 15 May.

Every corporation must substantially satisfy its personal property tax liability, if any, through estimated tax payments. The amount of estimated taxes should be paid in equal instalments on the 15th day of August, November, February, and May of the taxable year of the corporation. The estimated payments should equal or exceed 90% of the actual personal property tax for the year or 100% of the personal property tax as reflected in the personal property tax return for the preceding taxable year, whichever is less. Any tax not covered by the estimated tax payments should be paid along with the personal property tax return. Failure to pay the tax by the due dates indicated above may result in a penalty of 5% of the instalment due.

A 5% statutory discount is available if 100% of the personal property tax, as reflected in the personal property tax return for the preceding taxable year, is made by the first instalment date (15 August).

In general, all personal property not specifically exempted, including cash, finished goods inventory, supplies, and depreciable property, is subject to the tax. The personal property tax is generally based on the book value of the asset as of 1 January. Finished goods inventory, however, is assessed on the average of the monthly balances for the 12-month period preceding 1 January of each year.

The valuation of the personal property subject to tax is determined by multiplying the book value of such property by the applicable tax rate determined by the municipality in which the property is located. If the book value of depreciable property is below its estimated residual value, the property should be assessed at its estimated residual value.

Real property taxes

The property tax system is administered by the MRCC. The tax on real property is directly assessed by the MRCC and may be paid in two instalments. The tax, (which varies from a minimum of 8.03% to a maximum of 11.83%, depending on the municipality) is applied to an amount based on the hypothetical fair market value (FMV) of the relevant property in the year 1957. In general terms, this hypothetical FMV normally ranges between 40% and 50% of the cost of the property.

Transfer taxes

Puerto Rico does not have transfer tax provisions.

Stamp taxes

Puerto Rico does not have stamp tax provisions. However, recordation fees are imposed at the time of officially recording a real estate transaction with the Puerto Rico Property Registry.

Withholding taxes on salaries and wages

All employers are required to withhold Puerto Rico income tax from all wages paid to its employees.

Federal Social Security and Medicare (FICA)

The Federal Social Security and Medicare Law applies in full in Puerto Rico. The tax rate is imposed on both the employer and the employee. For 2018, the tax rate is 7.65%, which consists of 6.2% of Social Security and 1.45% of Medicare Tax. The Social Security Tax is calculated on the first USD 128,400 (year 2017) of wages received, and the Medicare Tax is calculated on the total wages, without ceiling.

In addition, an employer must withhold a 0.9% Additional Medicare Tax from wages paid to an employee in excess of USD 200,000 (for a single taxpayer; married filing jointly is USD 250,000 and married filing separately is USD 125,000) in a calendar year. The employer is required to begin withholding Additional Medicare Tax in the pay period in which wages are paid in excess of USD 200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare

Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the USD 200,000 withholding threshold.

State (PR) Unemployment Tax (SUTA)

The unemployment tax is paid only by the employer and is paid on the first USD 7,000 of total wages paid to each employee during the calendar year, based on an experience rating system. In addition, the employer must also pay a special tax equal to 1% of the wages subject to unemployment tax. However, the special tax together with the experience-based tax cannot exceed 5.4%.

Federal Unemployment Tax (FUTA)

Similar to the FICA, FUTA also applies in Puerto Rico. All persons who employ at least one individual during any 20-week period or pay USD 1,500 or more in salaries during any trimester of the calendar year are subject to the FUTA tax.

The employer is solely responsible for payment of the tax. The rate is 6.0% on the first USD 7,000 of total wages paid during the calendar year to each employee. However, a credit of 5.4% is granted for the PR unemployment tax paid. Therefore, the effective tax rate is 0.6% (6.0% less 5.4%).

Disability insurance

The Puerto Rico Department of Labor and Human Resources Bureau of Employment Security also administers the disability insurance program. This program is funded principally through the imposition of a tax, in equal amounts, on the employer and employee.

A contributory tax of 0.6% is imposed on the first USD 9,000 of the total wages paid in the year. From the total tax, half (0.3%) is paid by the employer and the other half by the employee.

Employers may establish private insurance plans if approved by the Puerto Rico Department of Labor and Human Resources.

Workmen's Accident Compensation Insurance

The Workmen's Accident Compensation Insurance Act (WACA) establishes a compulsory insurance program that covers employees who suffer injury, become disabled, or lose their lives due to a job related accident. The insurance premium is based on total wages paid during the government's fiscal year, which runs from 1 July to 30 June. The actual rates vary among industry types. The employer is solely responsible for payment of the assessed premium.

Chauffeurs' Social Security

Every employer having one or more drivers is subject to Chauffeurs' Social Security tax. It also applies to an employer whose employees are usually or regularly required or allowed to operate a motor vehicle as an inherent part of their work.

The tax is imposed on both the employer and the employee as follows:

- Every employer must pay USD 0.30 per week or fraction thereof for each covered employee.
- Every employee must pay USD 0.50 per week or fraction thereof.

Municipal license tax

Every corporation is required to file an annual volume-of-business declaration with each of the municipalities in which it establishes or conducts business operations during the year. The declaration must indicate the actual volume of business (i.e. net sales, gross income from any service rendered, and other gross receipts) attributable to each municipality. When a business operates in more than one municipality but does not receive income in all of them, the license tax shall be computed based on a distribution of sales apportioned to each municipality by square feet of the building used in each municipality.

For a non-financial business, the license tax payment varies from a minimum of 0.20% to a maximum of 0.50%, depending on each municipality. The payment must be made in two equal instalments on or before 15 July and 15 January on the basis of the volume of business generated by the entity during its accounting year ended within the immediately preceding calendar year before the due date of the declaration. A 5% discount is available when the tax is fully paid on the declaration due date (on or before five working days after 15 April of each year).

For the first six months after a new business is established, the new company is generally exempt from the municipal license tax, provided that the business informs the municipality that it has established a new business in the municipality within the first 30 days of operations and requests the provisional license tax as established in each municipality. A copy of the municipal licence is generally requested as a perquisite for obtaining other licences and permits in Puerto Rico.

Branch income

Corporations operating in Puerto Rico as a branch may be subject to a 10% tax on the dividend equivalent amount (commonly known as the branch profit tax or BPT). The BPT should be determined and paid along with the CIT return. There will not be an income tax withholding at source at the time cash transfers are made by the Puerto Rico branch to its home office outside of Puerto Rico.

Income determination

The gross income of a corporation generally includes business income, profits from the sale of property, interest, dividends, and income derived from any source, unless specifically exempted by law.

A corporation's net income is generally calculated in accordance with the method used for financial statement purposes, except for various items of income and expenses, which are treated differently. For example, the cash method of accounting may not be used by a corporation with inventory or with an average annual gross income in excess of USD 1 million. Long-term contract methods and the instalment method can be used for regular tax calculations.

Inventory valuation

In general, inventory is valued at the lower of cost or market. Retail merchants can use the retail method of accounting.

Capital gains

Tax-advantaged treatment is provided for net long-term gains (holding period of more than one year) from the sale of capital assets. For corporations, net long-term capital gains, reduced by any short-term capital losses, are subject to an alternative (preferential) tax of 20% in lieu of the regular CIT rates.

Dividend income

Dividends from a corporation that derives 20% or more of its profits from sources within Puerto Rico are taxable in Puerto Rico. However, a dividends-received deduction may apply.

Dividends-received deduction

All corporations engaged in trade or business in Puerto Rico are entitled to an 85% deduction on dividends received from a domestic corporation but not in excess of 85% of the net income of the corporation. A 100% dividends-received deduction applies for dividends received from taxable controlled domestic corporations (if ownership in a corporation is 80% or more).

Interest income

Interest income is generally taxable, except interest from obligations of the federal government or any state, or territory, or political subdivisions; the District of Columbia; and the Commonwealth of Puerto Rico or any of its instrumentalities or political subdivisions.

Royalty income

Royalties from property located in Puerto Rico or from any interest in such property are included in gross income.

Partnership income

The income (loss) of a partnership passes through to its partners so that the partnership itself is not subject to tax. Thus, each partner generally accounts for their distributive share of the partnership's taxable income (loss).

Other income

Service fees are generally taxable as ordinary income.

Foreign income

Generally, a Puerto Rico domestic corporation is taxed on its worldwide income, including foreign income earned and foreign dividends when received. Double taxation is avoided by means of foreign tax credit or deduction. In the case of resident foreign corporations, these are only taxed on their Puerto Rico-source income and on their effectively connected Puerto Rico income (i.e. foreign income won't be taxable for Puerto Rico purposes).

Deductions

All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business are deductible by corporations operating in Puerto Rico.

Depreciation

A reasonable depreciation allowance is deductible for the exhaustion, wear and tear, and obsolescence of property used in business. The most common depreciation method used by corporations is the straight-line method. Nevertheless, any other consistent method may be used in lieu of the straight-line method as long as it is in accordance with the recognised trade practice. In addition, a corporation (other than one that is exempt under an Industrial Incentives Act) can elect an accelerated depreciation method for new or used tangible property acquired by purchase in taxable years commencing after 30 June 1995.

For property acquired after 31 December 2009, when using the straight-line depreciation method, the useful life has to be determined based on the same rules of accelerated depreciation.

Assets	Useful life (years)
3 year property (e.g. computers, electronic equipment)	3
5 year property (e.g. automobiles, transportation equipment)	5
7 year property (e.g. certain furniture and fixtures, air transportation equipment)	7
10 year property (e.g. furniture and fixtures, printing equipment, other machinery and equipment)	10
15 year property (e.g. certain air transportation equipment, natural gas plants)	15
20 year property (e.g. vessels, land improvements)	20
Real property leased for residential purposes	30
Other real property	35

For intangibles (other than goodwill) acquired or created after 1 September 2010, the deduction is calculated using the straight-line method over the lower of a useful life of 15 years or the intangible's useful life.

Goodwill

The cost of goodwill is generally capitalised and amortised ratably over 15 years.

Start-up expenses

Generally, start-up expenditures may be deducted in the tax year in which the trade or business begins or they may be ratably amortised over five years.

Interest expenses

In general, interest expense is deductible without limitation. However, interest expenses related to exempt income are not deductible. If interest is paid to a non-Puerto Rico resident related party, a 29% withholding at source applies. If the 29% withholding is not withheld, no deduction is available.

Bad debt

Bad debt resulting from a trade or business may be deducted in the year the debt becomes worthless (i.e. uncollectible). The reserve method is not admissible for Puerto Rico purposes.

Charitable contributions

Deductions for allowed charitable contributions are limited to 10% of net income, computed regardless of the contributions.

Rent expense

Corporations are entitled to a rent expense deduction if the rented property is used in the business.

Employee remuneration

Corporations may deduct payments of reasonable salaries or other compensation for services actually rendered.

Insurance premiums

Insurance premiums paid or accrued on risks related to a trade or business are deductible, as well as premiums on group life policies covering employees where the beneficiary is not the corporation. No deduction is allowed for premiums paid to an insurance company not authorised to provide insurance in Puerto Rico or through an agent or broker not authorised to operate in Puerto Rico.

Meals and entertainment

Meals and entertainment expenses are deductible, subject to a 50% limitation. Travelling expenses are fully deductible if the trip is for business purposes.

Automobiles expenses

A corporation is allowed to depreciate non-cargo automobiles used in a trade or business over a five year useful life (three years in the case of sales persons) up to a maximum base of USD 30,000 for a maximum annual depreciation of USD 6,000.

On the other hand, for non-cargo automobile maintenance expenses (e.g. gas, repairs, insurance), a deduction based on USD 0.60 per mile is allowed.

Fines and penalties

Penalty payments, such as with respect to Commonwealth taxes, whether on account of negligence, delinquency, or fraud, are not deductible from gross income.

Taxes

A corporation is allowed a deduction for taxes paid (except for Puerto Rico CIT), including income tax paid to the United States, its other possessions, and any foreign country. The deduction is in lieu of claiming a foreign tax credit.

Other significant items

The cost of incidental repairs (not adding value to the property) is deductible as a business expense.

Subject to certain limitations, savings and retirement plans for the benefit of employees are deductible if qualified by the Secretary of the Treasury.

Net operating losses (NOLs)

All corporations are generally entitled to the NOL deduction in computing their tax. NOLs created from taxable years beginning prior to 31 December 2012 (and after 31 December 2004) may be carried forward for 12 taxable years (there are no carryback provisions). For taxable years beginning after 31 December 2012, the NOL carryforward period is ten years. The use of the NOL deduction is limited to 80% of the taxable income for the year. The NOL to be carried forward should exclude the deductible portion of the expenses or payments to foreign affiliates.

Also, losses from sales or exchanges of capital assets are allowed only to the extent of gains from such sales or exchanges. The carryforward period in this instance, however, is seven years. The use of capital losses is limited to 80% of the capital gains for the taxable year.

Payments to foreign affiliates

51% of expenses attributable to payments made to a related party that is not engaged in a trade or business in Puerto Rico or to the home office located outside of Puerto Rico (i.e. foreign affiliate) will not be deductible for purposes of computing the net taxable income, as long as these payments are not subject to income taxes in Puerto Rico.

The Secretary of the Treasury has the authority to grant a 100% deduction for the expenses paid or incurred with related parties not engaged in a trade or business in Puerto Rico via the waiver mechanism. However, the deduction is limited to 60% of the expenses that qualify for the waiver.

Expenses paid or incurred with related parties not engaged in a trade or business in Puerto Rico for which a waiver from the Secretary of the Treasury is not obtained do not generate NOL carryforward (i.e. the expenses are added back to the NOL). In other words, the non-disallowed portion of the payments to foreign affiliates/branches will not be allowed if this particular portion causes a NOL.

Group taxation

Puerto Rico does not have group taxation rules. In other words, corporations cannot file a consolidated return for Puerto Rico CIT purposes.

Transfer pricing

There are no specific transfer pricing rules in Puerto Rico.

Thin capitalisation

There are no specific thin capitalisation rules in Puerto Rico.

Controlled foreign companies (CFCs)

There are no specific CFC rules in Puerto Rico.

Tax credits and incentives

A corporation engaged in specific eligible activities may apply for a reduced CIT rate, among other incentives, through the request of a Tax Exemption Grant to the Puerto Rico Office of Industrial Tax Exemption (OITE) under Act No. 73 of 28 May 2008 (Act No. 73).

A corporation engaged in eligible activities related to the exportation of services may apply for a reduced CIT rate, among other incentives, through the request of a Tax Exemption Grant to OITE under Act No. 20 of 17 January 2012 (Act No. 20), instead of through Act No. 73.

The Governor of Puerto Rico issued various administrative orders during taxable years 2017 and 2018 imposing limitations with respect to the utilisation of credits.

Tax rate incentives

Under Act No. 73

Exempt entities may elect one of the following two scenarios:

- General scenario: 4% CIT rate with a WHT rate on royalty payments of 12%. Under this scenario, the amount of WHT on the royalty payments is creditable against the 4% CIT.
- Alternate scenario: 8% CIT rate with a WHT rate on royalty payments of 2%. Under this scenario, the WHT on royalty payments is creditable against the 8% CIT.

Companies may elect one of these scenarios at the time of applying for the benefits under the Act. However, there are other possibilities:

- 4% fixed income tax rate on Incentive Development Income (IDI), excluding income from certain investments provided by Section 2(j).
- Pioneer industries are eligible for a 1% CIT rate.
- Activities for the development in Puerto Rico of intangible property are eligible for a 0% CIT rate.
- Any exempt business having operations at a municipality located in a 'low or intermediate development zone' may reduce its CIT rate by an additional 5%.
- Any exempt business having operations in Vieques and Culebra may be totally exempt from income taxes during the first ten years of operations as established in the Act. The remaining years covered by its tax decree may qualify for a 2% CIT rate.

Under Act No. 20

- 4% CIT on export services income or
- 3% CIT when more than 90% of the eligible business's gross income is derived from export services and such services are considered strategic services, according to the criteria established in Act No. 20.

Special deductions

Special deductions under Act No. 73 are available for capital investment in buildings, structure, machinery and equipment, and the NOL carryforwards.

There are no special deductions allowed under Act No. 20.

Credits

The following credits are only available under Act No. 73. Please note that no credits are allowed under Act No. 20.

Credit for purchases of Puerto Rico manufactured product

Subject to certain limitations, the credit for purchases of products manufactured in Puerto Rico is 25% (35% in the case of recycled products).

Job creation credit

There is a credit for every incremental job applicable to exempt business starting operations after 1 July 2008. The amount of the credit (maximum of USD 5,000 per each employment) depends upon the location of the industrial development zone.

Research and development (R&D) investment credit

A 50% credit is granted for the eligible investment in R&D activities, including operational expenditures, clinical trials, infrastructure, renewable energy, or intellectual property (IP).

The 'Electricity, Water and Sewer Services Subsidies and Overdue Payments Reform Act' (Act No. 22) amends the 'Economic Incentives Act for the Development of Puerto Rico' (Act No. 73) in order to provide that existing businesses that hold a tax grant under Act No. 73 will not be allowed to claim R&D credits against an electric energy, water, and/or sewer services bill unless the PRTD certifies the availability of the credit.

Energy investment credit

A 50% credit is granted for the eligible investment in the acquisition of machinery and equipment for the creation of energy.

Energy cost credit

There is also a 3% credit (which could be increased up to 10% if certain employment requirements are met) for payments made to the Puerto Rico Power Authority during the corresponding taxable year. This credit is available for a ten-year period starting as of 1 July 2008. Additional credits (for the purpose of reducing the cost of energy) may be available to industrial units, subject to certain limitations. Act No. 22 of 2016 eliminates the energy credits to new applicants for tax grants under Act No. 73.

Technology transfer credit

A 12% credit (2% in the case of exempt businesses that opted for the alternate tax) is available for payments made to resident entities for the use or privilege of using intangible property in Puerto Rico.

Strategic projects investment credit

There is a 50% credit for eligible investment in strategic projects, including activities for the design, development, and construction of dams.

Industrial investment credit

There is a 50% credit, up to a maximum of USD 8 million, for cash invested in the purchase of 50% or more of the stock or operating assets of an exempt business that is in the process of shutting down operations, amounts used to start-up a small or medium-exempt business, or amounts used for a substantial expansion of an exempt business.

Property tax incentives

Similar to the previous incentives laws, Act No. 73 allows for a 90% property tax exemption on personal and real property. However, Act No. 73 introduced a methodology for the classification and assessment of real property owned by the exempt businesses. Under the provisions of Act No. 73, a taxpayer can self-assess one's real property tax responsibility (similar to the current personal property tax system) and remit the related tax liability due along with a real property tax return (to be issued by the MRCC) by 15 May of each year. The self-appraisal method is only applicable to real property that has not been appraised by the MRCC and is mainly limited to machinery and equipment classified as real property. Note that this method is not available for assets such as land, buildings, and building equipment.

For purposes of Act No. 20, there is a 100% exemption from property taxes during the first five years of operations in the case of eligible services as call centres, management services, and shared services. After said five-year period, a 90% exemption will apply during the term remaining under the Tax Exemption Grant.

Municipal license tax and other municipal tax incentives

Under Act No. 73, the municipal license tax exemption continues at 60% for exempted businesses. Exempt businesses operating in Vieques or Culebra are 90% exempt; small or medium-exempt businesses are 75% exempt; and central or regional corporate headquarters providing managerial services to affiliated companies are 100% exempt during the first five years after becoming eligible for the exemption.

There are no municipal tax exemptions under Act No. 20.

Foreign tax credit

Generally, in any year, a taxpayer can choose whether to take as a credit (subject to limitation) or as a deduction the foreign income and excess profit taxes paid or accrued during the taxable year to any foreign country. A foreign tax credit reduces the Puerto Rico income tax liability dollar for dollar, while a deduction reduces the Puerto Rico income tax liability at the marginal rate of the taxpayer. There are no carryforward provisions for foreign tax credit purposes.

Withholding taxes

Corporations not engaged in a trade or business in Puerto Rico are subject to a 29% WHT at source on certain gross income items (considered fixed or determinable, annual or periodical [FDAP]) from Puerto Rico sources.

FDAP income may include interest received from a related person, rents, royalties, salaries, annuities, compensation, remuneration, and net capital gains. However, if the payment received is from dividends, a 10% WHT should apply.

The payer, as a withholding agent, is responsible for the withholding and remittance of the 29% (10% in the case of dividends) to the PRTD. Such tax is due on or before the 15th day of the month following the receipt of the income by the non-resident corporation. An annual informative return is also required to be filed no later than 15 April of the following year.

Tax treaties

There are no tax treaties between foreign countries and Puerto Rico.

Tax administration

Taxable period

The annual accounting period may be on the basis of the calendar year, a fiscal year ending on the last day of a month, or a 52/53 week year.

Tax returns

The Puerto Rico tax system is based on the principle of self-assessment. A corporate taxpayer is required to file an annual income tax return by the 15th day of the fourth month following the close of its tax year. In general terms, a taxpayer can obtain an automatic extension of three months to file its income tax return. Failure to timely file can result in penalties.

A corporate taxpayer may also be subject to file a personal property tax return by 15 May and/or a volume of business declaration by the fifth business day after 15 April.

Payment of tax

A corporation must substantially satisfy its annual income tax liability, if any, through estimated income tax payments. The amount of estimated income taxes should be paid on equal instalments on the 15th day of the fourth, sixth, ninth, and 12th month of the taxable year of the corporation. The estimated payments should equal or exceed 90% of the actual tax for the year (including AMT) or, in cases where a CIT return was filed by the corporation in the preceding year, 100% of such tax liability. Any tax not covered by the estimated tax payments should be paid along with the CIT return. Failure to pay the tax by the due dates indicated above may result in a penalty of 10% of the instalment due.

Annual report

Every corporation is required to file an annual corporation report with the Puerto Rico Department of State. This annual report must be filed by the 15th day of April along with a USD 150 annual fee and a balance sheet as of the close of operations of the prior year. The report should be filed through the Puerto Rico Department of State's website. In the case of for-profit corporations, if the volume of business exceeds USD 3 million, the annual report must be accompanied by a balance sheet certified by a certified public accountant (CPA) licensed in Puerto Rico. In the event that the volume of business does not exceed USD 3 million, a balance sheet prepared under Generally Accepted Accounting Principles (GAAP) by a person with a general knowledge in accounting has to be submitted along with the corporate annual report. An extension of 60 days (an additional 30-day period may be requested) for filing the annual report can be obtained if timely requested. The Secretary of State is authorised to impose a penalty for failure to timely or accurately file the annual corporate report that would be between USD 75 and USD 2,000 if a non-profit corporation, and between USD 750 and USD 2,000 if a for-profit corporation.

Audited financial statements

Accounting records must be prepared in accordance with the GAAP followed in the United States. Domestic (i.e. incorporated in Puerto Rico) or foreign corporations with volume of business of more than USD 3 million must include, with their CIT return, audited financial statements of the Puerto Rico operations for the accounting year ended on or before the preceding 31 December. The financial statements should be submitted with an audit report issued by a CPA licensed in Puerto Rico.

Also, qualified and disclaimer opinions are now allowed to the extent that the qualification or disclaimer does not result from a restriction in scope. However, no adverse opinions are allowed. All groups of related entities engaged in a trade or business in Puerto Rico are required to file consolidated or combined financial statements (CFS), which should contain a consolidating schedule and general information of the related parties. The determination of the gross income threshold for purposes of the audited financial statement requirement should be made taking into consideration the volume of business of all the entities within a controlled group. In the case of foreign entities, these will be able to submit audited financial statements with their Puerto Rico operations on a stand-alone basis; in other words, the CFS will not be required. The requirement for audited financial statements will not apply to non-profit organisations.

With respect to the municipal license and personal property tax filings, the threshold amount for the audited financial statements requirement is gross revenues of more than USD 3 million, regardless of the corporate residency (i.e. foreign or domestic).

Supplemental information is also required to be included as part of the audited financial statements to be filed with the income tax return, volume of business declaration, and personal property tax return. The due date for the supplemental information is the last day of the month following the CIT due date, including extensions (i.e. 31 August 2018). The supplemental information must be submitted electronically and separately from the audited financial statements.

Tax audit process

Many taxpayers are under audit by the PRTD. The audits may include income, payroll, withholding, and sales and use taxes.

Statute of limitations

The PRTD generally has four years after an original return is filed to assess income, payroll, and sales and use taxes. A return will be deemed to have been filed on the later of (i) its due date or (ii) the date the return was actually filed.

Topics of focus for tax authorities

Currently, the PRTD is focused on SUT, intercompany loans, withholding at source, and payments to foreign affiliates, among others.

Qatar

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Significant developments

Implementation of a value-added tax (VAT) in 2018/19

The Gulf Cooperation Council (GCC) countries have signed a VAT common framework, which forms the legal basis for the introduction of a VAT system in each of the GCC member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates [UAE]). Saudi Arabia and the United Arab Emirates have implemented VAT as of January 2018. The other GCC member states are expected to issue their own VAT legislation shortly. The Cabinet of Qatar has approved a draft law on VAT and its Executive Regulations as put forth by the Qatar Ministry of Finance. The laws and respective executive regulations have not been published yet. It is expected that VAT at the rate of 5% will be implemented in 2018/19.

Inclusive Framework on Base Erosion and Profit Shifting (BEPS)

On 14 November 2017, Qatar joined the 'Inclusive Framework on BEPS' and pledged to implement the new international BEPS minimum standards.

Country-by-Country Reporting (CbCR) Multilateral Competent Authority Agreement (MCAA)

Qatar became a signatory of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 10 November 2017 and the CbCR MCAA on 20 December 2017. The regulations pertaining to CbCR filing in Qatar had not been published by the date of this review. It is expected that further transfer pricing regulations, including Master File and Local File, may also be introduced shortly.

Common Reporting Standard (CRS)

On 10 November 2017, Qatar signed the CRS Multilateral Competent Authority Agreement (CRS MCAA).

Qatar Financial Centre (QFC): New 'local source' income definition

Recently amended QFC Tax Rules and Regulations modify the definition of 'local source' income. According to the new provisions, if certain conditions are met, profits arising in or derived from Qatar by a QFC non-regulated entity from the provision of services for use outside Qatar would not form a part of local source taxable profits and would not be subject to tax.

Qatar

Taxes on corporate income

An entity that is wholly or partially foreign owned and that derives income from sources in Qatar is taxable in Qatar. In the case of a joint venture, the tax liability of the joint venture is dependent upon the foreign partners' share of the joint venture's profit. Currently, no corporate income tax (CIT) is levied on a corporate entity that is wholly owned by Qatari nationals and GCC nationals.

Unless specifically exempt from tax, an entity will be taxable in Qatar if it has generated Qatar-source income, regardless of the place of its incorporation.

Taxable income generally is subject to a flat (CIT) rate of 10%, with certain exceptions available.

The following tax rates apply in the specific circumstances noted:

- If a special agreement was reached with the government of Qatar prior to 1 January 2010, the rate specified in the agreement continues to apply. If no rate is specified in the agreement, a rate of 35% will be used.
- The rate applied with respect to oil operations, as defined in Law No. 3 of 2007, may not be less than 35%.
- Payments made to non-residents with respect to certain service activities not connected with a permanent establishment (PE) in Qatar are subject to WHTs (*see the Withholding taxes section*).

The amount of tax payable is reduced for companies that are partly foreign owned, depending on the extent of local ownership.

Local income taxes

There are no local, state, or provincial government taxes on income in Qatar.

Corporate residence

It is important to recognise that residence is not the basis used to determine whether an entity is taxable for CIT purposes in Qatar. Accordingly, a CIT exposure in Qatar may arise even if a company is not resident in Qatar. However, residence is relevant when considering whether withholding tax (WHT) will apply on payments received rather than CIT.

A company is resident in Qatar if it is incorporated in accordance with Qatari laws, its head office is situated in Qatar, or its place of effective management and control is in Qatar.

Permanent establishment (PE)

A PE is defined as a fixed place of business through which the business of a taxpayer is wholly or partly carried on. A PE is deemed to include a branch, office, factory, workshop, mine, oil or gas well, quarry, a building site, an assembly project, or a place of exploration, extraction, or exploitation of natural resources. A PE also includes activity carried on by the taxpayer through a person acting on behalf of the taxpayer or in the taxpayer's interest, other than an agent of an independent status.

To date, the Qatar tax department has permitted a PE to register for tax purposes and file an annual tax return. However, if a PE is not registered in the commercial register, it is in contravention of the Foreign Investment Law. Following introduction of the tax administration system (TAS), the risk may increase of the Qatar tax department querying why the PE has not registered in the commercial register as the commercial registration number is ordinarily required as part of the online filing process.

Other taxes

Value-added tax (VAT)

Currently, Qatar imposes no VAT or sales tax on operations in Qatar. However, the introduction of VAT in Qatar under a common GCC framework is expected in 2018/19. The anticipated tax rate is 5%.

Customs duties

Customs duties are applied to goods with an origin outside the GCC countries, normally at a rate of 5%. Higher rates sometimes apply for specific types of goods, such as tobacco products. Temporary import exemptions are sometimes available.

Excise taxes

Implementation of a selective excise tax is expected in 2018/19. Tobacco, certain luxury products, and sugar-sweetened beverages are to be taxed upon importation or production in Qatar.

Property taxes

There are no property taxes in Qatar. However, fees may be payable to the government by the owner on the registration of property and by the landlord on the registration of leases.

Transfer taxes

There are no transfer taxes in Qatar; however, share transfers of state entities require formal confirmation of 'No Objection' from the tax authorities prior to the transfer being updated in the commercial register.

Stamp taxes

There are no stamp taxes in Qatar.

Payroll taxes

Employed individuals' salaries, wages, and allowances are not subject to income tax.

Social security contributions

Employers have to pay social insurance in respect of Qatari employees but have no obligations for employees of other nationalities.

Branch income

The profits of a branch owned by a foreign parent entity are subject to the same tax rules as apply to other forms of taxable entities.

Income determination

CIT is levied on a company's Qatar-source income. Some examples of Qatar-source income include:

- Income derived from an activity carried on in Qatar.
- Income derived from contracts wholly or partially performed in Qatar.
- Income from real estate situated in Qatar, including income from the sale of shares of companies with assets consisting of mainly real estate situated in Qatar.
- Income from shares in companies resident in Qatar.

Inventory valuation

Inventory must be valued in accordance with International Financial Reporting Standards (IFRS).

Capital gains

Any chargeable gains on the sale of capital assets are taxed as ordinary income. Specific rules exist in respect of gains realised on the disposal of real estate. Capital gains generated by a non-resident on the sale of shares in a Qatar company are an area of focus for the tax authorities.

Dividend income

Dividends are not taxable in Qatar if received from profits that have been subject to Qatar tax or from companies that are exempt from Qatar tax.

Interest income

Interest arising in Qatar and bank interest realised outside Qatar, if it results from the taxpayer's activity in Qatar, are taxed as ordinary income.

Royalty income

Royalty income is taxed as ordinary income.

Foreign income

Non-Qatar-sourced income is not subject to tax in Qatar.

Deductions

Taxable income is determined after deducting all expenditures, costs, and losses incurred to generate gross income. A deduction is usually available for expenses that are not considered to be 'capital' in nature and are incurred in generating Qatar-source revenue.

Depreciation

Depreciation should be calculated in accordance with rates specified by the Qatar tax law and the related regulations. In practice, however, the deduction for depreciation is restricted to the amount of the accounting depreciation.

For certain assets, depreciation is calculated on the cost on a straight-line basis. The rates of depreciation are as follows:

Assets	Depreciation rate (% per annum)
Buildings and constructions, including roads, bridges, pipelines, storage tanks, and port ducts inside the establishment and excluding ready-made light constructions	5
Ships and boats	10
Airplanes and helicopters	20
Drilling instruments	15
Intangible assets:	
Pre-establishment expenses	50
Trademarks, patents, and the like	Amortised over the expected lifetime of the asset, provided that the amortisation allowance shall not exceed 15% per annum.

Other assets will be divided into groups and depreciated on a reducing-balance basis. The rates of depreciation are as follows:

Group	Asset	Depreciation rate (% per annum)
I	Computer hardware and software accessories	33.33
II	Machinery, plant, equipment, electrical devices, means of transportation of goods and persons, including cars, vehicles, trucks, and cranes	20
III	Furniture, fixtures and fittings, and other fixed assets	15

Goodwill

There are no specific provisions dealing with the taxation of goodwill. Accordingly, the accounting treatment should be followed from a tax perspective.

Interest expenses

Interest on loans used for the purpose of the taxpayer's activity is tax deductible, except where the loan is between a Qatar branch and its head office or a party related to the head office.

Bad debt

Bad debts approved by the tax authorities in accordance with the criteria set out in the tax law are deductible.

Charitable contributions

Donations, gift aid, and subscriptions to charitable, humanitarian, scientific, cultural, or sporting activities paid in Qatar to government authorities or public bodies are deductible, provided the value does not exceed 5% of net profit in the year in which the deduction is claimed.

Fines and penalties

Fines and penalties are not deductible for Qatar tax purposes.

Taxes

Taxes and duties, other than the income tax, provided for in the law are deductible.

Other significant items

Other deductible expenditures include the following:

- Employee costs (including salaries, wages, gratuities, and other end of service benefits).
- Losses resulting from the sale of assets.
- Rents.
- Insurance premiums.

Net operating losses

Losses may be deducted from net income during the year. Losses can be carried forward for three years after the year in which they were incurred. Losses cannot be carried back.

Allocations of overhead costs to branches

The branch's share of head office expenses (i.e. indirect or allocated overhead) generally is deductible only up to a certain limit. The deduction is capped at 3% (1% for banks) of the total revenue less certain other costs.

Group taxation

There is no definition of a 'group' for Qatar tax purposes; consequently, there is no concept of group taxation.

Transfer pricing

The executive regulations, which supplement Qatar's tax law, have made it clear that the anti-avoidance provision will be applied to related-party transactions. In determining the arm's-length value, the unrelated comparable price method should be used (i.e. the price of services or goods that would have been applied should the transaction be between unrelated parties). It is possible to make an application to the Qatar tax authorities to use another method approved by the Organisation for Economic Co-operation and Development (OECD).

Thin capitalisation

There are no specific thin capitalisation rules in Qatar, although consideration should be given to the anti-avoidance provision noted above.

Controlled foreign companies (CFCs)

There are no CFC provisions in Qatar.

Tax credits and incentives

Foreign tax credit

The executive regulations of Qatar's tax law provide that income tax paid outside Qatar is deductible as an expense for the purposes of determining taxable income, provided such income is taxable in Qatar.

Qatar Science and Technology Park (QSTP)

Qatar has established the QSTP, which is aimed at entities with research and development (R&D) activities. QSTP entities can be fully exempt from Qatar tax; however, tax-exempt entities are required to file tax returns.

Other tax exemptions

An application for a tax exemption may be made for certain projects that are considered to be strategically significant to the Qatar economy. The exemptions are generally granted for a period of three or six years. Applications for an exemption are assessed based on certain criteria set out in the Qatar tax law.

Notwithstanding the fact that an exemption is granted, an entity that is exempt is still required to file a tax return under the Qatar tax law.

Withholding taxes

WHT is levied on certain payments made to non-residents in relation to royalties and technical services (the applicable rate is 5%) and on interest, commissions, brokerage fees, directors' fees, attendance fees, and any other payments for services carried out wholly or partly in Qatar (the applicable rate is 7%). The executive regulations have excluded certain payments from the scope of WHT. Dividends are not subject to WHT.

The company that makes the payment to its foreign supplier is required to withhold the tax and remit to the tax department the funds that were withheld by the 16th day of the following month. In the event that the company does not make a payment to the tax department, the company will be liable for a penalty equal to the amount of unpaid tax due, in addition to the WHT.

Retention system

Pursuant to circulars issued by the tax department, a retention system is in place whereby certain final contract amounts are required to be retained from payments made to Qatari resident entities and non-resident entities with a PE in Qatar in connection with services performed in Qatar. All ministries; government departments; public, semi-public, and private establishments; and Qatar taxpayers are required to retain. Companies resident in Qatar and permanent branches can secure a release of the final payment by presenting a tax card. A retention equivalent to the higher of 3% of the contract value (less the value of supply and work carried out abroad) or the final contractual payment will apply to temporary branches registered for activities of at least one year until they produce a no objection letter from the Qatar tax authorities. All other non-residents are expected to be subject to WHT in respect of payments that fall within the scope of WHT.

Tax treaties

Qatar has a growing double taxation treaty (DTT) network with over 60 DTTs currently in force. The WHT rates under these treaties in respect of dividends, interest, and royalties are as follows:

	WHT (%)			
Recipient	**Dividends ***	**Interest**	**Royalties**	**Effective date**
Non-treaty	0	7	5	

Recipient	WHT (%) Dividends *	Interest	Royalties	Effective date
Treaty:				
Algeria	0	0	0/5 (12)	1 Jan 2012
Armenia	5/10 (1)	5	5	1 Jan 2008
Austria	0	0	5	1 Jan 2012
Azerbaijan	7	7	5	1 Jan 2009
Barbados	0	0	5	1 Jan 2014
Belarus	0/5/10 (2)	5	5	1 Jan 2008
Brunei	0	0	5	1 Jan 2017
Bulgaria (11)				1 Jan 2011
China (People's Republic of)	10	10	10	1 Jan 2009
Croatia	0	0	10	1 Jan 2010
Cuba	5/10 (3)	10	5	1 Jan 2009
Cyprus	0	0	5	1 Jan 2010
France	0	0	0	1 Jan 2007
Georgia	0	0	0	1 Jan 2012
Greece	5	5	5	1 Jan 2011
Guernsey	0	0	5	1 Jan 2014
Hong Kong	0	0	5	1 Jan 2014
Hungary	0/5 (13)	0	5	1 Jan 2013
India	5/10 (4)	10	10	1 Jan 2001
Indonesia	10	10	5	1 Jan 2008
Iran	5/7.5 (15)	10	5	1 Jan 2011
Ireland	0	0	5	1 Jan 2014
Isle of Man	0	0	5	1 Jan 2013
Italy	5/10 (3)	5	5	1 Jan 2010
Japan	5/10 (21)	0/10 (22)	5	1 Jan 2016
Jersey	0	0	5	1 Jan 2013
Jordan	10	5	10	1 Jan 2009
Kenya	5/10 (4)	0/10 (25)	10	1 Jan 2016
Korea, Republic of	10	0/10 (10)	5	1 Jan 2010
Kyrgyzstan	5	0	5	1 Jan 2017
Latvia	0/5	0/5	5	1 Jan 2017
Lebanon	0	0	0	1 Jan 2010
Luxembourg	0/5/10 (2)	0	5	1 Jan 2011
Macedonia	0	0	5	1 Jan 2009
Malaysia	5/10 (4)	5	8	1 Jan 2010
Malta	0	0	5	1 Jan 2010
Mauritius	0	0	5	1 Jan 2010
Mexico	0	5/10 (14)	10	1 Jan 2014
Monaco	0	0	5	1 Jan 2011
Morocco	5/10 (4)	0/10 (16)	10	1 Jan 2010
Nepal	10	10	15	1 Jan 2010
Netherlands	0/10 (5)	0	5	1 Jan 2010
Norway	5/15 (6)	0	5	1 Jan 2010
Pakistan	5/10 (4)	10	10	1 Jan 2001
Panama	5	5	5	1 Jan 2012
Philippines	10/15 (23)	0/10 (16)	15	1 Jan 2016
Poland	5	0/5 (9)	5	1 Jan 2010
Portugal	5/10 (19)	10	10	1 Jan 2015

Recipient	WHT (%) Dividends *	Interest	Royalties	Effective date
Romania	3	3	5	1 Jan 2004
Russia	5	5	0	1 Jan 2001
Senegal (11)				1 Jan 2001
Serbia	5/10 (4)	10	10	1 Jan 2011
Seychelles	0	0	5	1 Jan 2008
Singapore	0	5	10	1 Jan 2008
Slovenia	5	5	5	1 Jan 2011
South Africa	0/5/10 (24)	0/10 (20)	5	1 Jan 2016
Spain	0/5 (26)	0	0	13 Feb 2018
Sri Lanka	10	10	10	1 Jan 2008
Sudan (11)				1 Jan 2004
Switzerland	5/10/15 (7)	0	0	1 Jan 2011
Syria (11)				1 Jan 2007
Tunisia (11)				1 Jan 1999
Turkey	10/15 (8)	10	10	1 Jan 2009
United Kingdom	0	0	5	1 Jan 2011
Venezuela	5/10 (4)	5	5	1 Jan 2008
Vietnam	5/12.5 (17)	0	5/10 (18)	1 Jan 2012
Yemen (11)				1 Jan 2004

* Dividends are not subject to WHT according to domestic tax law of Qatar.

Notes

1. 5% if capital exceeds 100,000 United States dollars (USD), and 10% in all other cases.
2. 0% if the beneficial owner is a company that owns at least 10%, 5% if 10% direct participation is held by an individual who has resided in the relevant state for a period of at least 48 months, and 10% in all other cases.
3. 5% if the beneficial owner is a company that has owned, directly or indirectly, at least 25%, and 10% if participation is less than 25%.
4. 5% if the beneficial owner is a company that owns at least 10%, and 10% in all other cases (i.e. less than 10% shareholding).
5. 0% if the beneficial owner is a company that owns at least 7.5%, and 10% in all other cases (i.e. less than 7.5% shareholding).
6. 5% if the beneficial owner is a company that owns at least 10%, and 15% in all other cases (i.e. less than 10% shareholding).
7. 5% if the beneficial owner is a company that directly holds at least 10%, 10% if the beneficial owner is an individual that directly holds at least 10%, and 15% in all other cases.
8. 10% if the beneficial owner is a company that has owned at least 25%, and 15% in all other cases (i.e. less than 25% shareholding).
9. 0% where the beneficial owner of the interest carries on business in the other contracting state where the interest arises (i.e. through a PE therein), and 5% if the contracting company does not have a PE.
10. 0% if interest arising in contracting state is derived from government debt, and 10% if the contracting company does not have a PE.
11. It should be noted that there is limited information available in respect of the treaty with this country, and the date provided above may be the date on which the treaty was signed or entered into force rather than its effective date.
12. Reduced to zero if the beneficial owner has a PE in the contracting state.
13. 0% if the beneficial owner is a company, and 5% in all other cases.
14. 5% if the beneficial owner is a bank, and 10% in all other cases.
15. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends. 7.5% in all other cases.
16. 0% if the interest derived from a contracting state and paid for the government or the central bank in the other state. 10% in all other cases.
17. 5% of the gross amount of the dividends if the beneficial owner is a company that holds, directly or indirectly, at least 50% of the capital of the company paying the dividends or has invested more than USD 10 million in the capital of the company paying the dividends. 12.5% in all other cases.
18. 5% of the gross amount of the royalties in respect of payments of any kind received as a consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or

for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience. 10% in all other cases.

19. 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
20. 0% if the interest is derived from government debt or arises in respect of any debt instrument listed on a recognised stock exchange. 10% in all other cases.
21. 5% if the beneficial owner is a company that has owned, directly or indirectly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 10% of the voting power or of the total issued shares of the company paying the dividends, and if the company paying the dividends is not entitled to a tax deduction of dividends. 10% in all other cases.
22. 0% if interest is derived from government debt or if the beneficial owner is either: (i) a bank, (ii) an insurance company, (iii) a securities dealer, or (iv) any other enterprise, provided that, in the three taxable years preceding the taxable year in which the interest is paid, the enterprise derives more than 50% of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest and more than 50% of the assets of the enterprise consist of debt-claims against persons that are not associated with the enterprise. 10% in all other cases.
23. 10% if the beneficial owner is a company (excluding partnerships) that directly holds at least 10% of the capital of the paying company. 15% in all other cases.
24. 0% if dividends are paid to the other contracting state. 5% if the beneficial owner is a company (other than a partnership) that holds at least 10% of the capital of the company paying the dividends. 10% in all other cases.
25. 0% if the beneficial owner of the interest is the other contracting state, its political subdivisions, local authorities, statutory bodies, Central Bank, or any entity wholly owned, directly or indirectly, by that other state, including, in the case of Qatar, Qatar Investment Authority and Qatar Holding.
26. 0% if the beneficial owner is a company that directly holds at least 10% of the capital of the payer company; or the beneficial owner is an entity wholly owned by the other state or authority, if that state, authority, or entity directly holds at least 5% of the capital of the payer company; or the dividends are paid by a company whose shares are substantially and regularly traded on a stock exchange of one of the contracting states, and the beneficial owner is a resident of the other state who directly holds at least 1% of the capital of the payer company; or in some other cases.

Tax administration

Taxable period

The tax year is generally the same as the calendar year, although advance approval may be sought from the Qatar tax authorities to use a company's accounting year-end.

Tax returns

The tax return is due within four months from the end of a company's accounting period.

Payment of tax

The tax payable is based on the tax declaration and should be paid on the same day that the tax return is due.

Late filing penalties

The Qatar tax law contains a penalty regime, which imposes a penalty for the late filing of a tax return. In addition, a penalty applies where there is a late payment of tax.

Objection and appeals process

It is possible for a taxpayer to initially object directly to the tax department regarding a decision related to a tax position. If the objection is unsuccessful with respect to altering the tax department's decision, an appeal may be made by the taxpayer to the Tax Appeals Committee. Based on the Tax Appeals Committee's decision with respect to the appeal, a final appeal may be made by either the tax department or the taxpayer to the administrative chamber of the court. The law prescribes time limits for each stage of the appeal process.

Accounting and audit requirements

A company's CIT return is required to be accompanied by audited financial statements if the company's capital or profit exceeds 100,000 Qatari riyal (QAR) or the head office is situated outside Qatar. The audit report must be signed by a Qatar-registered auditor.

Qatar tax law requires accounts to be prepared in accordance with IFRS.

Accounting record retention

All accounting books, registers, and documents relating to activity in Qatar are required to be retained in Qatar for a ten-year period.

Anti-avoidance provision

The Qatar tax law contains an anti-avoidance provision that gives the Qatar tax authorities wide powers to counteract transactions that have been carried out with a tax avoidance purpose. These powers include substituting an arm's-length value or re-characterising transactions.

Topics of focus for tax authorities

The following areas appear to be the focus of the Qatar tax authorities from a tax compliance perspective:

- Representative offices of non-residents are being required to file tax returns, notwithstanding the fact that they may only be promoting their business.
- The Qatar tax authorities are closely examining the taxpayer's activities to establish whether or not a PE exists. This is a particular area of focus where a taxpayer submits a claim for a refund of WHT on the basis of application of the provisions of a DTT. If a taxpayer has a PE, the Foreign Investment Law requires that PE to be formally registered as a company or a temporary branch.
- Related-party transactions and large and unusual items of expenditure are being scrutinised by the Qatar tax authorities. *See the Group taxation section for comments on the anti-avoidance provision and transfer pricing*.
- The allocation of head office general and administrative expenses to a Qatar branch of a foreign company.
- Capital gains generated on the sale of shares by a non-resident in a Qatari company.

Other issues

The Qatar Financial Centre (QFC)

The QFC was established in 2005 to attract companies in the financial services sector. The QFC has its own tax regulations and rules, and the State of Qatar tax laws do not apply to the licensed activities of entities established in the QFC.

The QFC is an onshore regime that operates within its own legal, tax, and regulatory framework, which is independent of, but runs parallel to, the existing framework in the State of Qatar. The QFC has its own Civil and Commercial Courts, as well as an independent Regulatory Tribunal. The legal framework is modelled closely after the English common law and existing major financial centres.

QFC-established entities can access the local market, be 100% foreign owned, are subject to no currency restrictions, and can repatriate 100% of their profit. Whilst entities can currently be based at any of the QFC's designated premises in Qatar (which are not confined to a specific zone), the QFC has recently announced an initiative to move all existing and future QFC entities to Msheireb Downtown Doha, a special designated area, by 2018.

Regulated activities

Regulated activities include activities such as financial, banking, and investment business; insurance and reinsurance business; funds administration; fund advisory; fiduciary business; and other financial-related business.

Non-regulated activities

Permitted non-regulated activities were originally limited to professional services in support of financial firms (e.g. services generally provided by accounting, audit, and legal firms). The QFC subsequently expanded the scope of permitted non-regulated activities to include services such as intellectual property (IP) management and treasury for all sectors and consultancy services in relation to information technology (IT), real estate, recruitment, and sports and event management. The above-mentioned services are not exhaustive, and the QFC authority continues to consider novel types of professional 'business-to-business (B2B) services' on a case-by-case basis, to the extent that the envisaged business is a strategic fit for the QFC. The opportunity now exists for a non-regulated business to incorporate a 100% foreign owned entity within the QFC. The QFC is also available to Qatari investors, and they can enjoy benefits similar to those awarded under the State Tax Law (i.e. exemption from CIT), provided the business is 90% Qatari owned.

The QFC also offers the possibility for investors to set up special purpose companies for the purpose of a transaction or a series of transactions. There is a streamlined and quicker process for setting up such vehicles, which are also not subject to the same corporate compliance obligations as the other QFC entities.

In addition, single-family offices can be incorporated in the QFC for the sole purpose of providing services to and carrying on activities in relation to a 'single family' (i.e. investment and financial activities or services, arranging or providing custodian of fiduciary services). The single family must have a minimum investable or liquid assets of USD 5 million and must be under the management of a single family.

The QFC has recently amended its Tax Rules and Regulations, which, *inter alia*, modifies the definition of 'local source' income. According to the new provisions, profits arising in or derived from Qatar by a QFC entity from the provision of services for use outside Qatar would not form a part of local source taxable profits and would not be subject to tax. The new provisions apply to firms licensed in non-regulated activities that fulfil certain substantiation criteria.

Tax environment

The key features of the QFC tax environment are as follows:

- Unregulated QFC LLCs with a minimum 90% Qatari ownership benefit from a 0% concessionary CIT rate.
- Low general CIT rate of 10% on locally sourced profits.
- Extensive tax exemptions for qualifying activities, dividends, and capital gains.
- No WHT on payments from Qatar.
- Access to Qatar's DTT network with over 60 jurisdictions.
- VAT may be introduced in the future, but is currently not applicable.

- No personal income tax (PIT) for expatriate employees.
- Online tax administration system.
- Advance ruling services providing QFC entities with a high degree of certainty.
- Statutory protection for investors, whereby QFC tax authority must review tax returns within 12 months of filing.
- Group loss relief available.
- No tax exemption for profits of Qatari partners in joint ventures where the Qatari ownership is less than 90%.

Foreign Account Tax Compliance Act (FATCA)

To implement FATCA in Qatar, Qatar and the US government concluded a Model 1B Inter-governmental Agreement (IGA) in 2015.

Financial institutions based in Qatar should not be subject to a 30% WHT on their US-source income, provided they meet the requirements established by the Agreement.

Qatar Central Bank (QCB) Regulated Financial Institutions are required to provide the information to the QCB FATCA Unit. The information should be further transferred to the US Internal Revenue Service (IRS) through the Ministry of Finance.

Common Reporting Standard (CRS)

On 10 November 2017, Qatar signed the CRS Multilateral Competent Authority Agreement (CRS MCAA) re-confirming its commitment to implement the automatic exchange of financial account information pursuant to the OECD/G20 CRS in time to commence the exchanges in 2018.

Romania

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Significant developments

Corporate taxation

Anti-Tax Avoidance Directive (ATAD) provisions have been transposed into the national legislation. This brings a new set of interest deductibility limitation, exit taxation, anti-abuse, and controlled foreign company (CFC) rules.

The threshold under which a company is considered a micro-company has been increased as of 1 January 2018.

Value-added tax (VAT)

A VAT split-payment mechanism was introduced in Romania.

Taxes on corporate income

The standard profit tax rate is 16% for Romanian companies and foreign companies operating through a permanent establishment (PE) in Romania. Resident companies are taxed on their worldwide income, unless a double tax treaty (DTT) stipulates otherwise. Non-resident companies are taxed on all income derived from Romanian taxpayers, regardless of whether the services are rendered in Romania or abroad.

The profit tax due for nightclubs and gambling operations is either 5% of the revenue obtained from such activities or 16% of the taxable profit, whichever is higher.

Micro-company tax regime

Micro-companies are subject to a mandatory revenue tax rate (*see details below*) in lieu of the standard profit tax.

The condition for a company to be considered a micro-company is to have a maximum revenue at the end of the previous year of 1 million euros (EUR) (the threshold was increased from EUR 500,000 as of 1 January 2018). All the previous exceptions under which certain companies were not considered micro-companies (i.e. the capital limit, the industry, etc.) have been repealed.

The tax rates used for micro-company income tax are:

- 1% for micro-companies with one or more employees.
- 3% for micro-companies with no employees.

Newly established companies are required to follow the micro-company tax regime starting with the first fiscal year.

Micro-companies can opt once for applying profit tax if they fulfil both of the following conditions:

- Have a subscribed share capital of at least 45,000 Romanian leu (RON).
- Have at least two employees.

Local income taxes

There are no county or local taxes on corporate income.

Corporate residence

A company is considered tax resident in Romania if it was set-up under Romanian law or has its 'place of effective management' (POEM) in Romania. POEM represents the place where strategic economic decisions necessary to ensure the management of the foreign company are taken and/or the place where the most senior person or group of persons who manage and control the activity of the foreign entity operate.

Permanent establishment (PE)

A PE is generally defined as being the place through which the activity of a non-resident company is conducted, fully or partially, directly or through a dependent agent.

Once a PE is created, Romania has the right to tax the profits of the non-resident parent company derived from the activities performed through the PE.

In defining the PE concept, reference can be made to Article 5 - 'Permanent establishment' of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, which has been transferred from the Methodological Norms to the Fiscal Code.

The Romanian legislation explicitly states the conditions that trigger a PE:

- Fixed base PE is created through a place of business with a certain degree of permanency through which business is conducted in Romania (with some exceptions).
- Agency PE is created through agents with a dependent status that operate in Romania on behalf of the foreign company.

The registration, reporting, and tax payment requirements for a PE are similar to those for a Romanian company.

Consolidation of PE revenues and expenses belonging to the same foreign legal entity is possible. *For further information, please see the Group taxation section*.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 19%.The standard VAT rate is applied to all supplies of goods and services (including imports) that neither qualify for an exemption (with or without credit) nor for a reduced VAT rate.

The reduced VAT rate of 9% is levied on supply of prostheses and accessories to them, defined as per specific legislation, with the exception of dental prostheses, which are tax exempt; supply of medicines for human and veterinarian use; accommodation in hotels or in areas with a similar function, including the lease of land arranged for camping; restaurants and catering services, except for alcoholic beverages, other than beer classified under CN 22 03 00 10; supply of food, including non-alcoholic drinks, for human and animal consumption; supply of drinking water and irrigation water used in agriculture; supply of fertilizers and pesticides used in agriculture; seeds and other agricultural products intended for sowing or planting; as well as supplies of specific services used in the agricultural sector.

The supply of school manuals, books, newspapers, and some magazines, as well as the provisions of services consisting of the allowance of access to castles, museums, cinemas, and others, is subject to the reduced VAT rate of 5%. Sports events are also included in the category of operations subject to the reduced VAT rate of 5%, as well as the supply of dwelling places as part of the social policy (including land on which they are built).

VAT exemption without credit applies to a range of activities, including the supply of services in relation to banking, finance, and insurance. However, some financial services are subject to the standard VAT rate of 19% (e.g. factoring, debt collection, managing and safekeeping certain equity papers). The VAT exemption without credit also applies to medical, welfare, and educational activities if performed by licensed entities.

There are also operations exempt with credit (i.e. deduction right for the related input VAT), such as the following:

- Supply of goods shipped or transported outside the European Union (EU), and related services.
- Intra-Community supply of goods.
- International transport of passengers.
- Goods placed into free trade zones and free warehouses.
- Supply of goods to a bonded warehouse, a VAT warehouse, and related services.
- Supply of goods that are placed under suspensive customs regimes.
- Supply of services in connection with goods placed under suspensive customs regimes or goods placed into free trade zones.
- Supply of goods and services to diplomatic missions, international organisations, and North Atlantic Treaty Organization (NATO) forces.

VAT on imported goods will continue to be paid at customs, except for taxable persons registered for VAT purposes that obtain an import VAT deferment certificate from the customs authorities. For these taxpayers, the VAT is not paid in customs but shown in the VAT return as both input and output VAT. The import VAT deferment certificate is available only to companies for which the value of imports (excluding imports of goods subject to harmonised excise) performed in the previous year/previous 12 consecutive months has exceeded the threshold of RON 100 million, to companies with Approved Economic Operators (AEO) status, and to those companies registered for VAT purposes in Romania authorised to perform in-house customs clearance formalities.

VAT consolidation

Companies established in Romania that are legally independent but are closely related in terms of financial, economic, and organisational purposes may choose to form a tax group, as long as they apply the same fiscal period. However, transactions between the members of the group fall within the scope of VAT.

Place of VAT taxation

The rules for establishing the place of VAT taxation for supply of goods and services are determined based on the same rules as those presented in the EU 2006/112/EC and EU 2008/8/EC Directives. Services provided by non-resident entities to Romanian companies with deemed place of supply in Romania are subject to Romanian VAT under the reverse-charge mechanism, provided that no VAT exemption is applicable.

Reverse-charge mechanism

Under the VAT reverse-charge mechanism, VAT is not actually paid, but only shown in the VAT return as both input and output tax, provided that both the beneficiary and the supplier are registered for VAT purposes.

As a general rule, the reverse-charge mechanism applies either for intra-Community acquisitions of goods performed in Romania or for services performed by non-resident entities that are not established, nor have a fixed establishment, in Romania. Under the general rule, the place of supply of services is where the beneficiary is established or has a fixed establishment (e.g. consultancy, marketing services).

Domestic supplies of cereals and industrial plants performed between companies registered for VAT purposes will be subject to the reverse-charge mechanism. The measure applies until 31 December 2018. Also, the reverse-charge mechanism is applicable for the supply of buildings, parts of buildings, and plots of land, and, until 31 December 2018, to the supply of mobile phones, PC tablets, laptops, gaming consoles, and devices with integrated circuits (provided that the value of such goods, excluding VAT, mentioned on an invoice is equal to/higher than RON 22,500).

Limited VAT deduction right

The VAT deduction right related to the acquisition of road vehicles used for the transport of passengers and vehicles that meet certain characteristics, as well as the acquisition of fuel and all related services used for the respective vehicles, is limited to 50%, except for some specific exceptions (e.g. vehicles used by sales agents, taxis, transport services).

VAT compliance

The annual turnover threshold for VAT registration in Romania is the Romanian leu equivalent of EUR 65,000, computed based on the exchange rate from the date of EU accession (i.e. RON 220,000). We expect this threshold to be increased to EUR 88,500 (applicable until 2020), as Romania receded an authorisation from the European Commission (EC) to do so. Companies surpassing the VAT registration threshold will be liable to charge VAT for the advance payments received before registering for VAT purposes related to goods delivered/services performed after the registration date.

As a general rule, the fiscal period is the calendar month. For taxable persons registered for VAT purposes whose previous year-end turnover (from taxable operations, VAT exempt, and outside the Romanian VAT scope operations with deduction right) did not exceed EUR 100,000, the fiscal period is the calendar quarter.

Taxable persons must keep complete and detailed records for calculation of VAT liabilities.

VAT returns should be submitted to the tax authorities by the 25th day of the month following the end of the fiscal period; the VAT payment is due by the same date. The VAT return can be submitted by electronic means.

Taxable persons not registered for VAT purposes in Romania and not required to register are liable to pay VAT and to submit a special VAT return in connection to services rendered by/provided to non-residents. These obligations must be fulfilled by the 25th day of the month following that when the services are supplied.

Taxable persons are required to file VAT statements related to acquisitions/supplies of goods/services performed on Romanian territory on a monthly/quarterly basis, based on invoices issued/received to/from taxable persons registered for VAT purposes in Romania. These obligations should be fulfilled within 30 days.

A taxable person registered for VAT purposes who does not exceed the exemption threshold of RON 220,000 during the course of a calendar year may request de-registration from the VAT registered persons record between the first and tenth day of each month following the fiscal period used (month or quarter).

The cash accounting VAT scheme (CAVS)

The CAVS is optional for taxpayers with a turnover lower than RON 2,250,000 registered in the previous year and for newly founded companies. The right to deduct the input VAT for the acquisitions of goods/services from companies applying the CAVS is deferred until the date the payment is performed.

The VAT split-payment mechanism

The VAT split-payment system is mandatory for the following categories of taxpayers:

- Taxpayers that have, as of 31 December 2017, outstanding VAT liabilities and have not paid them by 31 January 2018: (i) for large taxpayers, more than RON 15,000; (ii) for medium taxpayers, more than RON 10,000; (iii) for other taxpayers, more than RON 5,000.
- Taxpayers that have, as of 1 January 2018, outstanding VAT liabilities and do not pay them within 60 business days, at the same levels as above.
- Taxpayers in insolvency or insolvency prevention procedures.

Taxpayers registered for VAT purposes not applying the system but making purchases from those who apply the system will be required to make split payments. The system is optional for any taxpayer. Taxable persons choosing for the optional application of this system will benefit from a 5% reduction in profit tax/micro-company tax.

Customs and international trade

Customs duties

Customs duties are those specified in the EU Common Customs Tariff and are expressed as a percentage applied to the customs value (i.e. *ad valorem* taxes), as a fixed amount applied to a specific quantity (i.e. specific taxes), or as a combination of the above.

Agricultural products (i.e. products from Chapters 1 to 24 of the EU Common Customs Tariff) are subject to specific taxation.

In certain cases (e.g. meat), the customs duty rate is established with regard to the cost, insurance, and freight (CIF) or the entry price of the products. In other cases, the customs duty rate is established by adding additional duties, such as agricultural components, to the *ad valorem* tax.

Customs value

The customs value is determined and declared by importers in accordance with the provisions of the Union Customs Code and its Delegated, Implementing, and Transitional Regulations, which took over the rules set up by the World Trade Organization (WTO) Customs Valuation Agreement (i.e. the Agreement pertaining to the implementation of Article VII of the General Agreement on Trade and Tariffs [GATT]).

Authorised Economic Operator (AEO) status

Operators that obtain AEO status benefit from simplifications regarding customs inspection, obtaining certain customs authorisations, and performing customs formalities.

Moreover, through the AEO authorisation, the holder is recognised by the customs authorities as a reliable person, giving comfort as regards observance of the safety and security standards, and can benefit from easier admittance to certain customs simplifications.

In addition, companies certified as an AEO may apply for a certificate granting the benefit to defer the payment of the VAT in customs upon import. Moreover, in case of imports followed by VAT-exempt intra-Community supplies, companies registered for VAT purposes in Romania having AEO status are not required to lodge a VAT guarantee.

Operators authorised as an AEO will be checked at least once every three years for assessing whether they comply with the certification criteria.

Binding Tariff Information (BTI)/Binding Origin Information (BOI)

Companies can obtain rulings (BTI) from the Romanian customs authorities on the tariff classification of imported goods that are binding for the customs authorities for a three-year period, whenever goods identical to those described in the BTI are imported.

A similar type of ruling can also be obtained regarding the origin of goods (BOI). They are also valid for a period of three years from the data of issue.

The BTI and BOI shall be binding for the holder of the decisions.

Trade measures

For some agricultural products, the European Union generally imposes specific measures (e.g. values or quantitative allowances) on imports from other countries. It is mandatory to obtain an import licence before importing such products.

Moreover, import/export licences from relevant authorities are also required for commodities regarded as potentially hazardous to human health or to the environment (e.g. some chemical products, certain types of waste and scrap), for commodities the end-use of which is controlled (e.g. explosives), or for dual use products (i.e. both civil and military).

Excise duties

Harmonised excise products

The following products are subject to harmonised excise duties: alcohol and alcoholic beverages, manufactured tobacco, energy products (e.g. unleaded gasoline, diesel, gas, coal), and electricity.

Excise duties are due when excise products are released for consumption (e.g. imported into Romania, taken out of an excise duty suspension arrangement).

Ethyl alcohol and other alcoholic products are exempt from the payment of excise duties if they are denatured and used in the pharmaceuticals or cosmetics industry.

Some energy products subject to movement control are excepted from excise duty, provided that an end-user authorisation is obtained and the payment of excise duties is secured.

Manufactured tobacco is also exempt from excise duties when exclusively intended for scientific and quality testing.

In some cases, traders can claim a refund of the excise duties paid (e.g. excise duty paid for goods released for consumption in Romania, but intended for consumption in other EU member states; excise duties paid for goods released for consumption and then returned to the production tax warehouse for recycling, reconditioning, or destruction; excise duties paid for goods released for consumption in Romania and then exported).

For cigarettes, the excise duty due is equal to the sum of the specific excise duty and the *ad valorem* excise duty. The specific excise duty expressed in RON/1,000 cigarettes is annually determined based on the weighted average retail price, the legal percentage related to the *ad valorem* excise duty, and the total excise duty. The specific excise duty for cigarettes has been set at RON 337.727/1,000 cigarettes for the period 1 April 2018 to 31 March 2019, inclusively.

The excise duty rate for ethyl alcohol is RON 3,306.98/hectolitre of pure alcohol.

The excise duty level for fermented sparkling beverages, other than beer and wines, is set at RON 47.38/hectolitre of product, while the excise duty level for apple and pear cider and mead is nil.

The excise duty level for intermediary products is set at RON 396.84/hectolitre of product, and the level for beer is set at RON 3.30/hectolitre/1 Plato degree.

The current levels of excise duties are RON 2,268.23/1,000 litres for leaded gasoline, 1,976.36/1,000 litres for unleaded gasoline, and RON 1,838.04/1,000 litres for diesel, respectively.

Companies selling fuel in gas stations have to register with the tax authorities. The same obligation applies for companies performing wholesales of fuel, alcoholic drinks, or tobacco products.

Other excise products

Other excise products are:

- Heated tobacco products, which by heating generate an aerosol that can be inhaled without the combustion of tobacco mixture (falling under CN 2403 99 90).
- Liquids containing nicotine (falling under CN 3824 99 56) for inhaling using an electronic device (i.e. electronic cigarette).

Excise duties should be paid no later than the 25th day inclusive of the month following the one:

- in which they were sold on the national market for domestic products, or
- when the actual receipt takes place for products received from EU countries, except for the excisable goods imported, for which the excise duty is to be paid when the goods are released for free circulation.

Economic operators performing directly intra-Community acquisitions/imports of such goods are entitled to request a refund of the excise duties paid if the products are exported, supplied to another EU member state, or returned to the supplier. For the production/intra-Community acquisitions/imports of such products, prior authorisation is requested.

Property taxes

Building tax

The building tax calculation method differentiates between buildings depending on their destination usage:

- Residential buildings: Tax rate between 0.08% and 0.2% (applicable to the taxable value as per the specific table provided by the law for individuals and the value resulted from the evaluation report for legal entities).
- Non-residential buildings: Tax rate between 0.2% and 1.3%. In the case of a building used for agricultural purposes, the applicable tax rate is 0.4%.

Local authorities have been granted the authority to increase local tax allowances by 50%.

The increased tax rate for building tax due by legal entities is 5% (if no revaluation was performed during the last three years).

If a building was acquired during a fiscal year, the building tax for the entire year is due by the seller. The buyer is liable to pay the tax starting with the next year.

Building tax is paid annually, in two equal instalments, by 31 March and 30 September. For the payment of the entire annual tax by 31 March, a reduction of up to 10% is granted by the Local Council.

Land tax

Owners of land are subject to land tax established at a fixed amount per square metre, depending on the rank of the area where the land is located and the area or category of land use, in accordance with the classification made by the Local Council.

Similar to building tax, land tax is paid annually, in two equal instalments, by 31 March and 30 September. A 10% reduction is granted for full advance payment of this tax by 31 March.

Transfer taxes

There are no transfer taxes for companies for the transfer of property. The income derived from such a transfer will be included into the taxable profits of the company and subject to the flat tax rate.

Stamp duty

For judicial claims, issue of licences and certificates, and documentary transactions that require authentication, stamp duty (in the form of notary fee) has to be paid.

Payroll taxes

Employers withhold, on a monthly basis, the mandatory employee's social security contributions (*see below*) and the income tax (10%) from the employee's gross salary and wire the amounts to the Romanian tax authorities.

Social security contributions

As of 1 January 2018, the social security contributions paid by the employer have been transferred to the employees.

The employer pays an insurance contribution for work of 2.25% and social insurance contribution of 4% for uncommon work conditions and 8% for special work conditions.

Environmental taxes

For certain activities (e.g. selling ferrous and non-ferrous waste, hazardous substances, activities that generate polluting emissions, introducing on the national market packaging materials and packed products/tyres, introducing on the national market electric and electronic equipment, and batteries and accumulators), companies have the obligation to declare and pay (by the case) related contributions to the Environmental Fund.

In certain cases (e.g. for the contribution related to packaging materials introduced on the national market and to the management of the related packaging waste), the contribution to the Environmental Fund depends on the degree to which companies achieve the annual packaging waste recovery/recycling targets. Thus, the contribution to the Environmental Fund is currently RON 2/kg of packaging introduced onto the market and is owed for the difference between the annual packaging waste recovery target stipulated by law and the packaging waste recovery/recycling target actually achieved by companies.

Companies conducting activities that result in the discharge of air-pollutant emissions from fixed sources (e.g. nitrogen oxides, sulphur oxides, persistent organic pollutants, heavy metal emissions, such as lead, cadmium, mercury) have to pay contributions to the Environmental Fund of between RON 0.02/kg and RON 20/kg.

A tax amounting to RON 0.3/kg is levied (one time only) on industrial oils and lubricants placed on the market; the tax must be distinctly stipulated on the purchase documents.

Producers/importers/exporters of electrical and electronic equipment and batteries and accumulators have to register with the National Agency for Environmental Protection and have to declare to the Environmental Fund Administration the categories and quantities of electrical and electronic equipment and batteries and accumulators introduced on the national market and to fulfil annual recovery/recycling targets for the waste that will be generated by these equipment.

Specific tax for certain activities

Economic operators in the tourism, hotel, restaurants, bars, and catering sector will pay a specific tax, regardless of the size of the turnover and the level of profits. The tax will be calculated according to the area of the business, the place where other variables take place.

Thus, whether or not profitable, the restaurants, bars, or cafés will apply this tax system, which will negatively affect small businesses, especially.

The declaration and payment of the specific tax will be made half-yearly until the 25th day of the month following the semester for which the tax is due. Thus, the payment amount will be half the annual tax.

Branch income

Branch

A foreign company can set up a branch in Romania, as long as the branch only operates in the same field of activity as the parent company. A branch is considered to have the same legal personality as the parent company and is not a separate legal entity (no own share capital, no separate name, etc.).

Profits derived by the branch are taxed at the standard profit tax rate of 16%.

Representative offices

Representative offices are often established as a first step to operating in Romania. A representative office can undertake only auxiliary or preparatory activities, cannot trade in its own name, and cannot engage in any commercial activities. A representative office can perform only a limited range of activities without being considered a PE for profit tax purposes.

A tax on representative offices is due by any foreign legal person with a representative office authorised to operate in Romania according to the law. The tax is paid on an annual basis. The amount to be paid for a fiscal year is RON 18,000. If a representative office is set up or closed down during a year, the tax due for that year is pro-rated for the months that the representative office was operational in that fiscal year.

The representative office of a foreign legal person has to declare and pay the tax to the state budget by the last day of February of the tax year.

Income determination

The taxable profit of a company is calculated as the difference between the revenue derived from any source and the expenses incurred in obtaining the taxable revenue throughout the tax year, adjusted for fiscal purposes by deducting non-taxable revenue and adding non-deductible expenses. Other elements similar to revenue and expenses are also to be taken into account when calculating the taxable profit.

For taxpayers that apply International Financial Reporting Standards (IFRS) (i.e. financial institutions and listed companies), there are specific rules in relation to the fiscal value assessment, profit tax computation, adjustments for step-down in value, amortisation, and fiscal treatment of deferred profit tax.

Inventory valuation

The methods permitted for inventory valuation under Romanian law are standard cost, detailed sale price, average (weighted) cost, first in first out (FIFO), and last in first out (LIFO). The accounting method is also recognised for tax purposes.

Assets are generally valued at their acquisition cost, production cost, or market value. Fixed assets may be re-valued at certain points in time for various purposes.

Capital gains

Capital gains earned by a Romanian resident company are included in their ordinary profits and are taxed at 16%. Capital gains obtained by non-residents from real estate property located in Romania or from the sale of shares held in a Romanian company are also taxable in Romania. However, the income may be subject to treaty protection.

Participation exemption applies for capital gains derived by a Romanian legal entity from participations of at least 10%, held for a minimum period of one year, in a subsidiary established in a state with which Romania has a DTT.

Dividend income

Dividends distributed by a company resident in another EU member state to a Romanian company are tax exempt if the Romanian company has held, prior to the time of distribution, a minimum of 10% of the shares in the respective non-resident company for an uninterrupted period of at least one year.

The Romanian Fiscal Code incorporates the amendments to the European Directive no. 2011/96/EU, relating to the application of a common system of taxation in the case of parent companies and subsidiaries of different member states. The legislation introduces the anti-abuse rule for preventing unlawful tax practices used to obtain tax benefits contrary to the Directive's principles. Also, dividends received by a Romanian legal entity from a foreign legal entity under certain conditions mentioned above will not be taxed as long as those dividends are not treated as deductible expenses by the paying subsidiary.

Participation exemption applies for dividends derived by a Romanian legal entity from participation of at least 10%, held for a minimum period of one year, in a subsidiary established in a state with which Romania has a DTT.

The tax rate on dividends is 5% for both dividends paid to Romanian companies and to non-resident companies. Non-residents may be eligible for a reduced rate under DTTs.

Interest and royalty income

Interest and royalty payments made by Romanian companies to other Romanian companies are taxable income in the hands of the beneficiary.

Romanian-sourced interest and royalty payments of an affiliated company, resident in an EU member state, are exempt from withholding tax (WHT), provided that certain conditions are met, e.g.:

- 25% minimum direct holding of the share capital (i.e. one company has a direct minimum holding of 25% in the share capital of the other company or a third company has a direct minimum holding of 25% in the share capital of both companies involved in the payment of the interest and royalties).
- The holding period must be maintained for an uninterrupted period of at least two years prior to the payment of the interest and royalties.
- The company receiving the interest or royalty payments must be the beneficial owner of these payments.

Fiduciary contracts

If the settlor of a fiduciary contract is also the beneficiary, then:

- the transfer of the patrimony from the settlor to the fiduciary is not considered a taxable transfer, and
- the fiduciary will keep separate bookkeeping entry for the fiduciary patrimony and will communicate to the settlor, on a quarterly basis, the income and expenses resulting from the administration of the patrimony.

If the beneficiary is the fiduciary or a third party, the expenses recorded from the transfer of the patrimony from the settlor to the fiduciary is considered non-deductible.

Other significant items

The other most relevant types of non-taxable revenue stipulated by the Romanian Fiscal Code are:

- Favourable fluctuations in the price of shares and long-term bonds registered by the company in which the shares and long-term bonds are held, as a result of capitalisation of reserves, benefits, or share premiums.
- Revenue from reversal or cancellation of provisions/expenses that were previously non-deductible, recovery of expenses that were previously non-deductible, and revenue from reversal or cancellation of interest and late payment penalties that were previously non-deductible.
- Revenue from the annulment of a reserve registered as a result of a participation in nature to the capital of other legal entities.
- Revenue from deferred income tax.
- Revenue resulting from the change in the fair value of real estate investments/ biological assets owned by the taxpayers applying IFRS.

- Non-taxable revenue expressly provided for under agreements and memoranda enforced by regulatory documents.

Foreign income

Resident companies are taxed on their worldwide income unless a DTT provides otherwise. However, in case of foreign subsidiaries of Romanian companies, income is not taxed in Romania until remitted back. Otherwise, there is no specific tax deferral regime in place.

Deductions

Expenses fall into three categories: deductible expenses, limited deductibility expenses, and non-deductible expenses.

Deductible expenses

As a general rule, expenses are deductible only if incurred for business purposes.

Some of the deductible expenses specifically mentioned by the Romanian Fiscal Code include:

- Marketing and advertising expenses.
- Research and development (R&D) expenses that are not recognised as intangible assets for accounting purposes.
- Expenses incurred for environmental protection and resource conservation.
- Expenses incurred for management improvement; updating information technology (IT) systems; introducing, maintaining, and developing quality management systems; and obtaining quality compliance confirmation.
- Losses incurred when writing off client receivables in any of the following cases:
  - The bankruptcy procedure of the debtor was closed due to a court ruling.
  - The debtor is deceased and the receivable cannot be recovered from the heirs.
  - The debtor is dissolved or liquidated.
  - The debtor has major financial difficulties affecting its entire patrimony.
- Expenses related to losses from the valuation of shares and long-term bonds.
- Travel and accommodation expenses related to business; this also includes transportation of personnel to and from the workplace.
- Daily allowances for expenses incurred by employees in connection to travels in Romania and abroad.
- Expenses incurred from professional training and development of employees.
- Expenses related to benefits granted to employees as equity instruments settled with cash, at the moment of the effective granting, if the benefits are subject to personal income tax (PIT).
- Expenses incurred in connection to work safety, prevention of work accidents and occupational diseases, the related insurance contributions, and professional risk insurance premiums.
- Expenses incurred in connection to the acquisition of packaging materials during the useful life set by the taxpayer.
- Fines, interest, penalties, and other increased payments due under commercial contracts.

Note that credit institutions apply IFRS rules, and certain deductibility rules are provided for this category of taxpayers.

Limited deductibility expenses

The deductibility of the following expenses is limited:

- Interest expenses and foreign exchange losses under thin capitalisation rules (*see the Group taxation section for more information*).
- Provision and reserve expenses (*see details below*).
- Depreciation and reduction in value of fixed assets under fiscal depreciation rules (*see details below*).
- Perishable goods and losses resulted from transport/storage, according to law.
- Protocol expenses are deductible at up to 2% of the accounting profit, adjusted with protocol and profit tax expenses. Output VAT related to gifts of at least RON 100 offered by taxpayers fall under the protocol expenses category.
- Social expenses are deductible at up to 5% of salary expenses and include, among other items, maternity allowances, expenses for nursery tickets, funeral benefits, and allowances for serious or incurable diseases and prostheses, as well as expenses for the proper operation of certain activities or units under taxpayers' administration (i.e. kindergartens, nurseries, health services supplied for occupational diseases and work accidents prior to admission to health establishments, canteens, sports clubs, clubs, etc.), gifts represented by money of in kind, including gift tickets given to employees and their children, and medical services granted in case of professional diseases and labour accidents until transfer to a hospital. Expenses incurred for benefits granted under a collective labour agreement are also deductible within the same limits.
- Expenses incurred with lunch vouchers and holiday vouchers given by employers, according to law.
- Technological losses within the internal consumption norm required for the production of a good or provision of a service.
- Expenses incurred for functioning, maintenance, and repairs corresponding to an establishment represented by an individual's personal property, used as well for individual purposes, deductible in the limit of the surfaces at the disposal of the company based on the contractual agreements.
- Expenses incurred with electricity at the level of the technological internal consumption norm or, in case it is missing, at the level of the norm approved by the National Authority for Energy, including the commercial consumption for the taxpayers in the electricity distribution business.
- Taxes and fees paid to non-government organisations or professional associations related to the taxpayer's activity are deductible up to the limit of EUR 4,000 per year.
- All direct expenses attributable to vehicles with up to nine seats that are not used exclusively for business purposes are 50% deductible for profit tax purposes, under certain conditions provided by law. These expenses are fully deductible for vehicles used for the following activities:
  - Emergency, safety and security, courier services, cars used by sales and acquisitions agents.
  - Paid transportation services and taxi activities.
  - Rental.
  - Driving schools.
  - Vehicles used as commodities.
- For vehicles with up to nine seats, tax depreciation is limited to a maximum of RON 1,500 per month for each vehicle starting from 1 February 2013.

Non-deductible expenses

Expenses deemed non-deductible include, among other items, the following:

- Domestic profit tax, including differences from previous years or from the current year, and profit tax paid in foreign countries, deferred tax registered according to accounting standards.
- Expenses with tax not withheld at source in the name of non-resident individuals and legal entities.
- Expenses related to non-taxable revenues.
- Interest, fines, and penalties due to Romanian or foreign authorities, according to legal provisions, with the exception of the ones pertaining to agreements concluded with these authorities.
- Expenses incurred for management, consultancy, assistance, or other supply of services performed by a non-resident located in a state that has no exchange of information agreement concluded with Romania. These provisions are applicable if the expenses are incurred in respect of transactions deemed as artificial.
- Sponsorship and patronage expenses and expenses for private scholarships. Taxpayers are, however, granted a fiscal credit of up to 0.5% of turnover and 20% of the profit tax due, whichever is lower. Taxpayers that do not benefit from fiscal credit in the year when they grant sponsorship according to the law may carry forward the fiscal credit for the next seven consecutive years.
- Losses incurred when writing off client receivables, for the amount not covered by a provision, in any cases other than the following: a reorganisation plan was applied through a court decision in accordance to Law no. 85/2014; the bankruptcy procedure of the debtor was closed due to a court ruling; the debtor is deceased and the receivable cannot be recovered from the heirs; the debtor is dissolved or liquidated; or the debtor has major financial difficulties affecting its entire patrimony.
- Expenses resulting from the adjustment of acquired receivables, provided insurance contracts have been put in place.
- Expenses resulted from benefits granted to employees as equity instruments settled with shares/cash, unless subjected to PIT.
- Expenses in favour of shareholders, other than those related to goods or services provided by the shareholders at market value.
- Expenses incurred with insurance premiums unrelated to the risks and assets of the taxpayer's business, with the exception of those that relate to goods representing a banking guarantee for the loans used for business purposes.
- Expenses registered in the accounting records based on documents issued by an inactive taxpayer, according to the provisions of the Fiscal Procedure Code, with the exception of those representing acquisitions of goods performed during foreclosure procedures or from legal entities in bankruptcy procedure according to Law no. 85/2014.
- Expenses relating to missing or damaged non-imputable inventories or tangible assets, as well as related VAT, if the case. These expenses are deductible in case any of the following conditions are applicable to the inventory/assets:
  - They were destroyed following natural disasters or major force situations in the conditions provided by the methodical norms.
  - Insurance contracts have been set up in respect of these.
  - They were degraded from a qualitative perspective, and the proof of destruction is available.
  - They have a validity/expiry term that has passed, according to law.
- Expenses reflected in accounting records, irrespective of their nature, that later prove to be related to acts of corruption as defined under the law.

Note that credit institutions apply IFRS rules, and certain non-deductibility rules are provided for this category of taxpayers.

Depreciation

Romanian law makes an explicit distinction between fiscal and accounting depreciation. Fiscal depreciation is treated as an expense deductible from the tax base, while accounting depreciation is treated as a non-deductible expense. Companies should maintain a separate record to reflect the separate computation of the fiscal and accounting depreciation. Any accounting revaluations of fixed assets are not taken into account in computing the tax depreciation.

Assets are generally depreciated using the straight-line method. However, accelerated or degressive depreciation methods may be used to determine fiscal depreciation, while the accounting depreciation method may be different.

The useful lives to be used for tax purposes are the ones stated in the Official Fixed Assets Catalogue, published under government decision. Ranges are provided for classes of fixed assets, from which the taxpayers can choose the useful life (e.g. office and housing buildings: 40 to 60 years, commercial buildings: 32 to 48 years, commercial furnishings: 9 to 15 years, automobiles: 4 to 6 years).

For vehicles with up to nine seats, the fiscal depreciation is limited to a maximum of RON 1,500 per month for each vehicle. Certain categories of vehicles are exempt from this monthly deduction limitation (e.g. used exclusively for emergency, security, or delivery service; used for paid passenger transport; or used for paid supply of services).

Land cannot be depreciated.

Accelerated depreciation

Under the Romanian Fiscal Code, machinery and technical equipment, computers and their peripherals, as well as patents, may be depreciated by using the accelerated method, under which a maximum of 50% of the asset's fiscal value may be deducted during the first year of usage, while the rest of the asset's value can be depreciated using the straight-line method over the remaining useful life.

Goodwill

As a rule, goodwill is deemed non-depreciable from a Romanian fiscal perspective.

Start-up expenses

According to accounting rules, start-up expenses may be capitalised and depreciated over a maximum period of five years. However, according to the fiscal rules, start-up expenses should not be depreciated for tax purposes.

Provisions and reserves

As a general rule, provisions and reserves are non-deductible for profit tax purposes. However, there are certain provisions and reserves that are deductible, such as:

- Setting up or increasing the legal reserve fund up to 5% of the accounting profit, adjusted with profit tax expense, and until it reaches 20% of the share capital.
- Provisions related to guarantees for proper execution granted to the clients.
- Provisions for depreciation of receivables are deductible at up to 30% if the related receivables meet the following conditions simultaneously:

- Not collected for a period exceeding 270 days from the due date.
  - Not guaranteed by another person.
  - Due by a person not affiliated with the taxpayer.
- Bad debt provisions are fully deductible if all the following conditions are met:
  - The debtor is a company declared bankrupt by a court ruling or an individual for whom insolvency procedure has been declared based on:
    - Reimbursement plan.
    - Asset liquidation.
    - Simplified procedure.
  - Receivables are not guaranteed by another person.
  - The debtor is not a related party.
- Specific provisions established by non-banking financial institutions and other legal persons according to their incorporation law.
- Adjustments for impairment set up by credit institutions that apply IFRS and prudential filters set up according to regulations issued by the National Bank of Romania.
- Technical reserves set up by insurance and reinsurance companies, in accordance with their regulatory legal framework, except for the equalisation reserve.
- Risk provisions for transactions carried out on financial markets, in accordance with the rules issued by the Romanian National Securities Commission.
- Provisions and adjustments for impairment of receivables that were acquired by legal persons from credit institutions in order to be collected, for the difference between the receivables value and the amount due to the assignee, provided several conditions are met.
- Reserves from revaluation of fixed assets and land made after 1 January 2004, which are deductible through depreciation or through expenses triggered by assets sold or written off, are taxable at the same time and for the same amount as the tax depreciation deduction (i.e. when the assets are sold or written off).
- In case the level of the subscribed share capital was reduced, the part of the legal reserve corresponding to the reduction that was previously deducted represents an element similar to revenues.

The reduction or cancellation of any provision or reserve deducted from the taxable profit, due to changing the destination of the provision or reserve, distribution towards shareholders in any form, liquidation, spin-off, merger, or any other reason, is included in the taxable revenue and taxed accordingly.

Note that special rules are applicable to credit institutions that are required to apply IFRS rules.

Fiscal losses

Companies are allowed to carry forward fiscal losses declared in the annual profit tax returns for a period of up to seven years, based on the FIFO method. No related adjustment for inflation is allowed.

Any loss incurred by a PE of a Romanian company located in a non-EU/European Free Trade Association (EFTA) member state or in a country that has a DTT in place with Romania is only deductible for tax purposes from the revenue derived by that PE, and losses can be carried forward only for a period of five years.

For foreign legal persons, carryforward of losses applies only to revenue and expenses attributable to their PE in Romania.

Losses incurred by a company can be transferred within a merger/spin-off operation and can be recovered by the successors, in proportion to the assets and liabilities transferred. The successors of these restructuring operations are able to use such losses during the remaining period.

Carryback of losses is not available in Romania.

Payments to foreign affiliates

Transactions with Romanian-affiliated companies and with non-resident related parties fall within the scope of the investigations regarding compliance with transfer pricing legislation (*see Transfer pricing in the Group taxation section*).

Group taxation

There is no tax consolidation or group taxation in Romania, except for PE consolidation. Members of a group must file separate returns and are taxed separately. Losses incurred by group members cannot be offset against profits made by other members of the group.

Consolidation of PEs

Foreign legal entities that perform economic activities in Romania through several PEs must register one of them as their PE designated to fulfil the fiscal obligations for all the PEs owned.

The revenues and expenses of all the PEs belonging to the same foreign legal entity will be cumulated at the level of the designated PE.

Transfer pricing

Transfer pricing requirements are applicable to transactions between Romanian related parties as well as foreign related parties.

Transactions between related parties should observe the arm's-length principle. If transfer prices are not set at arm's length, the Romanian tax authorities have the right to adjust the taxpayer's revenue or expenses so as to reflect the market value.

Traditional transfer pricing methods (i.e. comparable uncontrolled prices, cost plus, and resale price methods), as well as any other methods that are in line with the OECD Transfer Pricing Guidelines (i.e. transactional net margin and profit split methods), may be used for setting transfer prices.

Transfer pricing documentation

Taxpayers engaged in related party transactions have to prepare and make their transfer pricing documentation file available, irrespective of whether the transfer pricing documentation file has been requested by the Romanian tax authorities.

Transfer pricing audit activity has significantly increased during the past few years, and requests for presenting the transfer pricing documentation file have started to become common practice. We are aware of recent cases where the Romanian tax authorities adjusted the taxable result of local taxpayers in accordance with the applicable regulations.

The content of the transfer pricing documentation file has been approved by order of the president of the National Agency for Tax Administration. The Order is supplemented by the Transfer Pricing Guidelines issued by the OECD and the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union Transfer Pricing Document (EUTPD).

The deadline for presenting the transfer pricing documentation file will not exceed three calendar months, with the possibility of a single extension equal to the period initially established.

Failure to present the transfer pricing documentation file or presenting an incomplete file following two consecutive requests may trigger estimation of transfer prices by the tax authorities on the basis of generally available information.

Advance pricing agreement (APA)

Taxpayers engaged in transactions with related parties have the possibility to apply for an APA. These taxpayers can also schedule a pre-filing meeting to discuss the feasibility of the APA.

The request for an APA is filed together with the relevant documentation and payment evidence of the fee (ranging between EUR 10,000 and EUR 20,000). The required documentation is based on the EUTPD and suggests, up front, the content of the APA.

The term provided by the Fiscal Procedural Code for issuance of an APA is 12 months for unilateral APAs and 18 months for bilateral and multilateral APAs. The APA is issued for a period of up to five years. In exceptional cases, such as long-term agreements, it may be issued for a longer period.

APAs are opposable and binding on the tax authorities as long as there are no material changes in the critical assumptions. In this view, the beneficiaries are obligated to submit an annual report on compliance with the terms and conditions of the agreement.

If taxpayers do not agree with the content of the APA, they can notify the National Agency for Tax Administration within 15 days. In this case, the agreement does not produce any legal effects.

Country-by-country (CbC) reporting

Romania implemented CbC reporting requirements, transposing the provisions of Directive (EU) 2016/881 into the national legislation. The new CbC reporting provisions follow the OECD Base Erosion and Profit Shifting (BEPS) Project Action 13 initiative.

As such, *a* Romanian tax-resident entity that is the ultimate parent entity of a multinational enterprise (MNE) group with consolidated revenues of EUR 750 million or more, and is required to prepare consolidated financial statements of the group, has to file a CbC report with the Romanian tax authorities within 12 months of the last day of the MNE group's reporting fiscal year. The Romanian legislation also provides for filing of CbC reporting by a so-called 'surrogate parent' (i.e. a Romanian tax-resident entity may be appointed by the MNE group to file a CbC report in Romania on its behalf).

In addition, other Romanian resident entities will be required to file a CbC report if one of the criteria below is met:

- The ultimate parent entity of the group does not have the obligation to file a CbC report in its own jurisdiction of tax residence.
- The jurisdiction in which the ultimate parent entity is resident for tax purposes has a current international agreement to which Romania is a party but does not have a qualifying competent authority agreement in effect to which Romania is a party.
- There is a persistent failure in the automatic exchange procedure with the competent authority of the ultimate parent company required to file CbC reporting.

Moreover, failure to provide the CbC report in time or with incomplete/incorrect data will trigger the following penalties:

- For failing to file a CbC report, the penalty ranges from RON 70,000 to RON 100,000.
- For late filing of a CbC report or for incomplete/incorrect data in a CbC report, the penalty ranges from RON 30,000 to RON 50,000.

Thin capitalisation

If the company's equity is negative or the debt-to-equity ratio is higher than 3:1, expenses incurred from interest charges and net losses related to foreign exchange differences on long-term loans are fully non-deductible. However, these expenses may be carried forward to the following fiscal years and become fully tax deductible in the year the debt-to-equity ratio becomes lower than or equal to 3:1.

Debt included in the calculation of the debt-to-equity ratio is represented by all such (non-financial institution) loans with a maturity period of over one year.

The equity includes share capital, share/merger premiums, reserves, retained earnings, current year earnings, and other equity elements. Both debt and equity are calculated as the average of values existing at the beginning and at the end of the period for which profit tax is calculated.

Loans with a reimbursement term of longer than one year for which no interest is due according to the contract are also taken into consideration.

The deductibility of interest expenses and net foreign exchange losses related to long-term loans (with a maturity period of over one year) is further subject to the safe harbour rule. The safe harbour rule limits the deductibility of interest on such loans to a maximum of 4% for loans denominated in foreign currency and to the National Bank of Romania's reference interest rate for Romanian leu loans (currently set at 1.75%). Interest expenses recorded over this limit are tax non-deductible and cannot be carried forward in future periods.

Controlled foreign companies (CFCs)

New rules have been introduced regarding the taxation of CFCs. Under these rules, a taxpayer should include in its taxable base, in proportion with its holding in the CFC, the latter's non-distributed income derived from the following categories:

- Interest or any other income generated by financial assets.
- Royalties or any other income generated from intellectual property (IP).
- Dividends and income from the disposal of shares.

- Income from financial leasing.
- Income from insurance, banking, and other financial activities.
- Income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value.

A company is considered a CFC if the following conditions are both met:

- The taxpayer by itself, or together with its associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of the capital or is entitled to receive more than 50% of the profits of that company.
- The actual profit tax paid on its profits by the company or PE is lower than the difference between the profit tax that would have been charged for the company or PE under the applicable Romanian profit tax provisions and the actual profit tax paid on its profits by the company or PE.

Exit taxation

Romania transposed the provisions of the Anti-Tax Avoidance Directive into national law, introducing rules on exit tax. Thus, a taxpayer will be subject to profit tax (at 16% tax rate) for transfer of business carried out by a PE, transfer of assets, or transfer of residence. The taxable base should be calculated as the difference between the market value of the assets and their fiscal value.

Tax credits and incentives

Foreign tax credits

- Tax credits for taxes paid to a foreign state may be obtained in Romania only if the DTT concluded between Romania and the foreign state applies and only if proper documentation confirming the tax was paid is available.
- A Romanian PE of a legal entity resident in the European Union or the European Economic Area (EEA) that obtains revenues from another EU or EEA member state, taxed both in Romania and in that member state, may claim a tax credit in Romania under the applicable tax law provisions.

Tax exemption for reinvested profits

The profit invested in technological equipment, electronic computers and peripheral equipment, cash registers and machinery, control and invoicing machinery and devices, as well as in software, produced and/or acquired, including on the basis of the financial leasing contracts, and commissioned/used for the purpose of pursuing the economic activity, is tax exempt under the Romanian Fiscal Code. The equipment subject to this incentive cannot be depreciated by using the accelerated method.

Research and development (R&D) incentives

Companies can benefit from an additional deduction of 50% of the eligible expenses for their R&D activities. Moreover, accelerated depreciation may be applied for devices and equipment used in the R&D activity.

In order to benefit from this supplementary deduction, the eligible R&D activities must be applicative research and/or technological development relevant to the taxpayer's activity and must be performed in Romania or in the EU/EEA member states.

The additional deduction for R&D activities is not available if the R&D project's objectives are not met.

Exemption from profit tax for taxpayers engaged exclusively in innovation and R&D activities

Taxpayers that exclusively perform innovation and R&D activities on scientific research and technological development and related activities are exempt from profit tax for the first ten years of activity.

Tax incentives related to professional and technical education

When determining the taxable profit, expenses for organising and developing professional and technical studies as per specific education legislation are considered deductible.

Local tax exemptions for business located in industrial parks

No property tax is due for buildings and constructions located in an industrial park. Also, land within industrial parks is exempt from land tax.

The incentives granted for the set up and development of industrial parks include:

- Local tax exemptions/reductions for immovable assets and land related to the industrial park.
- Other incentives that may be granted by the local tax authorities.
- Development programmes for infrastructure, investments, and equipment endowments granted by local and central public administration, companies, and foreign financial assistance.
- Concessions and structural funds for development.

The companies operating within the industrial park benefit from:

- Various services offered by the park administrator free of charge or with reduced fees.
- Advantageous conditions with regard to location, use of the infrastructure, and communications of the park, with payment in instalments.

Local Councils may grant land tax exemptions for owners of land situated in degraded or polluted areas, but not included in the area of improvement, at taxpayer's request and with the approval of the Ministry of Agriculture and Rural Development and the Ministry of Environment.

Land tax exemptions apply from the first day of the month following approval being obtained.

Other incentives granted to taxpayers

For justified claims of the taxpayers, the tax authorities may grant incentives for the payment of taxes, such as the rescheduling of tax payments due.

Rescheduling of tax payment obligations may be granted by the tax authorities to individuals and legal entities upon request. The time-frame for the rescheduling is a maximum of five years.

In order to benefit from the rescheduling of tax payment obligations, taxpayers must meet certain conditions and also provide a guarantee.

Withholding taxes

Domestic dividend tax

The dividend tax rate for the dividend distribution between Romanian legal entities is 5%. The tax is eliminated if there is a shareholding percentage of a minimum of 10% for an uninterrupted period of at least one year.

WHT for non-residents

The provisions of the Parent-Subsidiary Directive (2011/96) and of the Interest and Royalties Directive (2003/49) as transposed into the domestic fiscal legislation apply only to EU member states, with the member states of the European Free Trade Association (Iceland, Norway, and Lichtenstein) being excluded.

All income obtained by non-residents from Romanian taxpayers for the provision of services rendered in Romania or abroad is subject to 16% WHT rate in Romania.

Non-resident companies not operating through a PE are subject to a 16% WHT on revenue sourced in Romania, such as interest, royalties, revenue from services, commissions, and revenue derived from liquidation of a Romanian legal entity.

The tax rate for dividend revenues derived by non-residents from Romania is 5%.

Certain specific provisions and exceptions apply to non-resident WHT, as follows:

- A 50% WHT applies to payments made by Romanian residents (e.g. dividends, interest, royalties, commissions, services) to non-residents in countries that do not have an exchange of information agreement concluded with Romania, regardless of whether the beneficiary of the income is resident of a state with which Romania has concluded a DTT or not. However, this WHT is applicable only to the extent such payments result from artificial transactions.
- As Romania is an EU member state, the provisions of the Parent-Subsidiary Directive apply. Consequently, dividends paid by Romanian companies to companies resident in one of the EU/EEA member states are exempt from WHT if the dividend beneficiary has held, at the time of distribution, a minimum of 10% of the shares of the Romanian company for an uninterrupted period of at least one year.
- Dividend and interest income obtained from Romania by EEA-registered pension funds is exempt from WHT.
- Romania has implemented the Interest and Royalties Directive. Payments of interest and royalties made by a Romanian company to another company resident in an EU member state are tax exempt from WHT if the non-resident company held, for an uninterrupted period of at least two years, at least 25% of the share capital of the Romanian company prior to the time of payment.

In order to apply EU legislation, non-resident recipients of the income are required to present a certificate of tax residence and a declaration attesting to compliance with the necessary requirements provided by the European Directives.

The Romanian Fiscal Code incorporates the recent amendments to the European Parent-Subsidiary Directive no. 2011/96/EU. The legislation introduces the anti-abuse rule for preventing unlawful tax practices used to obtain tax benefits contrary to the Directive's principles. Also, dividends received by a Romanian legal entity from a foreign legal entity under certain conditions will not be taxed as long as those dividends are not treated as deductible expenses by the paying subsidiary.

The following categories of income derived by non-residents from Romania are exempt from WHT:

- Interest income and income derived from the sale of debt instruments issued by the Romanian authorities (e.g. government bonds).
- Revenue from international transportation and accessory services.
- Prizes obtained by individual non-residents from artistic, cultural, or sport festivals/competitions paid from public funds.
- Income obtained from a partnership constituted in Romania by a non-resident company (the related profits are subject to corporate profit tax).

Measures are in place for the purpose of eliminating the discriminatory treatment applied to non-residents deriving interest revenues and/or revenues from freelancing activities in Romania that are subject to WHT applied to the gross value of the income.

Legal entities/individuals resident in member states of the European Union or the Economic European Area deriving interest revenues and/or revenues from freelancing activities in Romania may opt for the regularisation of the WHT by way of declaring and paying in Romania the corporate income tax/income tax related to the revenues obtained.

The tax withheld and paid is deemed as an advance payment in connection with the corporate income tax/income tax.

The possibility for regularisation of the WHT is only applied in the case of revenues derived from Romania by residents of member states of the European Union or the European Economic Area, provided that a Convention for the Avoidance of Double Taxation or a legal instrument for the exchange of information is concluded between Romania and those states.

WHT rates for companies, and rates under some DTTs

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Commissions**
Non-treaty	5	16	16	16
EU - Parent-Subsidiary Directive	0 (53)	N/A	N/A	N/A
EU - Interest and Royalties Directive	N/A	0 (53)	0 (53)	N/A
Treaty:				
Albania	10/15 (1)	10	15	15
Algeria	15	15	15	N/A
Armenia	5/10 (1)	10	10	15
Australia	5/15 (2)	10	10	N/A
Austria	0/5 (1)	0/3 (3)	3	N/A
Azerbaijan	5/10 (1)	8	10	N/A
Bangladesh	10/15 (4)	10	10	N/A
Belarus	10	10	15	N/A
Belgium	5/15 (1)	10	5	5

	WHT (%)			
Recipient	Dividends	Interest	Royalties	Commissions
Bosnia and Herzegovina (5)	5	7.5	10	10
Bulgaria	5	5	5	N/A
Canada	5/15 (4)	0/10 (6)	5/10 (7)	N/A
China, People's Republic of	3	0/3 (57)	3	N/A
Croatia	5	10	10	N/A
Cyprus	10	10	5	5
Czech Republic	10	7	10	N/A
Denmark	10/15 (1)	10	10	4
Ecuador	15	10	10	10
Egypt	10	15	15	15 (8)
Estonia	10	10	10	2
Ethiopia	10	15	15	N/A
Finland	5	5	2.5/5 (9)	N/A
France	10	10	10	N/A
Georgia	8	10	5	5
Germany	5/15 (4)	0/3 (10)	3	N/A
Greece	45	10	5/7 (11)	5
Hong Kong	0/3/5 (55)	0/3 (56)	3	N/A
Hungary	5/15 (12)	15	10	5
Iceland	5/10 (13)	3	5	N/A
India	10	10	10	N/A
Indonesia	12.5/15 (14)	12.5	12.5/15 (15)	10
Iran	10	8	10	N/A
Ireland	3	0/3 (16)	0/3 (17)	N/A
Israel	15	5/10 (18)	10	N/A
Italy	0/5 (4)	0/5 (19)	5	N/A
Japan	10	10	10/15 (20)	N/A
Jordan	15	12.5	15	15
Kazakhstan	10	10	10	10
Korea, Democratic People's Republic	10	10	10	N/A
Korea, Republic of	7/10 (13)	0/10 (21)	7/10 (22)	10
Kuwait	0/1 (23)	0/1 (24)	20	N/A
Latvia	10	10	10	2
Lebanon	5	5	5	N/A
Lithuania	10	10	10	2
Luxembourg	5/15 (13)	0/10 (25)	10	5
Macedonia	5	10	10	N/A
Malaysia	10	0/15 (26)	12	N/A
Malta	5	5	5	10
Mexico	10	15	15	N/A
Moldova	10	10	10/15 (27)	N/A
Montenegro (37)	10	10	10	10
Morocco	10	0/10 (4)	10	10
Namibia	15	15	15	N/A
Netherlands	0/5/15 (28)	0/3 (29)	0/3 (30)	N/A
Nigeria	12.5	12.5	12.5	N/A
Norway	5/10 (4)	5	5	4
Pakistan	10	10	12.5	10
Philippines	10/15 (31)	10/15 (32)	10/15/25 (33)	N/A

Romania

Recipient	WHT (%)			
	Dividends	Interest	Royalties	Commissions
Poland	5/15 (1)	10	10	0/10 (34)
Portugal	10/15 (35)	0/10 (19)	10	N/A
Qatar	3	3	5	3
Russia	15	15	10	N/A
San Marino	0/5/10 (36)	3	3	N/A
Saudi Arabia	5	5	10	N/A
Serbia (37)	10	10	10	10
Singapore	5	5	5	N/A
Slovakia	10	10	10/15 (38)	N/A
Slovenia	5	5	5	N/A
South Africa	15	15	15	N/A
Spain	10/15 (39)	10	10	5
Sri Lanka	12.5	0/10 (4)	10	10
Sudan	5/10 (1)	5	5	N/A
Sweden	10	10	10	10
Switzerland	0/15 (40)	0/5 (41)	0/10 (42)	N/A
Syria	5/15 (39)	10	12	N/A
Tajikistan	5/10 (39)	10	10	N/A
Thailand	15/20 (43)	10/20/25 (44)	15	10
Tunisia	12	10	12	4
Turkey	15	0/10 (45)	10	N/A
Turkmenistan	10	10	15	N/A
Ukraine	10/15 (13)	0/10 (46)	10/15 (47)	N/A
United Arab Emirates	0/3 (48)	0/3 (49)	0/3 (50)	3
United Kingdom	10/15 (51)	10	10/15 (52)	12.5
United States	10	10	10/15 (20)	N/A
Uruguay	5/10 (54)	10	10	N/A
Uzbekistan	10	10	10	N/A
Vietnam	15	10	15	N/A
Zambia	10	10	15	N/A

Notes

1. The lower rate applies to a participation of at least 25%.
2. The lower rate applies to a participation of at least 10% where the dividends are paid out of profits that have been subject to a normal rate of company tax.
3. The lower interest rate applies if one of the following requirements is fulfilled:
   - The payer or the recipient of the interest is the government of a contracting state itself, a local authority or an administrative-territorial unit thereof, or the Central Bank of a contracting state.
   - The interest is paid in respect of a loan granted, approved, guaranteed, of insured by the government of a contracting state, the Central Bank of a contracting state, or any financial institution owned or controlled by the government of a contracting state.
   - The interest is paid in respect of a loan granted by a bank or any other financial institution (including an insurance company).
   - The interest is paid on a loan made for a period of more than two years.
   - The interest is paid in connection with the sale on credit of any industrial, commercial, or scientific equipment.
4. The lower rate applies to a participation of at least 10%.
5. The treaty concluded with the former Socialist Republic of Yugoslavia (Socialist republic) signed in 1986.
6. The zero rate applies to interest paid by public bodies.
7. The lower rate applies to copyright royalties (excluding films), computer software, patents, and know-how.
8. The 15% withheld at source in Romania on the commission paid to an Egyptian resident shall be given as a credit to be deducted from the income tax charged in Egypt.

9. The lower rate applies to royalties for computer software and industrial, commercial, or scientific equipment.
10. The lower rate applies if and as long as Germany, under its domestic law, does not levy WHT on interest paid to a resident of Romania.
11. The higher rate applies to industrial royalties.
12. The lower rate applies to a participation of at least 40%.
13. The lower rate applies if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
14. The lower rate applies if the recipient is a company that directly owns at least 25% of the capital of the company paying the dividends.
15. The lower rate applies for royalties that consist of payments of any kind received as a consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience, or for the use of, or the right to use, industrial, commercial, or scientific equipment, cinematograph films, or tapes for television or broadcasting. The higher rate applies if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work.
16. The lower rate applies if such recipient is the beneficial owner and if such interest is paid:
    - in connection with the sale on credit of any industrial, commercial, or scientific equipment
    - on any loan of whatever kind granted by a bank or other financial institution (including an insurance company)
    - on any loan of whatever kind made for a period of more than two years, or
    - on any debt-claim of whatever kind guaranteed, insured, or directly or indirectly financed by or on behalf of the government of either contracting state.
17. The lower interest rate applies if the royalties are beneficially owned by a resident of a contracting state and refer to the right to use any copyright of literary, artistic, or scientific work, including motion pictures or films, recordings on tape or other media used for radio or television broadcasting, or other means of reproduction or transmission.
18. The lower rate applies to interest paid in connection with the sale on credit of any industrial or scientific equipment, of any merchandise by one enterprise to another enterprise, or on a loan granted by banks.
19. The lower rate applies to interest paid by public bodies.
20. The lower rate applies for cultural royalties; the higher rate applies for industrial royalties.
21. The lower rate applies for interest arising in a contracting state and derived by the government of the other contracting state, including local authorities thereof and administrative-territorial units thereof, the Central Bank of that other contracting state or any financial institution performing functions of a governmental nature, or by any resident of the other Contracting State with respect to debt claims guaranteed or indirectly financed by the government of that other contracting state, including local authorities thereof and administrative-territorial units thereof, the Central Bank of that other contracting state or any financial institution performing functions of a governmental nature.
22. The lower rate applies for royalties related to the right to use any patent, trademark, design or model plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
23. The lower rate applies if the beneficial owner of the dividends is the government of Kuwait or a company in whose capital the government directly or indirectly owns at least 51% and the remaining capital of such company is owned by residents of Kuwait.
24. The lower rate applies if the beneficial owner of the interest is a company, including a bank or a financial institution, that is a resident of Kuwait and in whose capital the government directly or indirectly owns at least 25% and the remaining capital of such company is owned by residents of Kuwait.
25. Interest shall not be taxed in the state where it arises if the indebtedness on which such interest is paid, guaranteed, insured, or financed by the other state or by a financial institution that is a resident of that other state.
26. The lower rate applies for interest to which a resident of Romania is beneficially entitled if the loan or other indebtedness in respect of which the interest is paid is an approved loan or a long-term loan.
27. The lower rate applies for royalties for the use of, or the right to use, any copyright, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, information concerning industrial, commercial, or scientific experience.
28. 0% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
29. The lower rate applies if, and as long as, the Netherlands does not levy a WHT on interest/royalties paid to a resident of Romania. Interest paid to a bank or financial institution (including an insurance company) and interest paid on a loan made for a period of more than two years are exempt.
30. The lower rate applies if, and as long as, the Netherlands does not levy a WHT on interest/royalties paid to a resident of Romania.
31. The lower rate applies if the recipient is a company (excluding partnership) and during the part of the paying corporation's taxable year that precedes the date of payment of the dividends and during the whole of its prior taxable year (if any) at least 25% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation.
32. The lower rate applies if such interest is paid:

- in connection with the sale on credit of any industrial, commercial, or scientific machine or equipment, or similar installation
- on any loan of whatever kind granted by a bank, or
- in respect of public issues of bonds, debentures, or similar obligations.

33. 10% of the gross amount of the royalties, where the royalties are paid by an enterprise registered with the Romanian Agency for Development, in the case of Romania and with the Board of Investments, in the case of the Philippines and engaged in preferred pioneer areas of activities; 15% of the gross amount of the royalties, in respect of cinematographic films and tapes for television or broadcasting; 25% of the gross amount of the royalties, in all other cases.
34. As long as Poland does not introduce in its domestic legislation the WHT of commissions paid to non-residents, the provisions of paragraph 2 of Article 13 are not applying and the commissions are taxable only in the residence country of the beneficial owner of the commission.
35. The lower rate applies if the beneficial owner of the dividends is a company that, for an uninterrupted period of two years prior to the payment of the dividends, directly owns at least 25% of the capital stock (capital social) of the company paying the dividends.
36. The lower rate applies to participations of at least 50%; the 5% rate applies to participations of at least 10%.
37. According to the treaty concluded between Romania and the former Yugoslavia (Federal Republic of). This is applicable in Serbia and Montenegro.
38. The lower rate applies to royalties for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or industrial, commercial, or scientific equipment, or for information concerning, industrial, commercial, or scientific experience.
39. The lower rate applies if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
40. The lower rate applies if the dividends are beneficially owned by a resident of the other contracting state that is:
    - a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends
    - a pension fund or other similar institution providing pension schemes, or
    - the government of that other state, a political subdivision, local authority, or administrative-territorial unit thereof, or the Central Bank of that other state.
41. The lower rate applies to the extent that such interest is paid:
    - in respect of a loan, debt-claim, or credit that is owed to, or made, provided, guaranteed, or insured by that state or a political subdivision, local authority, administrative-territorial unit, or export financing institution thereof, or
    - by a company to a company of the other contracting state where such company is affiliated with the company paying the interest by a direct minimum holding of 25% in the capital or where both companies are held by a third company that has directly a minimum holding of 25%, both in the capital of the first company and in the capital of the second company.
42. The lower rate applies as long as the Swiss Confederation, in accordance with its domestic legislation, does not levy a WHT on royalties paid to non-residents.
43. The lower rate applies if the company paying the dividends engages in an industrial undertaking and the recipient company, excluding partnership, directly holds at least 25% of the capital of the former company.
44. 10% of the gross amount of the interest if it is received by any financial institution (including an insurance company); 20% of the gross amount of the interest in the case of interest on credit sale; 25% of the gross amount of the interest in other cases.
45. Interest arising in Romania and paid to government of Turkey or to the Central Bank of Turkey shall be exempt from Romanian tax.
46. Interest arising in a contracting state shall be exempt from tax in that state if it is derived and beneficially owned by the government of the other contracting state, a local authority or an administrative-territorial unit thereof, or any agency or bank unit or institution of that government, a local authority or an administrative-territorial unit, or if the debt-claims of a resident of the other contracting state are warranted, insured, or directly or indirectly financed by a financial institution wholly owned by the government of the other contracting state.
47. The lower rate applies for use or lease of any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific equipment.
48. 0% if the beneficial owner of the dividends is (i) the government of any contracting state or any governmental institutions or entity thereof or (ii) a company that is a resident of either contracting state and the capital of which is directly or indirectly owned (at least 25%) by the government or governmental institutions of either contracting states.
49. Interest arising in Romania and paid to the government of the United Arab Emirates or its financial institutions shall be exempted from Romanian taxes.
50. The lower rate applies for approved industrial royalties.
51. The lower rate applies if the beneficial owner is a company that directly or indirectly controls at least 25% of the voting power in the company paying the dividends.
52. The lower rate applies in the case of royalties received as consideration for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic, or scientific work (including cinematograph films and films or tapes for radio or television broadcasting).
53. If certain conditions are met.

54. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 10% of the gross amount of the dividends in all other cases.
55. The 0% rate applies for certain government institutions, the 3% rate applies for a participation of at least 15%, and the 5% rate applies to all other cases.
56. If and as long as the Hong Kong Special Administrative Region levies no WHT on interest, the percentage shall be reduced to zero. The competent authority of the Hong Kong Special Administrative Region shall inform the competent authority of Romania of any changes made in the internal legislation of the Hong Kong Special Administrative Region regarding the imposition of a WHT on interest.
57. The lower rate applies to interest arising from credit sale of equipment, merchandise, or services, to loans granted by financial institutions, to a political subdivision, local authority, or administrative-territorial unit, or to any entity wholly or mainly owned by the state; the 3% rate applies in other cases.

In order to apply the provisions of the relevant DTT, the non-resident recipient of the income should provide to the Romanian paying company a tax residency certificate attesting its tax residency for the purpose of the DTT.

If the tax rates prescribed by domestic legislation differ from those prescribed by the DTT, then the most favourable rate will apply. The tax rate applicable to income obtained by a resident of an EU member state in Romania is the most favourable rate provided under either domestic legislation, the EU Directives transposed into domestic legislation, or the DTT.

Tax administration

Taxable period

The fiscal year is the calendar year or the period during which the entity existed if it was set up or ceased to exist during that calendar year.

Taxpayers with a financial year different from the calendar year have the option to align the tax year to the financial year. The first amended tax year will start on 1 January and will end on the last day of the amended tax year.

The period in which a taxpayer has to communicate to the territorial tax bodies the intention of changing the fiscal year period is within 15 days as of the beginning of the new fiscal year.

Tax returns

Taxpayers (except for non-profit organisations and taxpayers deriving most of their income from agriculture) must submit the profit tax returns by the 25th day of the first month following the first, second, and third quarters. The annual profit tax return is due by 25 March of the following year if the fiscal years equals the calendar year; for the cases where the fiscal year is different than the calendar year, the annual profit tax return is due by 25th day of the third month after the end of the company's fiscal year.

Non-profit organisations and taxpayers that obtain income mainly from agricultural activities have to declare and pay annual profit tax by 25 February of the year following the reporting period.

Taxpayers (except those specifically mentioned by law) may opt to declare and pay the annual profit tax by making quarterly advance payments (*see Payment of tax below*). The decision to take this option has to be communicated by 31 January of the fiscal year in which the taxpayer wants to apply the option and it has to be maintained for at least two consecutive years.

Large and medium-sized taxpayers have the obligation to submit fiscal forms online, using the *www.e-guvernare.ro* portal. The electronic signature of the tax returns can only be made using a qualified certificate issued by a legally accredited certification services provider. Other categories of taxpayers may file their tax return electronically as an alternative way of compliance.

Taxpayers required to withhold tax, with the exception of salary payers, are required to submit a statement to the tax authorities regarding the tax withheld for each beneficiary of income. This statement must be submitted for the previous year by the last day of February of the current fiscal year and refers to the tax withheld and paid by Romanian residents on income obtained in Romania by non-resident beneficiaries.

If taxpayers have failed to submit their tax returns, the tax authorities will assess, by way of default, all the tax obligations found in the taxpayer's fiscal liability records for each fiscal period in which tax returns were not submitted.

Payment of tax

Taxpayers (except for banks, non-profit organisations, taxpayers deriving most of their income from agriculture) must pay the quarterly profit tax by the 25th day of the first month following the first, second, and third quarters. The final profit tax payment is generally due on the 25th day of the third month after the end of the company's fiscal year. Banks and branches of foreign banks in Romania are required to apply the system of advance quarterly profit tax payments. Other taxpayers, with some exceptions mentioned by law, may use this system as an alternative reporting and payment procedure.

The anticipated quarterly payments are calculated as a quarter of the previous year's profit tax increased by the consumer price index (CPI) inflation rate, with the payments due by the 25th day of the month following the end of the quarter. The CPI inflation rate is published by Order of the Ministry of Finance by 15 April of the year for which the advance payments are made. For 2018, the CPI inflation rate was 103.1%. If taxpayers incur fiscal losses in the first year of the application of the option, the advance profit tax payments are calculated by applying the profit tax rate to the accounting profit for the period in which tax payments are made in advance.

Non-profit organisations and taxpayers that obtain income mainly from crop production have to pay annual profit tax by 25 February of the following year.

Newly established banks and branches of foreign banks in Romania (i.e. without a previous year history) or those that incurred fiscal losses in the previous year make quarterly advance payments at the level of the amount resulted from applying the profit tax rate on the accounting profit for the period for which the advance payment is made.

For the last quarter of the fiscal year, the deadline for the obligation to declare and make advance payment will be the 25th day of the last month of that fiscal year.

Late-payment penalty

The late-payment interest rate is 0.02% for each day of delay. Subsequent late-payment penalties also apply.

The penalty is set at 0.01% per day of delay. This penalty does not apply to main tax obligations not declared by the taxpayer and is established by a tax inspection authority decision.

A non-declaration penalty is applicable, at 0.08% per day, starting from the day following the due date until the date of payment. This penalty applies to the main tax obligations declared incorrectly or not declared by the taxpayer and is established by a tax inspection authority decision.

Non-resident companies

Non-resident companies deriving income from the sale of real estate located in Romania or from the sale of shares held in a Romanian company (except if participation exemption applies) are subject to a 16% profit tax in Romania and are liable to declare and pay such tax. Non-residents may appoint a tax agent/representative to fulfil this requirement. However, if the buyer is a Romanian company or a Romanian PE of a non-resident company, the obligation to declare and pay the annual profit tax rests with the buyer.

In case of income from sale/transfer of shares held by a non-resident in a Romanian entity, the obligation of the buyer to withhold the tax (in case the buyer is a Romanian entity) has been eliminated.

For capital gains tax declaration and payment, the Romanian legislation requires the following tax returns to be submitted:

- Quarterly statements, starting the 25th day of the month following the quarter in which the non-resident first earned capital gains taxable in Romania.
- An annual profit tax return.

The quarterly statements and annual return must be submitted during the entire period in which the non-resident is registered with the Romanian tax authorities, even if, throughout that period, it no longer carries out transactions generating taxable revenue in Romania.

Tax audit process

Tax inspections can be carried out in respect of all legal persons, irrespective of their organisational structure, that are bound to determine, withhold, and pay taxes, duties, contributions, and other amounts owed to the general consolidated budget.

The tax authorities may not inspect the same taxes for a period previously inspected unless additional data is obtained of which the tax inspectors were unaware when carrying out the first inspection or calculation errors were made.

Prior to the tax inspection commencing, the tax authorities must notify the taxpayer in writing, by sending a tax inspection notice, except in the cases explicitly laid down in the Fiscal Procedural Code.

Tax inspections are generally carried out at the taxpayer's business premises and may not exceed a six-month period in the case of large taxpayers or three months for other taxpayers. For taxpayers that have secondary offices, the tax inspections may not exceed six months. The tax authorities may suspend the tax inspection if they deem it necessary for the clarification of the taxpayer's tax status.

Before finalisation of the tax inspection, the tax authorities are required to inform the taxpayer of their findings and the tax consequences and allow the taxpayer to express its point of view, within three days from the ending of the tax inspection. Upon completion of the tax inspection, the authorities conclude a tax inspection report, based on which the tax assessment is made, which in turn is to be communicated to the taxpayer within 30 days from the ending of the tax inspection.

Statute of limitations

As a general rule, the statute of limitation is five years and it begins to run on 1 July of the year following that for which the tax obligation is for, provided the law does not dispose otherwise. However, the statute can be suspended for the duration of a tax inspection but will recommence after the inspection has been completed.

Topics of focus for tax authorities

Areas of focus during tax audits include:

- VAT reimbursable positions.
- Deductibility of service expenses.
- Transfer pricing.
- Transactions with tax havens.

Other issues

Mergers and acquisitions

Mergers, spin-offs, transfers of assets, and exchanges of shares between two Romanian companies should not trigger capital gains tax.

In the case of a relocation of the registered office of a European Company (SE) and a European Cooperative Society (SCE) from Romania to another EU member state, no tax will apply on the difference between the market value of the transferred assets and liabilities and their fiscal value, provided certain conditions are met. There will also be no tax on such movements at the shareholder level. Therefore, a tax basis step-up may be achieved in the case of Romanian shareholders.

If a Romanian company has a PE in another EU member state, and the Romanian company is dissolved as a result of a cross-border reorganisation, the Romanian tax authorities will not have the right to tax the PE.

There are provisions for the recovery of fiscal losses in the case of restructuring operations carried out by Romanian legal entities and those involving Romanian legal entities and residents of other EU member states. Herewith, the right to recover fiscal losses by legal entities that are successors of merger or spin-off operations is regulated. The recovery is correlated with the assets and liabilities transferred according to the merger/spin-off project. Also, some amendments are provided to the Romanian Company Law simplifying and, in some cases, reducing the time-frame for performing the legal steps that have to be followed in case of mergers and spin-offs.

For taxpayers going through a restructuring process, the right to carry forward non-deductible interest expenses and net foreign exchange losses is split between the beneficiary and the assignor in proportion to the assets and liabilities transferred.

The amendments applicable to domestic mergers, total or partial spin-offs, transfer of assets, and exchange of shares have been harmonised with those applicable to similar cross-border transactions. The neutrality of in-kind contributions to a company's equity has been eliminated, except for cases involving a transfer of a going concern. Transfers carried out during a partial spin-off will not be subject to profit tax only if a transfer of a going concern takes place and the transferor maintains at least one line of activity.

EU state aid investigations

There are no investigations launched by the European Commission on whether Romania granted selective tax advantages to certain companies in the form of state aid.

Measures taken by Romania in respect to base erosion and profit shifting (BEPS)

Anti-hybrid and general anti-avoidance rules (GAAR) related to BEPS Action 2 and Action 6

The Romanian Fiscal Code incorporates the anti-hybrid provisions and the GAAR of the European Directive no. 2011/96/EU, on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states, with its amendments.

The anti-hybrid rule states that income received by a Romanian entity from its qualifying subsidiary will not be tax exempt if such dividend was treated as a deductible expense by the subsidiary.

The GAAR states that member states shall not grant the benefits of the Directive to an arrangement or a series of arrangements that, having been put into place for the main purpose of obtaining a tax advantage that defeats the object or purpose of the Directive, are not genuine, having regard to all relevant facts and circumstances.

Recently, Romania transposed ATAD provisions and introduced a new anti-abuse rule applicable to an arrangement or a series of arrangements that, with regard to all relevant facts and circumstances, are not genuine, having been undertaken for the main purpose of, or having as one of the main purposes, obtaining a tax advantage that defeats the object or purpose of the applicable tax law. Specifically, the above-mentioned arrangements are to be ignored when calculating the tax liabilities attributed to a taxpayer.

Tightened restrictions on interest deductibility related to BEPS Action 4

As of 1 January 2018, the exceeding borrowing costs (calculated as the difference between any debt-related costs, including foreign exchange expenses and capitalised interest, and income from interest and other economically equivalent income) incurred in a fiscal period that exceed the deductible threshold of EUR 200,000 will be deductible for profit tax purposes up to the limit of 10% of the calculation base. The non-deductible exceeding borrowing costs can be carried forward indefinitely. The limitation also applies to any debt-related costs in connection with loans granted by financial institutions.

The calculation base is determined as the gross accounting profit, minus non-taxable revenues, plus exceeding borrowing costs and deductible tax depreciation.

If the calculation base is zero or negative, the exceeding borrowing costs are treated as non-deductible for profit tax purposes during the current tax period, but can be carried forward indefinitely.

The above-mentioned interest deductibility rules also apply to financial institutions, but not to independent entities (i.e. entities that are not part of a consolidated group for financial accounting purposes and do not have related parties and PEs), which can fully deduct exceeding borrowing costs.

The new rules will also apply to interest and foreign exchange losses carried forward from the past and accumulated as at 31 December 2017.

Substance over form requirements related to BEPS Action 5 and Action 6

A definition of a cross-border artificial transaction was introduced since 2016 in the Romanian Fiscal Code as well as the possibility of a cross-border transaction or a group of cross-border transactions being reclassified by the tax authorities so as to reflect their true nature. The Romanian anti-abuse rules in the Romanian Fiscal Code define 'artificial cross-border transaction' as a transaction or series of transactions without economic substance that normally would not be used as part of normal business practices and is intended to avoid tax or obtain tax benefits that otherwise could not be achieved. The anti-abuse rules provide that for such transactions advantage of DTTs cannot be taken.

Also, a 50% WHT rate can apply for income paid in a state with which Romania does not have a legal instrument in place for the exchange of information. Specifically, the 50% rate will apply only in situations where the income is paid as part of a transaction deemed artificial.

Transfer pricing related to BEPS Action 13

Taxpayers engaged in related-party transactions have to prepare and make their transfer pricing documentation file available based on certain materiality thresholds.

Large taxpayers that carry out inter-company transactions equal to or above certain thresholds are required to prepare transfer pricing documentation on an annual basis.

The rest of large taxpayers, and also the small and medium-sized taxpayers that carry out inter-company transactions equal to or above certain limits, have an obligation to prepare transfer pricing documentation where a written request is made by the tax inspector during a tax audit. The deadline for presenting the transfer pricing documentation is between 30 and 60 calendar days. A one-off extension of no more than 30 calendar days is allowed.

The content of the transfer pricing documentation file includes the elements referred to in the latest version of 'Chapter V: Documentation of the OECD Transfer Pricing Guidelines'.

Intergovernmental agreements (IGAs)

A Model 1 IGA is treated as 'in effect' by the United States (US) Treasury as of 2 April 2014.

The Model 1 IGA between the US and Romanian governments was signed on 28 May 2015 in order to improve international tax compliance and to implement the Foreign

Account Tax Compliance Act (FATCA). The agreement will enhance transparency between the two countries in the field of taxation, promote growing cooperation in combating tax evasion practises, simplify implementation of financial information transmission, and increase legal certainty for financial institutions in Romania.

The agreement between Romania and the United States to improve international tax compliance and implementation of FATCA was ratified by the Romanian Parliament and published in the Official Gazette on 30 October 2015.

Common Reporting Standard (CRS)

The status regarding the implementation of the CRS, as developed by the OECD, is the following:

- On 29 October 2014, the Romanian Minister of Finance signed the Declaration to comply with the provisions of the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information.
- On 1 November 2014, the Convention on Mutual Administrative Assistance in Tax Matters was enforced in Romania.
- In April 2016, the Romania government ratified the MCAA.

These two official documents are part of the process of implementing the CRS issued in February 2014 by the OECD.

Based on the MCAA, Romania implemented the first automatic information exchange by September 2017.

In addition, Romania transposed the provisions of Directive 2011/16/EU as amended and supplemented by Directive 2014/107/EU regarding the mandatory automatic exchange of information in the field of taxation. As such, Romania introduced in the national legislation a requirement for financial institutions to implement reporting and due diligence rules, which are fully consistent with the CRS developed by the OECD.

Under the CRS and FATCA, reporting financial institutions (e.g. depositary institutions [banks, credit co-operative organisations, savings and credit banks for housing, mortgage loans banks], custodial institutions, investment entities, and specified insurance companies) are required to report to the tax authorities the following information:

- Identity of the person (name, address, jurisdiction of residence, number/tax identification number [TIN], date and place of birth, if applicable).
- Identity of the entity that is the account holder (name, address, jurisdiction/jurisdiction of residence, number/TIN of the entity and the person(s) controlling the entity, as well as their date and place of birth, etc.).
- The account number, name, and identification number of the reporting financial institution, and information on the account balance or value.
- For deposit accounts, the total gross amount of interest paid or credited to the account during the calendar year.
- For custody accounts, the total gross amount of interest, dividends, or other earnings generated from assets held in the account, as well as the amount of gross revenue from the sale or redemption of financial assets.

Russian Federation

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Significant developments

Recent significant changes in tax legislation

Taxation of movable property

Under the Russian Tax Code (RTC), all Russian legal entities and permanent establishments (PEs) of foreign legal entities were exempt from tax on movable property recorded as fixed assets since 1 January 2013. However, this tax incentive becomes a regional incentive starting from 2018. Russian taxpayers must check the laws of particular constituent regions before applying the incentive.

Investment deduction

The mechanism of investment deduction was introduced in the RTC. Starting from 2018, taxpayers will choose between using the standard method of depreciation of their fixed assets and deducting investment expenditures directly from the amount of tax within the set limit.

The law grants Russian constituent regions the right to introduce the deduction, and the regions reserve the option to decide whether to exercise that right. In addition, regions determine the categories of fixed assets (and taxpayers) that are or are not eligible for the deduction.

This tax regime is applicable only to newly commissioned (or modernised) assets with a useful life of 3 to 20 years (e.g. buildings, machinery, transport). *Please refer to Depreciation and amortisation in the Deductions section for details.*

Three-tier transfer pricing documentation

A requirement to prepare three-tier transfer pricing documentation for the financial years starting in 2017 has been introduced to the RTC. Thus, multinational groups of companies (MNCs) with a total income (revenue) over 50 billion Russian rubles (RUB) under consolidated financial statements for the previous financial year must submit three-tier documentation to tax authorities, including Master file, Local file, and Country-by-Country (CbC) report, as well as a notification on their membership in an MNC.

Taxes on corporate income

Corporate income tax (CIT)

Russian legal entities pay tax on their worldwide income (credit relief is available for foreign tax paid, up to the amount of the Russian tax liability that would have been due on the same amount under Russian rules).

The maximum CIT rate for all taxpayers in the Russian Federation has been set at 20%. In the period 2017 through 2020, the following allocation proportion applies: 3% of CIT revenues is allocated to the federal budget, whereas 17% is allocated to the budgets of the relevant constituent regions. Individual Russian constituent regions may bring their CIT rates down to 12.5%; thus, the total minimum tax rate may be reduced to 15.5%.

Foreign legal entities (FLEs) pay tax on Russia-source income derived through a PE at 20% and are also subject to withholding tax (WHT) on income from Russian sources not related to a PE (at rates varying from 10% to 20%, depending on the type of income and the method used to calculate it).

Local income taxes

There are no provincial, municipal, or local taxes on income in the Russian Federation.

Corporate residence

FLEs managed from Russia can be recognised as Russian tax residents. Russian tax residency means that the worldwide income of such entities is taxable in Russia.

The tax residency rules set basic and additional criteria for determining the place of management. Moreover, the rules specify those situations that do not affect residency status (e.g. preparation of consolidated financial statements in Russia). Nevertheless, when assessing the risk of a company being deemed a Russian tax resident, it is advisable to evaluate all relevant facts and circumstances, even if the company's activities carried out in Russia would technically qualify for such exemptions.

The rules also specify four situations when a company may be deemed a Russian tax resident only on a willing basis. These situations are when a company is:

- a party to a production sharing agreement (PSA)
- an 'active' foreign holding or sub-holding company (subject to compliance with certain conditions)
- an operator of a new subsea field (or a direct shareholder of such an operator), or
- engaged as its core activity in offering for lease or sublease marine or mixed river-ocean vessels and/or the international transportation of goods, passengers, and their baggage, and providing related services.

Permanent establishment (PE)

A 'permanent establishment' is broadly defined in the RTC as 'a branch, division, office, bureau, agency, or any other place through which a foreign legal entity regularly carries out its business activities in Russia'.

Other taxes

Value-added tax (VAT)

VAT is a federal tax in Russia, which is payable to the federal budget.

There is no separate VAT registration in Russia (with the exception of electronic services). The established general tax registration requirements are applicable to all taxes, including VAT.

Taxpayers follow a 'classical' input-output VAT system, whereby a VAT payer generally accounts for VAT on a full sales price of the transaction and is entitled to recover input VAT incurred on inventory costs and other related business expenses. Although not originally based on the European Union (EU) model, the Russian VAT system has, nonetheless, converged more with it. Currently, however, it still differs from the EU VAT system in various ways.

Output VAT

VAT usually applies to the value of goods, work, services, or property rights supplied in Russia. The standard VAT rate is 18% in Russia (with a lower rate of 10% applicable to certain basic foodstuffs, children's clothing, medicines and medical products, printed publications, etc.). The same VAT rates (as for domestic supplies) apply to imports of goods into Russia.

Exports of goods, international transportation and other services related to the export of goods from Russia, international passenger transportation, and certain other supplies are zero-rated with the right of input VAT recovery. The application of the 0% VAT rate and recovery of relevant input VAT amounts are confirmed by submitting a number of documents to the tax authorities within certain time limits. Recovery of input VAT related to the export of goods (except for exports of raw materials) is performed according to general recovery rules (i.e. prior to submission of confirmation documents to the tax authorities). Special rules are in place for the documentary confirmation of the right to tax export supplies to Customs Union member countries at the 0% VAT rate. Since 1 January 2018, it is possible to waive the application of the 0% VAT rate in respect of export of goods, international transportation, and other services related to the export of goods from Russia and apply the 18% VAT rate.

The list of VAT-exempt goods and services includes basic banking and insurance services, services provided by financial companies (depositaries, brokers, and some others), educational services provided by certified establishments, sales of certain essential medical equipment, passenger transportation, and certain other socially important services. Most accredited offices of FLEs (as well as their accredited employees) may be exempt from VAT on property rental payments. The provision of VAT-exempt supplies does not entail the right to recovery of attributable input VAT. Instead, costs associated with non-recoverable input VAT are, in most cases, deductible for CIT purposes.

A list of services rendered through the Internet or other similar electronic networks by foreign suppliers to Russian individuals are subject to Russian VAT. From 1 January 2019, new changes will be introduced, and these changes will require foreign entities to register for VAT purposes and pay taxes if they provide electronic services to legal entities and individual entrepreneurs. Depending on the particular type of service, either the 18% VAT rate or a VAT exemption may apply. If a foreign supplier is directly involved in settlements for electronic services provided, it would be required to register for tax purposes in Russia and fulfil its Russian VAT obligations (including payment of Russian VAT and filing VAT returns with the tax authorities).

Withholding VAT

The Russian VAT law provides rules for determining where services are supplied in terms of VAT. These rules divide all services into different categories in order to determine where they are deemed to have been supplied for VAT purposes. For example, certain services are deemed to have been supplied where they are performed, whereas some are deemed to have been supplied where the 'buyer' of the services carries out its activity, some where the relevant movable or immovable property is located, and still others where the 'seller' has its place of activity, etc.

Under the reverse-charge mechanism, a Russian buyer must account for VAT on any payment it makes to a non-tax registered foreign company if the payment is connected to the supply of goods or services considered to have been supplied in Russia, based on the VAT place of supply rules, and that do not fall under any VAT exemptions based on domestic VAT law. In such circumstances under the law, the Russian buyer shall act as a tax agent for Russian VAT purposes by withholding Russian VAT at the rate of 18/118 from payments to the foreign supplier and remit such VAT withheld to the Russian budget. The VAT withheld may be recovered by Russian payers in accordance with the standard input VAT recovery rules as provided by law.

Input VAT recovery

Taxpayers are usually eligible to recover input VAT associated with the purchase of goods, work, services, or property rights, provided that they adhere to the set of rules established by VAT legislation. Input VAT can potentially be recovered by the taxpayer in the following cases:

- VAT related to goods, services, or work acquired for the purpose of conducting VATable transactions.
- Input VAT related to advance payments remitted to Russian suppliers of goods (work, services), provided that such acquired goods (work, services) are for use in VATable activities. Please note that taxpayers are entitled (rather than obligated) to apply this rule, and they may choose whether or not to exercise this right.

Effective 1 January 2018, a tax-free system is established in Russia. Foreign individuals are entitled to refund VAT paid upon retail purchase of goods. The refund is available if the amount of purchase is higher than RUB 10,000 and the location where the goods were purchased is included in the special list established by the government.

VAT compliance requirements

Each taxpayer performing VATable supplies of goods, work, services, or property rights must issue VAT invoices and provide them to customers. A taxpayer supplying VATable goods, work, or services to a customer that is not a VAT payer may opt not to issue a VAT invoice if agreed in writing with the customer. VAT invoices must be issued within five days after the supply has occurred. The VAT invoice is a standard form that is established by the government. Compliance with invoicing requirements is crucial for the buyer's ability to recover input VAT.

Incoming and outgoing VAT invoices should usually be registered by taxpayers in special purchases and sales VAT ledgers.

VAT returns must be submitted electronically to the tax authorities on a quarterly basis. VAT must be paid after the end of each quarter in three instalments, no later than the 25th day of each of the three consecutive months following the quarter, except for remittal of VAT withheld by Russian buyers under the reverse-charge mechanism, which is to be remitted on the date of the external payment.

Import VAT

Import VAT is payable to customs upon importation of goods. The tax base for import VAT is generally the customs value of the imported goods, including excise duties. Either the 18% or 10% VAT rate may apply upon import of goods in Russia, depending on the specifics of the goods. Import VAT may generally be claimed for recovery by the importer, provided that the established requirements for such recovery are met.

A limited scope of goods is eligible for exemption from import VAT. The list of such goods includes, for example, certain medical products and goods designated for diplomatic corps. Relief from import VAT is available on certain technological equipment (including their components and spare parts), analogues of which are not produced in Russia. The list of such equipment has been established by the Russian government.

Import duties

Goods imported into the Russian Federation are subject to customs duties. The rate depends on the type of asset and the country of its origin (generally from 0% to 20% of the customs value). There is special relief from customs duties for qualifying goods contributed to the charter capital of Russian companies with foreign investments.

Russia was admitted to the World Trade Organization (WTO) in 2012.

Russia is a member of the Eurasian Economic Union (EAEU) as well (together with Belarus, Kazakhstan, Armenia, and Kyrgyzstan). The Union has a single customs territory, and sales between the member states are exempt from clearance formalities. Members of the EAEU apply unified customs tariffs and customs valuation methodology.

Customs processing fee

Goods transported across the Russian Federation's customs border are subject to a customs processing fee with a flat rate. The fee depends on the customs value of transported goods. The fee is usually insignificant.

Excise duty

Excise taxes are generally paid by producers of excisable products on their domestic supplies. Excise taxes are also charged on imports of excisable goods. Exports of excisable products are generally exempt from excise taxes. Excisable goods include cars, tobacco, alcohol, and certain oil products. Special excise rates for each type of excisable goods are established in the RTC. The rates vary widely and are based on various factors.

Property tax

The maximum property tax rate is 2.2%, and regional legislative bodies have the right to reduce it. Property tax is charged on fixed assets only (including leased out property). Intangible assets, inventories, work-in-progress, and financial assets are not subject to property tax in Russia.

Property tax is not charged on:

- fixed assets included in the first or second depreciation groups (equipment used for up to three years), or
- movable property entered into a company's books as of 1 January 2013 as fixed assets, except for property obtained as a result of:
  - reorganisation or liquidation of legal entities, or
  - transfer or acquisition from related parties.

Starting from 2018, the exemption of movable property is available only in those Russian constituent regions where local legislation allows it. The maximum tax rate applicable to such property in 2018 is 1.1%.

From 2015 through 2034, a zero rate applies to trunk gas pipelines and structures constituting integral parts of such pipelines, as well as gas production project sites and helium production and storage facilities, subject to certain conditions (e.g. initial commissioning after 1 January 2015).

At the same time, the property of natural monopolies, which was previously exempted, is now taxed. The tax rates applicable under the laws of Russia's constituent regions to public railroads, trunk pipelines, power lines, and facilities constituting an integral technical component of the above objects cannot exceed 1.9% in 2018.

In most cases, the average book value of fixed assets is taxed.

Certain real estate properties are taxed based on their cadastral value (which is close to their market value), namely:

- Administrative and business centres.
- Shopping centres and premises therein.
- Offices, retail outlets, public eateries, and consumer facilities.
- Immovable property of foreign entities with no PE in Russia or not related to their operations through a PE in Russia.

The tax rate for such properties may not exceed 2%.

Actual tax rates and special rules for determining the taxable base for certain properties are currently set by individual constituent regions. According to the law of the City of Moscow, the tax rates on such property equal 1.5% in 2018.

Transfer taxes

There are no transfer taxes in Russia.

Transport tax

Transport tax is imposed on certain types of land, water, and air transport registered in Russia. Fixed rates apply (per unit of horsepower, gross tonnage, or unit of transport), which may differ based on engine capacity, gross tonnage, and type of transport. The actual rates in Russia's regions may be subject to a maximum ten-fold increase/reduction by the legislative bodies of individual Russian constituent regions. Reporting and payment rules have been established by regional legislative authorities.

A multiplier (up to three) depends on the age and cost of a car. For example, in the City of Moscow, the tax may be as high as RUB 200,000 per year for the most high-end class of vehicle.

Payroll taxes

There are no payroll taxes in addition to social contributions (*see below*) that an employer is responsible for.

Social contributions

The annual salaries of all employees are taxed under the following rules in 2018:

- Contributions to the Social Insurance Fund: Only the first RUB 815,000 of salary is taxed (at a rate of 2.9%).
- Contributions to the Pension Fund: The first RUB 1,021,000 is taxed at 22%, and the excess is taxed at 10%.
- Contributions to the Medical Insurance Fund: A 5.1% rate applies to the total salary.

Remuneration of foreign nationals temporarily staying in Russia are covered by (i) pension insurance contributions at a rate of 22% within the threshold of RUB 1,021,000 and a 10% top-up charge on remuneration paid in excess of the threshold and (ii) social insurance contributions at a rate of 1.8% within the threshold of RUB 815,000. The only exception made is for highly qualified specialists who hold a relevant work permit.

Mineral Resources Extraction Tax (MRET)

The MRET calculation depends on the type of mineral resource.

The MRET for coal, oil, gas, and gas condensate is calculated using the extracted volume of the relevant resource. The tax rate is established as a fixed rate multiplied by various coefficients linked to world prices and field characteristics. A zero MRET rate applies to oil extracted from greenfields in certain regions of Russia (e.g. Eastern Siberia, internal and territorial waters in the northern polar zone, the Azov and Caspian Seas, and the Nenets and Yamal regions) during their initial production stage.

The MRET on other natural resources depends on the value of the resources extracted. The tax rate varies from 3.8% to 8%. For instance, 3.8% for potassium salt, 4.8% for ferrous metals, 6% for products containing gold, and 8% for non-ferrous metals and diamonds.

Reduced MRET rates apply to investors in Russia's Far East (*see Regional incentives in the Tax credits and incentives section for more details*).

Environmental levy

An environmental fee must be paid by manufacturers and importers of goods to be disposed of after they are no longer fit for use or consumption because of wear and tear, broken down by certain groups of goods. These include paper and paper products, rubber and plastic products, textile and leather, metals, and electronics.

It should be noted that the fee is not technically a tax, and is established by a special law that is not part of the RTC. It is levied on entities operating in specific industries whose products are determined to have an environmental impact that warrants compensation.

The fee is calculated by multiplying three values: (mass/quantity of goods subject to utilisation [or mass of packaging]) * (levy rate) * (utilisation standard in relative units).

The following groups of goods are subject to the highest environmental fee amounts in 2018: rechargeable batteries, computer hardware, consumer electronics, and some types of industrial equipment.

Trade levy

Regional authorities may introduce a trade levy in their respective municipalities (or federal cities). It is to be applied towards assets used in retail and wholesale trade.

To date, the levy has only been enacted by Moscow.

Branch income

FLEs pay tax on profits attributable to a PE. The profits of an FLE's PE are calculated primarily on the same basis as Russian legal entities, including the composition of tax-deductible expenses. Although the RTC does not specifically mention the deductibility of expenses incurred outside of Russia by a foreign corporate head office with respect to its PE in Russia (including a reasonable allocation of administration costs), most double taxation treaties (DTTs) provide for such an option.

Russian tax law has recently been amended to include a special provision on the taxable income of PEs. When determining the taxable income of a PE in Russia, its functions, assets, and economic and commercial risks should be taken into account. This provision does not contain any guidance on specific transfer pricing methods that taxpayers should follow. In addition, court practice regarding this approach has not yet been developed.

If an FLE conducts free-of-charge preparatory and/or auxiliary services for the benefit of third parties, then a PE would be considered to have been formed, and the tax base of such a PE would be calculated as 20% of its expenses related to such activities.

FLEs operating in Russia through a PE must follow the filing and payment schedules established for Russian legal entities. Although they do not make monthly advance payments, they should pay CIT on a quarterly and annual basis.

Income determination

The accounting period in Russia is the calendar year. Different periods are not permitted. The taxable base is calculated on an accrual basis (only small-scale taxpayers are allowed to use a cash basis).

Taxable income is to be calculated following the rules and principles established in the RTC. Taxpayers must maintain tax accounting registers. Statutory accounts may be used for computing tax items for which accounting methods are the same. In practice, most taxpayers use statutory accounts as a basis and apply adjustments so as to arrive at their taxable income.

Inventory valuation

Inventory can be valued using one of the following methods: first in first out (FIFO), average cost, and individual unit cost.

Capital gains

Capital gains are subject to the same 20% CIT rate and are added to ordinary income in order to arrive at the taxable income.

There are two tax baskets for taxpayers performing operations with securities and derivatives: (i) general and (ii) results from operations with non-listed securities and non-listed derivatives. A loss on the second basket cannot be offset with profits on the first basket (however, the opposite offset is possible). It is worth noting that prices charged in transactions with securities and derivatives should be compared with the market price only if a transaction is controlled under transfer pricing rules.

Gains from the sale of fixed assets and other property are equal to the difference between the sale price and their net book value for tax purposes. Losses resulting from the sale of fixed assets should be deducted in equal monthly instalments during the period, defined as the difference between their normative useful life and the actual time of use.

A significant exemption is available for capital gains from the sale or other disposal (including redemption) of shares in Russian entities (interests in Russian entities' charter capital). One of the following conditions must be met in order to apply the 0% tax rate:

1. The shares have been non-listed securities over the entire period of the taxpayer's ownership.
2. The shares are listed securities, and the company issuing shares has been active in the high-tech/innovation sector of the economy over the entire period of the taxpayer's ownership.
3. As of the date of acquisition by the taxpayer, the shares qualified as non-listed securities and, as of the date of their sale by this taxpayer or of another disposal (including redemption) by this taxpayer, they are listed securities in the high-tech/innovative sector of the economy.
4. Real estate in Russia accounts for less than 50% (directly or indirectly) of the total assets of the company issuing shares.

The benefit is available provided that shares have been continuously held by a taxpayer for more than five years for bullets 1 and 4 and more than one year for bullets 2 and 3. One more criteria applies to bullets 1 and 4: shares have to be acquired by a taxpayer after 1 January 2011.

Dividend income

Dividends earned by Russian legal entities from Russian legal entities or FLEs are taxed in Russia at a 13% flat rate.

Dividends earned from 'strategic investments' are exempt from Russian income tax. An investment is considered strategic when:

- the owner (recipient of dividends) owns at least 50% of the capital of the payer of dividends or owns depository receipts entitling it to receive at least 50% of the total amount of dividends paid out, and
- the shares or depository receipts have been owned for at least 365 calendar days on the date the dividends are declared.

Dividends from companies domiciled in offshore zones with preferential tax regimes are not eligible for this tax exemption. The Ministry of Finance maintains a list of offshore zones.

Tax on dividends from abroad withheld in the source country may be credited against Russian tax.

The standard 15% tax rate is applicable to dividends paid by Russian legal entities to FLEs. The tax should be withheld by the Russian legal entity paying dividends. The tax may be reduced based on a relevant DTT, usually to 10% or 5% (*see the Withholding taxes section for more details*).

Interest income

Interest income is taxed on an accrual basis. A standard CIT rate of 20% is applied to interest income, except for interest on government and municipal securities, which are taxed at 0%, 9%, or 15%, depending on the type of security.

The WHT rate on interest income paid abroad equals 20% and may be reduced (typically to zero) under a relevant DTT.

The level of interest income recognised for tax purposes may be subject to control (*see Interest expense in the Deductions section for more details*).

Royalty income

There is no separate tax on royalty income. A standard CIT rate of 20% applies.

Exchange gains and losses

Foreign exchange gains and losses are recognised for tax purposes on an accrual basis only.

Foreign income

Russian legal entities pay tax on their worldwide income. Credit relief is available for foreign taxes paid up to the amount of the Russian tax liability that would have been due on the same amount under Russian rules.

Current tax legislation does not contain provisions that allow tax deferral with respect to foreign income.

Deductions

Expenses are deducted on an accrual basis. The main criteria for deductibility of expenses is that the expense is properly documented, aimed at generating income, and not specified in the RTC as non-deductible for tax purposes.

Depreciation and amortisation

Two methods of depreciation are allowed: the straight-line method and the declining-balance method. The useful lifespans of assets for tax purposes are established in the Classification of Fixed Assets, which was approved by the Russian government, for example:

Fixed asset	Useful life (years)
Personal computer	2 to 3
Automobile	3 to 5
Truck (capacity above five tonnes)	7 to 10
Aircraft	10 to 15
Blast furnace	20 to 25

Accelerated depreciation is permitted in respect to some types of property (a special ratio of up to three may be applied). It is prohibited to apply several special coefficients to a normal rate of depreciation.

An upfront premium is allowed, which means that a taxpayer has the right to deduct 10% (or 30% for certain categories of fixed assets) of the cost of fixed assets purchased (or built) in the month when the depreciation started. The balance is depreciated over the useful life of the asset. A premium must be recaptured if a relevant asset is sold within five years of its acquisition (the requirement to recapture has not applied to sales to unrelated parties since 2013).

Intangible assets are amortised over their useful life, or over ten years (two years for certain types of intangible assets) if their useful life cannot be determined.

Starting from 2018, a new tax benefit stimulating the renewal of fixed assets applies. Taxpayers will have a choice to use depreciation or to deduct the cost of investment (cost of fixed assets acquired) directly from CIT. The choice is available in constituent regions where an appropriate law is adopted. Up to 90% of expenses can be deducted from the regional CIT and up to 10% from the federal CIT. Considering this, the amount of regional CIT must be at least 5% of the tax base before applying the deduction. The amount of federal CIT may be reduced to zero. The Russian regions may set a cap on the amount of the deduction. If the amount of investments exceeds the set cap, it may be carried forward for unlimited number of years. The deduction is applicable only to newly commissioned (or modernised) assets with a useful life of 3 to 20 years (e.g. buildings, machinery, transport). Only a few Russian regions have introduced the benefit, as it is associated with a temporary decrease in tax collection. There is no information as to whether the regime will be introduced in Moscow and St. Petersburg.

Goodwill

Under Russian tax law, a mark-up (the difference between the acquisition value and net assets of the business [property complex] purchased) should be recognised as goodwill for tax purposes and may be amortised by a buyer over five years. However, this tax regime often does not apply since a business (subject of a deal) needs to be registered as a property complex with the government authorities. However, sellers almost never do this.

Start-up expenses

Russian tax law does not contain specific provisions on the deductibility of start-up expenses. In some cases, they may not be deducted by either a parent company or a subsidiary for tax purposes.

Interest expenses

The tax authorities can audit interest income and expenses only for transactions that are deemed as controlled under Russian transfer pricing rules (this means transactions with related parties in most cases) and only in accordance with these rules.

The following table shows how the market corridors (safe harbours) are applied to interest accrued:

Debt currency	Type of loan	Safe harbour rates
Russian rubles (RUB)	Ruble-denominated loans between Russian entities	75% to 125% of the Central Bank of Russia (CBR) key rate
	Other ruble-denominated loans	75% to 125% of the CBR key rate
Euros (EUR)	Foreign currency-denominated loans	EURIBOR +4% to EURIBOR +7%
Chinese renminbi (CNY)		SHIBOR +4% to SHIBOR +7%
British pounds (GBP)		LIBOR in GBP +4% to LIBOR in GBP +7%
Swiss francs (CHF) or Japanese yen (JPY)		LIBOR in relevant currency +2% to LIBOR in relevant currency +5%
Other		LIBOR in United States dollars (USD) +4% to LIBOR in USD +7%

The CBR's key rate has been 7.25% since 26 March 2018.

Free-of-charge loans between Russian related parties are not controlled under transfer pricing rules.

Bad debt

Losses in the form of bad debts written off are usually deductible. Companies may create a bad debt provision. The method of accrual for the provision for tax purposes may differ from that in financial accounting, as it is based only on the overdue payment period (i.e. if the delay exceeds 90 days, the full amount of the account receivable is included in the reserve).

A tax deductible bad debt provision can be created only to the extent of the excess of amounts receivable over amounts payable (if any) to the same counterparty.

Charitable contributions

Russian tax law does not provide any benefits with respect to charitable contributions. Such expenses are not deductible for tax purposes.

Research and development (R&D) expenses

R&D expenses (including R&D with a negative result) are deductible within one year after completion. Certain R&D expenses may be deducted using a coefficient of 1.5. The list of R&D categories is determined by the Russian government. A provision for future R&D expenses may be accrued for tax purposes.

Insurance premiums

Expenses related to all types of obligatory insurance are deductible and subject to government tariff limitations, wherever established. Voluntary insurance expenses are deductible to the extent that they relate to the insurance of damage and losses related to certain classes of assets, and the insurance of construction activity risks. Contract liability insurance expenses are deductible to the extent that such insurance is required by an international treaty to which Russia is a party or a generally accepted international trade custom.

Long-term life and pension insurance is deductible within a limit of 12% of the payroll fund. Voluntary medical insurance is deductible within a limit of 6% of the payroll fund.

Fines and penalties

Fines and penalties paid to contractors for violating contractual terms may be deducted for tax purposes.

Fines and penalties paid to a government budget are not deductible.

Taxes

Taxes paid by a taxpayer, as well as social contributions of employers, are deductible for tax purposes. Trade levies are credited against CIT.

Net operating and capital losses

The amount of a recognised loss of prior periods cannot exceed 50% of the current year tax base for CIT purposes. This limitation applies from 2017 through 2020. Starting from 2021, recognition of the entire amount of losses will be possible again.

At the same time, the limitation on carryforward of losses for a ten-year period has been abolished in principle (which means that losses incurred since 2007 may be carried forward until fully recognised).

Carryback of losses is not allowed.

Losses from the sale of fixed assets are recognised evenly during the remaining useful life.

Losses and income from different tax baskets are determined separately (*see Capital gains in the Income determination section for more details*).

Payments to foreign affiliates

There are no special tax provisions with respect to the deductibility of payments to foreign affiliates for services provided. They may be deducted in full if general deductibility criteria are met. Charges with respect to administrative support provided by foreign affiliates may be deductible. However, due care should be taken with regard to the documents used to support the nature and actual receipt of service.

Group taxation

Consolidated taxpayer regime

The consolidated taxpayer regime is available for large Russian corporate groups. A group can comprise two or more Russian entities in which the direct or indirect equity interest of one member in the charter/share capital of the other members equals at least 90%. In order to establish and apply this regime, all group members should meet the following requirements:

- At least RUB 10 billion in total CIT, VAT, excise tax, and MRET paid during the year preceding the year of tax registration of a new consolidated group.
- At least RUB 100 billion in sales proceeds and other income.
- Total value of assets of at least RUB 300 billion.

The advantages of applying this regime are as follows. First, transactions among group member entities are not controllable under Russian transfer pricing legislation (with one exception: transactions with mineral resources subject to MRET with a percentage rate are still subject to control). Second, for the purposes of calculating CIT, it is possible to consolidate group member entities' profits and losses.

A limitation on recognition of losses incurred by loss-making members of a consolidated group has been introduced. The limit is set as 50% of the given consolidated group's tax base for the current (tax) period.

Transfer pricing

Russian transfer pricing legislation is essentially based on Organisation for Economic Co-operation and Development (OECD) principles, with certain important deviations. This legislation establishes criteria for related parties and controlled transactions, transfer pricing methods for determining arm's-length prices/profitability, a list of permitted information sources, and compliance requirements.

According to the Base Erosion and Profit Shifting (BEPS) Action 13 report, Russia has implemented three-tier transfer pricing documentation. The requirement is applicable to financial years starting in 2017. Thus, MNCs with a total income (revenue) over RUB 50 billion under consolidated financial statements for the previous financial year must submit three-tier documentation to tax authorities, including Master file, Local file, and CbC report, as well as a notification on their membership in an MNC.

Advanced pricing agreements (APAs), including bilateral APAs, are available to Russian companies registered as 'largest' taxpayers.

Thin capitalisation

Under the RTC, interests are deductible if the debt does not exceed the amount of equity by three times (12.5 times for banks and leasing companies). If the debt amount exceeds this limit, excess interest will be reclassified for taxation purposes as dividends paid to foreign shareholders. Such dividends are not deductible for CIT purposes and are subject to WHT at the rate of 15% (treaty benefits may apply to reduce the rate).

Three types of Russian borrowers' debt are subject to thin capitalisation rules (with some exceptions provided):

- Debt to a foreign-related party if such a party has a direct or indirect equity interest in the borrower ('Party 1').
- Debt to a party related to Party 1 ('Party 2').
- Debt to another party if either Party 1 or Party 2 guaranteed the debt.

For debt from Party 1, the relationship would be defined based on the transfer pricing rules (in particular, the 25% participation criterion is applied).

The scope of thin capitalisation rules includes loans from foreign-related companies that do not hold a direct or indirect interest in Russian borrower (foreign 'sister' companies). At the same time, interest on loans from independent banks are exempted from the rules (provided the debt [both principal and interest] was not repaid by a foreign shareholder or its affiliates as a result of execution of a guarantee to the bank).

Among other features:

- Loans provided exclusively within Russia are not controlled (provided certain requirements are met).
- All listed liabilities of a taxpayer should be considered in aggregate (so the split of loans will not allow for avoiding the rules).
- A debt arising upon the issue of Eurobonds is not subject to the rules.

Controlled foreign companies (CFCs)

Under the Russian CFC rules, the retained earnings of a CFC that is controlled by a Russian tax resident are taxable in Russia on an annual basis (at the 20% CIT rate if the controlling person is a legal entity Russian tax resident, or at the 13% tax rate if the controlling person is an individual Russian tax resident).

Definition of a CFC

An entity is deemed to be a CFC (or other structure) if it meets the following criteria:

- it is not considered to be a Russian resident for tax purposes, but
- it is controlled by a Russian tax resident (control is determined based on ownership share and other metrics as outlined below).

A controlling person of a foreign company is defined as:

- a person whose direct and/or indirect participating interest in a foreign company (for individuals, jointly with their spouse and minor children) is more than 25%, or
- a person who directly or indirectly owns more than 10% of a foreign company if Russian tax residents (for individuals, jointly with their spouses and minor children) hold a direct or indirect interest(s) in the foreign company in excess of 50%.

The definition of 'control' is rather broad and thus could be construed to mean that control exists even when the percentage of a shareholding (interest) is less than the thresholds noted above. For example, the CFC Law stipulates that control may exist based on a management agreement or other means of control. Control may be established directly or indirectly. The existence of control should be determined on a case-by-case basis.

Available CFC exemptions

The CFC Law provides that profits earned by the following types of companies (or other structures) are exempt from CFC taxation in Russia:

- Non-profit organisations that do not distribute profits.
- Companies incorporated in the Eurasian Economic Union.
- Companies resident in jurisdictions that have a tax treaty with Russia and share tax-related information with Russia, and that pay tax at an effective rate equal to at least 75% of the Russian blended CIT rate.
- Companies that qualify as 'active companies' as defined by the CFC Law (i.e. companies deriving less than 20% of their total income from passive sources, such as dividends, royalties, interest, rental/lease income, capital gains, consulting fees, and certain other types of income).
- Active foreign holding companies or active foreign sub-holding companies (a share of direct participation of at least 75% during a period of at least 365 calendar days, where passive income [except active dividend income] does not exceed 5% of total income).
- Banks and insurance companies if they operate in a jurisdiction that has a tax treaty with Russia and shares tax-related information with Russia.
- Issuers of certain types of listed bonds or an organisation authorised to earn interest income payable on listed bonds, or an organisation that is the assignee of the rights and obligations related to listed bonds issued by another foreign company, subject to certain conditions (e.g. if the interest income earned should equal at least 90% of the company's total income for the period and these issuers operate in a jurisdiction that has a tax treaty with Russia and shares tax-related information with Russia).
- Companies participating in a PSA, concession agreement, or similar contract signed with the government of the relevant country, provided that the relevant income amounts to at least 90% of the company's total income for the period.
- Operators of new subsea fields (or direct shareholders of such operators).

In addition, *de minimis* exemptions from the CFC rules are available for profits below RUB 10 million for 2017 onwards.

These exemptions may be applied by Russian controlling parties when calculating their taxable base in Russia. If such an exemption is applicable, then a CFC's profits should not be included in the taxable base of its controlling party in Russia.

Calculating taxable profits

The taxable profits of a CFC are calculated using one of the following two methods:

- If the CFC is incorporated in a jurisdiction that has a tax treaty with Russia and shares tax-related information with Russia, then its profits are calculated based on its financial statements prepared in accordance with the laws of its home jurisdiction (provided that the financial statements are subject to audit).
- Profits are calculated in accordance with the requirements of the RTC. This method is more burdensome and likely to result in a higher Russian tax bill in most cases, as the RTC imposes a number of strict conditions on the tax deductibility of expenses.

A CFC's taxable profits may be reduced by the amount of dividends paid out of such profits during the tax year in which they were generated (interim dividends) and the subsequent 12 months.

Losses incurred by a CFC may be carried forward without any time limitations (subject to certain restrictions). Losses incurred by a CFC before 1 January 2015 may be carried forward up to the amount of losses for the three financial years preceding 1 January 2015 and may be deducted from the CFC's profit.

Relief from foreign taxes

Foreign taxes paid on the profits of a CFC, either under Russian law or the laws of a foreign jurisdiction, may be offset against the Russian tax liabilities charged on the CFC's attributed profits.

Implications for affected entities

If none of the available exemptions may be applied, the CFC's chargeable profits must be apportioned among the relevant Russian controlling persons in proportion to their interest(s) in the CFC, and such persons should be taxed on their portion(s) at the applicable rate. However, the Russian CFC rules have no implications for the CFC itself.

Tax credits and incentives

At present, there are several types of incentives in Russia:

- Regional incentives granted by regional or local authorities with respect to taxes paid to their budgets.
- Special tax regimes in special economic zones (SEZs).
- Regional investment projects and special investment contracts.
- Advanced Development Zones (ADZs).
- The free port of Vladivostok.
- Incentives related to certain activities (e.g. R&D and information technology [IT] related activities).
- Incentives related to specific projects (e.g. Skolkovo, 2018 FIFA World Cup).

The incentives are briefly described below.

Also note that Russian tax law provides for special tax regimes to support small and medium-sized enterprises (SMEs). These include unified and simplified tax regimes, as well as a unified agricultural tax.

Regional incentives

Many industrial regions of Russia offer numerous tax and non-tax incentives and benefits to investors.

Regional incentives in the form of reduced tax rates (primarily the given region's portion of CIT, property tax, and transport tax) are granted to certain classes of taxpayers, typically large investors or entities operating in specific industries. Local land tax incentives are frequently available for such investors as well. The size of an entry investment is usually in the range of around RUB 50 million to RUB 150 million. Some regions require a lesser amount, and some do not require any minimal amount at all (it is subject to negotiation).

There are also several notable non-tax incentives, including the allocation of budget subsidies, partial compensation of capital expenditures, provision of guarantees to banks, simplified access to infrastructure facilities, lower rental charges, and administrative and legal support, among others.

Special economic zones (SEZs)

The following types of SEZs have been established in Russia:

- Industrial zones.
- Technical research and implementation zones for scientific projects.
- Tourism and recreation zones for the development and effective use of Russia's wealth of tourist attractions.
- Port zones.

The minimum amount of investment to be eligible for such incentives are:

- RUB 120 million. The investment of RUB 40 million should be made within the first three years from the date of obtaining resident status for residents of industrial zones.
- RUB 400 million within three years from the date of obtaining resident status in a port zone in cases of port facilities construction (RUB 120 million in case of reconstruction).

Moreover, most regions provide their own incentives with respect to CIT and transport tax.

In addition, reduced social contribution rates are available for residents of industrial zones if they are engaged in R&D.

Residents of SEZs may also enjoy free customs zones.

Advanced Development Zones (ADZs)

ADZs have been initially established to develop the Russian Far East. Currently, ADZs are expanded to some other Russian regions such as ADZs in Republic Komi, Smolensk region, etc. ADZs offer special terms for companies operating in various industries (e.g. agriculture, textiles, chemicals, pharmaceuticals, furniture, telecommunications, education, science and technology, etc.), including CIT and property tax incentives, free customs zones, project financing, and simplified rules for hiring foreign employees. In particular, residents of ADZs are provided with the following tax incentives:

- Zero rate on the federal portion of CIT for a five-year period.
- Reduced regional portion of CIT (not more than 5% during the first five years of profitable sales and at least 10% during the subsequent five years). Specific rates are established by regional law.
- Reduced social contributions (7.6% instead of the standard 30%) during a ten-year period.

Free port Vladivostok

Residents of the port enjoy the following tax incentives:

- Zero rate on the federal portion of CIT for a five-year period.
- Reduced regional portion of CIT (not more than 5% during the first five years of profitable sales and at least 10% during the subsequent five years). Specific rates are established by regional law.

- Reduced social contributions (7.6% instead of the standard 30%) during a ten-year period.

Activities incentives

The following 'activities' incentives are available to taxpayers in Russia:

- Reduced CIT rate for IT companies in several regions.
- Certain R&D services are exempt from VAT.
- Certain R&D service-related expenses, as listed by the government, are deductible using a coefficient of 1.5.
- Fixed assets used in science and technology may be depreciated with an accelerated coefficient of up to 3.
- Reduced rates for contribution payments to social funds are established for IT companies.

Special project incentives

Participants in the Skolkovo Innovation Centre enjoy a number of benefits, the main ones of which are: exemption from CIT and property tax, as well as from VAT liability, and reduced rates for mandatory social fund contributions.

The same approach is applicable to the *Fédération Internationale de Football Association* (FIFA) and its contractors.

Regional investment projects and special investment contracts

Incentives related to specific projects are not limited to Skolkovo and the 2018 FIFA World Cup. In addition to these projects, there are two types of contracts that may be concluded directly with the Russian Federation: a special investment contract and a regional investment project. Investors who have concluded such contracts may enjoy a reduced CIT rate and a number of non-tax incentives, including privileges regarding rental payment for land plots, 'grandfather' clauses, etc.

Foreign tax credit

Credit relief is available for foreign taxes paid up to the amount of the Russian tax liability that would have been due on the same amount under Russian rules.

Withholding taxes

Under the general provisions of the RTC, income earned by an FLE and not attributed to a PE in Russia is subject to WHT in Russia (to be withheld at source). WHT rates are as follows:

- 15% on dividends and income from participation in Russian enterprises with foreign investments.
- 10% on freight income.
- 20% on certain other income from Russian sources, including royalties and interest.
- 20% of revenue or 20% of the margin on capital gains (from the sale of immovable property in Russia or non-listed shares in Russian subsidiaries where the immovable property in Russia accounts for more than 50% of assets).

Taxation of margins (rather than gross income received from the types of sales listed above) may be applied only if expenses are properly documented.

Income of foreign organisations (not performing activities in Russia through a PE) from the sale of certain listed securities of Russian entities (and their derivatives) is not regarded as income derived from sources in Russia subject to WHT.

The list of exempt income (not subject to WHT) also includes: (i) interest payments on Russian government securities; (ii) interest payments on tradable bonds, issued in accordance with the laws of foreign countries; and (iii) payments made by Russian companies to finance coupons on Eurobonds issued by special purpose vehicles (SPVs) incorporated outside of Russia.

Tax should be withheld by the tax agent and paid to the Russian budget. WHT rates may be reduced under a relevant DTT, provisions of which may be applied based on confirmation of tax residency, which is to be provided by a foreign company to the Russian tax agent prior to the payment date (no advance permission from the Russian tax authorities is required) and also as long as general conditions are fulfilled (proof of beneficial ownership, etc.).

The Russian tax authorities recognise the terms of treaties concluded by the Union of Soviet Socialist Republics (USSR) until they are renegotiated by the Russian government. Furthermore, the list of effective tax treaties is continuously updated.

Concept of 'beneficial ownership'

The concept of the actual owner of income (i.e. the 'beneficial owner') was introduced into Russian tax legislation by the so-called "Deoffshorisation" Law. It determines the ability to apply lower tax rates under a DTT.

There is not any test on beneficial ownership in the Russian tax legislation, which means that Russian tax agents cannot be entirely comfortable applying reduced tax rates on income paid abroad. In making any payments, they need to consider the risk of additional tax and penalties to be paid at their own expense.

According to the law, a tax agent has to request confirmation that a foreign entity is a beneficial owner of income. If the actual beneficial owner is known, the tax agent may apply the 'look through' approach (to use a treaty with the country where this beneficial owner resides).

If the beneficial owner is a Russian tax resident, the income paid is taxed under the RTC rules (note that a zero tax rate on dividends applies under special criteria).

Treaty rates

The list below indicates the WHT rates mentioned in treaties.

	WHT (%)			
Recipient	**Dividends**	**Interest (1)**	**Royalties**	**Construction site duration before creation of PE (months)**
Non-treaty	15	20	20	
Treaty:				
Albania/Russia	10	10	10	12
Algeria/Russia	5 (2)/15	0/15	15	6 months and an aggregated period of more than 3 months in any 12-month period for furnishing services
Argentina/Russia	10 (2)/15	0/15	15	6
Armenia/Russia	5 (2)/10	0/10	0	12

Recipient	WHT (%) Dividends	Interest (1)	Royalties	Construction site duration before creation of PE (months)
Australia/Russia	5 (3)/15	10	10	12
Austria/Russia	5 (4)/15	0	0	12
Azerbaijan/Russia	10	0/10	10	12
Belarus/Russia	15	0/10	10	No special provisions in the relevant DTT; local tax legislation provisions should apply
Belgium/Russia	10	0/10	0	12
Botswana/Russia	5 (2)/10	0/10	10	6
Brazil/Russia	10 (5)/15	0/15	15	9
Bulgaria/Russia	15	0/15	15	12
Canada/Russia	10 (6)/15	0/10	0 (7)/10	12
Chile/Russia	5 (2)/10	15	5 (8)/10	6
China/Russia	5 (9)/10	0	6	18
Croatia/Russia	5 (10)/10	10	10	12
Cuba/Russia	5 (11)/15	0/10	0 (12)/5	12
Cyprus/Russia	5 (13)/10	0	0	12
Czech Republic/ Russia	10	0	10	12 months and an aggregated period of more than 6 months in any 12-month period for furnishing services
Denmark/Russia	10	0	0	12 months and an aggregated period of more than 365 days in any 18-month period for a drilling rig
Egypt/Russia	10	0/15	15	6 months and an aggregated period of more than 6 months in any 12-month period for furnishing services
Finland/Russia	5 (14)/12	0	0	12 months and an 18-month period for particular types of construction work
France/Russia	5 (15)/10 (16)/15	0	0	12
Germany/Russia	5 (17)/15	0	0	12
Greece/Russia	5 (11)/10	7	7	9
Hong Kong/Russia	0 (18)/5 (19)/10	0	3	12
Hungary/Russia	10	0	0	12
Iceland/Russia	5 (20)/15	0	0	12
India/Russia	10	0/10	10	12 (may be extended on agreement with the competent authorities)
Indonesia/Russia	15	0/15	15	3

Russian Federation

Recipient	WHT (%) Dividends	Interest (1)	Royalties	Construction site duration before creation of PE (months)
Iran/Russia	5 (11)/10	0/7.5	5	12
Ireland/Russia	10	0	0	12
Israel/Russia	10	0/10	10	12
Italy/Russia	5 (21)/10	10	0	12
Japan/Russia (22)	5 (23)/10/15 (24)	0/10 (25)	0	12
Kazakhstan/Russia	10	0/10	10	12
North Korea/Russia	10	0	0	12 months and an aggregated period of more than 6 months in any 12-month period for furnishing services
South Korea/Russia	5 (26)/10	0	5	12 (may be extended up to 24 months upon agreement with the competent authorities)
Kuwait/Russia	0 (18)/5	0	10	6 months and an aggregated period of more than 3 months in any 12-month period for furnishing services
Kyrgyzstan/Russia	10	0/10	10	12
Latvia/Russia	5 (27)/10	0/5 (28)/10	5	9
Lebanon/Russia	10	0/5	5	12
Lithuania/Russia	5 (20)/10	0/10	5 (8)/10	9
Luxembourg/Russia	5 (29)/15	0	0	12
Macedonia/Russia	10	10	10	12
Malaysia/USSR	15	0/15	10 (30)/15 (31)	12 months and more than a 6-month period for installation or assembly projects
Mali/Russia	10 (32)/15	0/15	0	No special provisions in the relevant DTT; local tax legislation provisions should apply
Malta/Russia	5 (33)/10	5	5	12
Mexico/Russia	10	0/10	10	6
Moldova/Russia	10	0	10	12
Mongolia/Russia	10	0/10	rates in accordance with local legislation	24
Montenegro/Russia	5 (20)/15	10	10	18
Morocco/Russia	5 (34)/10	0/10	10	8
Namibia/Russia	5 (35)/10	0/10	5	9 months and more than a 6-month period for furnishing services and installation projects
Netherlands/Russia	5 (36)/15	0	0	12

Recipient	WHT (%) Dividends	Interest (1)	Royalties	Construction site duration before creation of PE (months)
New Zealand/Russia	15	10	10	12
Norway/Russia	10	0/10	0	12
Philippines/Russia	15	0/15	15	183 days and an aggregate period of more than 183 days in any 12-month period for furnishing services
Poland/Russia	10	0/10	10	12 (may be extended up to 24 months upon agreement with the competent authorities)
Portugal/Russia	10 (37)/15	0/10	10	12
Qatar/Russia	5	0/5	0	6
Romania/Russia	15	0/15	10	12
Saudi Arabia/Russia	0 (18)/5	0/5	10	6 months and an aggregated period of more than 6 months in any 12-month period for furnishing services
Serbia/Russia	5 (20)/15	10	10	18
Singapore/Russia	0 (18)/5 (38)/10	0	5	12
Slovakia/Russia	10	0	10	12
Slovenia/Russia	10	10	10	12
South Africa/Russia	10 (39)/15	0/10	0	12
Spain/Russia	5 (40)/10 (41) /15	0/5	5	12
Sri Lanka/Russia	10 (11)/15	0/10	10	6 months and an aggregated period of more than 183 days in any 12-month period for furnishing services
Sweden/Russia	5 (42)/15	0	0	12
Switzerland/Russia	0 (18)/5 (43)/15	0	0	12
Syria/Russia	15	0/10	4.5 (44) /13.5 (45)/18 (46)	6
Tajikistan/Russia	5 (2)/10	0/10	0	24 (may be extended on agreement with the competent authorities)
Thailand/Russia	15	0/10	15	6 months and an aggregated period of more than 3 months in any 12-month period for furnishing services
Turkey/Russia	10	0/10	10	18
Turkmenistan/Russia	10	5	5	12
Ukraine/Russia	5 (47)/15	0/10	10	12

Russian Federation

Recipient	WHT (%) Dividends	Interest (1)	Royalties	Construction site duration before creation of PE (months)
United Kingdom/ Russia	10	0	0	12
United States/Russia	5 (6)/10	0	0	18
Uzbekistan/Russia	10	0/10	0	12
Venezuela/Russia	10 (4)/15	0/5 (48)/10	10 (49)/15	9
Vietnam/Russia	10 (50)/15	10	15	6 months and more than a 12-month period for furnishing services

Information is provided for reference purposes. Please review the relevant DTT for full information.

Notes

1. In most cases, a 0% tax rate applies to interest payments to the governments of contracting states and to payments guaranteed by the government.
2. If the beneficial owner of the dividends directly holds at least 25% of the capital of the company paying the dividends.
3. If the following conditions are met:
   - Dividends are paid to a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
   - The resident of the other contracting state has invested a minimum of 700,000 Australian dollars (AUD), or an equivalent amount in Russian rubles, in the capital of that company.
   - If the dividends are paid by a company that is resident in Russia, the dividends are exempt from Australian tax.
4. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends and the participation exceeds USD 100,000 or an equivalent amount in any other currency.
5. If the beneficial owner directly holds at least 20% of the total capital of the company paying the dividends.
6. If the beneficial owner of the dividends is a company that owns at least 10% of the voting stock (or in the case of Russia, if there is no voting stock, at least 10% of the statutory capital) of the company paying the dividends.
7. 0% WHT is applied to the following types of Royalties:
   - Royalties for the production or reproduction of any literary, dramatic, musical, or other artistic work (but not including royalties for motion picture films or works on film or videotape or other means of reproduction for use in connection with television broadcasting).
   - Royalties for the use of, or the right to use, computer software.
   - Royalties paid to an unrelated party for the use of, or the right to use, any patent or any information concerning industrial, commercial, or scientific experience.
8. For the use of any industrial, commercial, or scientific equipment.
9. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends and this holding amounts to at least EUR 80,000 or its equivalent in any other currency.
10. If the beneficial owner of the dividends is a company that directly holds at least 25% of the capital of the company paying the dividends (this share should be at least USD 100,000 or its equivalent in another currency).
11. If the beneficial owner of the dividends is a company (excluding partnerships) that directly holds at least 25% of the capital of the company paying the dividends.
12. Royalties paid for copyrights and other similar remuneration for the production of a literary, dramatic, musical, or artistic work.
13. If the beneficial owner of the dividends has directly invested in the capital of the company not less than EUR 100,000 or its equivalent in another currency.
14. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 30% of the capital of the company paying the dividends, and the foreign capital invested exceeds USD 100,000 or its equivalent in the national currencies of the contracting states at the moment when the dividends become due and payable.
15. If the following conditions are met:
    a. Where the beneficial owner of the dividends has invested in the company paying the dividends, irrespective of the form or the nature of such investments, a total value of at least 500,000 French francs (FF) or the equivalent in another currency; as the value of each investment is appreciated as of the date it is made.

b. Where that beneficial owner is a company that is liable to tax on profits under the general tax laws of the contracting state of which it is a resident and which is exempt from such tax in respect of such dividends.

16. If only one of the conditions of 15(a) or 15(b) are met.
17. If the beneficial owner of the dividends is a company that directly holds at least 10% of the basic or common stock of the company paying the dividends and such capital share amounts to at least EUR 80,000 or the equivalent value in rubles.
18. The 0% rate applies to income paid to governmental agencies or governmental financial institutions (to pension funds in case of Switzerland as well).
19. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 15% of the capital of the company paying the dividends.
20. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends and the foreign capital invested exceeds USD 100,000 or its equivalent in the national currency of the contracting state.
21. If the beneficial owner of the dividends is a company that directly holds at least 10% of the capital of the company paying the dividends (this share should be at least USD 100,000 or its equivalent in another currency).
22. The new treaty replaces the old treaty of 1986. We expect that the new treaty will be ratified in 2018, and it will take effect from 2019.
23. If the beneficial owner of the dividends is a company that has directly owned at least 15% of the voting power of the company paying the dividends for the period of 365 days ending on the date on which entitlement to the dividends is determined.
24. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, dividends derived by a resident of a contracting state from shares of a company or comparable interests, such as interests in a partnership, trust, or investment fund, may be taxed in the other contracting state according to the laws of that other contracting state if, at any time during the 365 days preceding the payment of the dividends, these shares of comparable interests derived at least 50% of their value directly or indirectly from immovable property referred to in Article 6 of this Convention and situated in that other contracting state. The tax so charged shall not exceed 15% of the gross amount of the dividends.
25. Notwithstanding the provisions of paragraph 1 of this Article, interest arising in a contracting state that is determined by reference to receipts, sales, income, profits, or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution, or similar payment made by the debtor or a related person, or any other interest similar to such interest arising in a contracting state, may be taxed in that contracting state according to the laws of that contracting state, but if the beneficial owner of the interest is a resident of the other contracting state, the tax so charged shall not exceed 10% of the gross amount of the interest.
26. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 30% of the capital of the company paying the dividends and invests not less than USD 100,000 or the equivalent in local currencies to the company paying the dividends.
27. If the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of a company paying dividends and the capital invested exceeds USD 75,000.
28. Applicable to interbank loans only.
29. If the beneficial owner of the dividends directly holds at least 10% of the capital in the company paying the dividends and the investment exceeds EUR 80,000 or its equivalent in rubles.
30. Any patent, trademark, design or model, plan, secret formula or process, or any copyright of scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
31. Cinematograph films or tapes for radio or television broadcasting, any copyright of literary or artistic work.
32. If the invested amount equals or exceeds FF 1 million.
33. 5% where the participation interest is at least 20% (if the owner is not a partnership) and the investment exceeds EUR 100,000; 10% in all other cases.
34. If the beneficial owner of the dividends has invested in the capital of the company paying dividends of more than USD 500,000.
35. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the share capital of the company paying the dividends and has directly invested in the equity share capital of that company not less than the equivalent of USD 100,000.
36. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends and has invested in it at least 75,000 European Currency Units (ECU) or its equivalent in the national currencies of the contracting states.
37. If the beneficial owner of the dividends is a company that, for an uninterrupted period of two years prior to the payment of the dividends, directly owned at least 25% of the capital of the company paying the dividends.
38. If the beneficial owner of the dividends is a company that directly holds at least 15% of the capital of the company paying the dividends.
39. If residents of the other contracting state hold at least 30% of the capital of the company paying the dividends and have directly invested in the equity share capital (authorised fund) of that company an amount of not less than USD 100,000 or its equivalent in the currency of the first state.
40. If the following conditions are met:

   a. The beneficial owner of the dividends is a company (other than a partnership) that has invested at least ECU 100,000 or its equivalent in any other currency in the capital of the company paying the dividends.
   b. Those dividends are exempt from tax in the other contracting state.
41. If only one of the conditions of 40(a) or 40(b) are met.
42. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 10% of the share capital of the company paying the dividends (except for investment fund paying the dividends) and such capital share amounts to at least EUR 80,000 or the equivalent value in any other currency at the moment of actual distribution of dividends.
43. If the beneficial owner of the dividends is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends and the foreign capital invested exceeds 200,000 Swiss francs (CHF) or its equivalent in any other currency at the moment when the dividends become due.
44. Cinematography films, programmes, and recordings for radio or television broadcasting.
45. Any copyright of literary, artistic, or scientific work.
46. Any patent, trademark, design or model, plan, secret formula or process, any computer software programme, or for information concerning industrial, commercial, or scientific experience.
47. If a resident of the other contracting state has invested in its joint-stock capital (registered fund) at least USD 50,000 or its equivalent in the national currencies of the contracting states.
48. In the case of banks.
49. In the case of fees for technical assistance.
50. If the residents of the other contracting state have directly invested in the equity share capital of that company not less than USD 10 million.

Tax administration

All taxpayers are required to obtain tax registration and be assigned a taxpayer identification number, irrespective of whether their activities are subject to Russian taxation.

Taxable period

The taxable period runs from 1 January to 31 December.

Tax returns

An annual CIT return must be filed by 28 March of the year following the end of the reporting year.

Payment of tax

Companies pay advance CIT payments on a monthly or quarterly basis. The final payment for the year is due by 28 March of the following year.

Tax audit process

Tax dispute resolution at the pre-trial (administrative) stage

Tax disputes happen quite frequently in Russia. Most corporate taxpayers have to go through the tax litigation process at least once while doing business in the country.

At present, if taxpayers seek to challenge decisions and other documents/actions (or failure to act) of the tax authorities in court, before going to court, they must first contest such decisions/actions with the relevant higher tax office.

In recent times, tax disputes have been increasingly resolved at the pre-trial (administrative, superior tax office) stage. However, taxpayers cannot formally negotiate tax audit results or enter into formal settlement agreements with the tax authorities at the pre-trial stage. So, in many cases, they still must litigate in order to uphold their rights.

Tax dispute resolution in court

Taxpayers can file claims against the tax authorities through *arbitrazh* courts (i.e. courts that review and resolve economic disputes mainly among legal entities/entrepreneurs or between legal entities/entrepreneurs and state authorities, including the tax authorities). Claims may be filed with a court within three months after a contested decision takes effect or within three months after a taxpayer discovers that its rights have been violated (provided that the taxpayer has already sought redress through the mandatory pre-trial stage mentioned above).

Courts of the first instance (first level) initially review disputes and issue decisions. Decisions of a first instance court can be appealed to appellate courts (second instance or level) and *cassational* courts (third instance or level). If litigation goes through all three instances (levels), the process usually takes up to a year.

Resolutions/decisions of courts at these three levels may be appealed to the Russian Federation Supreme Court (as a supervisory authority). However, in practice, very few such disputes are actually heard by the Supreme Court.

Statute of limitations

The statute of limitations is established for three years. For example, tax authorities may examine 2017, 2016, and 2015 CIT returns by conducting a site tax audit in 2018.

Topics of focus for tax authorities

The recent court practice demonstrates that tax authorities concentrate on (i) tax evasion schemes and relationships with one-day contractors, (ii) financing structures and thin capitalisation rules, and (iii) passive income (e.g. interests, dividends, royalties) paid abroad.

Other issues

Common Reporting Standard (CRS) in Russia

Russia adopted Common Reporting Standard (CRS) legislation at the end of 2017. It enables Russian tax authorities to obtain information on financial accounts held by Russian tax resident individuals and companies from the tax authorities of the partner countries. The list of such partner countries is available on the OECD website:

www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships

Russian tax authorities will provide similar information about foreign tax residents to partner countries. The exchange of information will occur annually. The first exchange is expected at the end of 2018.

Rwanda

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Significant developments

A new income tax law, Law no. 16/2018, was gazetted on 16 April 2018, repealing Law no. 16/2005 of 18/08/2005 on direct income tax and all prior legal provisions, including the Commissioner General's rules and Ministerial orders contrary to this law. In the new law, a number of amendments were made. The more significant updates to the law relate to taxation of capital gains derived from sale or transfer of shares, the base and tax point for withholding taxes (WHTs), transfer pricing requirements, and inclusion of more anti-avoidance provisions.

Taxes on corporate income

Rwanda operates both a source and residence-based taxation system. This means that any income that is deemed to be from sources within Rwanda will be liable to tax in Rwanda. In addition, resident entities are taxed on their worldwide income. However, where such income is taxed in another country, a tax credit is allowed, which does not exceed the tax that would have been payable on the same income in Rwanda.

Non-resident entities are taxed on income sourced in Rwanda through a permanent establishment (PE).

The standard corporate income tax (CIT) rate is 30%. However, micro-enterprise companies (with turnover of less than 12 million Rwanda francs [RWF] in a tax period) pay flat tax amounts, and small businesses (whose turnover is between RWF 12 million and RWF 20 million in a tax period) pay a lump sum tax at the rate of 3% of turnover.

Special CIT regimes

There are special CIT rates for certain industries or sectors of the economy.

Newly listed companies on capital markets are taxed as follows for a period of five years:

- If a company sells at least 20% of their shares to the public, the CIT rate is 28%.
- If a company sells at least 30% of their shares to the public, the CIT rate is 25%.
- If a company sells at least 40% of their shares to the public, the CIT rate is 20%.

Companies and cooperatives that carry out micro-finance activities, approved by competent authorities, pay CIT at the rate of 0% for a period of five years from the time of their approval.

Registered investors in priority sectors can enjoy reduced CIT rates and tax holidays where certain conditions and thresholds are fulfilled. *See the Tax credits and incentives section for more information*.

Local income taxes

Rwandan legislation does not provide for any provincial or local taxes on income.

Corporate residence

Rwanda incorporated companies or associations are treated as Rwanda resident entities. In addition, companies incorporated overseas are also treated as Rwandan resident companies if they have a place of effective management in Rwanda at any time during the tax period. The term 'effective management' is not defined in the tax law.

Rwandan government companies are also considered to be residents in Rwanda.

Permanent establishment (PE)

The definition of a PE for Rwanda is largely based on the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention definition. According to Rwandan tax law, a PE means a fixed place of business through which the business of a person is wholly or partially carried on.

For non-resident companies, CIT liability will arise if they have a PE in Rwanda through which a trade is carried on. The profits attributable to the PE will be taxed in Rwanda. However, there are no rules or guidance on how the PE's profit should be evaluated for Rwanda tax purposes. The general understanding is that entities are required to use transfer pricing methods to determine the level of profits that should be attributable to the PE based on the functions it performs.

In particular, the existence of the following triggers a PE:

- A place of management.
- A branch.
- A factory or workshop.
- A mine, quarry, or any other place for the exploitation of natural resources.
- A site set for construction, construction site, or a place where supervision or assembly works are carried out.
- A place of provision of services, including consulting services, carried on by a person, with the support of employees or other personnel, for more than 90 days in a 12-month period, either continuously or intermittently.

There are a number of specific exceptions from the definition of a PE. A person is deemed not to have a PE if that person:

a. uses facilities solely for the purpose of storage of goods or merchandise belonging to that person
b. maintains a stock of goods or merchandise belonging to that person solely for the purpose of storage
c. maintains a stock of goods or merchandise belonging to that person solely for the purpose of processing by another person
d. has a place of operation aimed purposely at purchasing goods or merchandise or at collecting information related to one's business, or

e. has a place of operation solely for the purpose of performing, within the context of one's activities, any other activities of a preparatory nature or intended to make them more effective.

Where a person, except an independent person (i.e. agent) concerned with (e) above, acts on behalf of another person (i.e. principal), and the agent has capacity to make contracts in the name of the principal, the principal is considered as owning a PE in respect of activities one's agent undertakes except if such activities of the agent are limited to those mentioned in (a) to (e) above.

However, a person is not considered as having a PE if one carries out activities through a broker, general commission agent, or any other private agent in accordance with procedures of the ordinary course of the activities of such an agent.

A company that controls or is controlled by another company does not, of itself, constitute either company to be a PE of the other.

Other taxes

Value-added tax (VAT)

VAT is levied on the supply of taxable goods and services in Rwanda as well as on the importation of taxable goods and services into Rwanda.

The threshold for VAT registration is taxable turnover of RWF 20 million in any relevant year or RWF 5 million in a calendar quarter.

The standard VAT rate is 18% and applies to goods and services that are neither exempt from VAT nor zero-rated.

Exports of goods and services are subject to VAT at 0%. Supplies to privileged persons, such as goods imported for official purposes of diplomatic missions, supplies made under special arrangements between the government of Rwanda and donors, and supplies or importation made under special technical aid agreements, are subject to VAT at 0%. Persons entitled to zero rating of goods or supplies received by them are required to pay VAT at the time of receiving the supply and then apply for a refund of the VAT paid.

Some supplies are exempt from VAT, the main categories being supply of water service, goods and services for health purposes, educational materials and services, transport services, books and newspapers, financial and insurance services, lending or leasing interests in land or building for residential purposes, funeral services, energy supplies, all unprocessed agricultural and livestock products, mobile handsets, and equipment for information, communication, and technology.

Suppliers who provide zero-rated services or goods are entitled to recover input VAT incurred in making the supply. This is unlike exempt supplies, where input VAT recovery is not allowed. Therefore, zero rating is preferable to exemption.

The VAT returns and relevant payment are due to the Rwanda Revenue Authority (RRA) on a monthly basis by the 15th day of the following month. However, taxpayers with annual turnover of RWF 200 million or below may elect to file VAT returns or make payments on a quarterly or monthly basis.

Rwanda

Customs duties

Rwanda is a member of the East African Community, which uses the East African Community Customs Act (EACMA) for levying import duty. The EACMA prescribes Common External Tariffs (CET) for goods originating outside the Customs Union. Goods are generally subject to import duty of 0% for raw materials and capital goods, 10% for intermediate goods, and 25% for finished goods.

Goods will only enjoy the preferential community tariffs if they meet the East African Community (EAC) Customs Union Rules of Origin.

Certain industries and items are also entitled to exemptions under the customs law (e.g. assemblers of bicycles and motor cycle kits, importers of gas cylinders, certain hotel equipment, solar equipment, and energy saving bulbs).

Enterprises established in Free Trade Zones are exempt from customs duty on machinery and inputs for exported products. There also exists an import duty remission scheme, where import duty may be remitted for raw materials used to manufacture goods for export. This is subject to a requirement for proof of export and execution of the bond.

All imported goods, except those listed as exempt, are also subject to the 1.5% Industrial Development Levy (IDL) and the 0.2% African Union Levy. Additionally, imported goods, regardless of whether they are exempted, are subject to a 0.2% Quality Inspection Fee (QIF). The levies are computed on the customs value of imported goods.

Excise taxes

Excise tax is imposed on the manufacturer or importation of certain commodities, mainly soft drinks, bottled water, cigarettes, alcohol, fuels, and lubricants.

The following rates apply in respect of products and services for which excise duty is applied:

- Juice from fruits: 5%.
- Soda and lemonade: 39%.
- Mineral water: 10%.
- Beer: 60%.
- Wine, brandies, liquors, and whisky: 70%.
- Cigarettes: 36% of retail price of a pack (of 20 rods) and RWF 30 per pack.
- Telephone communication: 10%.
- Premium (excluding benzene) fuel and gas oil: RWF 183/litre on premium fuel and RWF 150/litre on gas oil.
- Lubricants: 37%.
- Powdered milk: 10%.
- Vehicles with an engine capacity of above 2500cc: 15%.
- Vehicles with an engine capacity of between 1500cc and 2500cc: 10%.
- Vehicles with an engine capacity of less than 1500cc: 5%.

Property taxes/fixed asset tax

Local government levies fixed asset tax on:

- the market value of parcels of land

- the market value of buildings and all improvements thereto registered with the land registration centre and for which the owner has obtained a title deed from the time the building is inhabited or used for other activities
- the value of land exploited for quarry purposes, and
- the market value of usufruct with a title deed.

The tax rate is fixed at a thousandth (1/1000) of the taxable value per year. The tax payment must be paid not later than 31 March of the year.

Transfer taxes

There is a fixed fee of RWF 20,000 on transfer of property. However, no transfer of ownership of a fixed asset can be effected without a tax clearance certificate issued by the concerned decentralised entity.

Stamp taxes

There are no stamp duties in Rwanda.

Payroll taxes

Employers are required to withhold tax on payments to employees in respect of employment services that they have rendered. The tax is withheld through the pay-as-you-earn (PAYE) system. The tax deducted should be remitted to the RRA by the 15th day of the following month.

Social security contributions

All people working in Rwanda, both nationals and foreigners, are required to contribute to a national social security contribution fund managed by the Rwanda Social Security Board (RSSB). The employer is required to contribute 5% of the employee's gross salary to the scheme, while the employee's contribution is 3%.

Gross salary means total remuneration received by the employee, including allowances, bonuses, commissions, and all other cash benefits, as well as any fringe benefits, but excludes reimbursement of business expenses and transport allowances.

The social security contributions computed are required to be remitted to the RRA by the 15th day of the following month.

Maternity leave benefits scheme

The law governing maternity leave benefits requires all employers and employees to contribute towards a maternity fund, which is administered by the RSSB.

The law grants employed women full monthly salary for the entire 12 weeks duration of maternity leave. The main requirements affecting employers are summarised below:

- The employer is responsible for collecting and remitting the contributions to the RSSB.
- The total contribution for maternity leave benefits is 0.6% of the contribution base. The employer and the employee are each required to contribute 0.3%.
- The contribution base is the gross pay to the employee, including benefits in kind, but excluding termination benefits, retirement benefits, dismissal compensation, and any other allowances that have a compensatory character.
- The employer is required to declare and remit the collected contribution to the RSSB by 15th day of the month following the month to which the contribution relates.

Trading licence fee

Districts charge a trading licence fee, which is paid by any person who commences a profit-oriented activity in Rwanda. The tax year starts on 1 January, and the trading licence fee must be paid for a whole year. If such activity starts after January, the taxpayer must pay a trading licence fee equivalent to the remaining months, including the one in which the activities started.

The tax declaration is made not later than 31 March of the tax year. The trading licence fee is calculated on the basis of turnover, and the amount of the fee varies between RWF 60,000 (for turnover of less than RWF 40 million) and RWF 250,000 (for turnover of over RWF 150 million).

The turnover applied is as per the amount approved in the previous year by the RRA. Every year, not later than 31 January, the RRA submits the necessary data to the concerned decentralised entity.

There are also different trading licence fee rates for other small traders (not registered for VAT). These include vendors without shops, small-scale technicians who do not use machines, sewing machine operators, transporters of people and goods on motorcycles, non-VAT registered traders and technicians who use machines, all other vehicles besides bicycles, transport activities by motor boat, and other profit-oriented activities.

Branch income

The tax law does not prescribe special provisions for taxation of branches; consequently, tax rates on the profits of PEs are the same as for domestic corporations. PEs are subject to tax at a rate of 30% and treated as domestic companies.

A branch is considered a PE for the parent company; consequently, it is taxed on the income that is sourced from Rwanda only.

Income determination

Inventory valuation

Trading stock is valued at a lower of cost price or market price on the last day of the tax period. Work in progress is valued at cost.

Capital gains

Capital gains tax is charged on the direct or indirect sale or transfer of shares or debentures. The capital gains tax is charged at the rate of 5% of the capital gain. The capital gain on sale or transfer of shares is determined as the difference between the acquisition value of the shares and their selling or transfer price.

The capital gains tax is required to be withheld and accounted for by the company in which the share sale or share transfer transaction occurred.

The capital gains tax is required to be declared and paid within 15 days following the month in which the sale or transfer of shares occurred.

However, the following transactions are exempted from capital gains tax:

- Capital gains from the sale or transfer of shares on the capital market.
- Capital gains from the sale or transfer of units of collective investment schemes.
- Capital gains resulting from restructuring of companies in respect of the transferring company.

There is a general capital gains tax law in Rwanda that provides that capital gains arising from the sale of commercial immovable property are subject to tax at the rate of 30%. However, capital gains arising from secondary market transactions on listed securities are exempt from taxation.

In addition, a capital gain arising from a corporate restructuring is exempt from tax in respect of the transferring company.

Corporate restructuring is defined to include the following:

- a merger of two or more resident companies into a separate company
- the acquisition or a takeover of 50% or more of shares or voting rights by number or value in a resident company in exchange for shares of the purchasing company
- the acquisition of 50% or more of the assets and liabilities of a resident company by another resident company solely in exchange of shares in the purchasing company
- the acquisition of the entire company's assets so that its existence is replaced by the purchasing company, or
- splitting of a resident company into two or more resident companies.

Dividend income

Dividend income includes income from shares in any societies, other similar income that may be generated by all entities that pay CIT, as well as the outstanding balance after the taxation of income from the correction made by the tax administration in the transfer pricing.

Dividend income is subject to WHT at the flat rate of 15%. Where there is a double taxation agreement (DTA) between the recipient country and Rwanda, a lower rate as per the DTA will apply.

If dividend distribution has been subjected to WHT, this becomes the final tax. Consequently, dividends paid between resident companies and subjected to the WHT are not included in taxable income for CIT purposes.

Financial income

Financial income includes income from loans, income from deposits, and income from guarantees. It also includes income from government securities and bonds, as well as from negotiable securities issued by the government, securities issued by public and private companies, as well as income from cash negotiable securities.

Financial income is subject to WHT at the flat rate of 15%. Where there is a DTA between the recipient country and Rwanda, a lower rate as per the DTA will apply.

However, the following financial interests are not subject to the 15% WHT:

- Interests on deposits in financial institutions for at least a period of one year.
- Interests on loans granted by a foreign development financial institution exempted from income tax under applicable law in the country of origin.

- Interests paid by banks operating in Rwanda to banks or other foreign financial institutions.

Royalty income
Royalty income includes:

- all payments of any kind received as a prize for the use of, or the right to use, any copyright of literary, craftsmanship, or scientific work, including cinematograph films, films, or tapes used for radio or television broadcasting
- any payment received from using a trademark, design or model, computer application, and invention patent
- the price of using, or of the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific knowledge, and
- payments from use of natural resources.

Royalty income is subject to WHT at flat rate of 15%. Where there is a DTA between the recipient country and Rwanda, a lower rate as per the DTA will apply.

Rental income
Rental income includes all revenue derived from rent of machinery and other equipment, including agriculture and livestock equipment, in Rwanda. This is reduced by 10% of gross revenue deemed expenses, interest paid on loans, and depreciation expenses.

Foreign income
Resident companies and enterprises are taxed on their worldwide income. However, a foreign tax credit is granted in respect of taxes paid on the foreign income, subject to the limit of the tax that would have been paid in Rwanda on the same income.

There are no provisions in Rwanda for tax deferral of income earned abroad.

Deductions

A trading company is generally permitted to deduct expenses that are incurred wholly and exclusively for purposes of the company's trade, provided these costs are not capital in nature and are charged to the profit and loss account.

The Rwandan tax law stipulates that deductible expenses should fulfil the following conditions:

- Are incurred for the direct purpose of the business and are directly chargeable to the income.
- Correspond to a real expenses and can be substantiated with proper purchase receipts.
- Lead to a decrease in the net assets of the business.
- Are used for activities related to the tax period in which they are incurred.

Depreciation and amortisation
Accounting depreciation of fixed assets is not allowable as a deduction for tax purposes. The same applies in the case of amortisation of assets. However, businesses are allowed

specified deductions, referred to as tax depreciation in respect of specified classes of assets. This is deducted in arriving at taxable income.

Tax depreciation allowance is granted to persons who own depreciable assets at the end of the tax period and use such assets in the production of income.

Land, fine arts, antiquities, jewellery, and any other assets that are not subject to wear and tear or obsolescence are not depreciated. Buildings, heavy industrial equipment, and machineries are depreciated annually, each on its own, at a depreciation rate of 5% of the cost of acquisition, construction, refining, rehabilitation, or reconstruction.

Intangible assets, including goodwill that is purchased from a third party, are depreciated annually, each on its own, at a depreciation rate of 10%, while information and communication systems whose life is over 10 years are depreciated annually at the rate of 10% of the cost of acquisition.

Computers and accessories and information and communication systems whose life is under 10 years are granted tax depreciation at 50%.

Tax depreciation allowance is available on any other business asset at the rate of 25%.

Goodwill

As mentioned above, purchased goodwill will attract tax depreciation at the rate of 10%, which is an allowable deduction. However, amortisation of goodwill is not tax deductible.

Start-up expenses

There is no clear guidance on the tax treatment of start-up expenses. However, in practice, start-up expenses of a capital nature are not deductible for tax purposes. Where they relate to purchase of assets, respective tax depreciation is claimed. Start-up expenses of a revenue nature are tax deductible.

Interest expenses

Interest on borrowed money used for earning business profit or interest in respect of an amount payable for property acquired to earn income is deductible, provided the interest paid is pursuant to a legal obligation and is reasonable under the circumstances.

Thin capitalisation rules can limit interest deductions when debt owed to related entities exceeds four times the amount of the corporation's equity (*see Thin capitalisation in the Group taxation section*).

Bad debt

A bad debt provision will be deductible for tax purposes if it fulfils the following conditions:

a. The amount was previously included in the income of the taxpayer.
b. Debt is written off in the books of accounts.
c. Taxpayer has taken all possible steps in pursuing payment and has shown a court decision declaring the insolvency of one's debtor.

However, for an individual whose debt is less than RWF 3 million, in addition to the conditions referred to in (a) and (b), the taxpayer must provide proof that one has taken all reasonable steps over a period of three years to recover the debt.

Further, licensed commercial banks and leasing entities duly licensed as such are allowed to deduct, in determining business profit, any increase of the mandatory reserve for non-performing loans as required by the directives related to management of bank loans and similar institutions of the National Bank of Rwanda. Similarly, the business profit is increased by the entire amount recovered from bad debts deducted from such reserves.

Charitable contributions

Donations and gifts to charitable organisations and other non-profit making organisations are tax deductible to the extent of 1% of turnover. Consequently, donations to profit making organisations, irrespective of the amount, and any donations above 1% of turnover to non-profit making organisations are not allowed as deductions for CIT purposes.

Fines and penalties

Fines and similar penalties imposed for breaking the law or for statutory offences, such as late payment of taxes, are not tax deductible.

The law does not specify which type of non-statutory fines or penalties are not allowed for tax. For example, there is no guidance on whether fines or penalties paid for breach of contract are deductible or not.

Taxes

Income tax paid on business profit and recoverable VAT are not deductible for tax purposes. This includes any back taxes paid by the business.

Net operating losses

Tax losses can only be carried forward for five tax periods, earlier losses being deducted before later losses. However, on application, the tax administration may authorise the taxpayer to carry forward the tax loss for more than five tax periods. This is subject to fulfilment of certain conditions.

If the direct or indirect ownership of the share capital or the voting rights of an unlisted company changes more than 25% by value or by number during a tax period, such a company is restricted from carrying forward losses incurred during the tax period and previous tax periods.

There are no provisions for carrying back tax losses.

Payments to foreign affiliates

Royalties, management fees, and similar payments to non-residents are deductible expenses to the extent that:

- they do not exceed 2% of the turnover of the taxpayer, and
- they are incurred to earn income of the Rwandan company, adhere to the arm's-length principle, and comply with transfer pricing requirements.

Group taxation

There is no provision for group taxation in Rwanda. Each individual corporate group member is required to submit their own tax return on a stand-alone basis.

Transfer pricing

Rwandan transfer pricing legislation and the prescribed transfer pricing methods are generally consistent with OECD guidelines. The law requires that transactions between related parties be carried out under the arm's-length principle.

The tax law empowers the Commissioner General to adjust profits earned between related parties if the Commissioner General considers that the trading arrangements between related parties do not adhere to the arm's-length principle. The arm's-length principle requires that transfer prices charged between related parties are equivalent to those that would be charged between independent parties in the same circumstances.

Rwanda operates a self-assessment system; consequently, taxpayers are obligated to self-assess their compliance to the tax legislation, which includes transfer pricing policy. According to the new income tax law, related persons involved in controlled transactions are required to have documents justifying that their prices are applied according to the arm's-length principle. This means that companies are now expected to have transfer pricing policies and documentation.

Failure to do so would result into the tax administration's adjustment of transactions prices in accordance with general rules on transfer pricing, issued by an Order of the Minister.

Thin capitalisation

The interest paid on loans and advances from related entities is not tax deductible to the extent that the total amount of loans/advances exceeds four times the amount of equity during the tax period. For purposes of determining the above, equity excludes provisions and reserves. This provision does not apply to commercial banks, financial institutions, and insurance companies.

Controlled foreign companies (CFCs)

There are no provisions in Rwanda for CFCs.

Tax credits and incentives

There are tax incentives in the form of lower CIT rates (*see Special CIT regimes in the Taxes on corporate income section*) for registered investors.

The investment code also provides the following incentives to a registered investor:

- A seven-year tax holiday for investments in the following specific sectors: manufacturing, tourism, health, exports, energy projects producing at least 25 MW (excluding investors having an engineering procurement contract [EPC] executed on behalf of the government of Rwanda, and information and communications technology (ICT) with an investment involving manufacturing, assembly, and service. The investment should be of at least 50 million United States dollars (USD)

and the investor should contribute at least 30% of this investment in the form of equity in these sectors.
- A preferential CIT rate of 0% for international companies with their regional offices in Rwanda and that fulfil certain requirements.
- A preferential CIT rate of 15% for registered investors undertaking (i) exportation; (ii) energy generation, transmission, and distribution; (iii) transport of goods and related activities; (iv) mass transportation of passengers and goods; (v) ICT; (vi) financial services, including global business activities, private equity funds, fund management, wealth management, mutual funds, collective investment schemes, captive insurance schemes, venture capital, and asset backed securities; (vii) building of low-cost housing; and (viii) any another priority economic sector as may be determined by an Order of the Minister of Finance.
- Exemption from capital gains tax.
- Five-year tax holiday for micro-finance institutions.
- Customs exemption on products used in Export Processing Zones (EPZs).
- Prompt settlement of VAT refunds.

There are, however, certain conditions that have to be fulfilled to obtain the incentives above.

Foreign tax credit

Rwanda allows a foreign tax credit on income generated from business activities performed abroad by a tax resident. The income tax payable is offset by the foreign tax paid on that income. However, the foreign tax credit is limited to the amount of tax that would have been applicable on that income in Rwanda.

The credit is allowed where it is supported by appropriate evidence, such as a tax declaration, a WHT certificate, or any other similar acceptable document.

Withholding taxes

WHT of 15% of the total amount, excluding VAT, is required to be accounted for on payments or other methods of extinguishing an obligation made by resident individuals, including tax-exempt entities. The WHT is due where such payments or other methods of extinguishing an obligation are made to a person not registered with the tax administration or to a registered person who does not have recent income tax declaration.

Payments or other methods of extinguishing an obligation subject to WHT of 15% are related to the following:

- Dividends, except income distributed to the holders of shares or units in collective investment schemes.
- Financial interests, except interests on deposits in financial institutions for at least a period of one year; interests on loans granted by a foreign development financial institution exempted from income tax under applicable law in the country of origin; and interests paid by banks operating in Rwanda to banks or other foreign financial institutions.
- Royalties.
- Service fees, including management and technical service fees, except transport services.

- Performance payments made to a crafts person, a musician, an artist, a player, sports, cultural, and leisure activities, irrespective of whether paid directly or indirectly.
- Gambling activities.
- Goods sold in Rwanda.

However, money that is recorded in the books of account as a liability of a taxpayer to creditors and that reduces the taxable income is deemed a payment if it has exceeded six months following the tax period.

WHT is also applicable to non-resident persons for such payments on behalf of their PEs. This means that the local entity/PE is now required to declare and pay WHT at the time when the non-resident pays the foreign supplier on its behalf and not when the non-resident recharges for the costs.

As mentioned above, a WHT of 15% is required to be accounted for on dividends attributed to a company registered in Rwanda. However, the WHT shall be 5% if levied on:

- dividends and interest on securities listed on capital market when the beneficiary of the dividends or interest is a resident taxpayer of Rwanda or of the East African Community, and
- interests derived from treasury bonds with a maturity of at least three years.

There is also a WHT of 5% that is applicable on goods imported for commercial use. Public institutions are required to retain 3% on payments to winners of public tenders. However, businesses that possess a tax clearance certificate are exempted from deduction of the above WHT.

The WHT deducted should be remitted to the RRA within 15 days following the month of deduction.

Tax treaties

Rwanda has DTAs with Belgium, Jersey, Mauritius, Singapore, and South Africa. The WHT rates are as follows:

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalty**	**Management or professional fees**
Non-treaty	15	15	15	15
Treaty:				
Belgium	15	10	10	10
Jersey	10	10	10	12
Mauritius	10	10	10	12
Singapore	7.5	10	10	10
South Africa	10/20	10	10	10

The DTAs contain conditions to be complied with for the preferential rates to apply; consequently, it is recommended that professional advice is sought before application.

Tax administration

Taxable period

The normal taxable period is between January and December. However, a different tax period can be allowed on approval by the Minister of Finance.

Tax returns

Companies are assessed with reference to accounting periods. This refers to the period for which a company prepares its accounts. However, an accounting period for CIT purposes cannot exceed 12 months, so companies preparing statutory accounts for longer than 12 months need to prepare more than one CIT return.

Rwanda operates a self-assessment regime. Quarterly tax returns are due on 30 June, 30 September, and 31 December (or by the sixth, ninth, and 12th month of the tax period). The annual tax return/declaration must be filed within three months after the tax period. The tax declaration must include audited financial statements as well as any other documents that may be requested by the tax administration.

Payment of tax

Advance CIT is payable in three instalments. Tax payments are due on 30 June, 30 September, and 31 December (or by the sixth, ninth, and 12th month of the tax period). Each instalment is 25% of the tax liability as calculated in the tax return/ declaration of the previous tax period. This amount can be reduced by WHT paid during the tax period. The final payment of CIT for taxpayers with a December year-end is 31 March of the following year. In the case of other accounting year-ends, the final CIT payment is due by the last day of the third month following the accounting year-end.

Tax audit process

Large taxpayers are selected for audit by the RRA on a regular basis. The RRA tends to audit two tax periods, but this can be extended on request by the taxpayer. Most audits are carried out onsite. The RRA may conduct a desk audit of the taxpayer's tax affairs where they note discrepancies on tax returns filed by the taxpayer, anomalies with turnover, or any other situations that justify an audit.

Under normal in-depth audits, the RRA is required to issue a taxpayer with a draft notice of assessment following the completion of the field audit. The draft assessment is referred to as a rectification note. The taxpayer is granted 30 days within which to respond. In case the tax issues are not resolved, a final notice of assessment is issued. The taxpayer is allowed 30 days within which to appeal. Once an appeal is submitted to the Commissioner General, the RRA has 30 days within which to respond to the objection. This can be extended by another 30 days but not beyond this period. At this stage, the appeal is handled by the appeal committee, and the taxpayer and the taxpayer's agent are invited for a meeting to provide explanations.

Once the final assessment is issued, the tax due is payable, although the Commissioner General has powers to suspend the payment pending the determination of the appeal.

There is a provision for resolving the dispute through an amicable settlement process. Taxpayers can opt for this approach while at the same time exploring the next stage of the appeal process.

A taxpayer that disagrees with the response on the final assessment can appeal to the high court within 30 days.

Statute of limitations

The RRA has powers to audit a taxpayer for a period going back five years, although this can be extended to ten years in case of fraud. Taxpayers are required to keep their records for a period of ten years.

Topics of focus for tax authorities

Topics of interest for the RRA include:

- Deduction of WHT on payments to non-resident persons and reverse VAT.
- Treatment of capital gains on disposal of assets.
- Recovery of reverse VAT on services that are regarded as being available in the local market.
- Reconciliation of turnover per financial statements to receipts as per taxpayer bank statements.
- Reconciliation of cost of sales to importations.
- Reconciliation of turnover per financial statements to turnover declared in the VAT returns.
- Reconciliation of employment/staff costs per financial statements to staff costs declared in the PAYE returns.
- Transfer pricing arrangements
- Supporting expenses with proper, sufficient documents.
- Carry forward of tax losses.
- Categorisation of business assets for tax depreciation purposes.

Saint Kitts and Nevis

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Significant developments

The government of Saint Kitts and Nevis has signed on to the Common Reporting Standards (CRS) and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which would provide for exchange of tax information on a reciprocal basis.

On 14 November 2017, Saint Kitts and Nevis joined the Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS). By joining the IF, Saint Kitts and Nevis will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues.

On 24 November 2017, Saint Kitts and Nevis signed a double taxation agreement (DTA) with the United Arab Emirates.

Taxes on corporate income

Companies incorporated in Saint Kitts and Nevis pay corporate income tax (CIT) on their worldwide income with relief available under existing DTAs. Non-resident companies deriving income from Saint Kitts and Nevis are liable for CIT and should be registered if they have a physical presence in Saint Kitts and Nevis.

Saint Kitts and Nevis imposes CIT at a flat rate of 33%.

Taxable income or assessable income is ascertained by deducting from income all expenses that are wholly and exclusively incurred during the year in the production of the income. Assessable income is normally arrived at by adjusting the net profit per the financial statements for non-taxable income, non-deductible expenses, and prior-period losses of up to 50% of chargeable income.

Where a person resident in Saint Kitts and Nevis makes a payment to another person not resident in Saint Kitts and Nevis, *as noted in the Withholding taxes section*, then withholding tax (WHT) at a rate of 15% must be deducted and remitted to the Inland Revenue within 15 days.

A company that carries on business exclusively with persons who are not resident in Saint Kitts and Nevis is exempt from all income, capital gains, and WHTs.

Companies registered under the Condominium Act are governed by that Act and are not required to pay CIT.

Corporate residence

A corporation is deemed to be resident if it is incorporated in Saint Kitts and Nevis or if it is registered as an external company doing business in Saint Kitts and Nevis under the Companies Act.

Permanent establishment (PE)

A PE is not defined in the Income Tax Act; however, any company that would meet the general definition of a PE must be registered.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 17%, while hotel accommodation, tour operators, and restaurants carry a reduced rate of 10%.

Most foods (excluding prepared food or meals from a restaurant, snackette, cafeteria, etc.; live animals; and plants), medicines, and funeral expenses by a licenced funeral home are exempt from VAT.

Persons who have made or are likely to make taxable supplies in excess of 96,000 East Caribbean dollars (XCD) for certain professional services and XCD 150,000 for other business activities in a continuous period of 12 calendar months are required to register for VAT.

Customs duties

All imports are subject to import duties, VAT, and customs service tax (CST). In all instances, certain exemptions will apply.

Customs duty is levied on a wide range of imported goods at rates from 0% to 70% as specified in the Custom Duties Act. VAT is applied at a rate of 17%, and CST at a rate of 6%. Customs duty is levied on goods based on the cost, insurance, and freight (CIF) values and rates determined by the Caribbean Community (CARICOM) Common External Tariff.

Excise tax

The excise tax applies to a small range of goods, such as alcoholic beverages, tobacco products, petroleum products, motor cycles, aerated beverages, and firearms. The excise tax rate ranges between 5% and 25%.

Property tax

Saint Kitts

Property tax in Saint Kitts is levied at varied rates on the basis of the market value of the real property (including land and building as assessed by the Chief Valuation Officer) and its class.

Property classes and rates of tax are as follows:

- Residential use property: 0.2%.
- Commercial use property: 0.3%.

Annual allowances and tax rebates are available as follows:

- Residential use property and condominium allowance of XCD 80,000 from the taxable value.
- No property tax is assessed on any buildings, condominiums, etc. that are under construction.
- New residential use properties and condominiums are exempt from tax for one year from the date certified by the valuation officer.

Note that residential use properties located in the South East Peninsula are assigned values based on fixed rates for land (XCD 20 per square foot) and buildings (XCD 300 per square foot). Property tax is then applied at a rate of 0.2%.

Where property situated in the South East Peninsula area is not developed within five years, a surcharge can be assessed at the rate of 1% of the assessed market value *per annum*, and increased annually at the rate of 1% thereafter until it reaches a maximum rate of 5% of the assessed market value while the property remains undeveloped. If property is less than one acre, undeveloped, and owned by a resident for the purpose of erecting a house, such property is exempt from the surcharge upon application in writing to the Comptroller of Inland Revenue.

Property tax is payable on or before 30 June of each year and is deemed to be in default if not paid within 30 days of becoming due. Interest is charged at a rate of 12% *per annum* on the unpaid taxes.

Nevis

Property tax in Nevis is levied at varied rates on the basis of the market value of the real property (including land and buildings as assessed by the Chief Valuation Officer) and its class.

Property class and rates are as follows:

Property class	Building tax rate (%)	Land tax rate (%)
Residential	0.156	0.075
Commercial	0.3	0.2
Accommodation	0.3	0.2
Certified farming	0	0.01
Institutional	0.2	0.15

Commercial use property is defined as property that does not include accommodation use property or property used for certified farming operations.

Accommodation use property is defined as property for short-term accommodation and includes a guest house.

Annual allowances and tax rebates are available as follows:

- Residential use property and condominium allowance of XCD 80,000 from the taxable value.

- No property tax is assessed on any buildings, condominiums, etc. that are under construction.

Property tax is payable on or before 30 June of each year and is deemed to be in default if not paid within 30 days of becoming due. Interest is charged at a rate of 12% *per annum* on the unpaid taxes.

Alien land holding licences

To hold land as an owner, a non-citizen must first obtain an alien land holding licence and pay 10% of the market value of property or XCD 750, whichever is greater.

A non-citizen is required to obtain a licence to hold shares in a company that owns land, to vote at shareholders meetings of the company, and to be a director of the company. Each licence costs XCD 250.

If a non-citizen purchases land in the Frigate Bay area, then there is no requirement to obtain a licence and only a minimal fee of XCD 50 is payable.

If a non-citizen wishes to purchase land in the South East Peninsula, the non-citizen is required to obtain a licence prior to purchasing the property; however, the payment of the 10% licence fee will be waived.

Stamp duty

Stamp duty applies to a very wide range of transactions (e.g. bill of sale, lease, mortgage, contract, bill of lading). Stamp duty on transfer of real property, transfer of shares, mortgages, and bank loans to aliens is specifically covered below.

Transfer of real property

Stamp duty is levied on the consideration for the sale or the value of property as assessed by the Property Valuation Officer, whichever is higher.

The vendor is responsible for the payment of all stamp duty on property transfers on the following basis:

Type of property transfer		Rate
a.	Transfer of property for consideration in money or value in kind of not less than the value of the property	12%
b.	Transfer of property for consideration in money or value in kind of less than the value of the property	12%
c.	Transfer of property without consideration in money or value in kind	6%
d.	Transfer of property in any Special Development Area other than the South East Peninsula	14%
e.	Transfer of property situated in the South East Peninsula	18.50%
f.	Transfer of property other than stock or debenture stock or funded debt or land	2%
g.	Transfer of property between husband and wife and between parents and children and vice versa	XCD 100
h.	Transfer of land by will or by similar instrument	XCD 100
i.	Transfer of registered condominium units	5%

Where a developer has obtained concessions in connection with a house or building constructed on the land being transferred, the developer is required to pay stamp duty on the same basis as noted in a, b, and c above.

Where a developer has obtained concessions in connection with a house or building to be constructed on the land being transferred, then the developer will be required to pay stamp duty initially on the land on the same basis as noted in a, b, and c above. However, when the house or building is subsequently constructed on the land with the aid of the concession, the owner of the building shall pay stamp duty on the house or building as provided in a, b, and c above as if the concessions or any part thereof had not been utilised.

Where a developer has not obtained concessions in connection with a house or building constructed on the land being transferred, the developer will be required to pay stamp duty on the same basis as noted in a, b, and c in respect of the land only.

Transfer of shares

Stamp duty is levied on the value of the consideration for the sale of shares or debentures issued by or on behalf of a company or at the value assessed by the Property Valuation Officer, whichever is higher. The stamp duty is levied at a rate of 2%. If the company owns property and its value exceeds 50% of the value of the company's assets, then the stamp duty is calculated using the applicable rate on the transfer of real property (*see above*).

Mortgages

Stamp duty is levied on the total amount secured and is applicable to both the registration and discharge of the mortgage. The standard rate is 1%. For amounts secured in relation to a Special Development Area, the rate is 2%.

Bank loans to aliens

Stamp duty is levied on the total amount of a bank loan to aliens. The standard rate is 2.5%. For loans to finance development in a Special Development Area, the rate is 5%.

Life insurance premium tax

A premium tax of 5% is levied on the premium income of all life insurance companies, whether resident or non-resident. In addition, a registration fee of XCD 2 per XCD 1,000 of income or XCD 30, whichever is less, must be paid to the Comptroller of Inland Revenue.

General insurance premium tax

A premium tax of 5% is levied on the premium income (net of agent's commission) of all general insurance companies, whether resident or non-resident.

Social Security

The employer's portion of Social Security is 5% of chargeable income (on income of up to XCD 6,500 per month).

Housing and Social Development Levy (Social Services Levy)

The employer's portion of the Social Services Levy is 3% of chargeable income.

Employment Injury Benefit

The employer's portion of Employment Injury Benefit is 1% of chargeable income (on income of up to XCD 6,500 per month).

Severance Payment Fund
The employer's portion of the contribution to the Severance Payment Fund is 1% of chargeable income.

Branch income

Branch income is taxed on the same basis and at the same rate as the income of a corporation. A resident branch of a foreign company shall be regarded as a separate company and shall be taxed on the same basis as that of a locally registered corporation.

Recharges of expenses from head office to the branch will be subject to WHT at a rate of 10%; however, the recharges have to be justified and cannot be based on a percentage allocation.

Income determination

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

Capital gains
Capital gains tax will be imposed if an asset is sold within one year of the date of acquisition. The maximum rate of tax will be 16.5% (one half the 33% CIT rate). Assets sold after one year will not attract capital gains tax.

Dividend income
Dividends received by a company resident in Saint Kitts and Nevis from another company resident in Saint Kitts and Nevis are taxed at source at the CIT rate of 33%. Credit is given to the recipient for the tax on the dividend in computing the tax liability.

Interest income
Interest income received by a company registered in Saint Kitts and Nevis is taxed at the CIT rate of 33%. Interest earned on local and other CARICOM government securities are normally exempt from the payment of CIT.

Royalty income
Royalties received by a corporation are taxable as income from a business or property. Royalties earned from CARICOM sources are normally exempt from the payment of CIT.

Foreign income
A Saint Kitts and Nevis corporation is taxed on foreign branch income when earned and on foreign dividends when received. Double taxation is avoided by means of foreign tax credits where tax treaties exist and through deduction of foreign income taxes in

other cases (the United Kingdom [UK] and CARICOM). There is also relief from British Commonwealth taxes. *See Foreign tax credit in the Tax credits and incentives section for more information*.

Deductions

Depreciation

Depreciation allowed for tax purposes is computed by the diminishing-balance method at prescribed rates. An initial allowance of 20% is granted on industrial buildings or structures and in respect of capital expenditure incurred on plant and machinery by a person carrying on a trade or undertaking, as defined. In addition, an annual allowance of between 2% and 5% is allowed on all buildings constructed after 1 March 1994. Concrete buildings are depreciated at a rate of 2%, while the rate varies for other buildings depending on the type of material used in construction. Conformity between book and tax depreciation is not required.

Any gain on the sale of depreciated assets is taxable as ordinary income up to the amount of tax depreciation recaptured.

Initial allowances and annual allowances cannot reduce the tax that would have been otherwise payable by more than 50%. Any initial allowance or annual allowance not utilised may be carried forward indefinitely.

Goodwill

Goodwill and trademarks are not depreciating assets, and amortisation is not allowed.

Start-up expenses

There are no specific provisions in relation to deductions for start-up expenses. However, the policy is that certain start-up expenses, such as costs of incorporation and other initial start-up costs, may qualify for a three to five year straight-line write-off, depending on the total dollar value.

Interest expenses

No specific restrictions will apply to interest paid on loans owing to shareholders, directors, their spouses, children or relatives, or to any related parties. Interest is only deductible to the extent that it was incurred in producing chargeable income.

Restriction on bad debts

Specific bad or doubtful debts in excess of 5% of total trade receivables will not be allowed as a deduction.

Charitable donations

Charitable donations are not deductible for tax purposes.

Contributions to a pension fund

Contributions made by an employer to a pension fund (approved by the Comptroller) on behalf of its employees are deductible, up to a maximum of 5% of annual earnings of the employee or XCD 2,000 *per annum*. Application should be made to the Ministry of Finance or to the Pension Fund Committee.

Restriction on compensation expenses

Salaries, wages, leave pay, fees, commissions, bonuses, gratuities, or any other perquisites or such other payments that an employee of a company receives in the course of their employment or the value of any benefit to such employee or to any member of an employee's family in excess of XCD 90,000 *per annum* will not be allowed as a deduction from chargeable profit.

Where an employee or shareholder receives remuneration in a tax year from two or more associated companies, the amount deductible in relation to the employee or shareholder in the tax year by all of the associated companies shall not exceed XCD 90,000. If the remuneration received by the employee or shareholder exceeds XCD 90,000, the amount deductible by each associated company will be equal to the allowable deduction of XCD 90,000 times the remuneration received from the associated company divided by the total remuneration paid to the employee or shareholder by all of the associated companies.

Fines and penalties

Fines and penalties imposed under tax laws of Saint Kitts and Nevis are not deductible expenses.

Taxes

There are no provisions in the Income Tax Act in relation to the deductibility of taxes paid by a company. However, in general, VAT, VAT input tax, and adjustments under the VAT Act are disregarded for income tax purposes. Other taxes, including property tax, transfer taxes, payroll taxes, and insurance premium taxes, except income tax and share transfer tax, are deductible to the extent they are incurred in producing chargeable income.

Net operating losses

Income tax losses may be carried forward for five years following the year in which the loss was incurred. However, the chargeable income of a company after deducting initial and annual capital allowances in any one income year may not be reduced by more than 50% by losses brought forward. No carryback of losses is permitted.

Payments to foreign affiliates

A company incorporated in Saint Kitts and Nevis may claim a deduction for royalties, management fees, and interest charges paid to foreign affiliates, provided the payments are equal to or less than what the corporation would pay to an unrelated entity. The deductibility of any payments to a foreign affiliate will be subject to an arm's-length test, and WHT will be payable at a rate of 10%.

Restriction on related-party expenses

Amounts paid or payable to related or associated persons for administration fees, management fees or expenses, head office charges and allocations, technical services, shared costs, and other similar charges are restricted to 5% of the taxpayer's gross sales or revenues.

Group taxation

Group taxation is not permitted in Saint Kitts and Nevis.

Transfer pricing

There are no provisions for transfer pricing in the tax laws of Saint Kitts and Nevis.

Thin capitalisation

There are no provisions for thin capitalisation in the tax laws of Saint Kitts and Nevis.

Controlled foreign companies (CFCs)

There are no specific rules relating to a controlled foreign entity in the tax laws of Saint Kitts and Nevis.

Tax credits and incentives

Tax incentives are currently available under the following legislation.

Income Tax Act and Subsidiary Legislation, Cap 20.22

The Income Tax Act provides that if a company is licensed under the Hotel Aids Ordinance and constructs a hotel with more than 30 rooms, the hotel will receive an exemption from CIT for a period of ten years beginning on the day it is first open for business. If the hotel has less than 30 rooms, then it will be entitled to a five-year tax holiday. During the tax holiday period, no initial deductions or annual capital allowance deductions shall be allowed. Thereafter, only the annual allowance will be allowed and will be computed on the total capital expenditure incurred during the holiday period less any assets sold. The net losses arising during the tax holiday period (i.e. the excess of accumulated tax losses over total profits) may be carried forward and set-off against profits following the expiration of the tax holiday in accordance with the normal rules for set-off of losses.

The Income Tax Act also provides that if a licence is granted to a pioneer manufacturer under the Pioneer Industries Act, the manufacturer is entitled to a five-year tax holiday (or up to ten years, at the discretion of the government) as provided in the licence.

Hotel Aids Act

The Hotel Aids Act provides that a licence may be granted to any person who desires to construct or extend an existing hotel to import building material and equipment free from import duties, as specified in the licence, for use in the construction of the hotel and to furnish and equip the hotel. The holder of a licence may not dispose of any hotel equipment within three years of being imported free of duties and taxes. Permission must be received from the Comptroller of Customs to dispose of any building material and hotel equipment within the three-year period.

Fiscal Incentives Act

The Fiscal Incentives Act provides that if a company is declared to be an approved enterprise to manufacture certain ‘approved products’, then the manufacturer is entitled to a tax holiday period of between ten and 15 years depending on the classification of the approved enterprise. The net losses arising during the tax holiday period (i.e. excess of all losses over all profits) may be carried forward and set-off against profits of the approved enterprise for the five-year period following the tax holiday period.

Small Business Development Act, 2009

The Small Business Development Act provides the framework for the promotion of investment opportunities in Saint Kitts and Nevis by introducing a system of registration of small businesses and a range of incentives that are available to locals. The incentives and concessions available to any small business that would be entitled for consideration are as follows:

- Concession on consumption tax applicable to professionals (e.g. engineers, doctors).
- Reduction in CIT for a minimum of three years to a maximum of five years.
- Relief from CIT by way of an allowable deduction on any monies borrowed from any financial institution, including any bank, non-bank, or credit union.
- Export incentives.
- Rebate of CIT.
- Exemption from or reduction in customs duty on inputs imported for use in the small business.
- Exemption from or reduction in customs duty on any plant, machinery, equipment, or motor vehicle imported for use in the small business.
- Reduction of property tax by up to 75%.

A small business to which this Act applies must meet all of the following criteria:

- No more than 25 employees.
- Net assets or paid up capital not exceeding XCD 1 million.
- Annual sales not exceeding XCD 2 million.
- Owned by citizens of Saint Kitts and Nevis.
- Not more than 25% owned or controlled by a company whose annual turnover or net assets exceed the limits noted above or by a subsidiary of a larger company.
- The composition of the board of directors is not controlled by a company whose annual turnover exceeds the criteria above.
- Has no agreement for managerial or other services to persons who are not citizens of Saint Kitts and Nevis or other CARICOM territories.

The registration fee for an approved small business is XCD 100. Each approved small business must, within six months after the end of its financial year, submit to the Registrar (person designated by the Minister to perform the functions of Registrar of Small Businesses) financial statements audited by an auditor in accordance with generally accepted international auditing standards.

Other incentives

Approved manufacturing, agricultural, and tourist ventures are permitted to import building material and equipment free of customs duties.

A Memorandum of Understanding (MOU) between the government and small hotel operators provides for certain conditions under which small hotel operators will be eligible for duty-free concessions on the refurbishment of their facilities every seven years, and on food and wine for their restaurant facilities where applicable. For purposes of this incentive package, a small hotel is defined as a hotel consisting of at least ten rooms and not exceeding 99 rooms.

Foreign tax credit

Double taxation is avoided by means of foreign tax credits where tax treaties exist and through deduction of foreign income taxes in other cases (the United Kingdom and

CARICOM). A foreign tax credit is also available to persons in Saint Kitts and Nevis who have paid or are liable to pay income tax in a country that is a member of the British Commonwealth (other than the United Kingdom).

Commonwealth relief: Residents

The relief available for a person resident in Saint Kitts and Nevis from tax payable in Saint Kitts and Nevis is the income tax rate in the British Commonwealth country if that rate does not exceed one half of the tax rate in Saint Kitts and Nevis. If the income tax rate in the British Commonwealth country exceeds the Saint Kitts and Nevis tax rate, then the relief will be limited to one half the tax rate in Saint Kitts and Nevis.

Commonwealth relief: Non-residents

The relief available in Saint Kitts and Nevis for a person not resident in Saint Kitts and Nevis from tax payable in Saint Kitts and Nevis is one half of the income tax rate in the British Commonwealth country if that rate does not exceed the tax rate in Saint Kitts and Nevis. In any other case, the relief will be limited to the amount by which the Saint Kitts and Nevis tax rate exceeded one half of the rate of income tax in the British Commonwealth country.

Withholding taxes

WHT at the rate of 15% should be withheld from payments made to non-residents in respect of the following:

- Dividends.
- Interest, annuities, premiums, and discounts.
- Rent, leases, contracts, and royalty payments.
- Natural resources.
- Commissions, remuneration, fees, and licences.
- Charges for the provision of personal services, commercial advice, and managerial skills.
- Administration, management, or head office expenses.
- Profits.
- Technical, professional, vocational, and any other service fees.
- Accounting, actuarial, legal, and audit expenses.
- Non-life insurance premiums.
- Any other annual or periodic payments or distributions.

Tax treaties

	WHT (%)				
Recipient	**Dividends**	**Interest**	**Royalties**	**Management fees**	**Entry into force**
Non-treaty	15	15	15	15	
Treaty:					
CARICOM	0	15	15	15	7 July 1995
Monaco	0/5 (1)	0 (2)	0 (2)	N/A	1 December 2011
San Marino	5/7.5/15 (3, 4)	0 (5)	0 (2)	N/A	12 February 2014
United Arab Emirates	0 (2)	0 (2)	0 (2)	N/A	Awaiting ratification
United Kingdom	0 (5)	0 (5)	0 (5)	N/A	28 January 1948

Notes

1. The rate is 5% if the beneficial owner is a company; 0% if the beneficial owner is an individual and resident of either contracting state or a partnership held by individuals and beneficial owners who are resident of either contracting state.
2. Taxable only in the state in which the beneficial owner is resident.
3. The rate of tax is 5% if the beneficial owner is a company that has directly held at least 25% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
4. The rate is 7.5% if the beneficial owner is a company that has directly held at least 10% but less than 25% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
5. Taxable only in the source state.

Tax administration

Taxable period

Taxes are assessed on a fiscal-year basis.

Tax returns

The taxpayer must file an information return on Form CIT-01 by the 15th day of the fourth month after the fiscal year-end along with the financial statements. The authorities either accept the self-assessment or issue a revised assessment. If a return is not filed on a timely basis, the authorities have the power to issue estimated assessments. There is a 5% penalty for late filing.

The taxpayer can object to assessments raised within one month and ask the Comptroller of Inland Revenue to review and revise. In the event that the objection is unsuccessful, the taxpayer may appeal to the Commissioners of Income Tax. Assessments may be reviewed and revised by the Comptroller within the year of assessment or within six years of the expiration of the assessment year.

Payment of tax

Advance tax is payable in quarterly instalments on 15 March, 15 June, 15 September, and 15 December of each year and is ordinarily based on the tax chargeable and assessed in the previous fiscal year. The standard amount of each instalment is determined as one quarter of the tax chargeable in the previous fiscal year. If the assessment for the prior year has not been finalised, the Comptroller of Inland Revenue can raise an assessment based on best judgement.

The balance of tax due after the final assessment is issued, as notified in the assessment, is payable on or before the 15th day of the fourth month after the fiscal year-end. If the Comptroller of Inland Revenue revises the assessment, then payment of the balance of taxes due is due one month after the date of issue of the revised assessment.

Tax is deemed to be in default if not paid by the 15th day of the fourth month after the fiscal year-end or within one month of the date of the notice of assessment, whichever is later. Interest of 1% per month or 12% *per annum* is charged on unpaid taxes in default.

Anti-avoidance provisions

The Comptroller of Inland Revenue can, by notice in writing:

- distribute, apportion, or allocate amounts to be deducted in calculating income tax paid between related persons as is necessary to reflect the chargeable income or tax payable as if the arrangement had been done at arm's length
- re-characterise the source and type of income, loss, or payments made under an arrangement, the form of which does not reflect its substance or is classified as an avoidance arrangement, and
- disregard an arrangement, transaction, or part of an arrangement or transaction that does not have substantial economic effect or is classified as an avoidance arrangement.

Tax audit process

The Saint Kitts and Nevis tax system for companies is based on self-assessment; however, the Inland Revenue Department (IRD) undertakes ongoing compliance activities to ensure that corporations are meeting their tax obligations. There is no specific approach used by the IRD in relation to compliance and audit activities. Compliance activities generally take the form of reviews of specific issues and audits.

Statute of limitations

Assessments may be reviewed and revised by the Comptroller of Inland Revenue within the year of assessment or within six years of the expiration of the assessment year.

Topics of focus for tax authorities

The IRD does not have any specific compliance program; however, when an audit is done, the focus is mainly on the detection of basic non-compliance, such as omission of income, inclusion of non-deductible expenses, and classification of items between expenses and capital items. In recent years, the IRD has been paying special attention to the application of WHT on payments made to non-resident persons and VAT on services imported into Saint Kitts and Nevis, mainly between related parties.

Other issues

Tax Information Exchange Agreements (TIEAs)

TIEAs provide for the exchange of information on tax matters. TIEAs with Aruba, Australia, Belgium, Denmark, Finland, France, Guernsey, India, Ireland, Liechtenstein, the Netherlands, the Netherlands Antilles, and Norway are in force. TIEAs have also been signed with the Faroes, Germany, Greenland, Iceland, New Zealand, Portugal, South Africa, and Sweden.

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 31 August 2015, the Agreement between the Government of the United States of America and the Government of the Federation of Saint Kitts and Nevis to improve international tax compliance and to implement FATCA was made available.

Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Saint Kitts and Nevis signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in August 2016. Under the convention, Saint Kitts and Nevis will exchange tax information based on Organisation for Economic Co-operation and Development (OECD) standards, but is not required to collect taxes on behalf of another country or provide assistance in the service of related documents.

Common Reporting Standard (CRS)

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the OECD. Under the CRS, foreign tax authorities will provide information to the IRD relating to financial accounts in their jurisdiction held by Kittian residents. The IRD will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Saint Kitts and Nevis. Saint Kitts and Nevis has committed to implementing the CRS by September 2018.

Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS)

On 14 November, Saint Kitts and Nevis joined the IF on BEPS. By joining the IF, Saint Kitts and Nevis will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues. As a signatory to the IF, Saint Kitts and Nevis has committed to implementing minimum standards related to:

- preferential regimes, including exchange of tax rulings (Action 5)
- treaty abuse (Action 6)
- country-by-country (CbC) reporting to tax authorities allied to wider transfer pricing documentation in Action 13, and
- improved mutual agreement procedures (MAP) for resolving disputes (Action 14).

Saint Lucia

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Significant developments

Effective 1 February 2017, the value-added tax (VAT) rate was reduced from 15% to 12.5%.

Taxes on corporate income

Resident companies are taxed on gains or profits accrued directly or indirectly from all sources, whether in or out of Saint Lucia, and are subject to tax at a flat rate of 30%. The 30% tax rate is only applicable to companies that, prior to income year 2003, have no tax arrears and have complied with the requirements of any enactment administered by the Inland Revenue Department (IRD). The tax rate of 33.33% will still apply to those companies that have tax arrears and have not complied with the requirement.

Non-resident companies are taxed on Saint Lucia-source income. The gross amount of such income is liable to 25% withholding tax (WHT), while WHT of 15% applies to interest.

Associations of underwriters are taxed at 30% on 10% of the gross premium arising in Saint Lucia, and life insurance companies are taxed at 30% on 10% of the gross investment income arising in Saint Lucia.

Corporate residence

Companies are regarded as resident if they are incorporated in Saint Lucia or managed and controlled through a permanent establishment (PE) in Saint Lucia.

Permanent establishment (PE)

A PE is defined in Saint Lucia as a fixed place or premises through which the business is wholly or partly carried on.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 12.5%. There is also a 0% rate charged on certain goods and services. In respect of the hotel sector and related services, a reduced rate of 10% is applicable.

The threshold for registered taxpayers is currently set at 400,000 East Caribbean dollars (XCD) *per annum*. This means that it is not mandatory for businesses earning less than the threshold to register for VAT. The threshold is based on the annual sales turnover of the taxpayer.

The VAT rate of 0% has been legislated on certain supplies, which include, but are not limited to, the following:

- Goods to be exported.
- Goods for sale at duty-free shops.
- Fuel.
- Water.
- Electricity.

The following goods and services are exempted from payment of VAT, but this list is not exhaustive:

- Domestic residential rental.
- Educational services.
- Financial services.
- Insurance services.
- Medical services.
- Local transportation services.
- Certain food items (e.g. chicken, rice, milk, flour, bread).

The government secured the Caribbean Community and Common Market's (CARICOM's) approval to remove the import duty on medical supplies for a period of four years from 1 May 2012 to 30 April 2016. Although this was meant to be a temporary measure, the instrument instituting the exemption had no end date and there have been no official pronouncements terminating the exemption. Prescription drugs are currently exempt from VAT.

The government has also agreed to the establishment of a special VAT Refund Account in accordance with the provisions of the Financial Administration Act. This is to facilitate the timely processing and payment of refunds to taxpayers.

Customs duties

Customs duties are charged on a wide range of imported goods. Exemptions are granted for raw materials and plant and machinery used in manufacturing and for certain items imported by hotels under construction, extension, or refurbishing projects.

Excise taxes

Excise taxes are imposed on home-produced goods, mainly liquor, beer, and cigarettes. XCD 1.44 per litre of liquid applies to beer in glass bottles and XCD 3.50 per liquid gallon applies to beers in metal cans.

There is also an excise tax on fuel when fuel is imported by a wholesaler. Tax is included on the price of fuel paid at the gas pump. The tax rate formula is based on the current price provided by the supplier and regulated price at the gas pump.

Commercial property tax

Commercial property tax is assessed annually at 0.4% of the open market value of the property. The owner is required to obtain a commercial valuation assessing the open market value of the property. All new commercial properties completed after 1 April 2001 can benefit from a three-year tax exemption from commercial property tax.

Residential property tax

The property tax rate for residential property is 0.25% of the open market value.

Stamp tax

Stamp tax is charged on any document that evidences a legal or contractual relationship between two or more parties. Additionally, many types of commercial and legal documents must be stamped as evidence of the payment of taxes. Stamp tax may be charged either at a fixed rate or at an *ad valorem* rate, depending, for example, on the value of the property being transferred.

Instrument	Stamp duty rate
Conveyance or sale of immovable property (resident or non-resident purchaser)	2%
Conveyance or sale of immovable property:	
Non-resident vendor	10%
Resident vendor:	
XCD 50,000 to XCD 75,000	2.5%
XCD 75,0001 to XCD 150,000	3.5%
XCD 150,001 and over	5%
Conveyance or sale of debenture, stock, debt, or shares where less than 75% of assets comprise immovable property	Greater of 0.5% of net assets of company or XCD 10
Conveyance or sale of debenture, stock, debt, or shares where more than 75% of assets comprise immovable property:	
Non-resident vendor	10%
Resident vendor:	
XCD 50,000 to XCD 75,000	2.5%
XCD 75,001 to XCD 150,000	3.5%
XCD 150,001 and over	5%

Payroll taxes

Other than employers' portion of the statutory National Insurance Corporate (NIC) contributions (*see below*), there are no other payroll taxes, where the burden falls on the employer. Employers are, however, responsible for deducting the employees' income tax liability at source, through the pay-as-you-earn (PAYE) system.

Social security contributions

The employee's share of NIC contributions (for retirement, sickness, and disability benefits) is 5% of gross salary, up to a maximum contribution of XCD 250 per month (i.e. on a monthly salary of XCD 3,000). The employer matches the contribution and files monthly returns.

Branch income

The tax rate on branch income is the same as that on income earned by resident companies. No additional tax is withheld on transfers of profits to the head office.

Income determination

Inventory valuation

Inventory is generally valued at the lower of cost or market value. The Saint Lucia IRD will generally accept a valuation method that is in line with the common accounting practice of the particular trade or industry. First in first out (FIFO) or average costing are normally used for both book and tax purposes.

Obsolescence is permitted where it occurs, but there are no provisions to account for monetary inflation on inventory valuation.

Capital gains

There is no tax on capital gains except in instances where such gains comprise a portion of the income-earning activities of the business. In such instances, the corporate tax rate applies.

Dividend income

Dividends are tax exempt in Saint Lucia.

Inter-company dividends

Inter-company dividends are not subject to tax in Saint Lucia.

Interest income

The corporate tax rate applies to interest income. However, income earned on securities issued by member governments of the Eastern Caribbean Central Bank and income accruing from trading in securities under the Securities Act to any citizen or resident of any member state of the Organisation of Eastern Caribbean States or to any company incorporated in and registered in any member state of the Organisation of Eastern Caribbean States is tax exempt.

Any expenditure incurred for the purpose of producing exempt income is not deductible.

Royalty and rental income

The corporate tax rate applies to royalty and rental income. However, rental income from a residential accommodation shall be exempt from tax if certain requirements, as defined by regulations, are met.

Foreign exchange gains/losses

Foreign exchange gains or losses arising from foreign exchange transactions on trading items are assessable or deductible as realised gains or losses if settled within normal credit terms. Gains or losses on other instruments, including inter-company loans, are recognised only when actually realised.

Unrealised exchange gains/losses are not taxable/deductible.

Bribes, kickbacks, illegal payments

Bribes, kickbacks, and illegal payments received by a company are includible in taxable income.

Foreign income

Resident companies are taxed in Saint Lucia on income earned outside Saint Lucia. Reciprocal understandings exist with some countries for the avoidance of double taxation, and foreign tax is allowed as a credit against tax charged in Saint Lucia. Saint Lucia has no tax treaties with other countries, except for the member states that make up CARICOM. There is an agreement among the governments of CARICOM for the avoidance of double taxation. Where no agreement exists, the foreign tax offset is the lesser of the foreign tax paid or the tax payable on that income in Saint Lucia.

Tax deferral is not permitted in Saint Lucia.

Deductions

Accrued expenses are deductible as long as they are business related. Contingent liabilities are deductible expenses once they are recognised in the book of accounts.

Depreciation

The following capital allowances are available in Saint Lucia:

- An initial allowance of 20% is granted on the acquisition of industrial, agricultural, and commercial buildings (except for hotels and rental properties); on plant and machinery, including motor vehicles and furniture; and on fixtures and equipment.
- Thereafter, annual allowances for wear and tear, ranging from 10% to 33.33%, are granted on the reducing-balance method, except for industrial and agricultural buildings, which are allowed an annual rate of 5%, and commercial buildings (except for hotels and rental properties), which are allowed an annual rate of 2.5%.

The Comptroller of the IRD may also grant, on application, a higher rate for annual allowance for assets that have higher or abnormal wear and tear.

Gains on disposal are taxable as ordinary income to the extent of depreciation recovered, and any proceeds in excess of the cost of the asset are treated as a capital gain, which is not subject to tax. Where the proceeds on disposal are lower than the tax written-down value of the asset, a balancing allowance is granted for the shortfall.

Goodwill

Neither the amortisation of impaired goodwill nor the related write-off of it is an allowable deduction.

Organisational and start-up expenses

All expenditures incurred in connection with incorporation costs for the establishment of a new small business enterprise are allowable deductions. A small business enterprise is an enterprise incorporated during the year of income that:

- is wholly owned by citizens of Saint Lucia who have not been owners of previously incorporated businesses in Saint Lucia
- employs not more than 50 persons
- has gross income that does not exceed XCD 1 million
- engages in an activity on the listing of preferred business activities as approved by the Minister of Finance, and
- satisfies the provision of any law in force with respect to micro or small-scale business.

Interest expenses

Interest on any loan, including interest payable on debentures, is an allowable deduction to the extent that the amount of such loan was used for the purpose of producing assessable income.

Bad debt

Bad debt expense is deductible, provided it has been brought to account in generating the company's assessable income for any income year and that the company has taken all reasonable steps to establish that the collection of such debt is unlikely.

Charitable contributions

Charitable contributions are an allowable deduction when the contributions are made under a deed of covenant for a period of not less than three years to any religious, charitable, medical, or educational institution; sporting body; or fund of a public character, approved by Cabinet, if such contributions are made to the Saint Lucia National Trust. However, the deduction with respect to such contributions shall not exceed 25% of the assessable income of the company for that income year.

Pension expenses

Current annual contributions to an approved pension fund are deductible expenses. However, where a special payment is made to an approved pension fund, in relation to a period of service by an employee prior to the setting up of the approved pension fund, or to meet any actuarially ascertained insufficiency in the resources of the approved pension fund to meet its obligations to its employees, such amount shall be deductible as follows:

i. Where the special payment does not exceed the current annual contribution, such amount is wholly deductible.
ii. Where the special payment exceeds the current annual contribution, the special payment is an allowable deduction in such years of income, not exceeding five in number, as in the opinion of the Comptroller is reasonable under the circumstances.
iii. Where under (ii) above, annual deductions are allowable over a number of years of income, the first such deduction is allowable for the income year for which the special payment is made.

Taxes

VAT paid on goods imported or purchased, and sold in the ordinary course of business, are deductible for tax purposes. Property taxes are deductible where the property is used in producing assessable income. Income taxes, penalties, and interest on tax in arrears are not deductible.

Other significant items

Meals and entertainment, officer's compensation/life insurance, and payment to directors are deductible expenses, provided they are wholly and exclusively incurred by a company during that year of income for the purpose of producing its assessable income.

Net operating losses

Net operating losses may be carried forward for up to six years if the losses have not been fully absorbed earlier. In carrying losses forward, the amount that can be claimed in any subsequent year is restricted to one-half of the assessable income of that year. Losses may not be carried back.

Payments to foreign affiliates

There are no restrictions on the deductibility of interest paid to foreign affiliates if the transaction is carried out at arm's length and at commercial rates. However, deductions for management charges, allocations of head office expenses, royalties, and other charges that are subject to 25% WHT are restricted to the lesser of the aggregate of those charges or 10% of all allowable business deductions, excluding cost of sales and capital allowances.

Group taxation

Group tax filing is not allowed in Saint Lucia; however, group tax relief is available under certain circumstances to allow the trading losses, excluding the current loss, of a resident company within a group to offset the profits of another resident company within the same group. A claim for group relief requires the consent of the Comptroller of the IRD and is only available to resident companies.

Transfer pricing

Related-party transactions are accepted if they are made on an arm's-length basis. The IRD has the power under the Income Tax Act to make any adjustment deemed necessary to place such transactions at arm's length.

Thin capitalisation

No provision exists for thin capitalisation in Saint Lucia.

Controlled foreign companies (CFCs)

There are no provisions relevant to CFCs in Saint Lucia.

Tax credits and incentives

Foreign tax credit

Where income has accrued to a resident and has been taxed in a foreign country with which there is no double tax agreement (DTA) or is income to which a DTA, if there is one, does not relate, credit for tax on such income is allowed for the lesser of the tax payable in the foreign country or the tax charged under Saint Lucia tax law.

Tax holidays

Tax holidays are available for manufacturing companies. The incentives are aimed at increasing the manufacturing base of Saint Lucia, the level of exports, and the use of local materials and labour in production. An approved manufacturing enterprise will be granted a tax holiday, up to a maximum of 15 years. In determining the length of the tax holiday, the extent of the local value added to approved products is taken into account.

Investment incentives

Income tax incentives and other fiscal concessions are provided under the Fiscal Incentives Act, the Tourism Incentives Act, the Special Development Areas Act, and other concessions granted by the Cabinet of Ministers. The extent of the incentives and concessions granted are specific to the legislation or Cabinet conclusions and depend on the impact that the investment would have on local employment, exports, and the generation of foreign exchange earnings. The incentives granted include the following:

- Duty-free importation of raw materials, machinery, components, and spare parts and other inputs used in manufacturing, and the duty-free importation of construction materials, equipment, and other inputs used in the construction and operation of hotels and other hospitality products.
- Income tax waivers of up to 100% of the taxable income of companies engaged in manufacturing, tourism, and agriculture and other employment-generating activities, for periods of up to 15 years.
- Whole or partial waivers of property tax, stamp duties, Alien Landholding Licence fees, WHT, and VAT with respect to investments in specific areas, or in specific industries and activities.
- Guaranteed repatriation of capital and dividends. Remittance of profits and dividends are tax-free, as they are not subject to WHT.
- Export allowances for goods manufactured in Saint Lucia and exported. Companies that engage in such activity are given tax exemption on the export of such goods, up to a maximum of ten to 15 years.

Employment incentives

Employment incentives are available in the Income Tax Act for the following:

- Hiring university graduates. An additional deduction of 25% of salaries is provided for a maximum period of three years.
- Hiring persons in the offshore financial services industry with skills not available in Saint Lucia. A special tax concession is given to such persons that allows a prescribed percentage of an employee's or contractor's salary or fees to be exempt from income tax.

International Business Companies (IBCs) Act

IBCs are prohibited from conducting business in Saint Lucia and may elect to be exempted from income tax. Alternatively, IBCs may elect to be liable to income tax on their profits and gains at a rate of 1%. Freedom from exchange controls is granted to IBCs, as well as from stamp duty on the transfers of any property, assets, shares, debt obligation, or other securities. No WHT is levied on remittances of dividends and distributions, royalties, interest, management fees, or fees or other income paid by IBCs to persons outside Saint Lucia. Supplies to an IBC are also deemed to be an export, and VAT is applied at the rate of 0%.

Other incentives

Complete or partial waivers of income tax are available on the taxable profits of companies engaged in providing services to the offshore financial services industry.

Special tax concessions are also available for capital construction in the hotel industry. Capital expenditures on the construction of a hotel may offset profits for up to 15 years.

Withholding taxes

Resident corporations and persons that make certain payments of an income nature to residents or non-residents are required to withhold tax on these payments as follows:

Recipient	WHT (%)
Resident corporations:	
Payments to contractors	10
Equipment hire	10
Non-resident corporations:	
Interest	15/15 CARICOM
Royalties	25/15 CARICOM
Management fees	25/15 CARICOM
Commissions or fees (not by way of employment)	25
Income of a trust	25
Premiums, including insurance premiums	25
Any other payment of an income nature	25

Saint Lucia has only one DTA. This treaty, between the Caribbean territories, is referred to as the CARICOM Double Taxation Agreement. CARICOM is comprised of the following states:

- Antigua and Barbuda
- The Bahamas
- Barbados
- Belize
- Dominica
- Grenada
- Guyana
- Haiti
- Jamaica
- Montserrat
- St. Kitts and Nevis
- St. Vincent and the Grenadines
- Suriname
- Trinidad and Tobago

Tax administration

Taxable period

Returns must cover a 12-month period, which may be changed only with the Comptroller's permission.

Tax returns

Tax returns must be filed within three months of the company's fiscal year-end. An extension of the filing date may be obtained.

Financial statements must be submitted with the returns, together with a schedule reconciling taxable income with book income and various other schedules of additional information.

The system is one of self-assessment. Upon receipt of the returns, the IRD examines the information provided and issues a notice of assessment at any time, subject to the statute of limitations. The Revenue Department may also issue assessments in the absence of returns.

Payment of tax

Tax is payable in instalments on 25 March, 25 June, and 25 September in each year of income, based on the preceding year's income. Any remainder is payable within three months of the end of the fiscal year.

Penalties and interest

The following civil penalties and interest, which are non-deductible, are imposed:

- For late filing or for failure to file: 5% of the tax charge at filing date.
- For late payment: 10% of the unpaid tax at the due date.
- On tax and penalties unpaid: Monthly interest at a rate of 1.04%.
- Tax knowingly evaded or sought to be evaded: 100% of the tax.

Appeals

Within 30 days after the date of service of a notice of assessment or reassessment, the taxpayer may submit a written objection to the Revenue Department on any matters in such assessment or reassessment. If the Revenue Department confirms its assessment, the taxpayer may file an appeal with the Appeal Commission, which comprises seven persons appointed by the Minister of Finance. A decision by that body may be further appealed to the Saint Lucia High Court within 30 days. An appeal against an order from this Court may be made to the Court of Appeal.

Tax audit process

The IRD carries out audits of a selection of tax returns, usually at the taxpayer's place of business. Audits may be carried out at any time prior to the expiration of the statute of limitations, whether or not notices of assessment have been issued. The Revenue Department has wide powers in determining the information it requires for these audits.

Statute of limitations

Assessments are not final until six years after the end of the income year, within which period assessments may be made at any time. In cases of misrepresentation or failure to disclose any material fact, a reassessment can be made at any time.

Topics of focus for tax authorities

The tax authorities in Saint Lucia often focus on the deductibility of related-party expenses during the completion of tax audits and WHTs on head office or management charges.

Other issues

Tax Information Exchange Agreements (TIEAs)

TIEAs provide for the exchange of information on tax matters. TIEAs with Aruba, Australia, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, the Netherlands, Netherlands Antilles, Norway, Portugal, Sweden, the United Kingdom, and the United States are in force.

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 19 November 2015, the government of the United States and the government of Saint Lucia signed an intergovernmental agreement (IGA) entitled, 'Agreement between the Government of the United States of America and the Government of St. Lucia to Improve International Tax Compliance and to Implement FATCA'. The IGA requires, in particular, the exchange of certain information with respect to US and Saint Lucia reportable accounts on an automatic basis, pursuant to the provisions of Article 4 of the Agreement between both Governments for the Exchange of Information with Respect to Taxes, done at Washington on January 1987 (the 'TIEA').

Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Saint Lucia signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in November 2016. Under the convention, Saint Lucia will exchange tax information based on Organisation for Economic Co-operation and Development (OECD) standards, but is not required to collect taxes on behalf of another country or provide assistance in the service of related documents.

Common Reporting Standard (CRS)

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the OECD. Under the CRS, foreign tax authorities will provide information to the IRD relating to financial accounts in their jurisdiction held by Saint Lucian residents. The IRD will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Saint Lucia. Saint Lucia has committed to implementing the CRS by September 2018.

Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS)

In May 2018, Saint Lucia joined the IF on BEPS, becoming the 114th jurisdiction to do so. By joining the IF, Saint Lucia will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues. As a signatory to the IF, Saint Lucia has committed to implementing minimum standards related to:

- preferential regimes, including exchange of tax rulings (Action 5)
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Significant developments

Income tax

The Royal Decree No. (M / 131) dated 29/12/1438H (20 September 2017) has amended certain articles of the Law.

The key amendments are as follows:

Article 2: Persons subject to taxation

Persons subject to taxation also include a resident 'capital company' (includes a joint stock company and limited liability company) with respect to shares owned either directly or indirectly by persons operating in oil and hydrocarbon production.

Article 9: Intragroup transactions for certain assets

Intragroup transfers of cash, shares, financial securities, and other tangible and intangible assets can now be done tax neutrally. The 'cost base' of the relevant intragroup transactions will be at net book value to achieve the no gain no loss result.

Article 10: Tax exemptions extended

The types of income that are tax-exempt has been extended to include:

- Capital gains from the disposal of shares of a Saudi listed company that is listed on dual or multiple stock exchanges.
- Dividend income (cash or in kind) received by a Kingdom of Saudi Arabia (KSA) resident company from a foreign or KSA resident company, provided that:
  - the ownership in the company is 10% or more, and
  - the period of ownership is at least one year.

Article 17: Depreciation

The cost base of assets transferred or distributed between companies that are part of the same 'group' should be set at the net book value in line with Article 9 above.

Article 20: Contributions to authorised retirement funds

A capital company is now allowed to deduct its contribution to a retirement fund, a social insurance fund, or any other fund established for the purpose of settling employee end of service benefits or to meet staff medical expenses, provided they meet certain conditions.

It should be noted that there is a notification requirement to the General Authority of Zakat and Tax (GAZT) in order to claim any deduction of the contribution.

Article 43: Loss carry forward on change of ownership

Capital companies are now allowed to carry forward tax losses regardless of a change in the ownership or control in the company, provided the company continues to undertake the same activity. Previously, a change in control or ownership of 50% or more would result in carried forward tax losses being forfeited.

This amendment falls within the government's objective to encourage foreign investment.

The GAZT's right to information

The GAZT's right to obtain information from taxpayers now extends to the provisions of international bilateral/multilateral agreements.

Effective date

Amendments to Articles 2 and 20 are applicable from 1 January 2017.

All other amendments are effective from the commencement of the financial year immediately after the issuance of the said Royal Decree (i.e. for most companies it will be from 1 January 2018).

Amendments to the By-laws that provide further details concerning the above amendments have already been issued in February 2018.

Tax appeals

The Royal Decree No. (M / 113) dated 2/11/1438H (25 July 2017) has amended Articles 66 (objection and appeal) and 67 (formation and jurisdiction of preliminary objection and appeal committees) of the law.

The key amendments are as follows:

Article 66: Objection and appeal

The number of days within which to file an appeal against an assessment has been reduced from 60 days to 30 days.

The tax liability on the items not appealed is required to be settled before filing the appeal.

Article 66(f) relating to the appeal at the Board of Grievance (BOG) level has been deleted. As such, taxpayers will not be able to appeal further at the BOG level, and the decision of the Appeal Committee for Tax Violations and Disputes will be considered final.

Article 67: Formation and jurisdiction of preliminary objection and appeal committees

Two new appeal committees will be formed, namely: Committee for Resolution of Tax Violations and Disputes (CRTVD) appears functionally equivalent to the current Preliminary Appeal Committee, and Appeal Committee for Tax Violations and Disputes (ACTVD) appears functionally equivalent to the current Higher Appeal Committee.

The CRTVD and ACTVD will not hear any appeals filed after five years of the due date of liability under dispute or from the date of notification of disputed item unless there is a valid reason acceptable to the Appeal Committees.

The present structure of the Preliminary and Higher Appeal Committees will continue until the new Appeal Committees are formed.

France and KSA treaty application on royalty

In a recent tax case involving application of the provisions of the KSA and France double tax treaty (DTT), the Preliminary Appeal Committee has ruled in favour of a taxpayer resident in France with regard to application of withholding taxes (WHTs) on royalties.

In terms of the KSA domestic tax law, a 15% WHT rate is applicable on royalties paid from a KSA resident to a non-resident. However, based on the provisions of Article 8 of the KSA/France tax treaty, 'Royalties arising in KSA and paid to a resident of France shall be taxable in France'.

Accordingly, in the absence of any reduced WHT rates, no WHT should apply on payment of royalties from KSA to France. The GAZT initially challenged the approach of adopting no WHT on royalties paid to France; however, based on the Preliminary Appeal Committee decision, a ruling was made in favour of the taxpayer.

The above decision is significant for cases involving French companies with licensing and royalty arrangements with KSA residents.

Value-added tax

The KSA official VAT Law and VAT implementing regulations published on the GAZT website

Official VAT Law

The VAT Law was published by the GAZT on 28 July 2017 and entered into force from the start of the fiscal year following the date of its publication in the Official Gazette (i.e. 1 January 2018). The VAT Law is based on the VAT principles agreed upon in the Unified Gulf Cooperation Council (GCC) Agreement for VAT.

VAT registration

The VAT Law required taxpayers to register for VAT within 30 days from the date the law was published by the GAZT (28 July 2017). The VAT Law also required taxable persons to submit their advance VAT registration by 24 August 2017, although this was further extended to 20 December 2017.

VAT implementing regulations

Many details of the application of VAT, including specific VAT requirements, have been clarified in the implementing regulations.

In addition, the VAT regulations have been supported by user guides to help taxpayers in their understanding and interpretation of the legislation, as well as a number of advanced rulings as required, setting precedent for treatment of certain business-specific cases with regards to the application of VAT.

The Excise Tax Law for the Kingdom of Saudi Arabia published by the GAZT

The Excise Tax Law was published by the GAZT on 26 May 2017 and entered into effect on 11 June 2017. The implementation of excise tax by the Kingdom of Saudi Arabia follows the agreement of the GCC States on the GCC Unified Agreement for

Excise Taxes, which sets the common rules and principles of a region-wide excise tax system.

According to Article 6 of the Excise Tax Law, businesses that undertake any of the following activities must register for excise tax purposes:

- Import of excisable goods.
- Production of excisable goods.
- Acquisition of excisable goods under duty suspension arrangement.

The Excise Tax Executive Regulation, published on 6 June 2017, provides additional guidance regarding the application of the Excise Tax Law and taxpayers responsibilities in terms of registration and compliance. The regulations entered into force the same date as the Excise Tax Law (i.e. 11 June 2017).

See Value-added tax and excise tax in the Other taxes section for more information.

Taxes on corporate income

Only non-Saudi investors are liable for income tax in Saudi Arabia. In most cases, Saudi citizen investors (and citizens of the GCC countries, who are considered to be Saudi citizens for Saudi tax purposes) are liable for *Zakat*, an Islamic assessment. Where a company is owned by both Saudi and non-Saudi interests, the portion of taxable income attributable to the non-Saudi interest is subject to income tax, and the Saudi share goes into the basis on which *Zakat* is assessed.

According to the income tax law, the following persons are subject to income tax:

- A resident capital company to the extent of its non-Saudi shareholding.
- A resident non-Saudi natural person who carries on activities in Saudi Arabia.
- A non-resident person who carries out activities in Saudi Arabia through a permanent establishment (PE).
- A non-resident person who has other income subject to tax from sources within Saudi Arabia.
- A person engaged in natural gas investment fields.
- A person engaged in oil and other hydrocarbon production.
- A resident capital company with respect to shares owned either directly or indirectly by persons operating in oil and hydrocarbon production.

The rate of income tax is 20% of the net adjusted profits. WHT rates are between 5% and 20%. *Zakat* is charged on the company's *Zakat* base at 2.5%. *Zakat* base represents the net worth of the entity as calculated for *Zakat* purposes.

It should be noted that although the income tax rate is 20%, income from the following two activities is subject to different rates:

- Natural Gas Investment Tax (NGIT) shall be determined on the basis of the internal rate of return (IRR) on the cumulative annual cash flows of the taxpayer derived from natural gas investment activities. The rate applicable will be 30% if the IRR is 8% or less. The rate increases progressively up to 85% if the IRR equals or exceeds 20%.

- Income from oil and hydrocarbon production is subject to tax at a rate ranging from 50% to 85%.

Local income taxes

There are no local, state, or provincial government taxes on income other than the regular income tax or *Zakat* as mentioned above.

Corporate residence

A company is considered a resident company if it is formed under the Saudi Arabian Regulations for Companies or if its central management is located in Saudi Arabia.

Permanent establishment (PE)

According to the Saudi tax regulations, the following are the requirements for considering a non-resident party to have a PE:

- A PE of a non-resident in Saudi Arabia, unless otherwise provided below, consists of the permanent place of activity of the non-resident through which one carries out business, in full or in part, including business carried out through an agent.
- The following are considered a PE:
  - Construction sites, assembly facilities, and the exercise of related supervisory activities.
  - Installations or sites used for surveying for natural resources, drilling equipment, or ships used for surveying for natural resources, and the exercise of related supervisory activities.
  - A fixed location where a non-resident natural person carries out business.
  - A branch of a non-resident company that is licensed to carry out business in Saudi Arabia.
- A place is not considered a PE of a non-resident in Saudi Arabia if it is used in Saudi Arabia only to do the following:
  - Store, display, or deliver goods or products belonging to the non-resident.
  - Keep an inventory of goods or products belonging to the non-resident only for the purposes of processing by another person.
  - Purchase goods or products only for the collection of information for the non-resident.
  - Perform any other activities that are preparatory or auxiliary in nature for the interests of the non-resident.
  - Prepare contracts relating to loans, supply of products, or perform technical services for signature.
  - Execute any group of the activities mentioned above.
- A non-resident partner in a resident personal company is considered an owner to a PE in Saudi Arabia in the form of a share in a personal company.

Furthermore, the agent mentioned in the above article is identified as a dependent agent who has any of the following authorities:

- Negotiate on behalf of a non-resident.
- Conclude contracts on behalf of a non-resident.
- Has a stock of goods, owned by a non-resident, on hand in Saudi Arabia to supply the clients' demands regularly on behalf of the non-resident.

A place from which a non-resident carries out insurance and/or reinsurance activity in Saudi Arabia through an agent is considered a PE of the non-resident even though the agent is not authorised to negotiate and conclude contracts on behalf of the non-resident.

Other taxes

Value-added tax (VAT) and excise tax

VAT Law and implementing regulations have been published and are applicable from 1 January 2018.

VAT is imposed at a rate of 5% for most goods and services, with certain exceptions applicable.

The Excise Tax Law became effective on 11 June 2017 in Saudi Arabia, with only tobacco products (at 100%), soft drinks (at 50%), and energy drinks (at 100%) selected as goods subject to the excise tax in Saudi Arabia.

In order to comply with the Saudi Arabian Excise Tax Law, manufacturers and importers of excisable goods are required to register with the GAZT. Businesses that qualify to be under the scope of the Excise Tax Law that fail to register and comply with the guidance issued by the GAZT will be considered as tax evaders and will be imposed penalties.

Customs duties

Customs duties are imposed on imports according to tariff rates that are effective on the payment date in accordance with the Saudi Customs regulations. Customs duties are imposed on the price of the imported goods. This price is assessed based on the actual cost paid or on the agreed upon cost denominated in the currency of the exporting country. The price consists of the price of the imported goods as packed for shipping from the port of export plus freight and insurance cost to the Saudi port, which is converted to Saudi riyals at the exchange rates published by the Saudi Arabian Monetary Agency (SAMA) on the date of the declaration. In case this procedure is not achievable, the imported goods will be priced based on the most proximate comparable value that could be ascertained. Imported goods that are subject to customs duties based on weight are assessed based on the gross weight or the net weight as shown in the tariff schedules. The gross weight of the goods includes the goods weight, including all internal and external packing materials. Net weight of the goods excludes all internal and external packing materials, including the items used for separating and arranging the goods.

To encourage joint ventures in manufacturing, the government grants tariff protection from competing imports to locally produced, quality goods. Rates can be as high as 20%.

Penalties on smuggling goods vary from confiscation to collections of customs duties and penalties to imprisonment.

Payroll taxes

Since there is no individual income tax regime in Saudi Arabia, earnings from employment are not subject to income tax. Only the social insurance tax (*see below*) is applied on the payroll.

Social insurance tax

Social insurance tax is paid monthly based on (i) basic wage, (ii) cash or in-kind housing allowance, and (iii) commissions, with an upper limit of 45,000 Saudi riyals (SAR), is computed at 2% for non-Saudi employees, and is paid by the employer. For Saudi employees, the rate is 22% and is paid by both the employee (10%) and the employer (12%).

Based on Saudisation requirements, companies have to pay SAR 200 monthly per expatriate employee to the Labour Office for all the expatriate employees that exceed the Saudi national employees.

Other taxes

There is no form of stamp duty, transfer, sales, turnover, production, real estate, or property taxation except in so far as they may fall within the scope of *Zakat*, which is applicable only to Saudi nationals.

Branch income

Taxable income from a branch of a non-Saudi based corporation is taxed at 20%. Certain charges incurred by the headquarters are not deductible in the branch tax return.

Income determination

Inventory valuation

The weighted average-cost method is used for valuing inventory under Saudi tax law.

Capital gains

Capital gains are subject to income tax or *Zakat*, as appropriate, at the normal income tax or *Zakat* rate. However, capital gains realised from the disposal of shares in Saudi stock companies listed in the Saudi market are tax exempt, subject to certain conditions.

Dividend income

Dividend income that is received by a resident party is subject to income tax at the normal income tax rate. However, dividends paid to a non-resident party are subject to WHT at 5%.

Interest income

Interest income is subject to income tax at the normal income tax rate. However, interest paid to a non-resident party is subject to WHT at 5%.

Royalty income

Royalty income is subject to tax at the normal income tax rate. However, royalties paid to a non-resident party are subject to WHT at 15%.

Royalty is defined as per article one of the Saudi income tax law as follows:

“Payments received for use of or the right to use intellectual rights, including, but not limited to, copyright, patents, designs, industrial secrets, trademarks and trade names, know-how, trade secrets, business, goodwill, and payments received against the use of information related to industrial, commercial, or scientific expertise, or against granting the right to exploit natural and mineral resources.”

Imports and supply contracts

Saudi tax law provides that no profit will be considered to arise from a contract for the supply of goods to Saudi Arabia, provided delivery of the goods is either free on board (FOB) or cost, insurance, and freight (CIF) to a Saudi port. However, should the contract provide for the delivery and/or installation of materials at a point inside Saudi Arabia, the supplier may be considered to be carrying on business within Saudi Arabia, and, as a consequence, the contract may be subject to Saudi income taxation as follows:

- If the material cost was identified in the supply contract separately from the cost of work performed in Saudi Arabia, then, in the absence of a PE, a WHT on the work that will be performed in Saudi Arabia may be assessed, based on the type of services. However, if the contract qualifies the supplier to have a PE in Saudi Arabia, then income tax will be applied according to the Saudi tax regulations as for a normal taxpayer.
- If the supply contract indicates a total cost without segregation in the value of supply and the value of the other activities in Saudi Arabia, then the work performed in Saudi Arabia will be assigned a value equal to 10% of the contract value for each type of activity.

Foreign income

The gross income derived by a capital company resident in Saudi Arabia from its operations and of its branches inside and outside Saudi Arabia is subject to tax in Saudi Arabia. However, in order to avoid double taxation on the same income, the following exceptions and clarifications are to be considered:

- With respect to the income realised from investments in other resident capital companies and foreign capital companies (foreign dividends applicable from 1 January 2018) and in order to avoid double taxation, such income is to be excluded from being subject to tax under the following conditions:
  - The percentage of ownership in the company invested in is not less than 10%.
  - The period of ownership of shares is not less than one year.

Previously (up to 31 December 2017), foreign dividends were taxable unless a DTT provided relief.

There are no restrictions on repatriation of profits, fees, capital, salaries, or other monies.

Deductions

All expenses that are necessary and normal to the business, paid or accrued, are allowable deductions, provided the expense meets the following conditions:

- It is an actual expense, supported by a verifiable document or other qualifying evidence.
- It is related to the generation of taxable income.
- It is related to the subject tax year.
- It is of a non-capital nature.

Depreciation

A depreciation deduction is allowed under the following limitations as stipulated by the law:

- The asset is not intended for resale and is to be used, in full or in part, for the entity's purposes.
- The asset is of a depreciable nature that loses value because of use or because of wear and tear and obsolescence and has a value extending beyond the end of the taxable year.
- The asset is owned by the business, as per the ownership document for buildings and contracts and invoices for other assets.
- The asset depreciation is allowed even if the asset becomes inactive during the tax year.

Depreciation for tax purposes is calculated as follows, based on the following five categories of depreciable tangible or intangible assets, other than land:

Asset category	Depreciation rate (%)
Fixed buildings	5
Industrial and agricultural movable buildings	10
Factories, machines and equipment, computer application programs, passenger cars, and cargo vehicles	25
Expenditures for geological surveying, drilling, exploration, and other preliminary work to exploit and develop natural resources and their fields	20
All other tangible or intangible assets not included in previous categories, such as furniture, planes, ships and trains, and goodwill	10

The declining-balance method of depreciation, according to the above rates, should be followed for tax purposes. However, straight-line depreciation is allowed for *Zakat* payers as per Zakat regulations.

There are also rules for depreciation relating to assets either acquired or disposed of. Essentially, 50% of the allowable acquisition price or disposal proceeds is added to or subtracted from the asset pool in the first year, and the remaining 50% in the following year.

From 1 January 2018, the cost base of assets transferred or distributed between companies that are part of the same group should be set at the net book value.

Assets under build, own, and transfer (BOT) and build, own, operate, and transfer (BOOT) are allowed to be depreciated over the contract period. This presumes, although it is not clear, that assets under the BOT and BOOT schemes actually will have a separate grouping in addition to the above prescribed groups.

Start-up expenses

Tax treatment of start-up expenses depend on how they were treated under Saudi generally accepted accounting principles (GAAP). Generally, they can be fully expensed in the first financial year or can be capitalised and amortised.

Loan charges (interest expenses)

An interest deduction is limited to the lower of the loan charge incurred during the tax year, if related to income that is subject to tax, or the result of the following formula, whichever is less.

The taxpayer's total income from loan charges, plus 50% of (A minus B) as below:

A = income subject to tax other than income from loan charges.

B = expenses allowed under the law other than loan charge expenses.

Note that banks are not subject to this formula.

Bad debt

Bad debts are deductible, provided they meet all of the following conditions:

- The bad debt was previously declared in the appropriate year's income.
- The debt resulted from sale of goods or services.
- The company holds a certificate from the taxpayer's certified public accountant (CPA) certifying that the debt has been written off in the taxpayer's books and records, based on a decision by the taxpayer at the appropriate management level.
- Serious efforts have been exerted by the taxpayer to collect the debt with no success and the inability of the debtor to pay has been proved based on a judicial ruling or bankruptcy.
- The debt is not from a related party.
- There is a commitment by the taxpayer to reinstate, as income, any written-off debt whenever collected.

Charitable contributions

In determining the tax base of each taxpayer, a deduction is allowed for donations paid during the taxable year to public agencies or philanthropic societies licensed in Saudi Arabia, which are non-profit organisations and are allowed to receive donations.

Allocations and reserves

Allocations and reserves formed during the year are deductible as follows:

- Bank allocations to a reserve fund for doubtful debts are allowable deductions. However, a bank must submit a certificate from the SAMA stating the amount of doubtful debts and the amount of doubtful debts collected during the year that should be reinstated in the tax base of the year of collection.
- Insurance/reinsurance companies may deduct, based on industry standards, a reserve for unearned premiums and for unexpired risks, provided that it is reported in the tax base of the following year.

A reserve for unearned premiums means a part of premium amounts collected or stated in books that covers risks related to the future tax year(s). A reserve for unexpired risks mean the amount of compensation claimed or reported, but for which the payment process falls short of completion during the tax year.
- A taxpayer may reduce its book profit by the amount of reserves used during the year that had been readjusted when made to increase income or decrease expenses in the year of formation. Examples of such reserves are end-of-service awards, doubtful debt, and drops in prices. Such amounts are deductible, provided the following conditions are met:
  - The used amount was paid or accrued during the year, and it is supported by documentation.
  - The reserve had been adjusted in the year of formation to increase the tax base.

School fees
School fees paid by taxpayers for their employees' children are deductible expenses, provided they meet the following conditions:

- They are paid to a local licensed school.
- This benefit is stated in the employment contract.

Pension fund
Employers' contributions to employees' pension funds or savings funds established under Saudi Arabia's rules and regulations are deductible, provided that such contribution, one payment or in aggregate, is not in excess of 25% of the employee's income before the employer's contributions and that the fund meets the following criteria:

- The fund is established according to special provisions that clearly stipulate conditions of subscription and rights of subscribers.
- Such obligation is stated in the employment contract or in the Articles of Association of the establishment.
- The fund has a character independent of the establishment and has separate accounts audited by an independent CPA.

A capital company is allowed to deduct its contribution to a retirement fund, a social insurance fund, or any other fund established for the purpose of settling employee end-of-service benefits or to meet staff medical expenses, provided they meet certain conditions. It should be noted that there is a notification requirement to the GAZT in order to claim any deduction of the contribution.

Research and development (R&D)
A deduction is allowed for R&D expenditure incurred during the tax year in connection with the generation of income that is subject to tax. Such expenditure relates to technical, scientific, and engineering experiments; computer systems; or similar research. This provision does not apply to the acquisition of land and facilities, or to equipment used for research. Such facilities and equipment are subject to depreciation under the law.

Fines and penalties
Fines and penalties related to income tax, paid or payable in Saudi Arabia or to other countries, are not deductible.

Financial fines or penalties paid or payable to any party in Saudi Arabia, such as traffic fines or fines for causing damage to public utilities, are also not deductible.

Fines or penalties paid for breach of contractual obligations, such as fines on delayed or defaulted completion of contracts, are deductible, provided they are documented by the contracting party and the income from such penalties is reported in the year of recovery.

Taxes

Income taxes are not deductible.

Non-deductible expenses

The following expenses are non-deductible:

- Wages, salaries, and whatever is so deemed, in cash or in kind, paid to an owner, partner, or shareholder, or to a member of their families, being a parent, spouse, sons/daughters, and siblings (this provision does not apply to stockholders in a stock company).
- Compensation in cash or in kind paid to a partner, shareholder, or to a family member, including a parent, spouse, sons/daughters, and siblings, for a property or service to the extent that the compensation is higher than the fair market value of such property or service at time of transaction.
- Entertainment expenses incurred for events such as parties, sports competitions, entertainment trips and activities, etc.
- Expenses of a natural person for personal consumption, such as personal withdrawals, dependants' cost of living, or education.
- Any bribe or similar payment, which is considered an illegal practice in Saudi Arabia, even if paid abroad.
- Insurance commission in excess of 3% of total premiums collected in Saudi Arabia through an agent or others and regardless of whether or not the agent is a partner.

Net operating losses

A taxpayer may carry forward operational losses, as adjusted, to the years following the loss year until the cumulative loss is fully offset. The maximum profit percentage of any year that could be used to offset cumulative losses should not exceed 25% of the year's taxable profit as reported in the taxpayer's return. Carryback of losses is not allowed.

Payments to foreign affiliates

Payments made to headquarter offices located abroad by wholly owned local subsidiaries or branches are not deductible. Such payments include:

- royalties or commissions
- loan charges (interest expense) or any other financial fees (except loan charges paid by branches of foreign banks in Saudi Arabia to their non-resident head offices, which are considered as tax deductible expenses), and
- indirect administrative and general expenses allocated on an estimated basis.

The value of goods or services delivered to the taxpayer by related parties is not deductible to the extent that it is in excess of an arm's-length value.

Group taxation

Double taxation on the income of foreign investors realised from their investments in other resident companies is eliminated under the following conditions:

- Such income was subjected to tax in Saudi Arabia.
- The percentage of ownership in the company invested in is not less than 10%.
- The period of ownership of shares is not less than one year.

With respect to the income realised by a resident capital company from its investments and operations outside Saudi Arabia, it will be subject to tax in Saudi Arabia (unless an effective DTT between Saudi Arabia and the country invested in stipulates different provisions).

However, from 1 January 2018, dividend income (cash or in kind) received by a resident company from a foreign or resident company is exempt, provided that:

- the ownership in the company is 10% or more, and
- the period of ownership is at least one year.

For *Zakat* purposes, the concept of consolidation is acceptable and relief may be obtained for wholly owned subsidiaries by Saudi/GCC companies that are subject to *Zakat*.

Note that an entity operating in Saudi Arabia that has undertaken more than one project under the same commercial registration is required to consolidate the results of such projects into the financial statements of that entity and subject them to taxation as a single operation.

Transfer pricing

There are no specific transfer pricing rules in Saudi Arabia that impose or deem a charge to arise where the GAZT has reason to believe that a transaction has taken place at a value other than on an arm's-length basis. However, there is a generic provision that allows the GAZT to re-characterise or re-allocate income or expenses arising from a transaction if it is undertaken for the purposes of avoiding or reducing a tax liability in Saudi Arabia.

In addition to the above and based on the Ministerial Resolution (No. 1776) dated 19 March 2014, the GAZT is to issue guidelines/regulations on transfer pricing of transactions between related parties in accordance with the internationally accepted standards.

Thin capitalisation

There is no special legislation governing thin capitalisation for tax purposes. A Saudi company may deduct interest payments to affiliates, but not the head office, provided that the amount of debt and rate of interest are at arm's length and that the interest deductibility formula is met. A Saudi company may be financed with minimum capital, and there is no limit to the amount of debt that may be used.

Controlled foreign companies (CFCs)

There are no special rules for CFCs in Saudi Arabia. However, *as mentioned above*, the gross income derived by a capital company resident in Saudi Arabia from its operations and branches outside Saudi Arabia is subject to tax in Saudi Arabia.

Tax credits and incentives

Foreign tax credit

Income tax and related fines and penalties paid or payable to Saudi Arabia or to other countries are non-deductible expenses.

Incentives for investment in less-developed regions

The government of Saudi Arabia has granted tax concessions to the following six less-developed regions in Saudi Arabia, with the intention of attracting more investment:

- Ha'il.
- Jazan.
- Najran.
- Al-Baha.
- Al-Jouf.
- Northern territory.

These tax privileges are granted for a period of ten years from the start of any project.

The qualifying investing company's annual tax bill may be reduced by:

- Half the annual training expenditure on Saudis.
- Half the annual salaries paid to Saudis.
- 15% of the non-Saudi capital share, subject to certain conditions.

More deductions are granted if investment capital for any project exceeds SAR 1 million and if more than five employees of Saudi nationality have jobs of a technical or administrative nature with contracts of at least one year.

Customs incentives

An exemption from customs duties is available on machinery and raw materials that are required for approved projects, provided that they are not available in the local market. Such exemptions should be applied for prior to their importation and are subject to certain terms.

Withholding taxes

Payments made from a resident party or a PE to a non-resident party for services performed are subject to WHT. The rates vary between 5%, 15%, and 20% based on the type of service and whether the beneficiary is a related party.

The WHT should be paid within the first ten days of the month following the month during which the payment was made.

The domestic rate for WHT is 5% on dividends, 5% on interest, and 15% on royalties.

Tax treaties

Saudi Arabia has entered into tax treaties with several countries. Treaties currently or about to be in force are listed below. A number of other treaties are at various stages of negotiation.

DTTs have not yet been effectively tested in Saudi Arabia. However, they generally follow the Organisation for Economic Co-operation and Development (OECD) Model Treaty and may provide certain relief, including WHT on dividends, interest, and royalties.

The following are the treaty WHT rates for payments made from Saudi Arabia to treaty country recipients. Each tax treaty should be studied carefully because there could be exceptions to the general rules.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	5	5	15
Treaty:			
Algeria	0	0	7
Austria	5	5	10
Azerbaijan	5/7 (18)	0/7 (19)	10
Bangladesh	10	7.5	10
Belarus	5	5	10
China, People's Republic of	5	10	10
Czech Republic	5	0	10
Egypt	5/10 (23)	0/10 (24)	0/10 (24)
Ethiopia	5	0/5 (22)	7.5
France	0	0	0 (17)
Greece	5	5	10
Hungary	5	0	5/8 (11)
India	5	10	10
Ireland	0/5 (13)	0	5/8 (11)
Italy	5/10 (1)	5	10
Japan	5/10 (9)	10	5/10 (10)
Jordan	5	5	7
Kazakhstan	0/5 (22)	0/10 (22)	0/10 (22)
Kyrgyzstan	0	0	7.5
Luxembourg	5	0	5/7 (14)
Macedonia	5	0/5 (22)	10
Malaysia	5	5	8
Malta	5	0	5/7 (14)
Netherlands	5/10 (2)	5	7
Pakistan	5/10 (3)	10	10
Poland	5	5	10
Portugal	5/10 (20)	0/10 (21)	8
Romania	5	5	10
Russia	5	5	10
Singapore	5	5	8
South Africa	5/10 (2)	5	10
South Korea (Republic of Korea)	5/10 (4)	5	5/10 (10)
Spain	0/5 (5)	5	8

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Sweden	5/10 (2)	0	5/7 (14)
Syria	0	7.5	15
Tajikistan	5/10 (4)	8	8
Tunisia	5	2.5/5 (16)	5
Turkey	5/10 (6)	10	10
Turkmenistan	10	10	10
Ukraine	5/15 (15)	10	10
United Kingdom	5/15 (7)	0	5/8 (11)
Uzbekistan	7	7	10
Venezuela	5	0/5 (22)	8
Vietnam	5/12.5 (8)	10	7.5/10 (12)

Notes

1. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that has owned, directly or indirectly, at least 25% of the capital of the company paying the dividends for a period of at least 12 months preceding the date the dividends were declared.
   - 10% of the gross amount of the dividends in all other cases.
2. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
   - 10% of the gross amount of the dividends in all other cases.
3. Shall not exceed:
   - 5% of the gross amount of dividends if the beneficial owner is (i) a company or (ii) an entity wholly owned by the government.
   - 10% of the gross amount of the dividends in all other cases.
4. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
   - 10% of the gross amount of the dividends in all other cases.
5. Shall not exceed:
   - 5% of the gross amount of the dividends.
   - The contracting state of which the company paying the dividends is a resident shall exempt from tax the dividends paid by that company to a company (other than a partnership) that is a resident of the other contracting state, as long as it directly holds at least 25% of the capital of the company paying the dividends.
6. Shall not exceed:
   - 5% of the gross amount of the dividends:
     - if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends or
     - if the beneficial owner is central bank or an entity that is wholly owned by the government.
   - 10% of the gross amount of the dividends in all other cases.
7. Shall not exceed:
   - 15% of the gross amount of the dividends where qualifying dividends are paid by a property investment vehicle.
   - 5% of the gross amount of the dividends in all other cases.
8. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 50% of the capital of the company paying the dividends, or has invested 20 million United States dollars (USD) or more, or any equivalent currency, in the capital of the company paying the dividends.
   - 12.5% of the gross amount of the dividends in all other cases.
9. Shall not exceed:
   - 5% of the gross amount of the dividends if the beneficial owner is a company that holds, directly or indirectly, during the period of 183 days ending on the date on which entitlement to the dividends is determined, at least 10% of the voting shares or of the total issued shares of the company paying the dividends.
   - 10% of the gross amount of the dividends in all other cases.
10. Shall not exceed:
    - 5% of the gross amount of the royalties that are paid for the use of, or the right to use, industrial, commercial, or scientific equipment.
    - 10% of the gross amount of the royalties in all other cases.

11. Shall not exceed:
    - 5% of the gross amount of the royalties that are paid for the use of, or the right to use, industrial, commercial, or scientific equipment.
    - 8% of the gross amount of the royalties in all other cases.
12. Shall not exceed:
    - 7.5% of the gross amount of such royalties that are paid for rendering of any services or assistance of a technical or managerial nature.
    - 10% of the gross amount of such royalties in all other cases.
13. Shall not exceed:
    - 5% of the gross amount of the dividends.
    - The contracting state of which the company paying the dividends is a resident shall exempt from tax the dividends paid by that company to a company (other than a partnership) that is a resident of the other contracting state, as long as it directly holds at least 25% of the capital of the company paying the dividends or when paid to the government, the central bank, or any institution, agency, or fund wholly owned by the government of Ireland.
14. Shall not exceed:
    - 5% of the gross amount of the royalties that are paid for the use of, or the right to use, industrial, commercial, or scientific equipment.
    - 7% of the gross amount of the royalties in all other cases.
15. Shall not exceed:
    - 5% of the gross amount of the dividends if the beneficial owner directly holds at least 20% of the capital of the company paying the dividends.
    - 15% of the gross amount of the dividends in all other cases.
16. Shall not exceed:
    - 2.5% of the gross amount of income from debt-claims for banking institutions.
    - 5% of the gross amount of income from debt-claims in all other cases.
17. The GAZT informed a taxpayer in a case where a royalty was paid by a Saudi company to an unrelated, third party that it was also taxable in Saudi Arabia, and requested settlement of 15% WHT, indicating that Saudi Arabia has the taxing right. However, the GAZT recently agreed to provide WHT relief under the treaty provisions.
18. Shall not exceed:
    - 5% of the gross amount of dividends if the beneficial owner is the government of the other contracting state, the central bank of that other contracting state, or any entity wholly owned by the government of that other contracting state.
    - 5% of the gross amount of dividends if the beneficial owner of dividends has invested to the capital of the company paying the dividends at least USD 300,000 or its equivalent in any other currency.
    - 7% of the gross amount of dividends in all other cases.
19. Shall not exceed:
    - 0% if income from debt-claims arising in a contracting state and paid to the government or the central bank of the other contracting state or any entity wholly owned by the government of that other contracting state or under a loan agreement approved by the government shall be exempt from tax in the first-mentioned contracting state.
    - 7% of the gross amount of income from debt-claims in all other cases.
20. Shall not exceed:
    - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends or if beneficial owner is:
        - in the case of Saudi Arabia, the state, a political or administrative subdivision, or a local authority thereof (including The Saudi Arabian Monetary Agency) and wholly owned state entities and
        - in the case of Portugal, the state, a political or administrative subdivision, or a local authority thereof, or the Central Bank of Portugal.
    - 10% of the gross amount of the dividends in all other cases.
21. Shall be taxed only in the contracting state of which recipient is a resident if such income is paid to and beneficially owned by:
    - in the case of Saudi Arabia, the state, a political or administrative subdivision, or a local authority thereof (including The Saudi Arabian Monetary Agency) and wholly owned state entities and
    - in the case of Portugal, the state, a political or administrative subdivision, or a local authority thereof, or the Central Bank of Portugal.
22. Income from debt-claim arising in a contracting state shall be exempted from tax in that contracting state if the payer/beneficial owner of such income is the government of the other contracting state, an administrative subdivision or a local authority, or the Central Bank or any other financial institution wholly owned by the government of that other state.
23. Shall not exceed:
    - 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends.
    - 10% of the gross amount of the dividends in all other cases.
24. Income from debt-claim arising in a contracting state shall be exempted from tax in that contracting state if the payer/beneficial owner of such income is the government of the other contracting state.

The GAZT offers a choice of automatic application of relevant tax treaty without going through the refund procedure. The choice is given to Saudi Arabia residents or PEs of non-residents that make payments subject to WHT in Saudi Arabia.

They can apply reduced rates or full relief upon making the payment. The following conditions are imposed on taxpayers that choose to apply DTT automatically:

- Report, via monthly WHT returns, the full details of each payment made to non-resident parties (beneficiaries).
- Still file a request form for application of DTT together with tax residence certificate of the beneficiary.
- Undertake full responsibility for any understatement of tax, including penalties.

As mentioned above, the GAZT provides a choice; taxpayers can still withhold tax and comply with the refund procedure.

The GAZT's view on virtual PE

Usually, a treaty's articles do not address technical services (except Vietnam/Malaysia, where it is part of royalties), so the source country should not have a taxing right unless a PE is created by the non-resident in Saudi Arabia. Also, the treaty with Spain does not have a 'service PE' article. Effectively, the provision of technical services provided totally outside Saudi Arabia or other services not defined should be taxable only in the country of residence.

However, an internal circular issued by the GAZT should be taken into consideration when applying WHT refund claims by non-residents. The circular relates to the interoperation of services PE (article 5(3)(b), not OECD but the United Nations [UN] model).

Tax administration

Taxable period

Tax filings are based on the company's fiscal year.

Tax returns

Returns are due to be filed with the GAZT within 120 days after the taxpayer's year-end. The system is one of self-assessment.

According to the tax authority, companies that are owned by Saudis only, or by Saudis and non-Saudis, must file audited financial statements along with the tax return.

Payment of tax

Final tax due must be paid within 120 days after the taxpayer's year-end.

Three equal advance tax payments are required to be made on the last day of the sixth, ninth, and 12th months for a current tax year, provided that the taxpayer has earned income during the year. Each advance payment is equal to 25% of the amount resulting from the taxpayer's tax liability based on the previous year return minus the withheld tax on reported income, if any. The taxpayer is not required to make advance tax payments if the result of the said formula is less than SAR 500,000. Late payment of an advance payment is subject to a delay penalty of 1% of the amount due for every 30 days of delay.

Tax audit process

There is no specific audit process followed by the GAZT; however, the most common ways for the GAZT to select companies for tax audits are the size of the company, the companies' shareholders nationality (totally owned by foreigners and branches of foreign companies), and certain risk assessment measures.

Statute of limitations

The GAZT may, with a reasoned notification, make or amend a tax assessment within five years from the end of the deadline specified for filing the tax declaration for the taxable year, or, at any time, upon a written consent of the taxpayer.

The GAZT may make or amend an assessment within ten years of the deadline specified for filing the tax declaration for the taxable year if a taxpayer does not file its tax declaration or it is found that the declaration is incomplete or incorrect with the intent of tax evasion.

A taxpayer may request a refund of overpaid amounts at any time within five years from the end of the overpaid taxable year.

Topics of focus for tax authorities

The GAZT emphasises the submission of a certificate from the General Organisation for Social Insurance (GOSI) along with a reconciliation statement between salaries and wages subject to GOSI and salaries and wages charged to the taxpayer's accounts duly certified by a Saudi licensed CPA.

The GAZT focuses on the payments made to non-resident parties to verify compliance with the WHT regulations by requesting a reconciliation statement for such payments with the annual WHT form.

The GAZT has also been requesting import value lists from the Customs Authority in order to confirm the value of goods imported and declared by taxpayers in their annual declarations during the financial period.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

Saudi Arabia signed a Model 1 Intergovernmental Agreement (IGA) in light of the FATCA dated 24 June 2014. The draft regulations were issued in February 2012 and the final regulations were released on 17 January 2013 with an amendment to some of the deadlines issued through a notice on 12 July 2013.

On 6 February 2017, the Saudi Arabian Cabinet formally approved the IGA between Saudi Arabia and the United States to improve international tax compliance and implement the FATCA. The IGA and related implementing regulations will reduce the burden for financial institutions and remove some of the implementation issues faced by Saudi Arabia financial institutions, including the legal impediments related to data protection and reporting restrictions.

Under the IGA, Saudi-based financial institutions will be treated as compliant with the FATCA and should not be subject to a 30% WHT on US-source income and gross proceeds unless a financial institution fails to meet the requirements set out in the IGA and Saudi implementing regulations.

The IGA, signed on 15 November 2016, requires financial institutions to report US reportable accounts to the local competent authority, which is the GAZT. In case of non-compliance with IGA requirements, the GAZT may subject the relevant financial institutions to penalties.

Common Reporting Standard (CRS)

On 2 November 2016, the OECD announced that the Kingdom of Saudi Arabia joined the CRS Multilateral Competent Authority Agreement (MCAA), committed to the first exchange of financial account information by September 2018 (2018 adopter).

Applicable for individuals and legal entities, it aims to give participating countries transparency on the financial assets that residents hold offshore.

The CRS requires financial institutions to identify customer tax residencies and report to local tax authorities financial accounts held directly or indirectly by foreign tax residents. It also requires those tax authorities (in participating countries) to exchange this information.

If you are tax resident of a country other than the Kingdom of Saudi Arabia or where you maintain your bank account, then under the CRS, KSA-based financial institutions may be required to provide details, including information relating to accounts, to the tax authority in the country of your tax residency through the GAZT in the Kingdom of Saudi Arabia. In case of non-compliance, the GAZT may subject the relevant financial institutions to penalties.

Senegal

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Significant developments

Amendments to the General Tax Code (GTC)

In March 2018, the Parliament approved a government bill introducing significant amendments to the GTC (Law No. 2018-10 of 30 March 2018 amending the GTC).

Key changes of the law are discussed below:

- Introduction of the Local Economic Contribution (*Contribution Economique Locale* or CEL), which will substitute for the business license tax. The CEL is made of two different taxes: The company's properties contribution (*contribution sur la valeur locative des locaux professionnels*) and the company added value contribution (*contribution sur la valeur ajoutée*). *See the Other taxes section for more information*.
- Further developments on transfer pricing regulations arising from Base Erosion and Profit Shifting (BEPS) Action 13, such as country-by-country (CbC) reporting, the automatic exchange of CbC reporting, and light transfer pricing documentation. *See the Group taxation section for more information*.
- Companies will face more stringent legislation in regards to the deductibility of interest paid to a shareholder upon a loan or account advances (extension of the limitation to interests paid to a related party, fully paid-up capital for all type of company, deferral mechanism of non-deductible interests, etc.)
- Extension of the withheld VAT regime (*Précompte de TVA*) until 2020.
- Changes will occur on excise taxes (introduction of a tax on plastic bags, increasing of the tax rate applicable to oil products, extension of the scope of tax levied on beverages to juices).
- New requirements are provided for the bank industry (limitation concerning the withholding tax [WHT] on income derived from investments and securities, extension of declarative obligations).
- Introduction of tax incentives:
  - Agricultural industry (VAT exemption with a right to deduct, VAT refund on energy consumption).
  - Oil and gas companies (deductibility of provisions, exemption of the minimum CIT and the tax on built real estate).
  - Renewable energy (30% tax credit, VAT exemption on production).

Taxes on corporate income

Branches and companies are liable for corporate income tax (CIT) at the rate of 30%.

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Residents are taxed upon their worldwide income. Non-residents are generally taxed via the existence of a permanent establishment (PE) on Senegal-source income.

WHTs may also apply to non-residents, as per the services delivered to Senegalese taxpayers, subject to the application of a double tax treaty (DTT).

Minimum CIT

A minimum CIT is due, in case of lack of profits, at the rate of 0.5% applied on the annual turnover. The minimum amount cannot be less than 500,000 *Communauté financière d'Afrique* (Financial Community of Africa or CFA) francs (XOF), and the maximum amount cannot be more than XOF 5 million.

Local income taxes

See the Other taxes section for a description of local taxes based on turnover and property.

Corporate residence

Companies are considered as Senegalese residents if they have a registered fixed establishment. Nonetheless, foreign companies that are not registered locally may be deemed to have a PE in Senegal in relation to their local activity and will then be subject to tax liabilities.

Permanent establishment (PE)

The criteria for a PE were derived from the former GTC and are close to the Organisation for Economic Co-operation and Development (OECD) standards. The current GTC does not include a PE provision, but the former one should be applicable. DTTs can be applicable and can provide specific definitions. These DTTs are based on the OECD model in most cases. *See the Withholding taxes section for a list of countries with which Senegal has concluded DTTs*.

Other taxes

Value-added tax (VAT)

Subject to certain exclusions, most commercial operations are subject to an 18% VAT.

VAT on tourism activities is 10%.

A 17% special tax on financial activities (mainly banking, money transfers, and change operations) is applicable instead of VAT.

VAT returns must be filed monthly.

Customs duties/Import tariffs

In the case of import of goods, the following tariffs apply:

- Customs duties: 0%, 5%, 10%, or 20%, depending on the nature of the goods.
- Statistical import charge: 1%.
- Community solidarity levy: 0.8% since 1 July 2017 (1% before July 2017).
- Economic Community of West African States (ECOWAS) levy: 0.5% (only applicable to products originating from non-ECOWAS countries).

- Senegalese Shippers Council (COSEC) royalty: 0.4% (only applicable on importation by sea).

Excise taxes

The products on which the Senegalese authorities levy excise tax, and the relevant excise tax rates, are as follows:

- Beverages: 40% for beverages containing alcohol, plus an additional tax ranging from XOF 1,500 to XOF 5,000 per litre; 5% for sparkling beverages and juices.
- Tobacco: 45%.
- Coffee: 5%.
- Tea: 5%.
- Fat: Rate varies from 10% to 15%.
- Private cars with a horsepower (tax engine rating) superior to 13CV: 10%.
- Cosmetic products: 10% (increased to 15% for depigmentation products).
- Oil products (rates per nature and per hectolitre): XOF 21,665 for super-petrol, XOF 19,847 for conventional petrol, XOF 3,856 for petrol for the use of pirogues, XOF 10,395 for diesel.
- Plastic bags: XOF 3 per gram.

Tax on built real estate

The tax on built real estate applies annually to owners of buildings other than factories and industrial premises. Companies are no longer liable to the tax on built real estate on their properties listed in the balance sheet.

The tax rate is 5%. It is applied on the basis of the rental value of the lands, buildings, etc.

Tax on non-built real estate

The tax on non-built real estate applies annually to owners of land without buildings, factories, industrial premises, or equipment fixed on the land. The tax rate is fixed at 5%. It is applied on the basis of the rental value of the land.

Stamp/registration duties

There are many stamp and/or registration duties, depending on the operations, such as the following:

Operation	Stamp and/or registration duty
Commercial, house, or equipment lease	2% applicable on the basis of the annual rent
Transfer of real estate	5% on the sales price
Transfer of debt	1% on the debt value
Pledge	1% on the guarantee value
Increase of the capital in cash	1% of the increase where the share capital is greater than XOF 100 million
Transfer of business	5% on the sales price
Transfer of shares	1% on the sales price (or the market value if higher)

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Payroll taxes

Pay-as-you-earn (PAYE)

All compensation (including salary, cash allowances, and benefits in kind) paid to employees is generally taxable. For the calculation of the personal income tax (PIT) to be withheld by the employer, the tax administration provides a tax table determined on a monthly basis so that no calculation is necessary.

Employer tax

Employers are subject to a 3% tax based on the total gross salaries paid to employees.

Social Security contributions

Social Security contributions are borne exclusively by the employer.

The rate for the industrial accident/occupational disease branch has to be confirmed by the authority when registering the entity with the Social Security Office (applicable rate to be stated within the related certificate).

Sector	Rate of contributions (only payable by employers) (%)	Maximum monthly basis of calculation (XOF)
Family	7	63,000
Industrial accident / Occupational disease	1/3/5	63,000

Retirement contributions

Retirement contributions are payable both by the employer and the employees:

	Rates of contributions (%)		
Regime	Payable by employers	Payable by employees (withheld on the salary)	Maximum monthly basis of calculation (XOF)
General	8.4	5.6	360,000
Executive	3.6	2.4	1,080,000

Employment medical coverage

The employer shall subscribe for all employees a medical coverage. The level of coverage depends on the type of agreement concluded with the dedicated organism. Usually, the employee is reimbursed for 80% of medical expenses, even though the law provides a range between 50% and 80%.

The maximum monthly rate is 15%, to be levied on a contribution rate that cannot exceed XOF 250,000, for both the employee and the employer.

Local Economic Contribution (Contribution Economique Locale or CEL)

The CEL is a new contribution replacing the business license tax and consisting of two different taxes:

- the company's properties contribution, and
- the company value added contribution.

The company's properties contribution is assessed annually on the rental value of the company's business premises. The rental value corresponds to 7% of the cost price.

The applicable rates are 15% for leases premises and 20% for owned premises, lands, and installations.

The company added value contribution is based on the added value produced by a company during the previous year. The tax rate is 1%. An upper ceiling of 70% of the turnover applies to the company added value contribution.

Specific tax rates are provided for companies such as operators of public telecommunication networks licensed in Senegal (0.30%) and port facility operators (1.5%).

Tax on telecommunication

The tax rate is 5% on telecommunication use and access. To offset the tax, the purchase of mobile telephones (and other types of telephones) remains exempt from VAT and customs duty.

There are also two specific taxes payable by companies in the telecommunications sector. These taxes represent 3% (for the tax called 'CDE') and 1% (for the tax called 'PST') of the annual turnover less the payments made to other operators for networking services.

Tax on vehicles

An owner of a motor vehicle (car, truck, or motorbike) must pay an annual tax fixed at XOF 1,000 per hectolitre, except for the pirogue gasoline.

Company tax on vehicles

In addition to the tax on vehicles, companies owning or renting vehicles (more than 15 days a year) must pay a specific annual tax on them. Rates range from XOF 50,000 to XOF 200,000, depending on the type and horsepower of the vehicle.

Branch income

In general, the tax on branch income is similar to that of corporate income. Nonetheless, a 10% duty is automatically applied to profits generated after CIT. It corresponds to an automatic application of the 10% tax on payment on dividends applicable to a company.

Headquarter expenses, which are a proration of the worldwide office expenses, may be allocated to the Senegal branch. This proration is based upon a ratio of the local turnover of the branch and the worldwide turnover of the parent company. It applies to the total amount of headquarters' expenses incurred by the company. In addition, the deductibility of headquarters' expenses is limited to 20% of the accounting profits before the deduction. This limitation does not apply to other types of services provided by headquarters, such as technical assistance.

Income determination

Inventory valuation

Inventory is generally stated at the lower of cost or market value. Last in first out (LIFO) and first in first out (FIFO) are permitted. Book and tax conformity is required.

Capital gains

Capital gains derived from the transfer of assets are subject to the 30% CIT. There is no basket system. Sales of stocks by a non-resident are liable to the 30% CIT, subject to the application of a DTT.

Dividend income

If a parent company domiciled in Senegal owns 10% of the subsidiary (main condition for the application of the parent-subsidiary corporation special taxation status), a 95% reduction on the dividends received is applicable for CIT purposes.

If these conditions are not met, dividends received by a company are subject to CIT as follows:

- 40% of the dividends are added back to the taxable profit.
- The company benefits from a tax credit upon the CIT equal to 40% of the tax on distributions withheld (at the general WHT rate of 10%).

Stock dividends

Stock dividends are unusual in Senegal. However, this kind of distribution would be taxable at the general WHT rate of 10% on the basis of its real value.

Interest income

Article 105 of the GTC provides a list of interests that are not subject to CIT. For instance, the following are not subject to CIT:

- Interest on sovereign debt.
- Interest on deposit accounts opened at the Housing Bank of Senegal (*Banque de l'Habitat du Senegal*).
- Interest on loans granted by the Central Bank.

Royalty income

There are no specific provisions for royalty income. In general and in case of foreign payment, they are subject to 20% WHT (subject to a DTT that can limit or exempt the WHT), and in any case to 18% reverse VAT.

Foreign income

In general, profits generated in Senegal are taxed under Senegal's income tax law. Profits generated outside Senegal and constituting a PE in the relevant country are not taxed in Senegal. A DTT can provide different rules.

Deductions

Depreciation and depletion

The rates of depreciation are not provided by the law. The rate is determined on the normal and predictable duration of use of the asset by taking into account normal wear and tear. In practice, there are standard rates for common assets. Accelerated depreciation can be applicable, subject to conditions.

Goodwill

There are no provisions in Senegal for goodwill.

Start-up expenses

Start-up expenses are deductible if justified and approved by the shareholders.

Interest expenses

Interests on current account advances or loans from a shareholder (directly or indirectly) or a related party are subject to restrictions as to their deduction from taxable income:

- The share capital of the company receiving the loan or advance shall be, beforehand, fully paid.
- The amount of the loan or advance shall not exceed the share capital of the company receiving it. It is not an individual but an overall ceiling on the total amount of loans and advances of all shareholders and seniors.
- The rate of interest shall not exceed the rate of advance of the Institute of Emissions plus 3 points. The rate published by the Ministry of Economy and Finance for 2017 is 3.5437%.

Bad debt

There are no provisions in Senegal for bad debt.

Charitable contributions

Only payments made to specific chartered organisations are deductible, at a rate of up to 0.5/100 of turnover. On the contrary, payments made to non-chartered organisations are not deductible.

Fines and penalties

Fines and penalties are not deductible for CIT purposes.

Taxes

CIT and the company tax on vehicles are not deductible.

Other significant items

Provisions are deductible if they correspond to a risk or a probable cost that is more than possible and leads to a decrease in the assets. Provisions for paid holidays and retirement compensation are not deductible.

Net operating losses

Tax losses may be carried forward to the next three years. Losses corresponding to the depreciation of assets can be carried forward indefinitely. The carryback of losses is not allowed.

Payments to foreign affiliates

Reasonable royalties, interest, and management service fees paid to foreign parent companies are deductible. Supporting documents (e.g. invoices, contracts) will be necessary to prove that these expenses are justified.

Group taxation

Group taxation is not permitted in Senegal.

Transfer pricing

The transfer pricing regulations globally correspond to the OECD requirements standards (i.e. identifying related-party transactions, choosing the suitable transfer pricing method, and preparing documentation to support the selection of such method).

Companies with an annual turnover or amount of gross assets of at least XOF 5 billion are required to make available documentation upon a tax audit. This applies when the company directly or indirectly owns more than 50% of the share capital or more than 50% of the voting rights in another company.

An annual transfer pricing tax return shall also be provided with CIT filing (by April 30). This is a kind of simplified transfer pricing documentation, which includes information such as the description of the related companies and activities performed, group transfer pricing policy, intra-group flows, etc.

Country-by-country (CbC) reporting

Companies with group revenues exceeding XOF 491 billion must file a CbC report showing the allocation of revenues, profits, and taxes paid. The company shall prepare consolidated financial statements, and own directly or indirectly one or more legal entities located in Senegal.

The filing must be done electronically. The deadline is 12 months after the end of the fiscal year to which the CbC report relates.

Automatic exchange of the CbC report will take place between the Senegalese tax administration and other tax authorities of the jurisdictions in which the group operates and which have concluded a tax treaty providing such exchange with Senegal.

Thin capitalisation

There are no specific rules regarding thin capitalisation in Senegal. Nonetheless, the following tax and legal rules should be known:

- From a legal point of view (corporate law), the net assets must be equal to at least half of the share capital of the company. In case the net assets are lower than this threshold, the situation should be regularised by any lawful means within a period of two years following the financial year it appears. Otherwise, any third party can request the closing of the entity before the courts.

- The deductibility of interest paid to a shareholder upon a loan or an advance in general is limited to a maximum rate calculated on the Central Bank legal interest rate (currently fixed at 3.5%) plus 3 points, calculated on the amount of the share capital *(see Interest expenses in the Deductions section for more information*). Portions exceeding this limit are not deductible for CIT purpose.

Controlled foreign companies (CFCs)

There are no provisions in Senegal for CFCs.

Tax credits and incentives

Foreign tax credit

Usually, DTTs may provide some tax credit on the basis of the relationship between Senegalese entities and their partners located abroad. For each DTT, the specific process to enforce those tax credits either in Senegal or abroad (depending on the payments directions) are stipulated within that DTT. Nonetheless, as far Senegal is concerned, the practice consisting of enforcing foreign tax credits locally is very rare.

The Investment Code

The Investment Code applies to investments over XOF 100 million (mainly production, processing, industrial, tourism, agricultural, and complex trade). The benefits of the Investment Code include exemption from customs duties, suspension of VAT payment for three years, CIT limitation, etc. The tax benefits are directly integrated in the GTC and do not require administrative authorisation (i.e. as long the requirements are met, the taxpayers may benefit from those tax benefits).

Free export company status

Agriculture, industry, and telecommunications companies that have an exporting potential amounting to at least 80% of their turnover may qualify for the free export company status.

There are several advantages provided by the GTC for companies that qualify, including a CIT rate of 15%, exemption from the CEL, exemption from registration and stamp duty for incorporation or bylaws change purposes, and exemption from employer tax.

Miscellaneous incentives

There are a wide range of tax incentives, such as the special economic zone, which is an area designed to host economic activities that have a strong impact on economic growth and that focus their activities on exports (industrial activities, agrobusiness, ICT, tourism, medical services, port activities, and services in general).

Companies established within the zone benefit from a preferential tax regime (a 15% CIT, exemption from taxes and duties at the importation, exemption from CEL, etc.)

There are also some tax benefits for companies involved in the mining and petroleum sector (exemption from the CEL, employer tax, VAT [under conditions], etc.).

Withholding taxes

Senegal has various WHTs. The primary ones are as follows:

- 20% WHT on remuneration paid for services (including royalties) rendered by a foreign individual or foreign company.
- 5% WHT on remuneration paid for services rendered by a resident individual (liable for tax under lump sum taxation, among others) or resident company that are not subject to CIT.
- 10% WHT on dividends distributed.
- 13% WHT on bond interest.
- 8% WHT on deposits or guaranteed interest on accounts with a bank.
- 16% WHT on other revenues, notably interest on loans.

These WHTs may be limited by DTTs.

Double tax treaties (DTTs)

The DTTs concluded by Senegal are based on the OECD model in most cases. Senegal has concluded such treaties with the countries listed in the table below.

Treaty WHT rates are as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	10	8 to 16	20
Treaty:			
Belgium	10	15	10
Canada	10	16	15
France	10	15	15
Italy	10	15	15
Lebanon	10	10	10
Mauritania	10	16	N/A
Mauritius	N/A	N/A	N/A
Morocco	10	10	10
Norway	10	16	16
Portugal	5/10 (1)	10	10
Qatar	N/A	N/A	N/A
Spain	10	10	10
Tunisia	10	16	N/A
United Kingdom	5/8/10/15 (2)	10	10
WAEMU *	10	15	15

* West African Economic and Monetary Union (member states are Benin, Burkina-Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, and Togo).

Notes

1. The 5% rate is applicable if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends. The 10% rate applies in all other cases.
2. The below rates are applicable in the following cases:
   - 5% if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
   - 8% if the beneficial owner is a pension scheme established in the United Kingdom.
   - 10% in all other cases.

- 15% if dividends deriving directly or indirectly from immovable property are paid by an investment vehicle resident in Senegal, whose income from such immoveable property is exempt from tax, and which distributes most of that income annually to a beneficial owner resident of the United Kingdom.

Tax administration

Taxable period

The tax year in Senegal is the calendar year.

Tax returns

Companies must file CIT returns by 30 April of the year following the tax year.

Also, in addition to the miscellaneous annual returns (business licence tax, company car tax, etc.) and other monthly tax returns (VAT, payroll taxes, WHT, etc.), taxpayers must file by 31 January for the prior financial year:

- An annual recapitulative payroll tax return.
- An annual recapitulative return on payment for services.

Payment of tax

CIT must be paid in two instalments (each equal to one-third of the previous year's tax) by 15 February and 30 April. The outstanding balance payment amount of the tax due must be paid by 15 June.

For the first financial year of a newly incorporated company, no instalment is due; the new company pays the whole CIT before 15 June of the following year.

Penalties

In case of late payment, a 5% interest of delay on the amount due plus an additional 0.5% duty per month of delay or portion of month of delay are applicable. This late payment is due when the taxpayer's regularisation is spontaneous.

On the other hand, if such payment is triggered by a tax audit from the authority itself after the deadline is crossed, the following penalties apply:

- 50% for any WHT and VAT.
- 25% for other taxes (CIT, business licence tax, taxes on real estate, registration duties, company car tax).

Also, the late filling of tax returns triggers an XOF 200,000 penalty per return.

Tax audit process

The tax authorities may request information, clarifications, or justification to the taxpayers. The taxpayers have 20 days to answer to those requests.

The tax authorities may also implement an inspection of the accounting documents at the premises of the taxpayer or at any place the taxpayer would consider more appropriate for material reasons upon a specific request. In such cases, a notice is sent to the taxpayer at least five days before the beginning of the inspection.

The tax authorities are not allowed to process a new tax inspection on a period already inspected by their services unless a new element or document is revealed after the first inspection was processed.

Where the tax authorities estimate that the taxpayer has not fulfilled all of one's tax obligation, a tax reassessment shall be transmitted to the taxpayer, who has 30 days in order to answer or comment on the findings.

After the tax authorities have received those comments, they can confirm partially or totally the reassessment within a statutory delay of 60 days.

Statute of limitations

The statute of limitations is, generally speaking, four years.

Topics of focus for tax authorities

With regards to corporate tax compliance, the tax authorities are generally focusing on certain expenses with forbidden or limited deductibility, such as depreciation of assets, provisions, interest, royalties/services fees, insurance premiums, head office costs, etc., but they usually define their approach according to the business sector of the company.

Recently, tax authorities have also focused on transfer pricing issues by requiring documentation upon their tax audit. The implementation of BEPS Action 13 is likely to result in more interest on this subject.

Serbia

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Significant developments

The latest amendments to the tax laws were enacted in December 2017 and April 2018 and relate to the corporate income tax (CIT) and value-added tax (VAT).

Starting from CIT assessment for 2018, tax depreciation of intangible assets will be equal to their accounting depreciation, while assets consisting of movable and immovable parts will be classified into tax depreciation groups pursuant to the manner in which they are recognised in the taxpayer's statutory financials. As of 1 April 2018, the scope of withholding tax (WHT) in terms of service fees paid to non-residents, other than those to tax havens, will include solely market research services, accounting and audit services, and other legal and business consulting services.

Most significant changes to the VAT Law relate to the rules that govern the status of supply of goods and services between the grantor of concession and concessionaire. As of 1 January 2018, supply of goods or services between the grantor and the concessionaire is not subject to VAT, provided that certain conditions are met. As of 1 July 2018, VAT payers will be obligated to submit a VAT assessment overview to the tax authorities, along with the VAT return. As of 1 January 2019, foreign taxpayers will have the right to a VAT refund if one performs taxable supply of goods and services in Serbia to a Serbian VAT payer.

Taxes on corporate income

Residents are taxed on their income generated in Serbia, as well as on their worldwide income. Non-residents are taxed only on their income sourced through a permanent establishment (PE) in Serbian territory.

The CIT rate is 15%.

Local income taxes

There are no municipal or local taxes on income in Serbia.

Corporate residence

A legal entity is considered to be a resident of Serbia if it is established or has its place of effective management and control in Serbia.

Permanent establishment (PE)

A PE is any permanent place of business through which a non-resident conducts its business.

Other taxes

Value-added tax (VAT)

The VAT was introduced on 1 January 2005 and generally follows the European Union's (EU's) Sixth Directive.

The standard VAT rate is 20% for most taxable supplies. A reduced VAT rate of 10% applies for basic food stuffs, daily newspapers, medicines, publications, public transportation services, utilities, etc.

In addition to these tax rates, there is a 0% tax rate with the right of deduction of the input VAT that applies to the export of goods, transport and other services directly related to exports, international air transport, etc.

A 0% tax rate without the right of deduction of the input VAT applies to trading in shares and other securities, insurance and reinsurance, and the lease of apartments, business premises, etc.

A taxpayer for VAT purposes is a person who independently, and in the course of its business activities, undertakes the supply of goods and services or import of goods. Business activity is defined as the permanent activity of a manufacturer, salesperson, or service provider for the purpose of gaining income. A branch or other operating unit can be a taxpayer.

A non-resident that carries out taxable supply of goods and services in Serbia is obligated to appoint a fiscal representative and to register for VAT in Serbia, irrespective of the amount of the turnover realised in the previous 12 months. A foreign entity that performs a taxable supply of goods and services exclusively to VAT payers or entities referred to as governmental institutions (which includes the Republic and its authorities, the territorial autonomy and local self-government authorities, as well as legal entities established under law or other act of the Republic, territorial autonomy, or local government authority for the purpose of execution of activities of the state administration or local government) or performs passengers transportation service by buses (in special case envisaged by the Law) has no obligation to appoint a fiscal representative in Serbia and to register for VAT. A foreign taxpayer that fails to register for VAT in Serbia may be subject to penalties for non-compliance.

The usual taxable period is a calendar month; however, if a taxpayer's total annual turnover is less than 50 million Serbian dinars (RSD), the taxable period is a calendar quarter. For newly established businesses, the VAT period is the calendar month for the current and next calendar year. Taxpayers are required to submit returns within 15 days of the end of each taxable period. Tax debtors who are not taxpayers are required to submit returns within ten days of the end of the taxable period.

Supply of goods and services between the grantor of concession and concessionaire is not subject to VAT as of 1 January 2018, provided that the following conditions are cumulatively met:

- Supply is performed based on the public private partnership contract with elements of concession.
- The grantor of the concession and concessionaire are VAT payers.

If such supply would be subject to VAT, the customer would be entitled to input VAT recovery.

As of 1 July 2018, VAT payers will be obligated to submit a VAT assessment overview to the tax authorities, along with the VAT return.

As of 1 January 2019, foreign taxpayers will have the right to a VAT refund if one performs taxable supply of goods and services in Serbia to a Serbian VAT payer.

Customs duties

Goods imported into Serbia are subject to customs duty rates provided in the Law on Customs Tariff. These rates are *ad valorem* (the only exception is related to the importation of other cigarettes containing tobacco, where a combined *ad valorem* and specific customs duty rate is prescribed) and apply to goods originating in countries that have a most favoured nation (MFN) status in trading with Serbia. Goods originating in other countries are subject to MFN duty rates increased by 70%.

At the moment, the only trading partner with Serbia that does not have MFN status is Taiwan.

Customs duty rates in Serbia range from 0% to 57.6%, with most being under 30%. At the moment, the 57.6% rate only applies to cigarettes containing tobacco.

Excise duties

Excise duties are levied on producers and importers of the following goods:

- Oil derivatives.
- Tobacco products.
- Alcoholic beverages.
- Coffee (green, roasted, ground, and coffee extracts).
- Bio liquids and biofuels.
- Fuels for filling electronic cigarettes.
- Electricity for final consumption.

Excise duty in Serbia is specific (for oil derivatives, alcoholic beverages, cigars, cigarillos, and coffee), *ad valorem* (for pipe tobacco), and combined (specific + *ad valorem* on retail price for cigarettes).

Excise duties stated in Serbian currency are adjusted on a half-year basis according to variations of the consumer price index (CPI) declared by relevant government bodies in charge of statistics. For oil derivatives, the government can modify the specific excise duty amounts during the year according to changes in prices of crude oil on the market.

Property tax

Property tax is payable annually in Serbia by all legal entities and individuals who own or have rights over real estate located in Serbia, such as:

- Ownership rights.
- Right of occupancy.
- Tenancy rights over an apartment or a building for a period longer than one year or for an indefinite period.

- Urban land usage right (municipal, public, and other state-owned land) larger than ten acres in area.

Where the taxpayer keeps books, the property tax on real estate is levied at a flat rate that cannot exceed 0.40%.

Transfer tax

Transfer tax is levied on the transfer for a consideration of rights over real estate when VAT is not payable on such a transfer; intellectual property rights; ownership over used vehicles, vessels, and aircraft (unless owned by the state); right to use urban and/or public building land; as well as rights relating to expropriated real estate.

The contract price is used as a tax base; however, the tax authorities have the right to adjust the tax base in case they estimate that the price agreed to in the contract is lower than under market conditions. The tax is payable at a 2.5% rate.

Stamp taxes

There are no stamp taxes in Serbia.

Capital gains tax of non-residents

Capital gains realised by non-residents from both residents or other non-residents are subject to 20% capital gain tax. Non-residents should appoint a fiscal representative in Serbia who should submit a tax return within 30 days from the realisation of capital gain. Based on the tax return, tax authorities will issue a decision assessing tax liability (if any).

In order to benefit from application of a relevant double tax treaty (DTT), the same rules are applicable as for WHT. Non-residents (i.e. the income recipient) must provide a tax residency certificate (on the form prescribed by the Serbian Ministry of Finance stamped by the relevant body from the non-resident's country of residence or official translation of certificate issued by foreign tax authorities), and the income recipient must be the beneficial owner of the income.

Payroll taxes and social security contributions

The employer is liable to withhold personal income tax (PIT) and social security contributions on payment of salaries to employees, at the following rates:

- 10% PIT.
- 19.9% social security contributions payable by the employee.
- 17.9% social security contributions payable by the employer.

The tax and contributions base is gross salary. The social security contributions base is limited to five average monthly salaries in Serbia.

Branch income

Non-residents carrying on business in Serbia through a branch are taxed on their Serbian-sourced income at the CIT rate of 15%. A branch is considered to be a PE.

Income determination

Taxable profit is determined by adjusting the accounting profit as stated in the profit and loss statement (determined in accordance with International Financial Reporting Standards [IFRS] and local accounting and audit legislation) and in accordance with the provisions of the CIT Law.

For taxpayers who, according to local legislation, are not obligated to apply IFRS, taxable profit is determined according to the special guidelines prescribed by the Ministry of Finance.

Inventory valuation

Cost of materials and the purchase value of merchandise are tax deductible up to an amount calculated by applying the average weighted cost method or the first in first out (FIFO) method. If another method is used, an adjustment for tax purposes should be made.

Capital gains

Capital gains are generated by the sale or other transfer of real estate, rights related to industrial property, as well as shares, stocks, securities, certain bonds, and investment units. A capital gain is determined as the difference between the sale and purchase price of the asset concerned, determined in accordance with the provisions of the Law. If the amount is negative, a capital loss is realised.

Capital gains and operational profit are disclosed in the same tax return, but they are taxed separately. Consequently, capital gains/losses cannot be used to offset business losses/gains.

However, capital gains can be offset with capital losses occurring in the same period. A capital loss can be carried forward for five years.

The capital gains tax rate is 15%.

However, the rate applicable for capital gains incurred by non-residents is 20%, unless envisaged otherwise by a relevant DTT (*see the Other taxes section for more information*).

Dividend income

Dividends received by a Serbian company from another Serbian company are not subject to CIT.

Dividends received from a non-resident will be treated as taxable income of a Serbian company and subject to 15% CIT. However, a Serbian entity will have the right to decrease its tax liability by taking a tax credit for the WHT and underlying CIT paid in a subsidiary's country, provided that the taxpayer holds at least 10% of the shares in the subsidiary. If the taxpayer holds less than 10% of the shares in the subsidiary, the tax credit should not exceed the amount of tax that would be paid in Serbia on that income, where the tax basis represents 40% of the received gross income (*see the Tax credits and incentives section for more information*).

Interest income

Interest income will be included in accounting profit determined in accordance with IFRS and will be taxable at the CIT rate of 15%. A Serbian resident has the right to decrease its CIT liability for WHT on interest paid abroad. The amount of the tax credit should not exceed the amount of CIT that would be paid in Serbia on that income, where the tax basis represents 40% of the received gross income.

Royalty income

Royalty income will be treated as business income and subject to the general CIT rate.

A resident taxpayer also has the right to decrease its CIT liability for WHT on royalties paid abroad. The amount of the tax credit should not exceed the amount of CIT that would be paid in Serbia on that income, where the tax basis represents 40% of the received gross income.

Unrealised currency exchange gains

Unrealised currency exchange gains will be included in accounting profits under IFRS rules. Serbian legislation does not provide any exception of taxation of this income.

Foreign income

Companies resident in Serbia are taxed on their worldwide income.

When profit generated in another country is taxed in the foreign country, a company has the right to decrease its tax liability by claiming a tax credit from the tax authorities in Serbia (*see the Tax credits and incentives section for more information*).

There are no provisions that provide for the possibility that taxation of income earned abroad may be deferred.

Deductions

Depreciation and amortisation

Fixed and intangible assets are divided into five groups, with depreciation and amortisation rates prescribed for each (Group I: 2.5%; II: 10%; III: 15%; IV: 20%; and V: 30%). A straight-line depreciation method is prescribed for the first group, which includes real estate, while a declining-balance method is applicable for assets in the other groups.

Assets subject to tax depreciation and amortisation are all tangible and intangible (except goodwill and renewable resources) assets with a useful life longer than one year that are recognised as non-current assets under IFRS.

Starting from CIT assessment for 2018, tax depreciation of intangible assets will be equal to their accounting depreciation, while assets consisting of movable and immovable parts will be classified into tax depreciation groups pursuant to the manner in which they are recognised in the taxpayer's statutory financials.

Goodwill

Goodwill is not subject to tax amortisation.

Start-up expenses
Generally, start-up expenses are tax deductible for CIT purposes.

Interest expenses
Interest on related-party loans exceeding thin capitalisation and transfer pricing thresholds are not deductible (*see the Group taxation section*).

Bad debts
Bad debt provisions are generally tax deductible if they are at least 60 days overdue. Provisions have to be made individually for each receivable.

Write-off of individual debts, except for those from debtors who are at the same time creditors, is recognised as an expense under the following conditions:

- They were written off as uncollectable.
- The taxpayer has initiated a court procedure to collect debt or duly reported the receivables in case of liquidation or bankruptcy procedure over the debtor.

Taxable income should be increased for receivables that are written-off and do not meet the above requirements and for which tax-deductible provisions were previously made.

Charitable contributions
Expenses for health care, scientific, educational, humanitarian, religious, ecological, cultural, and sport related purposes, as well as humanitarian aid given to the Republic of Serbia, its autonomous provinces, and the local government for sanitation of consequences that emerged during emergency situations, are deductible, at up to 5% of total revenues.

Fines and penalties
Fines and penalties (both commercial and those charged by the authorities) are not deductible.

Taxes
All taxes, duties, and contributions that do not depend on the profitability of the company are deductible in the tax period that the liability in this respect was settled.

Other significant items
The following other expenses are not recognised for CIT purposes:

- Non-documented expenses.
- Provisions for receivables from entities that are creditors at the same time, up to the amount of the liability due to that entity.
- Presents provided to political organisations.
- Presents provided to related parties.
- Penalty interest for late payment of taxes, contributions, and other charges.
- Expenses related to forced collection of taxes and other liabilities.
- Non-business related expense.
- Share in the profit paid to employees or other individuals.
- Calculated but unpaid redundancy payments (deductible when paid).
- Expenses related to employment costs, apart from salaries (deductible when paid).

- Impairment of assets (deductible in tax period in which asset is disposed of or used).
- Direct write-off of receivables (under certain conditions).
- Long-term provisions (deductible when paid).

The following other expenses are recognised for CIT purposes only up to a certain limit:

- Advertising and promotional expenses, up to 10% of total revenues.
- Business entertainment expenses, up to 0.5% of total revenues.
- Membership fees paid to chambers of commerce and other associations (except political parties), up to 0.1% of gross revenue.

Net operating losses

The taxpayer has the right to carry forward and utilise tax losses incurred over the following five years.

Carryback rules do not exist in Serbia.

Payments to foreign affiliates

Generally, there are no restrictions on the deductibility of royalties and service fees paid to foreign affiliates, provided they are at arm's length, appropriately documented (by agreements, contracts, calculation sheets, etc.), and incurred for business purposes only.

Payment of interest to foreign affiliates is restricted and regulated by thin capitalisation rules and transfer pricing rules (*see the Group taxation section*).

Group taxation

Tax grouping/consolidation is allowed to a group of companies where all members are Serbian residents and one company directly or indirectly controls at least 75% of the shares in another company. Each company files its own tax balance sheet, and the parent company files a consolidated tax balance sheet for the whole group.

In the consolidated tax balance sheet, losses of one or more companies are offset by the profits of other related companies. Each company is liable for the portion of tax attributable to its share of the group's taxable profit.

Once approved by the Ministry of Finance, tax grouping/consolidation applies for at least five years.

Transfer pricing

A transfer price is the price of transactions between related parties. Related parties exist if there is a possibility of control or influence over business decisions between them. Ownership of 25% or more, or a majority of shares, is considered as potential control. Influence over business decisions exists when an associated party holds 25% or more, or individually holds the greatest portion, of votes in the taxpayer's management bodies. If the same persons participate in management or control of both companies, a connection between them will be deemed to exist.

Close family members are also regarded as related parties. Non-resident entities from tax havens are considered as related parties of resident entities. The Serbian Ministry of

Finance prescribed the list of countries that are to be considered as tax havens for the application of relevant CIT Law provisions.

A company should disclose transactions with related parties separately at transfer prices and at arm's-length prices in its CIT calculation. Positive difference between these prices (adjustments of expenses) and negative difference (adjustments of revenues) is included in taxable profit.

Serbian CIT Law recognises the following methods for determining arm's-length prices:

- Comparable uncontrolled price (CUP).
- Cost plus.
- Resale minus.
- Transactional net margin (TNMM).
- Profit split.
- Any other method that allows determination of arm's-length prices if none of the above methods can be applied.

It is mandatory to prepare and submit transfer pricing documentation together with the CIT return.

Transfer pricing rules for intra-group loans

Any interest incurred on related-party loans exceeding the arm's-length interest rate is not tax deductible. Arm's-length interest is deemed to be the:

- weighted average key policy rate for the tax period for loans denominated in dinars, and
- weighted average interest rate at which domestic banks borrowed from foreign lenders in the related tax period for foreign currency loans.

These indicators are determined by the National Bank of Serbia and published by the Ministry of Finance. However, taxpayers are entitled to determine market interest rates by using all general methods for determining arm's-length interest rates. In case the taxpayer decides to determine interest rates by applying general methods, it will be obligated to apply such interest rates for assessment of all related-party loans.

Transfer pricing rules in this respect are applied up to the amount of tax-deductible interest determined in accordance with the thin capitalisation threshold (*see below*).

Thin capitalisation

The interest and related costs will be fully deductible if the loans from related parties do not exceed four times the taxpayer's net equity (ten times for banks and leasing companies). The amount of a taxpayer's net equity for this purpose is calculated as the average of the total assets less total liabilities at the beginning and the end of the year, while the amount of loans from related parties is calculated as a daily average for the year.

In cases where the loans from related parties exceed the prescribed threshold, the amount of non-deductible interest will be calculated as proportional to the amount of loans exceeding the 4:1 (10:1) threshold.

Controlled foreign companies (CFCs)

There are no CFC rules in Serbia.

Tax credits and incentives

Foreign tax credit

A Serbian entity is entitled to a tax credit for the WHT paid on foreign-sourced dividends and underlying CIT paid abroad (by its non-resident subsidiary), provided that the taxpayer holds at least 10% of the shares in the subsidiary for at least one year before filing a return. If the taxpayer holds less than 10% of the shares in the subsidiary, the tax credit should not exceed the amount of tax that would be paid in Serbia on that income, where the tax basis represents 40% of the received gross income. Non-utilised tax credit can be carried forward by the parent company for five years.

A resident taxpayer also has the right to decrease its tax liability for WHT paid abroad on interest and authorship fees. The tax credit should not exceed the amount of tax that would be paid in Serbia on that income, where the tax basis represents 40% of the received gross income. Carryforward of unused tax credits is not allowed.

Tax holiday

A ten-year tax holiday is available for companies with a minimum investment in property, plant, and equipment (PPE) of RSD 1 billion. To qualify for the credit, a taxpayer must employ at least 100 new workers for an indefinite period. The tax holiday is available for the ten-year period in proportion to the investment made. The number of employees employed in the tax period in which the taxpayer qualified for the tax holiday must be retained throughout the whole tax holiday period.

Withholding taxes

WHT is calculated and paid at the rate of 20% on payments such as dividends/share in profit, royalties (including neighbouring authorship rights, intellectual property rights, and related rights), interest income, fees for services provided or used in Serbia, income from distributed surplus of a company in bankruptcy, revenues derived from the liquidation surplus of a company in liquidation, and lease payments for real estate and other assets made to a non-resident, unless a DTT applies to provide a reduced rate or exemption.

According to the latest amendments of the CIT Law, as of 1 April 2018, the scope of WHT in terms of service fees paid to non-residents, other than those to tax havens, will include solely market research services, accounting and audit services, and other legal and business consulting services.

WHT is also payable on a non-resident's income realised on the basis of performing entertaining, artistic, sports, and similar programs in Serbia, which is not taxed as income of an individual (performer, musician, sportsman, etc.).

In order to benefit from application of a relevant DTT, non-residents (i.e. the income recipient) must provide a tax residency certificate on the form prescribed by the Serbian Ministry of Finance stamped by the relevant body from the non-resident's country of residence.

Special WHT rules apply in case of non-resident entities from tax havens. WHT is payable at the rate of 25% on royalties, interest, income from lease of immovable property and other assets, and service fees paid to non-resident entities from tax havens. Dividend payments to non-residents from tax havens are subject to WHT at 20%. The Serbian Ministry of Finance publishes a list of jurisdictions that are regarded as tax havens (*http://www.poreskauprava.gov.rs/pravna-lica/pregled-propisa/pravilnici/312/pravilnik-o-listi-jurisdikcija-sa-preferencijalnim-poreskim-sistemom.html*).

WHT rates envisaged by applicable DTTs are provided in the following table.

	WHT (%)			
Recipient	**Dividends (1)**	**Interest**	**Royalties (3)**	**Applicable from**
Non-treaty	20	20	20	
Tax haven	20	25	25	
Treaty:				
Albania	5/15	10	10	2006
Armenia	8	8	8	2017
Austria	5/15	0/10 (5)	5/10	2011
Azerbaijan	10	0/10 (5)	10	2011
Belgium	10/15	15	10	1982
Belorussia	5/15	8	10	1999
Bosnia and Herzegovina	5/10	0/10 (5)	10	2006
Bulgaria	5/15	10	10	2001
Canada	5/15	0/10 (5)	10	2014
China	5	0/10 (5)	10	1998
Croatia	5/10	10	10	2005
Cyprus	10	10	10	1987
Czech Republic	10	0/10 (5)	5/10	2006
Denmark	5/15	0/10 (5)	10	2010
Egypt	5/15	15	15	2007
Estonia	5/10	0/10 (5)	5/10	2011
Finland	5/15	0	10	1988
France	5/15	0	0	1976
Georgia	5/10	0/10 (5)	10	2014
Germany	15	0	10	1989
Ghana (2)	5/15	10	10	N/A
Greece	5/15	10	10	2011
Hungary	5/15	10	10	2003
India	5/15	0/10 (5)	10	2009
Indonesia (2)	15	0/10 (5)	15	N/A
Iran (2)	10	0/10 (5)	10	2012
Ireland	5/10	0/10 (5)	5/10	2011
Italy	10	10	10	1986
Kazakhstan	10/15	0/10 (5)	10	2017
Kuwait	5/10	0/10 (5)	10	2004
Latvia	5/10	0/10 (5)	5/10	2007
Libya	5/10	0/10 (5)	10	2011
Lithuania	5/10	0/10 (5)	10	2010
Luxembourg	5/10	0/10 (5)	5/10	2017
Macedonia	5/15	10	10	1998
Malaysia	0 (4)	10	10	1991

Recipient	WHT (%) Dividends (1)	Interest	Royalties (3)	Applicable from
Malta	5/10 (6)	10	5/10	2011
Moldova	5/15	10	10	2007
Montenegro	10	0/10 (5)	5/10	2012
Morocco (2)	10	0/10 (5)	10	N/A
Netherlands	5/15	0	10	1983
North Korea	10	0/10 (5)	10	2002
Norway	0 (7)/5/15	0/10 (5)	5/10	2016
Pakistan	10	0/10 (5)	10	2011
Palestine (2)	10	0/10 (5)	10	N/A
Poland	5/15	10	10	1999
Qatar	5/10	0/10 (5)	10	2011
Romania	10	0/10 (5)	10	1998
Russia	5/15	10	10	1998
Slovak Republic	5/15	10	10	2002
Slovenia	5/10	0/10 (5)	5/10	2004
South Korea	5/10	0/10 (5)	5/10	2017
Spain	5/10	0/10 (5)	5/10	2011
Sri Lanka	12.5	10	10	1987
Sweden	5/15	0	0	1982
Switzerland	5/15	10	10	2007
Tunisia	10	10	10	2014
Turkey	5/15	0/10 (5)	10	2008
Ukraine	5/10	0/10 (5)	10	2002
United Arab Emirates	0 (7)/5/10	0/10 (5)	10	2014
United Kingdom	5/15	10	10	1983
Vietnam	10/15	10	10	2014
Zimbabwe (2)	5/15	10	10	N/A

Notes

1. If the recipient company owns/controls at least 25% (5% depending on the relevant DTT) of the equity of the paying company, the lower of the two rates applies.
2. The treaty has not been ratified by one of the parties.
3. A tax rate of 5% will be applicable to literary, scientific, and work of art; films and works created like films; or other source of reproduction tone or picture. A tax rate of 10% will be applicable to patents, petty patents, brands, models and samples, technical innovations, secret formulas, or technical procedures.
4. Only in cases when dividends are to be paid to Serbian residents. If paid to Malaysian residents, they are taxable at 20% in Serbia.
5. A 0% rate is applicable in cases when the income recipient is the government or government owned banks. In all other cases, a higher rate envisaged by the DTT should apply.
6. WHT rate refers solely to dividends distributed from Serbia. In Malta, WHT cannot be higher than CIT on profit before dividend distribution.
7. A 0% rate is applicable in cases when the dividend income recipient is the government of the contracting state.

Tax administration

Taxable period

The tax period in Serbia is the calendar year. However, entities have a possibility to opt for a different tax period other than the calendar year (subject to the approval of the Ministry of Finance), but still 12-months long. Once approved, such tax period must be applied for at least five years.

Tax returns

CIT returns, together with all supporting documents (e.g. tax depreciation and tax credit forms), must be filed with the tax authorities not later than 180 days after expiration of the tax year (e.g. 30 June).

A newly established company needs to register with the tax authorities within 15 days of registration with the Serbian Business Registry.

Payment of tax

CIT is payable monthly in advance instalments by the 15th day of the following month for the prior calendar month. The amount of payable advances is determined on the basis of a company's CIT calculation for the previous year.

The due date for final settlement of CIT liability is the date of filing the annual tax return.

Tax audit process

The tax authorities may undertake an unlimited number of tax audits in respect of the same taxes within a reviewed period. In principle, re-performing of an audit of the same tax within a reviewed period is based on existence of new facts that were previously unavailable to the tax authorities.

Statute of limitations

The statute of limitations period for assessment of tax liabilities is five years from the year in which tax should have been assessed. The statute of limitations for collection of tax liabilities is five years from the year in which tax was due for payment. This is with the exception of pension insurance contributions, which do not become statute barred.

The statute of limitations commences from 1 January of the year following the year in which the tax return/liability was due.

Topics of focus for tax authorities

Historically, audits by the tax authority have been focused primarily on VAT, PIT, and social security contributions assessment.

Other issues

Intergovernmental agreements (IGAs)

United States (US) Foreign Account Tax Compliance Act (FATCA)

FATCA is a set of regulations of the United States adopted in order to combat tax evasion. It requires that foreign financial institutions or other financial intermediaries participate in preventing tax evasion by reporting (i.e. providing) information concerning US 'account holders', which include bank account holders, investors, and shareholders, to the US Internal Revenue Service (IRS).

The Model 1 IGA has not yet been signed by the United States and Serbia. However, the IGA is treated as 'in effect' by the US Treasury as of 30 June 2014. Serbia has consented to disclose this status since the United States and Serbia have reached an agreement in substance. In accordance with this status, the text of such IGA has not been released and financial institutions in Serbia are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

Singapore

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Significant developments

The 2018 Budget was announced on 19 February 2018. Corporate tax changes include the following:

Key corporate tax changes include:

- Enhancement of the tax rebate for year of assessment 2018 (income year 2017) to 40% of tax payable, capped at 15,000 Singapore dollars (SGD), and extension of the rebate to year of assessment 2019 at 20% of tax payable, capped at SGD 10,000.
- Adjustments to the Partial Tax Exemption and Start-up Tax Exemption schemes from year of assessment 2020, which reduce the maximum exempt income to SGD 102,500 (previously SGD 152,000) and SGD 125,000 (previously SGD 200,000), respectively.
- Introduction of a 250% tax deduction for qualifying research and development (R&D) projects performed in Singapore, and 200% tax deductions for the first SGD 100,000 of qualifying intellectual property (IP) registration costs and the first SGD 100,000 of qualifying IP licensing costs.
- Introduction of investment allowances for submarine cable systems landing in Singapore.
- Higher cap for double deduction for prescribed travelling expenses (for which no prior approval is needed) under the Double Tax Deduction for Internationalisation scheme.
- Introduction of a tax framework for Singapore Variable Capital Companies (S-VACC).
- Tax transparency for specified income of Singapore-listed Real Estate Investment Trusts Exchange-Traded Funds (REIT-ETFs).
- Extension of the Enhanced-Tier Fund scheme to all forms of fund vehicles.
- Rationalisation of the withholding tax (WHT) exemptions for the financial sector.

Other Budget changes include the following:

- Introduction of a goods and services tax (GST) reverse charge on services imported by businesses that make exempt supplies or those that do not make any taxable supplies with effect from 1 January 2020.
- Requirement for overseas vendors providing digital services to register for GST with effect from 1 January 2020 if their global turnover is more than SGD 1 million annually and their online sales to Singapore consumers exceed SGD 100,000.
- Increase GST rate from 7% to 9% sometime between 2021 and 2025.
- Increase in buyer's stamp duty for residential property purchases.
- Introduction of carbon tax of SGD 5 per tonne of greenhouse gas emissions.

For details of the 2018 Budget proposals, refer to our 2018 Budget Commentary at *https://www.pwc.com/sg/en/publications/budget-commentary.html*

Taxes on corporate income

Companies (resident and non-resident) that carry on a business in Singapore are taxed on their Singapore-sourced income when it arises and on foreign-sourced income when it is remitted or deemed remitted to Singapore. Non-residents are subject to WHT on certain types of income (e.g. interest, royalties, technical service fees, rental of movable property) where these are deemed to arise in Singapore (*for details, see the Withholding taxes section*).

Tax on corporate income is imposed at a flat rate of 17%.

A partial tax exemption and a three-year start-up tax exemption for qualifying start-up companies are available.

Partial tax exemption (income taxable at normal rate):

Years of assessment 2018 to 2019			Year of assessment 2020 onwards		
Chargeable income (SGD)	**Exempt from tax**	**Exempt income (SGD)**	**Chargeable income (SGD)**	**Exempt from tax**	**Exempt income (SGD)**
First 10,000	75%	7,500	First 10,000	75%	7,500
Next 290,000	50%	145,000	Next 190,000	50%	95,000
Total		152,000	Total		102,500

Start-up tax exemption (income taxable at normal rate):

Years of assessment 2018 to 2019			Year of assessment 2020 onwards		
Chargeable income (SGD)	**Exempt from tax**	**Exempt income (SGD)**	**Chargeable income (SGD)**	**Exempt from tax**	**Exempt income (SGD)**
First 100,000	100%	100,000	First 100,000	75%	75,000
Next 200,000	50%	100,000	Next 100,000	50%	50,000
Total		200,000	Total		125,000

The start-up exemption is not available to property development and investment holding companies.

In addition, for the year of assessment 2018, there is a 40% corporate tax rebate. This rebate is capped at SGD 15,000. There is also a rebate of 20% of tax payable for year of assessment 2019, which is capped at SGD 10,000.

Singapore adopts a one-tier taxation system, under which all Singapore dividends are tax-exempt in the shareholder's hands.

Corporate residence

In Singapore, the tax residence of a corporation is determined by the place where the central management and control of its business is exercised. This is taken generally to mean the place where the directors meet to exercise *de facto* control. The Inland Revenue Authority of Singapore (IRAS) has also set out further guidance.

Permanent establishment (PE)

The presence of a PE is largely irrelevant, except for treaty purposes, as Singapore taxes with reference to the source of income rather than the presence of a PE.

However, a PE is a clear indication of source.

The definition of a PE in Singapore's double taxation agreements (DTAs) is largely based on the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention definition.

It is generally taken to be a fixed place through which the business of an enterprise is wholly or partly carried on, and normally includes a place of management, a branch, an office, a factory, a workshop, and a place of extraction of natural resources, etc.

In addition, and subject to the terms of the relevant agreements, a non-resident may have a PE in Singapore if one:

- has a building site or a construction, assembly, or installation project that lasts longer than a specified period, or supervisory activities connected with the building site or construction project
- furnishes services (including consultancy services) through employees in Singapore for more than a specified period, or
- has an agent in Singapore who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise.

The Singapore tax legislation defines a PE more broadly than most of the DTAs; however, as mentioned above, this is largely irrelevant where a treaty can take precedence.

Other taxes

Goods and services tax (GST)

GST is charged at 7% on the supply of goods and services made in Singapore by a taxable person in the course or furtherance of one's business. It was announced in the 2018 Budget that this rate would be increased to 9% sometime between 2021 and 2025.

The only exemptions from GST are prescribed financial services (including life insurance), the sale or rental of residential properties, and the import and local supply of investment precious metals (IPM). Zero-rating only applies to the export of goods and international services.

GST is also levied on imports of goods, at the time of importation. However, there are reliefs available to ease the cash-flow burden of import-export traders by suspending GST at the time of importation. GST is not currently charged on imports of services, although this will change from 1 January 2020 with the introduction of a reverse-charge on local businesses that make exempt supplies, and those which do not make any taxable supplies, to account for GST on the services they import. A non-registered business that imports services exceeding SGD 1 million in a year and is not entitled to full input tax credit if it were GST-registered will be required to register for GST to account for the reverse charge under the new rules. These businesses can in turn claim the GST accounted for as their input tax, subject to the normal rules for input tax recovery. In addition, overseas suppliers and electronic marketplace operators that make significant supplies of digital services to local consumers will be required to register for GST in Singapore.

A taxable person is one who is, or is required to be, registered for GST. GST registration is required if one's taxable turnover exceeds SGD 1 million per year. Voluntary registration is permitted if the taxable turnover is below the registration threshold, subject to conditions.

A supply of goods is made in Singapore if the goods are in Singapore at the time of supply, and a supply of services is made in Singapore if the supplier belongs in Singapore. Generally, a person belongs in Singapore if one's business establishment (including carrying on a business through a branch or agency) or fixed establishment is in Singapore.

A taxable person is allowed to credit the input GST paid on taxable purchases against the output GST chargeable on taxable supplies made. However, certain purchases are specifically denied an input GST deduction. These include supplies of goods and services such as non-business expenses, club subscription fees, family benefits, car rental expenses, motor vehicle expenses, medical expenses, and transactions involving betting, sweepstakes, lotteries, fruit machines, or games of chance.

A non-resident is not entitled to GST refunds except by appointing a resident business that is registered for GST to act on one's behalf. The resident tax agent can then recover import GST paid on behalf of the non-resident business but will be required to account for output GST on any subsequent supply of the non-resident's goods in Singapore.

Customs and excise duties

Singapore is essentially a free port with minimal import restrictions. Customs and excise duties are imposed on intoxicating liquors, tobacco products, motor vehicles, and petroleum products.

Property tax

Property tax is levied annually on the annual value of houses, land, buildings, or tenements.

For residential properties, owner-occupier tax rates range from 0% to 16% and non-owner occupier tax rates range from 10% to 20%. The tax rates depend on the annual value bands.

For non-residential properties, such as commercial and industrial buildings and land, the tax rate is 10%.

Stamp duties

Stamp duties are levied on written documents relating to immovable properties, leases, and stocks and shares.

Immovable properties

Stamp duties are typically payable by the buyer (i.e. buyer's stamp duty or BSD); however, seller's stamp duty (SSD) and additional buyer's stamp duty (ABSD) have been introduced as measures to cool the residential property market.

There is BSD of up to 4% on the purchase price or market value, whichever is the higher. There is an ABSD of up to 15% and an SSD of up to 15% on the price or market value of the property, whichever is the higher, depending on the type of property (residential or industrial), the residency status of the buyer, the holding period of the property, and the number of properties owned.

Foreigners of certain nationalities who fall within the scope of the respective free trade agreements will be accorded the same treatment as Singaporeans.

Certain transfers of equity interest in property holding entities (PHEs) that own (directly or indirectly) primarily Singapore residential properties could attract additional conveyance duty (ACD) for buyers and sellers who are significant owners (as defined) of PHEs, as well as for a buyer who would become a significant owner after acquiring an equity interest in the PHEs. For acquisition of equity interest in a company, share duty remains payable in addition to the ACD.

Leases

Leases attract duty at 0.4% of the total rent (for leases of up to four years) or 0.4% of four times the average annual rent for the period of the lease (for leases longer than four years), but leases with average annual rents not exceeding SGD 1,000 are exempt from stamp duty.

Stocks and shares

Instruments effecting the transfer of stocks and shares are subject to stamp duty of 0.2% on the purchase price or market value of the shares transferred, whichever is higher.

Foreign Worker Levy (FWL)

The FWL is a monthly levy of up to SGD 950 that employers are liable to pay for each foreign employee (Work Permit or S Pass holders) hired. The levy rate depends on the employee's qualifications, the employer's industry, and the ratio of foreigners to Singaporeans and permanent residents employed in the company. The government has announced that levy increases for Work Permit holders in the marine and process sectors that were originally proposed for 1 July 2016 will be deferred for yet another year till 1 July 2019.

Payroll taxes

Singapore does not have payroll withholding. When a non-Singapore citizen employee ceases employment in Singapore, leaves Singapore for an overseas posting, or leaves Singapore for a period exceeding three months, the employer needs to notify the Singapore tax authorities once the fact of cessation/departure is known to the employer, unless the employer is bearing full Singapore taxes for the employee, and withhold all monies due until tax clearance is issued. The notification must be made no later than one month prior to the date of cessation/departure, or two months from the date of cessation/departure where the employer is bearing full Singapore taxes for the employee. Non-Singapore citizen employees are also subject to tax on unexercised/

unvested stock options/awards on a deemed gain basis when they cease employment or leave Singapore.

Social security contributions

Central Provident Fund (CPF)

The CPF is Singapore's national pension scheme. Contributions are payable by Singapore citizens and permanent residents only. Generally, employers and employees contribute 17% and 20%, respectively, of ordinary monthly wages up to an income ceiling of SGD 6,000. Their respective maximum contributions are therefore SGD 1,020 and SGD 1,200. The rates are applicable to employees aged 55 years and below.

These rates also apply to additional wages (e.g. year-end bonus), up to a maximum contribution of:

If: Annual ordinary wages	**And:** Total wages	**Maximum contribution**
Not more than the ordinary wage ceiling of SGD 72,000	Not more than the maximum contribution of SGD 102,000	Actual additional wages
Not more than the ordinary wage ceiling of SGD 72,000	Exceed the maximum contribution of SGD 102,000	Difference between the maximum contribution of SGD 102,000 and annual ordinary wages
Exceed the ordinary wage ceiling of SGD 72,000	Not more than the maximum contribution of SGD 102,000	Actual additional wages
Exceed the ordinary wage ceiling of SGD 72,000	Exceed the maximum contribution of SGD 102,000	Difference between the maximum contribution and the ordinary wage ceiling (SGD 30,000)

Reduced rates apply for employees who are earning less than SGD 750 per month and those above 55, although these rates are being gradually increased.

Foreign nationals and their employers are precluded from making CPF contributions. Foreign employees who become Singapore permanent residents, and their employers, may contribute at reduced rates for the first two years.

Supplementary Retirement Scheme (SRS)

The SRS is a voluntary scheme to encourage employees and the self-employed to save for retirement over and above their CPF savings. The maximum amount to be contributed is subject to an income cap of SGD 102,000. Employers are allowed to contribute to their employees' SRS accounts. This is subject to a 15% contribution limit (capped at SGD 15,300) for Singapore citizens and permanent residents, and a 35% cap for foreigners (maximum SGD 35,700). Employees will be taxable on these employer contributions, but will be allowed corresponding tax relief. Relief is subject to a personal income tax (PIT) relief cap of SGD 80,000 that applies to the total amount of all tax reliefs claimed, including any SRS relief. There is no refund for SRS contributions already made, in the event the overall PIT relief cap is exceeded.

Carbon tax

Carbon tax at a rate of SGD 5 per tonne of carbon dioxide-equivalent (tCO2e) of emissions will be applied on the total greenhouse gas emissions of facilities that produce 25,000 or more tCO2e of emissions per year. The carbon tax will apply uniformly to all sectors, without exemption, and will take the form of a fixed-price credits-based mechanism. The first payment of the carbon tax will be in 2020, based on emissions in 2019.

Branch income

Tax rates on branch profits are the same as on corporate profits. There is no branch profits remittance tax on the repatriation of profits to the head office.

Income determination

Inventory valuation

There are no special rules as to which valuation basis should be adopted for inventories (stock-in-trade) in the case of a continuing business, as long as the basis is consistent from one year to another. However, a last in first out (LIFO) basis of valuation is not permitted for tax purposes. Generally, tax reporting conforms to book reporting.

Capital gains

There is no tax on capital gains. Where there is a series of transactions or where the holding period of an asset is relatively short, the tax authorities may take the view that a business is being carried on and attempt to assess the gains as trading profits of the corporation. The United Kingdom (UK) Badges of Trade, which are used in judicial decisions to distinguish capital and revenue transactions, are generally applied in determining this issue. They include the existence of a profit-seeking motive, the number of transactions, the nature of the asset, the existence of similar trading transactions or interests, the way the sale was carried out, the source of finance, the interval of time between purchase and sale, and the method of acquisition.

Gains derived by a company from the disposal of ordinary shares that take place between 1 June 2012 and 31 May 2022 will not be taxed if the company has held at least 20% of the ordinary shares in the investee company for a continuous period of at least 24 months prior to the disposal. This protection does not apply to gains derived by an insurance company or disposal of shares in certain companies that trade or hold immovable properties.

Dividend income

Singapore dividends are exempt in the hands of the recipient.

Interest income

Singapore-sourced interest income is taxable when it arises, and foreign-sourced interest is taxable when it is remitted or deemed to be remitted to Singapore. *For further details on foreign-sourced interest income and the availability of foreign tax credit, refer to Foreign income below*.

Royalty income

Singapore-sourced royalty income is taxable when it arises, and foreign-sourced royalty income is taxable when it is remitted or deemed to be remitted to Singapore. *For further details on foreign-sourced royalty income and the availability of foreign tax credit, refer to Foreign income below*.

Foreign income

A corporation, whether resident in Singapore or not, is taxed on foreign income when it is received in Singapore. Legislative provisions govern the basis of treating foreign income as received in Singapore. There are no special rules for taxing the undistributed income of foreign subsidiaries.

Where income is earned from treaty countries, double taxation is avoided by means of foreign tax credit granted under those treaties. For non-treaty countries, unilateral tax credit is given in respect of foreign tax on all foreign-sourced income. These foreign tax credits may be pooled, subject to certain conditions.

Foreign dividends, foreign branch profits, and foreign service fee income remitted to Singapore may be exempt from tax if they fulfil certain conditions.

Deductions

Depreciation

Tax depreciation is allowable at specified rates on buildings used in qualifying industry sectors, subject to conditions. In 2010, industrial building allowances were replaced by a Land Intensification Allowance. The latter provides for faster depreciation but is subject to approval as it is allowed as a tax incentive. Transitional provisions for industrial building allowances are available for taxpayers who committed to qualifying capital expenditure on or before 22 February 2010.

Tax depreciation is available on machinery and equipment on a straight-line basis over their specified working life for all types of business. In lieu of the straight-line basis, accelerated tax depreciation allowances can be claimed by all businesses on all machinery and equipment in equal instalments over three years.

A 100% depreciation allowance is available on capital expenditure incurred on computers, robots, standby generators, pollution control equipment, and prescribed automation equipment.

Writing down allowances on a straight-line basis over five years are allowable on the cost of acquisition of IP, subject to certain conditions. Taxpayers acquiring IP in the 2016 to 2019 income years may make an irrevocable election to claim the writing down allowances over 10 or 15 years instead of five.

In addition, enhanced allowances may be available for the acquisition of automation equipment and IP up to the year of assessment 2018 (*see Productivity and Innovation Credit [PIC] in the Tax credits and incentives section*).

Gains on tax depreciable property (i.e. the excess of proceeds over tax base) are taxed as ordinary income to the extent that tax depreciation has been allowed; that is, there is a clawback of tax depreciation on the disposal of the asset.

Goodwill

Payments for the acquisition of goodwill are generally capital in nature and not deductible.

Start-up expenses

Generally, expenses incurred prior to the commencement of business are not tax deductible. However, most businesses are allowed to deduct expenses incurred in the 12 months immediately preceding the accounting year in which the business earned its first dollar of trading income. Deductible expenses are those that would have been allowed a deduction had they been incurred after the business commenced operations.

In addition, deductions and writing down allowances are available for certain types of pre-commencement expenditure (acquisition of plant and machinery, R&D, etc.) that are deemed to be incurred on the first day on which the taxpayer carries on one's business.

Interest expenses

Interest incurred on capital employed in the production of income, and prescribed borrowing costs that are incurred as a substitute for interest or to reduce interest costs, will be allowed as a tax deduction.

Research and development (R&D) expenses

The following deductions are available for qualifying R&D expenditure, subject to conditions:

	Year of assessment 2018	Years of assessment 2019 to 2025
R&D carried out in Singapore	150% of qualifying R&D expenditure	250% of qualifying R&D expenditure
R&D carried out overseas	100% of qualifying R&D expenditure	

Expenditure incurred in relation to R&D cost-sharing arrangements are accorded the same tax treatment as R&D expenses.

Enhanced deductions may also be available under the PIC scheme up to the year of assessment 2018 (*see Productivity and Innovation Credit [PIC] in the Tax credits and incentives section*).

Bad debts

Bad trade debts and provisions for trade debts are deductible to the extent that they are incurred in the business and previously included as trading receipts. Doubtful debts are deductible if they are properly estimated and specific. General provisions for bad debts are not deductible.

Businesses that have elected to align their tax treatment of financial instruments with the accounting treatment prescribed by SFRS 39 (Financial Instruments: Recognition and Measurement) will be allowed a tax deduction for impairment losses on trade debts when they are incurred (regardless of whether they are general or specific provisions). Correspondingly, any reversal will be taxed. Businesses that have adopted SFRS 109 (Financial Instruments) will be allowed a tax deduction for impairment losses on trade debts when recognised in the profit and loss account, to the extent that the debts are credit impaired. Correspondingly, any reversal will be taxed.

Charitable contributions

Donations are deductible only if they are made in cash or another prescribed form and to an approved recipient. The deduction allowed for qualifying donations is generally 250% of the value of the donation. Businesses that send employees to volunteer and provide services to approved charitable institutions from 1 July 2016 to 31 December 2021 will be allowed to deduct 250% of the wages and incidental expenses incurred, subject to certain conditions.

Fines and penalties

Fines and penalties imposed for violations of the law are not deductible.

Taxes

Income taxes are generally not deductible in determining corporate income. However, irrecoverable GST is deductible under certain circumstances. The FWL and property taxes are deductible to the extent they are incurred wholly and exclusively in the production of income.

Other significant items

Private automobile expenses are not deductible.

The tax deduction for medical expenses is limited to 2% of total payroll if the employer implements certain portable medical insurance or benefit schemes. Otherwise, the amount deductible will be limited to 1% of total payroll. Where the company is exempt or taxed at a reduced rate, the excess expenses will be taxed at the prevailing corporate rate.

A tax deduction for employee share-based remuneration (stock awards or stock option schemes) is allowed only if treasury shares in the company or its holding company are purchased to fulfil such obligations. A company may also claim a tax deduction when the share-based remuneration scheme is administered by a special purpose vehicle (SPV). The deduction is restricted generally to the lowest of the actual outlay incurred by the company, its holding company, or the SPV.

Net operating losses

Loss carryover, including unutilised tax depreciation allowance, is unlimited, provided shareholdings in the loss-making corporation have not changed beyond 50% of the total number of issued shares. Additionally, for tax depreciation allowances to be carried forward, the same trade needs to be continued. The tax authorities may exercise discretion to allow carryover of tax losses and unutilised tax depreciation even when there has been a change in shareholding beyond 50%, absent any tax avoidance motives. Losses and tax depreciation of up to SGD 100,000 incurred by the company in the current year can be carried back for one year. The carryback of losses and tax depreciation is subject to the continuity of shareholding test and the same trade test for carryback of tax depreciation.

Payments to foreign affiliates

Payments to non-residents, including foreign affiliates, are deductible, provided they are fair and reasonable, are revenue in nature, and can be seen to be relevant to earning the payer's income.

Group taxation

A company is allowed to transfer excess current year trade losses, current year tax depreciation, and current year approved donations to another company within the same group if certain conditions are satisfied.

Broadly, to qualify for group relief, companies must be incorporated in Singapore, belong to the same group of companies where, among other things, there must be at least a 75% ownership relationship between claimant and transferor, and have the same accounting year-end. In addition, a group must comply with certain prescribed offset and apportionment rules.

Transfer pricing

The Income Tax Act contains specific transfer pricing provisions that define the arm's-length principle and provide the tax authorities with a right to make transfer pricing adjustments in cases where taxpayers do not comply with the arm's-length principle.

In 2017, these transfer pricing provisions were enhanced to introduce mandatory contemporaneous documentation requirements, penalties for non-compliance, and a surcharge to be imposed at 5% of the transfer pricing adjustment value. In general, businesses with turnover exceeding SGD 10 million are required to maintain contemporaneous transfer pricing documentation with effect from the year of assessment 2019, subject to certain exemptions as defined. Failure to comply with these requirements (including contemporaneous transfer pricing documentation) could result in a penalty not exceeding SGD 10,000. The tax authorities are also given the power to disregard the form of a transaction where the substance of it is inconsistent with the form.

The tax authorities have issued revised transfer pricing guidelines to supplement the provisions in the Income Tax Act. Guidance is also provided on matters relating to mutual agreement procedures (MAPs) and advance pricing arrangements (APAs).

Country-by-country (CbC) reporting

On 21 June 2017, Singapore signed the Multilateral Competent Authority Agreement on the exchange of CbC Reports. For income years beginning on or after 1 January 2017, Singapore-headquartered multinational enterprises with global revenues exceeding SGD 1,125 million have to submit to the IRAS an annual CbC report containing the income, taxes paid, and other indicators of level of economic activities in every tax jurisdiction where they operate. The IRAS will exchange CbC reports with jurisdictions with which Singapore has entered into bilateral agreements for the exchange of CbC reports.

Thin capitalisation

There are no formal thin capitalisation rules in Singapore. However, general anti-avoidance and transfer pricing provisions may operate in cases of abuse.

Controlled foreign companies

There are no CFC rules in Singapore.

Tax credits and incentives

There are various tax incentives available to taxpayers involved in specified activities or industries identified as being beneficial to Singapore's economic development.

Tax incentive applications are typically subject to an approval process during which the administering agency evaluates the applicant's business plans in detail. Successful applicants are required to satisfy rigorous requirements and are expected to make significant economic commitments in Singapore.

Generally, applicants are expected to carry out substantive, high value activities in Singapore, and will be required to commit to certain levels of local business spending and skilled employment. Some factors that will be considered include the use of Singapore as a base from which to implement regional growth strategies; introduction and anchoring of leading-edge skills, technology, and activities in Singapore; contributions to the growth of R&D and innovation capabilities; and potential spin-off to the rest of the economy.

Pioneer tax incentive

Corporations manufacturing approved products with high technological content or providing qualifying services may apply for tax exemption for five to 15 years for each qualifying project or activity under the pioneer tax incentive. Corporations may apply for their post-pioneer profits to be taxed at a reduced rate under the Development and Expansion Incentive, *as discussed below*.

Development and Expansion Incentive

Under the Development and Expansion Incentive, corporations engaging in new high-value-added projects, expanding or upgrading their operations, or undertaking incremental activities after their pioneer period may apply for their profits to be taxed at a reduced rate of not less than 5% for an initial period of up to ten years. The total tax relief period for each qualifying project or activity is subject to a maximum of 40 years (inclusive of the post-pioneer relief period previously granted, if applicable).

Investment allowance

Under the investment allowance, a tax exemption is granted on an amount of profits based on a specified percentage (of up to 100%) of the capital expenditure incurred for qualifying projects or activities within a period of up to five years (up to eight years for assets acquired on hire-purchase). Capital expenditure incurred for productive equipment placed overseas on approved projects may likewise be granted integrated investment allowances. Investment allowances of 100% of capital expenditure (net of grants) may be granted to businesses seeking to make substantial investment in automation, subject to a cap of SGD 10 million per project.

Incentives for internationalisation

The double tax deduction scheme for internationalisation allows companies expanding overseas to claim a double deduction for eligible expenses for specified market expansion and investment development activities. This includes manpower expenses incurred when Singaporeans are deployed to overseas entities.

Intellectual Property Development Incentive (IDI)

The IDI is a new incentive scheme that was introduced to encourage the exploitation of IP arising from R&D activities of the taxpayer. Income from the commercialisation of certain IP will be taxed at a concessionary rate. This incentive scheme is expected to be modelled after the modified nexus approach set out in the Action 5 report of the OECD base erosion and profit shifting (BEPS) project.

Productivity and Innovation Credit (PIC)

The PIC scheme provides for an enhanced 400% deduction for qualifying expenditure incurred in respect of six qualifying activities during the accounting periods that ended between 2010 and 2017 (i.e. years of assessment 2011 to 2018). The six qualifying activities are:

- The acquisition or leasing of prescribed IT and automation equipment.
- Staff training.
- The acquisition of IP.
- The registration of IP rights.
- R&D.
- Design.

The enhanced deduction is available only on the first SGD 400,000 of qualifying expenditure incurred each year on each of the qualifying activities, although, for the years of assessment 2015 to 2018, qualifying small and medium enterprises may claim PIC benefits for up to SGD 600,000 of such expenditure for each qualifying activity a year. The cap may be combined for certain years of assessment. Certain activities are subject to approval or minimum ownership requirements.

For the years of assessment 2013 to 2018, the acquisition of IP rights includes licensing of those rights, other than trademarks and any rights to the use of software.

With the expiry of the PIC scheme, the following further deductions have been introduced for the years of assessment 2019 to 2025:

- 250% deduction for qualifying expenditure incurred for R&D carried out in Singapore.
- 200% deduction for the first SGD 100,000 of qualifying expenditure incurred to register qualifying IP.
- 200% deduction for the first SGD 100,000 of expenditure incurred to license qualifying IP.

Mergers and acquisitions allowance

The mergers and acquisitions allowance allows a write-off, over five years, of 25% of the value of qualifying mergers or acquisitions deals executed between 1 April 2015 and 31 March 2020, subject to a cap of SGD 5 million (SGD 10 million for deals executed from 1 April 2016 to 31 March 2020) per year of assessment. This incentive is available to companies that are incorporated, tax resident, and carrying on a business in Singapore; however, this requirement may be waived for companies under the headquarters schemes (further details below) and the Maritime Sector Incentive (MSI) (further details below) for shipping-related supporting services (for share acquisitions completed from 17 February 2012 to 31 March 2020). A 200% tax allowance is also granted on transaction costs (capped at SGD 100,000 per year of assessment) incurred on qualifying deals.

Financial services incentives

Financial Sector Incentive (FSI) scheme

The FSI scheme covers a broad range of financial institutions, including bond intermediaries, Asian currency units, derivative traders, fund managers, equity capital market intermediaries, operational headquarters, providers of high-value-added processing services supporting financial activities, providers of trustee and custodian services, and trust management or administration services. Financial institutions that plan to expand their Singapore operations and are prepared to meet various strict qualifying conditions may apply for this incentive.

Under the FSI scheme, income from certain high growth, high-value-added activities, such as services and transactions relating to the bond market, derivatives market, equity market, and credit facilities syndication, may be taxed at 5%, while a broader range of financial activities will qualify for a 12% tax rate. This rate has been increased to 13.5% for awards granted or renewed from 1 June 2017, and the scope of qualifying income has been expanded (broadly speaking, certain currency, counterparty, and investment instrument restrictions have been removed). The tax incentive period may last for five, seven, or ten years, subject to certain conditions being met.

Finance and treasury centre (FTC)

Income derived by an FTC from approved FTC activities is taxed at a reduced rate of 8%. Approved activities include international treasury and fund management activities, corporate finance and advisory services, economic and investment research and analysis, and credit control and administration.

Interest payments to overseas banks and approved network companies are also exempt from WHT where the funds borrowed are used for approved activities.

Debt securities incentives

A package of tax concessions is available to various players in the Singapore bond market, including those involved in certain Islamic financing arrangements.

Insurance Business Development (IBD) scheme

The IBD scheme is an umbrella incentive for the insurance sector. Incentives offered under this scheme include a 10% concessionary tax rate for qualifying income of life, general, and composite insurers from carrying on insurance businesses from Singapore, and income derived from the provision of insurance broking and advisory services. This includes income from marine hull and liability insurance, captive insurance businesses, and qualifying specialised insurance.

Real Estate Investment Trusts (REITs)

Distributions made to foreign non-individual investors by a listed REIT out of rental income from Singapore real estate are subject to a reduced tax rate of 10%, subject to certain conditions being met. Listed REITs investing in foreign properties can apply for tax exemption for certain foreign income received in Singapore. Distributions out of this income similarly are exempt.

From 1 July 2018 to 31 March 2020, tax transparency treatment will be accorded for specified income of Singapore-listed REIT Exchange-Traded Funds (REIT-ETFs) so that there will be parity in tax treatments between investing in individual S-REITs and via REIT-ETFs with investments in S-REITs.

As a concession, Singapore-listed REITs are allowed to claim GST on expenses incurred for their business and for their special purpose vehicles, regardless of whether the REIT is eligible for GST registration, subject to a specified formula and certain conditions.

Islamic financing arrangements

The income tax, stamp duty, and GST treatment of prescribed Islamic financing arrangements and Islamic debt securities (*Sukuk*) are aligned with that of the conventional financing contracts to which they are economically equivalent, subject to certain conditions.

Infrastructure project finance incentives

Tax exemption is available for interest income earned from qualifying investments in qualifying infrastructure projects/assets. FSI companies that provide project finance advisory services related to qualifying projects/assets may enjoy certain tax concessions for their qualifying income, and companies that provide management services to qualifying business trusts and funds pay tax at 10% on their qualifying income.

Sovereign wealth funds

Tax exemption is available for income derived by a sovereign fund entity and an approved foreign government-owned entity from funds managed in Singapore.

Singapore Variable Capital Companies (S-VACC)

An S-VACC will be treated as a company and a single entity for tax purposes. The tax exemptions for income from funds managed in Singapore and the existing GST remission for funds will be extended to qualifying S-VACC. A 10% concessionary tax rate under FSI incentive for fund managers will be extended to approved fund managers managing an incentivised S-VACC. This tax framework will take effect when or after the regulatory framework for S-VACC comes into effect.

Headquarters schemes

Approved regional headquarters in Singapore are taxed at a concessionary rate of tax of 15% on qualifying overseas income. Depending on their level of economic commitments to Singapore, international headquarters can apply for various tax incentives, including tax exemption or concessionary tax rates on qualifying income.

Maritime Sector Incentive (MSI) scheme

The MSI scheme is the umbrella incentive for the maritime sector. Incentives offered include tax exemption for shipping companies and a 10% concessionary tax rate for international freight and logistics operators. Approved ship investment managers are also taxed at 10% on qualifying management-related income. The scheme also includes approved ship investment vehicles, which are tax exempt on their qualifying vessel lease income; approved container investment enterprises, which are taxed at 5% or 10% on qualifying income from container-leasing; and approved container investment management companies, which are taxed at 10% on qualifying management fees.

Qualifying ship operators and lessors under the MSI scheme also enjoy automatic tax exemption on gains from the disposal of vessels, vessels under construction, and new building contracts.

Global Trader Programme (GTP)

International traders are taxed at concessionary rates of 5% or 10% on qualifying income from physical trading, brokering of physical trades, and derivative trading income.

Other incentives

Other incentives include tax exemptions for not-for-profit organisations and a concessionary tax rate of 8% for approved aircraft lessors.

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Withholding taxes

Domestic corporations paying certain types of income to non-residents are required to withhold tax.

Unless a lower treaty rate applies, interest on loans and rentals from movable property are subject to WHT at the rate of 15%. Royalty payments are subject to WHT at the rate of 10%. The tax withheld represents a final tax and applies only to non-residents who are not carrying on any business in Singapore and who have no PE in Singapore. Technical assistance and management fees for services rendered in Singapore are taxed at the prevailing corporate rate. However, this is not a final tax. Royalties, interest, rental of movable property, technical assistance, and management fees can be exempt from WHT in certain situations or subject to a reduction in tax rates, usually under fiscal incentives or DTAs.

Payments made to public entertainers and non-resident professionals who perform services in Singapore are also subject to a final tax of 15% on their gross income. For public entertainers, this appears to be a final tax unless they qualify to be taxed as Singapore tax residents. However, non-resident professionals may elect to be taxed at the prevailing tax rate for non-resident individuals of 22% on net income if this results in a lower tax cost. The WHT rate on payments to non-resident entertainers was reduced to 10% from 22 February 2010 to 31 March 2020.

Ship charter fee payments are not subject to WHT.

The WHT rates are shown in the following table.

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (2)**
Resident individuals	0	0	0
Resident corporations	0	0	0
Non-resident corporations and individuals:			
Non-treaty	0	15	10
Treaty:			
Albania	0	5 (3b)	5
Australia	0	10	10 (4a)
Austria	0	5 (3b, d)	5

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (2)**
Bahrain	0	5 (3b)	5
Bangladesh	0	10	10 (4a)
Barbados	0	12 (3b)	8
Belarus	0	5 (3b)	5
Belgium	0	5 (3b, d)	3/5 (4b)
Bermuda (5a)	0	15	10
Brazil (5c)	0	15	10
Brunei	0	5/10 (3a, b)	10
Bulgaria	0	5 (3b)	5
Cambodia (5d)	0	10 (3b)	10
Canada	0	15 (3e)	10
Chile (5b)	0	15	10
China, People's Republic of	0	7/10 (3a, b)	6/10 (4b)
Cyprus	0	7/10 (3a, b)	10
Czech Republic	0	0	0/5/10 (4b, 4c)
Denmark	0	10 (3b)	10
Ecuador	0	10 (3a, b)	10
Egypt	0	15 (3b)	10
Estonia	0	10 (3b)	7.5
Ethiopia (5d)	0	5	5
Fiji Islands, Republic of	0	10 (3b)	10
Finland	0	5 (3b)	5
France	0	0/10 (3b, k)	0 (4a)
Georgia	0	0	0
Germany	0	8 (3b)	8
Guernsey	0	12 (3b)	8
Hong Kong (5c)	0	15	10
Hungary	0	5 (3b, d)	5
India	0	10/15 (3a)	10
Indonesia	0	10 (3b, e)	10
Ireland	0	5 (3b)	5
Isle of Man	0	12 (3b)	8
Israel	0	7 (3b)	5
Italy	0	12.5 (3b)	10
Japan	0	10 (3b)	10
Jersey	0	12 (3b)	8
Kazakhstan	0	10 (3b)	10
Korea, Republic of	0	10 (3b)	10
Kuwait	0	7 (3b)	10
Lao People's Democratic Republic	0	5 (3b)	5
Latvia	0	10 (3b)	7.5
Libya	0	5 (3b)	5
Liechtenstein	0	12 (3b)	8
Lithuania	0	10 (3b)	7.5
Luxembourg	0	0	7
Malaysia	0	10 (3b, f)	8
Malta	0	7/10 (3a, b)	10
Mauritius	0	0	0
Mexico	0	5/15 (3a, b)	10

Singapore

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties (2)**
Mongolia	0	5/10 (3a, b)	5
Morocco	0	10 (3b)	10
Myanmar	0	8/10 (3a, b)	10
Netherlands	0	10 (3b)	0 (4a)
New Zealand	0	10 (3b)	5
Norway	0	7 (3b)	7
Oman	0	7 (3b)	8
Pakistan	0	12.5 (3b)	10 (4a)
Panama	0	5 (3b, d)	5
Papua New Guinea	0	10	10
Philippines	0	15 (3e)	10
Poland	0	5 (3b)	2/5 (4b)
Portugal	0	10 (3b, f)	10
Qatar	0	5 (3b)	10
Romania	0	5 (3b)	5
Russian Federation	0	0	5
Rwanda	0	10 (3a)	10
San Marino	0	12 (3b)	8
Saudi Arabia	0	5	8
Seychelles	0	12 (3b)	8
Slovak Republic	0	0	10
Slovenia	0	5 (3b)	5
South Africa	0	7.5 (3b, j, l)	5
Spain	0	5 (3b, d, f, g)	5
Sri Lanka (5d)	0	10 (3a, b)	10
Sweden	0	10/15 (3b, c)	0 (4a)
Switzerland	0	5 (3b, d)	5
Taiwan	0	15	10
Thailand	0	10/15 (3a, b, h)	5/8/10 (4d)
Turkey	0	7.5/10 (3a, b)	10
Ukraine	0	10 (3b)	7.5
United Arab Emirates	0	0	5
United Kingdom	0	5 (3a, b, i)	8
United States (5c)	0	15	10
Uruguay (5d)	0	10 (3b, d, j, k)	5/10 (4e)
Uzbekistan	0	5	8
Vietnam	0	10 (3b)	5/10 (4f)

Notes

1. Singapore has no WHT on dividends over and above the tax on the profits out of which the dividends are declared. However, some treaties provide for a maximum WHT on dividends should Singapore impose such a WHT in the future.
2. The non-treaty rates (a final tax) apply only to non-residents who do not carry on business in Singapore and who do not have a PE in Singapore. This rate may be further reduced by tax incentives.
3. Interest:
    a. Lower rate or exemption if received by a financial institution.
    b. Exempt if paid to the government.
    c. Lower rate or exemption if paid by an approved industrial undertaking.
    d. Exempt if paid by a bank and received by a bank.
    e. Exempt if paid to a bank but linked to a government loan agreement or paid to specific financial institutions/banks.
    f. Exempt if paid in respect of an approved loan or indebtedness.

   g. Exempt if paid to an approved pension fund.
   h. Lower rate if paid to a financial institution or insurance company or paid with respect to indebtedness arising from a sale on credit of any equipment, merchandise, or services.
   i. Exempt if paid by a financial institution.
   j. Exempt if paid by the government.
   k. Exempt if paid in respect of a loan, debt-claim, or credit that is guaranteed or insured by the government.
   l. Exempt if paid in respect of any debt instrument listed on a recognised stock exchange.
4. Royalties:
   a. Royalties on literary or artistic copyrights, including film royalties, are taxed at the non-treaty rate.
   b. Lower rate for payments in connection with industrial, commercial, or scientific equipment.
   c. Royalties on literary, artistic, or scientific work, except computer software, but including film royalties, are exempt.
   d. Lower rate of 5% for royalties on copyright of literary, artistic, or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, and 8% for royalties in connection with patents, trademarks, designs or model, plan, secret formula, or process, or industrial, commercial, or scientific equipment.
   e. Lower rate on copyright of literary, artistic, or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting.
   f. Lower rate for payments in connection with patents, designs, secret formulas/processes, or industrial, commercial, or scientific equipment/experience.
5. Treaties:
   a. Treaty with Bermuda covers only the exchange of information.
   b. Treaty with Chile covers only international ship operations.
   c. Treaties with Brazil, Hong Kong, and the United States cover only shipping and air transport activities.
   d. Treaty or lower rate applies from 1 January 2018.

Tax administration

Taxable period

The tax basis period is the calendar year; however, for business profits, the accounting period will generally be adopted.

Tax returns

Tax is computed for each tax year based on the income earned in the preceding year (the tax basis period). The corporation files an estimate of its income within three months of the end of the accounting period followed by a return of income by 30 November of the tax year, and the tax is assessed by the Comptroller of Income Tax. Mandatory electronic filing of tax returns will be introduced gradually. Certain companies will be required to file electronically from year of assessment 2018 (income year 2017). By year of assessment 2020 (income year 2019), all companies are expected to have adopted electronic filing. There is no fixed date for the issue of assessments.

Payment of tax

Assessed tax is payable within one month after the service of the notice of assessment, whether or not a notice of objection to the assessment has been lodged with the tax authorities. Application may be made to the Comptroller to pay estimated tax liabilities on a monthly basis. However, the Comptroller is under no obligation to grant such an application.

Late payment of tax will attract penalties, up to a maximum of 17% of the outstanding tax.

Tax audit process

The IRAS adopts a risk-based approach to identifying compliance risk, with a focus on improving the behaviour of taxpayers who pose a higher risk of non-compliance. It also prioritises and tailors specific compliance programmes that aim to identify taxpayers who have made mistakes in their tax returns, create an audit presence in the community to deter non-compliance by other taxpayers, educate taxpayers on their tax obligations and how to comply with these, and identify areas of tax law, policies, and processes where the tax system can be simplified.

Statute of limitations

The statute of limitations is four years from the year of assessment, but does not apply where there has been fraud or wilful default by the taxpayer.

Topics of focus for tax authorities

In the past, the IRAS has focussed its compliance efforts on:

- the timely filing of corporate tax returns
- PIC claims
- the classification of income and expenses for income taxable at concessionary and prevailing corporate tax rates
- group relief claims
- tax exemption for foreign-sourced dividends, and
- the recognition of income from construction contracts and provisions claimed by construction companies.

The IRAS has announced that, in addition to the above, it will be focussing on:

- wholesale of chemicals and chemical products, and
- travel agencies and ticketing agents.

Other issues

Exchange of information (EOI)

Generally, Singapore's tax treaties and EOI arrangements include provisions for the exchange of information for tax purposes. Treaty partners may make a request to the Comptroller of Income Tax for information, or the exchange may take the form of spontaneous EOI or automatic EOI.

Spontaneous EOI

Singapore has committed to spontaneously exchange certain rulings under the agreed framework for the compulsory spontaneous EOI set out in the BEPS Action 5 Report 'Countering Harmful Tax Practices More Effectively, taking into Account Transparency and Substance'.

International Tax Compliance Agreements

Singapore has also concluded the following international tax compliance agreements and will exchange information pursuant to those agreements as follows:

Foreign Account Tax Compliance Act (FATCA)

Singapore has a Model 1 FATCA intergovernmental agreement (IGA) with the United States in place to help ease the compliance burden of Singapore-based financial institutions (SGFIs). All Reporting SGFIs must submit a FATCA Return to the IRAS, setting out the required information in relation to every US Reportable Account.

Common Reporting Standard (CRS)

SGFIs are required to establish the tax residency of all their account holders. Further, they will need to report to the IRAS the requisite information for each Reportable Account relating to tax residents of jurisdictions with which Singapore has a Competent Authority Agreement to exchange information. The IRAS is expected to make the first exchange of CRS information in September 2018.

Adoption of International Financial Reporting Standards (IFRS)

Companies incorporated in Singapore and Singapore branches of foreign companies are required by the Companies Act to prepare and present financial statements that comply with the Singapore Financial Reporting Standards (SFRS). In Singapore, the Accounting Standards Council (ASC) has the statutory authority to issue SFRS for adoption.

The SFRS is principally based on and substantially similar to IFRS that are issued by the International Accounting Standards Board (IASB). Full convergence of the SFRS with IFRS for Singapore-listed companies was the strategic direction of the ASC set in 2009, and, on 29 December 2017, the ASC issued Singapore Financial Reporting Standards (International) (SFRS(I)s), Singapore's equivalent of the IFRS. Singapore-incorporated companies that have issued, or are in the process of issuing, equity or debt instruments for trading in a public market in Singapore are required to apply SFRS(I)s for annual periods beginning on or after 1 January 2018. Non-listed companies may voluntarily apply the new framework.

Companies are required to submit financial statements as part of their tax return filing. The IRAS generally accepts financial statements prepared for statutory filing, although companies that have been allowed to prepare their financial statements using standards other than SFRS, such as IFRS or the Generally Accepted Accounting Principles (GAAP) adopted by the United States, may be required to explain and/or account for any differences and make the necessary tax adjustments, if any.

In relation to financial instruments, the Income Tax Act has been amended to align the tax treatment with the accounting treatment prescribed by SFRS(I) 9 (Financial Instruments) and SFRS(I) 15 (Revenue from Contracts with Customers), and to allow tax adjustments to be made when the SFRS(I) is first applied. As a concession, the IRAS allows taxpayers to elect to align their tax reporting of lease income to the accounting treatment prescribed by SFRS 17 (Leases), which requires operating lease income to be recognised using the 'effective rent method'.

Sample corporate tax calculation

Accounting period ended 31 December 2017 (year of assessment 2018).

	SGD	SGD
Net profit before tax per accounts		5,857,500
Less:		
Singapore dividend (exempt)	1,500	
Foreign-sourced dividend (exempt)	2,200	
Foreign-sourced interest (unremitted)	1,600	
Profit on sale of fixed assets	34,000	
Capital exchange gain	6,750	(46,050)

	SGD	SGD
		5,811,450
Add:		
Depreciation	650,485	
Foreign pension contribution	100,000	
Medical expenses (non-deductible)	500	
Legal fees (capital in nature)	15,500	
Automobile expenses	33,500	
Donations	9,000	
Penalties and fines	2,000	810,985
Adjusted profit before capital allowances		6,622,435
Less:		
Unutilised capital allowances brought forward	1,152,000	
Capital allowances (current year)	3,000,000	
Balancing charge	(7,700)	(4,144,300)
Adjusted profit after capital allowances		2,478,135
Less: Unutilised losses brought forward		(67,500)
Adjusted profit after capital allowances and unutilised losses brought forward		2,410,635
Less: Approved donations (250% deduction)		(22,500)
Chargeable income before partial exemption		2,388,135
Less: Partial exemption		
75% of first SGD 10,000	7,500	
50% of the next SGD 290,000	145,000	(152,500)
Chargeable income after partial exemption		2,235,635
Tax thereon at 17%		380,057.95
Corporate tax rebate (capped at SGD 15,000)		(15,000.00)
Tax payable after tax rebate		365,057.95

Slovak Republic

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Significant developments

A recent amendment to the tax legislation in the Slovak Republic (Slovakia) includes, *inter alia*, the following measures applicable from 1 January 2018:

- Participation exemption on taxation of capital gains.
- Tax exemptions for intangible assets (patent box) and a 'super-deduction' for research and development costs (R&D credit).
- Cancellation of tax license (minimum tax).
- Tax treatment of business combinations.
- Refined criteria for creating a permanent establishment (PE) in Slovakia and source of income rules.
- New tax anti-avoidance measures (e.g. with respect to hybrid mismatches and beneficial ownership test).
- Introduction of exit tax.
- Introduction of rules for controlled foreign corporations (CFCs) (effective from 2019).

Note that the legislation is expected to continue to be subject to frequent amendments and new official interpretations; consequently, it is advisable to contact PwC Bratislava for up-to-date information.

Taxes on corporate income

As a member state of the Organisation for Economic Co-operation and Development (OECD), the Slovak Republic's system of corporate taxation generally follows OECD guidelines and principles.

The corporate income tax (CIT) applies to the profits generated by all companies, including branches of foreign companies.

Slovak tax residents are taxed on their worldwide income. Slovak tax residents may utilise a method of elimination of double taxation if their income is taxed abroad. The exemption or credit method can be used to eliminate the double taxation, depending on the relevant double tax treaty (DTT) and the type of income.

Slovak tax non-residents are taxable in Slovakia on their Slovak-source income only. Slovak-source income is defined by local tax law and includes, *inter alia*, the business income of PEs and passive types of income, such as royalties, interest, and income from disposal of assets.

The CIT rate for 2018 is 21%.

Withholding tax (WHT) of 7% may apply to certain taxable dividend payments to individuals.

Further, some income, such as interest or royalties, may be subject to a 19% WHT rate. A specific 35% WHT rate applies for payments to taxpayers from non-treaty jurisdictions (i.e. where no DTT or tax information exchange agreement [TIEA] exists) or where the beneficial owners of the income cannot be identified, including payments of taxable dividends.

Tax license (minimum tax)

Tax license (minimum tax) was cancelled from 1 January 2018.

Taxpayers can claim a tax license from previous periods even after 31 December 2017 at the amount of a positive difference between the tax license and the tax calculated in the tax return for no more than three consecutive taxable periods for which the tax license was paid.

Local income taxes

Slovakia does not have local, state, or provincial CIT.

Corporate residence

A company is a tax resident in the Slovak Republic if it has its registered seat or effective place of management in the Slovak Republic.

Permanent establishment (PE)

A PE is created if:

- a foreign entrepreneur uses, either continually or repeatedly, a permanent place or facility for carrying out its business activities in Slovakia
- a foreign entrepreneur repeatedly mediates transportation and accommodation services, including via a digital platform
- an individual acting on behalf and in the name of a foreign entrepreneur repeatedly mediates or plays a leading role in concluding contracts or negotiating contract details, or
- the period of providing services by the foreign entrepreneur or by individuals working for this foreign entrepreneur in Slovakia is longer than 6 months in any consecutive 12-month period.

The conditions for creating a PE may be regulated in more detail by a DTT.

A PE need not be entered in the Slovak Commercial Register, but a foreign entrepreneur with a Slovak PE is taxable in Slovakia. A foreign entrepreneur with a Slovak PE has the same tax registration, filing, payment, and tax advance payment obligations as a Slovak company. The tax base of a PE may not be less than one that which would have been achieved if similar activities under similar conditions were performed as an independent entity (e.g. a Slovak company).

Other taxes

Value-added tax (VAT)

A basic VAT rate of 20% applies to all taxable supplies, with certain exceptions. Certain medical products, printed materials, and 'basic goods' (e.g. milk, butter, meat) classified under selected codes of the Common Customs Tariff have a VAT rate of 10%.

The threshold for obligatory VAT registration for taxable persons with their seat or permanent address, place of business, or VAT establishment in Slovakia is a turnover of 49,790 euros (EUR) for the previous consecutive 12 calendar months. Voluntary registration is also possible.

More taxable persons established in Slovakia (i.e. with a seat, place of business, or VAT establishment in Slovakia) can create a VAT group if certain conditions are met.

A VAT registration obligation in Slovakia arises for foreign persons (taxable persons without a seat or VAT establishment in Slovakia) before commencing activities subject to Slovak VAT where they could be liable to pay Slovak VAT, except import of goods. There is a list of supplies that foreign taxable persons can perform in Slovakia without a need to register for Slovak VAT, including:

- Supplies subject to VAT reverse-charge.
- Supplies subject to triangulation simplification performed by the first customer in a chain.
- Intra-Community supplies of imported goods if represented by a tax representative.
- VAT-exempt transport and supplementary services related to export and import.

This list, among others, includes local supplies of goods to taxable persons established in Slovakia as such supplies are subject to local VAT reverse-charge mechanism (i.e. person liable to pay VAT on such supplies is the customer). Foreign taxable persons already registered for Slovak VAT are not entitled to deduct input VAT via Slovak VAT return if such input VAT relates only to supplies subject to VAT reverse-charge. Foreign companies are able to claim Slovak input VAT via the VAT refund procedure, provided they meet the stipulated conditions.

Call-off stock simplification is available for foreign persons VAT registered in other European Union (EU) member states that transfer own goods to a warehouse located in Slovakia for the purpose of their subsequent local supply to one specific Slovak VAT payer. If the conditions of call-off stock simplification are met, a foreign person can avoid VAT registration in Slovakia. If call-off stock simplification applies, there will be no need to report intra-Community acquisition of own goods in Slovakia; the customer will self-charge Slovak VAT upon withdrawal of goods from the warehouse.

Exempt supplies without credit entitlement include, among others, certain postal services, financial and insurance services, education, public radio and TV broadcasting services, health and social services, the transfer and leasing of real estate (with exceptions), and lottery services. There are also exempt taxable supplies with credit entitlement, for example financial and insurance services provided to the customer established outside of the European Union, supply of goods to other EU member states, certain import of goods, and export of goods and services.

A special regime for payment of VAT by a supplier based on receipt of payment for supplied goods or services ('cash accounting') is available in Slovakia in very specific cases. This regime postpones the obligation to pay VAT until the customer pays the supplier for the supply. This cash accounting scheme can only be used by Slovak-established entities (i.e. with a seat, place of business, or fixed establishment in Slovakia) and if they meet certain conditions.

Supplies of certain types of goods and services between two Slovak VAT payers are subject to local reverse-charge. Such supplies among others include supplies of real estate, metal waste and scrap metal, agricultural crops, iron and steel, mobile phones and integrated circuit devices, etc. Local reverse-charge also applies to supply of construction works, supply of building or parts of buildings under construction, and supply of goods with assembly and installation falling under section F of Commission Regulation (EU) No. 1209/2014 establishing a new statistical classification of products by activity (CPA). For such supplies, the supplier will not charge VAT on the issued invoice and the recipient must apply a reverse-charge.

Customs duties

Goods imported from non-EU countries are subject to import customs clearance. Goods exported from the EU customs territory have to be declared for export customs clearance.

To communicate with the customs offices, each person must have an Economic Operator Registration and Identification Number (EORI), which is registered by the customs authorities on request. EORI registration is mandatory for customs clearance.

The European customs nomenclature and customs tariffs are set by EU legislation. Customs procedures are harmonised within the European Union.

Excise taxes

Excise tax is charged on the release to tax-free circulation or import of tobacco products, wine, spirits, beer, mineral oil, electricity, coal, and natural gas. The excise tax rate depends on the customs classification of the product.

The excise duty administrator is the Customs Authority. Communication with the Customs Authority must be in electronic form if the company is a VAT payer registered in Slovakia or if it is represented by a tax adviser or attorney.

Immovable property tax

Immovable property tax, which is divided into land tax, building tax, and tax on apartments, is governed by the Act on Local Taxes. Immovable property tax is calculated based on the area of the real estate, its location, and its type, as well as the tax rate of each self-governing region.

The immovable property tax rate may vary significantly. Please find below the spread of the tax charges per square metre.

Property	Immovable property tax per square metre (EUR)
Four floor office building in centre of city of Bratislava	8.30 *
One floor hall rural area	0.66 to 6.40

* For each additional floor, add an additional tax of EUR 0.33.

Further, municipalities may opt to impose a local development levy that applies to real estate developments. If a municipality decides to impose the levy, its rate may be between EUR 10 and EUR 35 per square metre.

Transfer taxes

There are no transfer taxes in the Slovak Republic.

Stamp taxes

There are no stamp duties or similar taxes on share or other property transfers in the Slovak Republic, although small administrative fees are payable to register such transactions.

Turnover taxes

There are no turnover taxes in the Slovak Republic.

Payroll taxes

Taxable remuneration from employment includes all remuneration, whether monetary or non-monetary, including in-kind benefits provided to an employee. Statutory health insurance and social security contributions paid by the employee reduce taxable income. Obligatory employer's health insurance and social security contributions paid by the employer are not part of the employee's taxable income.

Employers must keep Slovak payroll records for employees and members of their statutory bodies.

The tax base up to EUR 35,268.06 is taxed at 19%. The exceeding part of the tax base is taxed at 25%.

A tax rate of 7% or 35% applies to taxable dividend income (e.g. dividends from profits generated from 1 January 2017) of individuals starting from 1 January 2017. The higher tax rate applies in case of dividends received from non-treaty jurisdictions.

Income of constitutional authorities from dependent activity is, in addition to the tax calculated as listed above, subject to a special tax rate of 5%.

Social security contributions

Employer's health insurance and social security contributions total 34.4% of employee remuneration. From 1 January 2018, the maximum assessment base for all types of social insurance was increased to EUR 6,384 monthly. Employers also pay injury insurance contributions of 0.8% of employees' total salary costs per month, which are not capped. The maximum assessment base for the purposes of health insurance is cancelled for all types of income, except dividend income. Dividend income paid out from the profit generated after 1 January 2017 is no longer subject to health insurance contributions. The rate of health insurance contributions for individuals who receive dividend income paid out from the profit generated before 31 December 2016 (except for dividends from listed shares) is 14% of the assessment base. In general, the payer of the dividend needs to withhold the health insurance contribution on the payment of the dividend.

Special tax on regulated industries

There is a special tax from activities of entities in regulated industries (e.g. energy, insurance and re-insurance, public healthcare insurance, electronic communications, pharmaceuticals, postal services, railway transport, public water distribution and sewerage, air transport). The tax is calculated as a multiple of the tax base, coefficient, and the tax rate. The liability to pay this special tax arises in case the accounting profit exceeds EUR 3 million.

The coefficient (maximum of 1) depends on the amount of income from the regulated activity. The monthly tax rate is 0.00726. Hence, the annual rate of the special tax can be up to 8.712%.

The tax rate will decrease to 0.00545 per month (i.e. maximum 6.54% *per annum*) in 2019 and 2020 and to 0.00363 per month (i.e. maximum 4.356% *per annum*) in 2021.

Special tax on banks

A special tax on banks is charged at a rate of up to 0.4% to the extent that the cumulative amount of special tax collected from all banks by the Tax Office does not reach the EUR 750 million threshold. The tax rate of 0.2% applies for 2017 to 2020.

The special tax on banks is calculated from the bank's liabilities recognised on the balance sheet net of deductions (e.g. the amount of the bank's equity, provided that its value is positive), the amount of the subordinated debt under a special regulation, and the amount of funds provided to the branch of a foreign bank.

Insurance premium tax (IPT)

IPT of 8% applies to non-life insurance premiums in Slovakia and is payable by insurance companies.

Motor vehicle tax

Vehicle tax applies to vehicles that are registered in the Slovak Republic and used for business purposes. The taxpayer is the entity that uses the vehicle for business purposes. The tax rate depends on engine capacity, vehicle size, etc. The motor vehicle tax is administrated by the Tax Office.

Branch income

A foreign company may trade through a Slovak branch, which must be registered in the Slovak Commercial Register. The taxable income of the branch must not be lower than that which an independent entity (e.g. a Slovak company) would achieve from carrying out similar activities under similar conditions. If the branch's taxable income cannot be assessed based on its income less costs, as adjusted for tax purposes, certain other methods may be used. A taxpayer may ask the tax authorities in writing to approve such a method.

Income determination

The tax base is generally the accounting result as determined under Slovak statutory accounting rules, adjusted for tax purposes.

Inventory valuation

Stock (i.e. inventory) is valuated at cost. Slovak legislation specifically provides for the use of the arithmetical average cost and first in first out (FIFO) methods to value stock. Last in first out (LIFO) may not be used. The tax treatment follows the accounting treatment.

Capital gains

Capital gains from the disposal of assets are included in the CIT base. The tax treatment of capital losses depends on the type of asset on which they arose.

Capital gains on the alienation of shares and participation interest in Slovak companies may be taxed in Slovakia, predominately if sold to a buyer who is a Slovak tax resident or has a PE to which the purchase is attributable.

The income from the sale of shares or participation interest of a company where the value of immovable property is more than 50% of the equity has its source in Slovakia.

However, as of 1 January 2018, income from the sale of shares in joint-stock companies, ownership interests in limited liability companies, or limited partnerships (hereafter 'participation') may be exempt from CIT if certain conditions are met. These conditions include the possession of at least 10% of shares or ownership interests for at least 24 months (counting from 1 January 2018 at the earliest).

A taxpayer who performs substantial functions in Slovakia, bears and manages the risks associated with the participation ownership, and has adequate personnel resources and material equipment to perform these functions may apply the tax exemption. However, the tax exemption does not apply to taxpayers who trade in securities, to the sale of companies in liquidation, bankruptcy, or restructuring, or to taxpayers in liquidation.

Exit tax

The exit tax applies to income in situations where taxpayers (Slovak tax residents and non-residents with a PE in Slovakia) transfer outside of Slovakia:

- individual property (transfer carried out by a tax resident from their headquarters in Slovakia to a PE in another country or by a tax non-resident from their PE in Slovakia to their headquarters of PE in another country)
- business activities (transfer carried out by a tax resident to another country or by a tax non-resident from their PE in Slovakia to another country), or
- tax residence (tax resident is no longer Slovak tax resident).

The tax is calculated by applying a 21% tax rate to a specific positive tax base, which is determined as follows:

- When transferring individual property, its fair (market) price at the time of exit will be considered as income and its tax value will be regarded as an expense.
- When transferring business activities, its fair (market) price of transferred asset and liabilities at the time of exit will be considered as income and the specific tax base will be calculated in the same way as when selling a business, or part thereof.

The exit tax must either be paid in one instalment in the period for filing the tax return or, upon request, in five annual instalments if it is a transfer to an EU or European

Economic Area (EEA) member state. When paying the tax in instalments, the taxpayer must also pay interest on outstanding instalments.

The new regulation on the exit tax also addresses the valuation of assets and liabilities for Slovak tax purposes where a Slovak tax non-resident becomes a tax resident in Slovakia.

The exit tax must be applied for taxable periods commencing on 1 January 2018 or later.

Dividend income

Dividends generated from profits arising until 31 December 2003 and from the profit arising in the period started since 1 January 2017 will be subject to taxation.

The tax regime for these dividends is as follows:

- Dividends from profits generated until 31 December 2003 and paid out from a Slovak tax resident company to a Slovak non-resident company will be subject to WHT of 19% (no taxation if subject to EU Parent/Subsidiary Directive exemption). If such dividends are paid to individuals (either Slovak tax residents or tax non-residents), the WHT of 7% will apply.
- Dividends from profits generated until 31 December 2003 and received by a Slovak company from foreign sources will be subject to taxation in Slovakia (no taxation if subject to EU Parent/Subsidiary Directive exemption).
- Dividends from profits generated after 1 January 2017 and received by a Slovak tax resident company from a non-contracting state company will be subject to tax of 35%.
- Dividends from profits generated after 1 January 2017 and paid out from a Slovak tax resident company to a non-contracting state company will be subject to WHT of 35%.
- Dividends received by a general partnership or a limited partnership and subsequently ‘paid’ to its partners of a non-contracting state will be subject to WHT of 35%.

However, dividends paid out of profits earned on or after 1 January 2004 and until 31 December 2016, and liquidation surpluses and settlement amounts to which shareholders became entitled on or after 1 January 2004, are not subject to tax.

Moreover, based on the anti-avoidance provisions, any dividends may be taxable in Slovakia if they are received through artificial structures with no genuine business reason and contrary to economic reality.

Interest and royalty income

Slovak-source interest income earned by taxpayers with limited, as well as unlimited, tax liability is subject to withholding at a flat tax rate of 19% (for states without a DTT, *please refer to the Withholding taxes section*), except where the recipient of the deposit interest or the yield is a Slovak investment fund, Slovak supplementary pension fund, Slovak bank or the branch of a foreign bank, or the Slovak Export-Import Bank.

Slovak-source royalty income of tax non-residents is subject to the 19% corporate flat tax rate (for states without a DTT, *please refer to the Withholding taxes section*).

Interest and royalty income is exempt if it is paid by a Slovak payer to a recipient who is a tax resident in the European Union and is a beneficial owner of this income, provided that for 24 months before the payment:

- the payer owns at least a 25% direct shareholding of the recipient of the income
- the recipient owns at least a 25% direct shareholding of the payer of the income, or
- a third entity resident in the European Union owns at least a 25% direct shareholding in both the payer and the recipient of the income.

Unrealised foreign exchange gains/losses

The taxpayer may decide whether to include unrealised foreign exchange differences relating to unsettled payables and receivables in the tax base in the tax period when they are accounted for or in the tax period when they are realised. However, the decision to include/stop including these differences when they are realised must be made on the CIT return.

Foreign income

Companies resident in the Slovak Republic are taxed on their worldwide income, including income of its foreign branches. A Slovak tax resident entity is able to deduct from its tax base a tax loss made by its taxable PE (e.g. branch) outside the Slovak Republic, adjusted for Slovak tax purposes.

Credit relief is available for foreign tax paid under most of Slovakia's DTTs. Alternatively, exemption of foreign income taxed abroad from taxation in Slovakia may apply.

Slovakia does not have provisions related to deferral.

Deductions

Depreciation and amortisation

Tangible fixed assets (acquisition value over EUR 1,700) are classified into six tax depreciation groups to which different depreciation periods apply. The possibility to use accelerated tax depreciation methods is limited to assets belonging to the tax depreciation groups 2 and 3.

Depreciation group	Assets	Depreciation (years)
1	Motor vehicles, office machines and computers, tools and implements	4
2	Combustion engines, outboard engines, most production line equipment, furniture	6
3	Electric motors, turbines, air-conditioning systems	8
4	Buildings made of metal, ships, railway locomotives	12
5	Buildings not involved in depreciation group no. 6 and engineer's sites not included in other depreciation groups	20
6	Administrative and residential buildings, hotels and buildings for culture, education, health, and public entertainment	40

Taxpayers do not have to depreciate an asset every year. Tax depreciation may be interrupted in any year and continued in a later year without a loss of the total tax depreciation available.

A lessee can depreciate a tangible fixed asset held under a financial lease. The tax depreciation base equals the acquisition value of the leased asset without VAT and financing costs plus expenses related to acquisition of the leased asset that the lessee incurred before the asset was put into use. The assets acquired under finance lease shall be amortised proportionally or using an accelerated method.

The value to be used as the basis for tax depreciation depends on how the asset is acquired and is usually based on one of the following:

- Acquisition costs (i.e. the price for which the asset was acquired).
- The taxpayer's own costs incurred, if the asset is acquired or produced internally.
- Intangibles (acquisition value of EUR 2,400 or more) and low value assets (acquisition value of EUR 1,700 or less) are amortised for tax purposes in line with their accounting amortisation (i.e. over the useful life of the asset).

Goodwill

Amortisation of purchased goodwill, including the goodwill on purchase of a business as a going concern, if it represents an identifiable intangible asset, is tax deductible over up to seven consecutive tax years.

For goodwill created at the contribution of business as a going concern or goodwill created at a merger, the tax deductibility of the goodwill depends on the method of tax treatment of this reorganisation. In general, if the reorganisation is performed for tax purposes at fair market values, the goodwill created will be tax deductible.

Start-up expenses

Start-up expenses are tax deductible in the period when incurred.

Interest expenses

In general, interest expenses incurred in order to generate taxable income can be treated as tax deductible, subject to thin capitalisation rules (*see Thin capitalisation in the Group taxation section*).

From 1 January 2018, interest on loans for the acquisition of shares is tax deductible only in the period of their sale, and if the income from this sale is not tax exempt.

Bad debt provisions

Provisions for unsecured receivables from loans created by banks, and bad debts of regular commercial companies, are fully tax deductible (subject to certain conditions) once the debt has been overdue for more than 1,080 days (20% of the bad debt is tax deductible when it has been overdue for more than 360 days, and 50% after 720 days), provided certain conditions are met. Provisions for bad debts in other circumstances can also be tax deductible if specific conditions are met (e.g. bad debts registered in bankruptcy proceedings).

Charitable contributions

Charitable contributions are treated as gifts, which are not tax deductible.

Pension expenses

Contributions to supplementary pension savings made by the Slovak employer on behalf of the employee, up to 6% of the gross salary of the employee participating in these plans, are tax deductible.

Fines and penalties

Penalties and fines are not tax deductible.

Allowance for students

Subject to specific conditions, taxpayers may deduct from their tax base a special allowance with respect to practical education provided to students of up to EUR 3,200 per student per year.

Transporting employees to place of work

The employer's expenses incurred on transporting employees to their place of work and back are tax deductible under the following conditions:

- Public transport is either verifiably not carried out at all or not in the extent as the employer needs.
- The employer uses a contract carrier or its own means of collective transport for 10+ persons for this purpose.

Taxes

Road tax, real estate tax, and most other such taxes are tax deductible. Social security contributions paid by an employer with respect to employees are also tax deductible. VAT charged to profit and loss is tax deductible only if certain conditions are met.

Other non-deductible expenses

Expenses are generally tax deductible if incurred to generate, secure, and maintain the entity's taxable income. However, certain other costs are specifically not tax deductible. These include entertainment costs, various provisions (e.g. provisions to tangible and intangible assets, certain bad debt provisions), and various expenses in excess of statutory limits (e.g. employee travel expenses and meal allowances).

Net operating losses

A company or branch may currently carry forward and utilise a tax loss equally over a period of four years following the year in which the loss arose.

For issues related to the interim provision regarding tax losses carried forward from years 2010 to 2013, please contact the local PwC Tax office.

Carryback of losses is not available in the Slovak Republic.

Payments to foreign affiliates

Generally, deductions may be claimed for royalties, management service fees, and interest charges paid to foreign affiliates, provided such amounts are at arm's length and subject to other limitations by the law (e.g. thin capitalisation rules).

Hybrid mismatches

From 1 January 2018, expenses incurred in so-called 'hybrid mismatches' to related parties are tax non-deductible if such expenses are:

- tax deductible for several entities
- are not included in taxable income of other entities, or
- are (in)directly used for financing the other entity, which results in multiple tax deductions or not including these expenses in the income of another entity.

Group taxation

There is no concept of group CIT in the Slovak Republic. Each company in a group is taxed individually.

Transfer pricing

Under the transfer pricing rules, prices in transactions between a Slovak company and its related parties should be at arm's length, which means the prices should be at rates similar to those that would be charged between unrelated parties for the same or similar transactions under comparable conditions. Although the OECD Transfer Pricing Guidelines were not formally implemented, they are usually followed for determination of arm's-length prices.

The transfer pricing documentation requirements also apply to domestic-related parties in addition to the rules for foreign-related parties. This means that the prices used between two Slovak related parties need to be set at an arm's-length basis for tax purposes. All provisions of the law on methods of determining such prices for the purpose of adjusting the tax base and the obligation to keep associated transfer pricing documentation also apply to domestic-related parties.

If transactions between the related parties are not made at arm's length, and this results in a reduction in the Slovak entity's corporate tax base, then the tax authorities can adjust the corporate tax base to that which it would have been if arm's-length prices had been used.

Based on the amendment of the Income Tax Act as of 1 January 2017, Slovak tax residents can request approval of an advance pricing agreement (APA) by the tax authorities. The amendment also sets fees for such APA approval in an amount of EUR 10,000 for unilateral APA approval and EUR 30,000 for multilateral APA approval (approval based on application of DTT).

In some cases, doubled penalties can be imposed for transfer pricing adjustments made by the Slovak tax authorities as a result of a tax audit initiated after 1 January 2017.

Transfer pricing documentation

All Slovak taxpayers must keep sufficient transfer pricing documentation to justify prices charged by or to their foreign-related parties. The Slovak Ministry of Finance has issued a guideline setting out detailed requirements for transfer pricing documentation (the Guideline).

The EU code of conduct was not formally implemented. However, the Guideline requires maintaining transfer pricing documentation in a form generally in line with the EU standards.

Slovak tax inspectors may require transfer pricing documentation. The deadline to provide transfer pricing documentation for taxpayers is 15 days, and the tax authority may request transfer pricing documentation without the formal opening of a tax audit.

Without such documentation, transfer pricing adjustments (increased tax base) are much more likely to be imposed.

Country-by-country (CbC) reporting

A newly proposed amendment to the Act on International Cooperation in Tax Administration introduced CbC reporting based on the base erosion and profit shifting (BEPS) plan with an aim to introduce automatic exchange of tax information between countries.

If consolidated revenues for a multinational enterprise (MNE) group of entities are higher than EUR 750 million for the immediately preceding financial year, the group is required to file CbC reporting.

The amendment defines parent entity, substitute parent entity, and principal entity. In most cases, the parent entity is obligated to file CbC reporting in the country in which it is the tax resident.

If a Slovak tax resident is not considered to be a parent entity, a substitute entity, or a principal entity (i.e. the entity that is required to file CbC reporting), it must announce to the Financial Directorate of the Slovak Republic the business name, address, identification number, and country of tax residence of the reporting entity by the filing due date of its income tax return. This notification requirement should already apply to the 2016 tax period.

The concept of a secondary obligation has also been introduced, which delegates the obligation to submit the CbC report to a surrogate parent entity or to another basic entity of the MNE if the parent or surrogate parent entity that is not the Slovak company does not prepare and submit the CbC report in the country of its tax residence. Therefore, Slovak tax residents may also be required to prepare a CbC report.

Thin capitalisation

The limit for the maximum amount of tax deductible interest and related fees on credits and loans between related parties is established as 25% of the adjusted earnings before interest, tax, depreciation, and amortisation (EBITDA), i.e. the sum of:

- accounting profit before tax
- depreciation and amortisation, and
- interest expenses included in the accounting profit before tax.

Controlled foreign corporations (CFCs)

The rules for CFCs seek to tax income artificially diverted by a Slovak parent company to a CFC if the income is paid without economic justification or to obtain a tax advantage for the Slovak company.

A company is considered a CFC if:

- it is controlled or managed, directly or indirectly, by the Slovak company (e.g. by voting rights, share capital, or share in profit), and
- the CIT paid in another country is lower than 50% of the tax the CFC would pay in Slovakia.

If income is diverted to a PE, it will only be sufficient (for purposes of the CFC assessment) to fulfil the second condition (i.e. the condition regarding the hypothetical Slovak tax).

The CFC's income will be taxed in Slovakia by including the CFC's tax base in the tax base of the Slovak parent company to the extent it is attributable to the assets/risks related to the significant functions of the Slovak company, which manages and controls the CFC.

To avoid double taxation, the Slovak parent company will be able to factor in the tax paid by the CFC abroad when calculating/paying tax in Slovakia.

The application of adjustments to the CFC tax base in line with transfer pricing rules will take precedence over the application of CFC rules for the taxation of profits.

The CFC rules will be applied for tax periods commencing on or after 1 January 2019.

Treatment of inter-company items

Dividends are not treated as taxable (subject to anti-avoidance provisions) if they are paid out of the profit after tax earned in the years 2004 to 2016. *For tax treatment of dividends paid out from profits realised before 2004 and from 2017 onwards, please see Dividend income in the Income determination section*.

In general, royalties, commissions, and other payments paid to foreign-related parties are tax deductible, provided they are incurred for genuine business reasons and the charges are in line with transfer pricing rules.

Tax credits and incentives

There are several types of investment incentives potentially available, including corporate tax credits, discounts on the price of publicly owned real estate, and financial support for creating jobs or for the acquisition of long-term assets. All of these are treated as state aid.

Various conditions must be met in order for a company to qualify for state aid. These include a minimum amount of investment in fixed assets, where the amount depends mainly on the type of project and where it is located, or a minimum number of newly created jobs.

Investment incentives

Investment incentives (including tax credits) are potentially available for projects in the following areas:

- Industry.
- Technology centres.
- Shared services centres.
- Tourism.

The granting of a tax relief is subject to approval of the Slovak authorities. If certain conditions are met, a taxpayer may apply tax relief in the ten subsequent years following the tax period in which the relief was granted.

Research and development (R&D) super deduction

Taxpayers who perform R&D activities may apply for a special form of support, the super-deduction of R&D costs. The total of the following items may be deducted from the tax base adjusted by the tax loss deduction:

- 100% of R&D costs incurred in the taxable period for which the tax return is filed.
- 100% of positive difference between the average of the total R&D costs incurred:
  - in the taxable period for which the taxpayer applies super-deduction, and in the immediately preceding taxable period, and
  - in the two immediately preceding taxable periods.

If a tax loss is recorded or if the tax base after the tax loss deduction is lower than the available deduction, the deduction may be applied in the next taxable period in which the taxpayer reports a positive tax base; however, this may not exceed four taxable periods immediately following the period in which the entitlement to make a deduction arose.

Tax exemption for intangible assets (Patent box)

The amendment of Income Tax Act valid since 1 January 2018 introduced a tax exemption of 50% for income from considerations for granting a right to use, or for using, a protected patent, utility model, or software created by the taxpayer (basic patent box). Tax exemption refers only to assets created by own activities and applies to tax periods in which amortisation of an intangible asset is included in tax expenses.

A similar exemption also applies to a certain part of income from selling goods that were manufactured on the basis of a protected patent or a utility model (extended patent box). Tax exemption accounts for 50% of income attributed to the sales price, less related costs and less profit margin.

If intangible research results acquired from another person are used to develop intangible assets, the tax exemption is reduced by a coefficient.

Entities applying this tax exemption are entered in a public register kept by the Financial Directorate of the Slovak Republic.

Foreign tax credit

Foreign tax credits are available if allotted under an applicable DTT.

Withholding taxes

Mainly, the following payments are subject to WHT when made by Slovak companies to foreign parties. According to the amendment of the Income Tax Act, effective from 1 January 2017, dividends will also be subject to WHT. However, a DTT may reduce or eliminate the rate.

Payments	WHT (%)
Fees for services	19/35
Royalties *	19/35
Interest on loans and deposits *	19/35
Dividends **	7/19/35

* Royalties and interest paid to related EU-resident companies are not subject to WHT if certain conditions are met.

** Dividends paid out of profits arising from 2004 to 2016 are not subject to Slovak WHT (subject to anti-avoidance provisions). *Please see Dividend income in the Income determination section.*

A 35% WHT rate applies on payments to taxpayers from non-contracting states (i.e. states that did not conclude either a DTT or TIEA with the Slovak Republic) or where the beneficial owner of the income is not (cannot be) identified.

Service fees may be subject to tax in Slovakia only if the service is provided in the territory of Slovakia or if paid for by a Slovak tax resident.

WHT should be paid to the Tax Office no later than 15 days from the end of the calendar month following that in which the payment was made. The withholding obligation lies with the Slovak resident taxpayer. The taxpayer must also notify the tax administrator of the tax withheld and transferred. If the tax is not properly withheld, the unpaid tax becomes the Slovak tax resident's tax liability, and a penalty may be assessed.

This table highlights countries with which Slovakia has entered into a DTT.

	WHT (%)		
Recipient	**Dividends (24)**	**Interest**	**Royalties**
Armenia	5/10	10	5
Australia	15	10	10
Austria	10	0	5
Belarus	10/15	10	5/10 (1)
Belgium	5/15	10	5
Bosnia and Herzegovina	5/15	0	10
Brazil	15	10/15 (2)	15/25 (3)
Bulgaria	10	10	10
Canada	5/15	10	10 (4)
China, People's Republic of	10	10	10
Croatia	5/10	10	10
Cyprus	10	10	5
Czech Republic	5/15	0	10
Denmark	15	0	5
Estonia	10	10	10
Finland	5/15	0	0/1/5/10 (5)
France	10	0	0/5 (6)
Georgia	0	5	5
Germany	5/15	0	5
Greece	Domestic (7)	10	10
Hungary	5/15	0	10
Iceland	5/10	0	10
India	15/25	15	30
Indonesia	10	10	10/15 (8)
Ireland	0/10	0	10
Israel	5/10	2/5/10 (9)	5
Italy	15	0	0/5 (10)
Japan	10/15	10	0/10 (11)
Kazakhstan	10/15	10	10

Recipient	WHT (%) Dividends (24)	Interest	Royalties
Korea, Republic of	5/10	10	10
Kuwait	0	10	10
Latvia	10	10	10
Libya	0	10	5
Lithuania	10	10	10
Luxembourg	5/15	0	0
Macedonia	5	10	10
Malaysia	0/5	10	10
Malta	5 (12)	0	5
Mexico	0	10	10
Moldova	5/15	10	10
Montenegro	5/15	10	10
Netherlands	0/10	0	5
Nigeria	12.5/15	15	15
Norway	5/15	0	0/5 (13)
Poland	0/5	5	5
Portugal	10/15	10	10
Romania	10	10	10/15 (14)
Russia	10	0	10
Serbia	5/15	10	10
Singapore	5/10	0	10
Slovenia	5/15	10	10
South Africa	5/15	0	10
Spain	5/15	0	5
Sri Lanka	15	0/10 (15)	0/10 (16)
Sweden	10	0	5
Switzerland	0/15	0/5 (17)	0/10 (18)
Syria	5	10	12
Taiwan	10	10	5/10 (19)
Tunisia	10/15	12	5/15 (20)
Turkey	5/10	10	10
Turkmenistan	10	10	10
Ukraine	10	10	10
United Arab Emirates	0	10	10
United Kingdom	5/15	0	0/10 (21)
United States	5/15	0	0/10 (22)
Uzbekistan	10	10	10
Vietnam	5/10	10	5/10/15 (23)

Notes

1. The 5% rate applies to literary, artistic, and scientific work copyright royalties. The 10% rate applies in other cases.
2. The 10% rate applies to industrial and public works equipment loans granted by a bank for a period of at least 10 years. The 15% rate applies in other cases.
3. The 25% rate applies to trademark royalties. The 15% rate applies in other cases.
4. The reduced WHT rate applies to artistic copyright royalties.
5. The 0% rate applies to literary, artistic, and scientific work copyright royalties. The 1% rate applies to finance leases of equipment. The 5% rate applies to operating leases of equipment, film, and broadcasting royalties, and to computer software royalties. The 10% rate applies to patent and trademark royalties and to information concerning industrial, commercial, and scientific experience.

6. The 0% rate applies to literary, artistic, and scientific work copyright royalties. The 5% rate applies in other cases.
7. The source state may tax the income at its domestic rate.
8. The 10% rate applies to film and broadcasting royalties. The 15% rate applies to copyright, patent, software, and trademark royalties, and to industrial, commercial, and scientific equipment and information royalties.
9. The 2% rate applies to government debt or government-assisted debt, the 5% rate applies when the recipient is a financial institution, and the 10% rate applies in other cases.
10. The 0% rate applies to copyright royalties. The 5% rate applies in other cases.
11. The 0% rate applies to cultural royalties and the 10% rate applies to industrial royalties.
12. *See the treaty for applicability of rates*.
13. The 5% rate applies to patent and trademark royalties and to industrial, commercial, and scientific equipment royalties.
14. The 10% rate applies to patent and trademark royalties, and to information concerning, industrial, commercial, and scientific experience. The 15% rate applies in other cases.
15. The 0% rate applies to interest received by a bank.
16. The 0% rate applies to copyright royalties and the 10% rate applies in other cases.
17. The 0% rate applies to the credit sale of equipment, merchandise, or services; a loan granted by a financial institution; a pension fund; or to interest paid by a company to a company of the other state that is affiliated with the company paying the interest by a direct minimum holding of 25% in the capital for at least two years prior to the payment of the interest or where both companies are held by a third company that has a direct a minimum holding of 25% for at least two years prior to the payment of the interest, both in the capital of the first company and in the capital of the second company. In other cases, the 5% rate applies.
18. The 0% rate applies to copyright royalties for literary, artistic, or scientific work, including cinematograph films or films or tapes. The 10% rate applies to patent and trademark royalties and to industrial, commercial, and scientific information royalties. However, patent and trademark royalties and industrial, commercial, and scientific information royalties are taxable at 0% if paid by a company resident in a state to a resident of the other state where the beneficial owner is a company that is affiliated with the company paying the royalties by a direct minimum holding of 25% in the capital for at least two years prior to the payment of the royalties or where both companies are held by a third company that has a direct minimum holding of 25% for at least two years prior to the payment of the royalties, both in the capital of the first company and in the capital of the second company.
19. The 5% rate applies to industrial, commercial, or scientific equipment royalties. The 10% rate applies in other cases.
20. The 5% rate applies to literary, artistic, and scientific works copyright royalties. The 15% rate applies in other cases.
21. The 0% rate applies to literary, artistic, and scientific work copyright royalties. The 10% rate applies in other cases.
22. The 0% rate applies to copyright royalties. The 10% rate applies in other cases.
23. The 5% rate applies to patent and secret formula royalties; industrial and scientific information royalties; and industrial, commercial, and scientific equipment royalties. The 10% rate applies to trademark royalties and commercial information royalties. The 15% rate applies in other cases.
24. The lower rate applies if the recipient is a company that directly owns at least a certain amount of the capital or a certain amount of the voting shares of the company paying the dividend.

Tax administration

Taxable period

The standard fiscal year is a calendar year, but a Slovak entity may opt to change this to a different 12-month period.

Tax returns

A corporate tax return must be filed together with the entity's financial statements within three months following the fiscal year-end. The taxpayer may extend the filing deadline by up to three months or six months (in case foreign income is included in the tax return). To extend the filing deadline, the taxpayer must notify the Tax Office before the normal filing deadline. After notification, the deadline is automatically extended.

Payment of tax

The balance of tax due for a fiscal year is payable by the filing deadline.

Advance payments of corporate tax must be paid monthly or quarterly during the current tax period. Instalments are usually based on the last known tax liability of the entity. It is not necessary to pay tax advances if the last tax liability did not exceed EUR 2,500.

Penalties

The penalties levied by the Tax Office will depend on the time elapsed from the deadline for filing the regular tax return to the date of filing the amended tax return or the start of the tax audit. The penalties are:

- 3% a year for self-assessment via an amended tax return.
- 7% a year for self-assessment within 15 days after notification that a tax audit has been opened ('self-disclosure').
- 10% a year for an assessment made by the Tax Office during a tax audit.

The penalties will be levied at a minimum of 1% of the assessed amount and a maximum of 100% of the assessed amount.

An 'aggregated penalty' applies for cases of more than one administrative offence.

Electronic communication obligations

As of 1 January 2018, all legal entities registered in the Commercial Register are required to deliver submissions to the Financial Administration electronically only.

Tax audit process

Generally, the tax authority selects the taxpayers subject to tax audit based on certain criteria that are not communicated to the public.

The taxpayers that utilise state aid in the form of tax relief are subject to specific tax audit in the year of utilisation of the tax relief.

The tax audit has to be finalised within one year.

Statute of limitations

A tax may not normally be assessed or additionally assessed more than five years (ten years when DTT treaty was applied, including transactions with foreign-related parties) after the end of the year during which the obligation to file a tax return arose, or during which the taxpayer was obligated to pay the tax. If a tax inspection is undertaken within this five-year period, another five-year period commences from the end of the year in which the taxpayer was notified of this action.

If a taxpayer utilises a tax loss, a tax or additional tax cannot be assessed more than seven years after the end of the year in which the obligation to file a tax return in which a taxpayer reported the tax loss arose.

However, tax may be assessed, or additionally assessed, no later than ten years after the end of the year during which the obligation to file a tax return arose, or during which the taxpayer was obligated to pay the tax.

Topics of focus for tax authorities

The tax authorities, within a tax inspection, generally focus on transfer pricing, VAT, limited tax deductibility of special types of costs (e.g. entertainment, promotion costs), and tax incentives.

Other issues

Business combinations

The amendments to the Commercial Code from November 2017 have strengthened the legal and administrative requirements for carrying out mergers, fusions, and demergers of commercial companies (e.g. new obligation to submit a draft contract for a merger or demerger project to the tax authorities no later than 60 days before the date on which these transactions are to be approved by the company bodies).

In 2018, in-kind contributions, mergers, fusions, and demergers of commercial companies may only be performed for tax purposes in most cases at fair (market) values. Under this method, the taxpayer should value assets for tax purposes using their current market values, and the revaluation difference must be reflected in the appropriate company's tax returns within seven years of the transaction.

The historical price method may only be applied for mergers, fusions, and demergers of commercial companies, in-kind contributions, or cross-border transactions if certain conditions are met.

Adoption of International Financial Reporting Standards (IFRS)

Slovakia has adopted most of the principles of IFRS in its accounting law. However, there are still some differences between IFRS and Slovak accounting standards.

Obligation to prepare statutory financial statements according to IFRS

Financial institutions (banks, insurance companies, etc.) must prepare their statutory financial statements according to IFRS. In addition, a company that fulfils two or more of the following conditions, in two consecutive accounting periods, must prepare its statutory financial statements according to IFRS:

- The total value of assets is more than EUR 170 million.
- Net turnover exceeds EUR 170 million.
- The average number of employees in the individual accounting period exceeds 2,000.

An entity may decide to prepare its financial statements under IFRS if certain conditions are met.

If the Slovak taxpayer is obligated to prepare its financial statements under IFRS, the tax base is derived from either:

- the profit before tax under IFRS, adjusted for tax purposes using the 'IFRS Tax Bridge' issued by the Slovak Ministry of Finance, or
- the profit before tax under Slovak statutory accounting standards.

Tax information exchange agreements (TIEAs)

This table highlights countries with which Slovakia has entered into a TIEA.

- Albania
- Andorra
- Anguilla
- Argentina
- Aruba
- Azerbaijan
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Cameroon
- Cayman Islands
- Chile
- Colombia
- Cook Islands
- Costa Rica
- Curaçao
- Faroe Islands
- Ghana
- Gibraltar
- Greenland
- Guatemala
- Guernsey
- Isle of Man
- Jersey
- Liechtenstein
- Lebanon
- Malaysia
- Marshall Islands
- Mauritius
- Monaco
- Montserrat
- Nauru
- New Zealand
- Niue
- Pakistan
- Panama
- Samoa
- San Marino
- Saudi Arabia
- Senegal
- Seychelles
- St. Kitts and Nevis
- St. Lucia
- St. Maarten
- St. Vincent and the Grenadines
- Turks and Cacaos Island
- Uganda
- Uruguay

International agreements

The Slovak/United States (US) Intergovernmental Agreement (IGA) entered into force during 2015. However, financial institutions in the Slovak Republic were allowed to register on the Foreign Account Tax Compliance Act (FATCA) registration website consistent with the treatment of having an IGA in effect even earlier.

FATCA was implemented into Slovak legislation with effect from 1 January 2016, with a first reporting deadline of 30 June 2016.

The Common Reporting Standard (CRS) was also implemented into Slovak legislation with effect from 1 January 2016, and the first reporting deadline to the Slovak tax authorities was 30 June 2017.

Slovenia

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Significant developments

There have been no significant corporate tax developments in Slovenia during the past year.

Taxes on corporate income

Slovenian tax residents are liable to pay corporate income tax (CIT) on their worldwide income. Slovenian tax non-residents are taxed only on income from sources in Slovenia, including income earned through permanent establishments (PEs) in Slovenia.

The CIT rate is 19%.

Non-profit taxpayers and charitable organisations, associations, foundations, etc. are exempt from CIT on their non-profit-making activities.

Investment funds, as well as pension funds and pension insurance companies, may be taxed at a rate of 0% if certain conditions are met.

Tonnage tax

A company may request to be subject to tonnage tax instead of CIT if it meets certain conditions (i.e. it operates in maritime transport in international shipping) and notifies the tax authorities in advance.

The tax base for tonnage tax is the sum of the tax bases for each of an entity's ships that are included in the tonnage tax regime. The tax base for a particular ship is calculated by multiplying the number of ship operating days by the daily tax base shown in the following table:

Net tonnage (NT)	EUR*/day for 100 net tonnes
For the first 1,000 tonnes	0.90
For the next 1,001 to 10,000 tonnes	0.67
For the next 10,001 to 25,000 tonnes	0.40
Above 25,001 tonnes	0.20

* euros

Local income taxes

There are no municipal or local taxes on income in Slovenia.

Corporate residence

A legal entity is considered to be a Slovenian tax resident if the entity has its statutory (registered) seat or place of effective management located in Slovenia. These conditions, however, do not exclude a society or any association of persons, including an association under civil or foreign law that does not have legal identity, from also being considered to be a Slovene tax resident.

Permanent establishment (PE)

The Slovene definition of a PE is generally in line with the definition set out in the Organisation for Economic Co-operation and Development (OECD) model tax treaty. Thus, it is a place of business in Slovenia in or through which the non-resident's activities are conducted in whole or in part. The following, in particular, are considered to constitute a PE:

- An office, branch, factory, workshop, mine, quarry, or other place where natural resources are obtained or exploited.
- A building site; construction, assembly, or installation site; or the supervision thereof if the duration of the activities concerned exceeds 12 months.

A place of business is not considered a non-resident's PE if the non-resident:

- only uses the premises in question for storage, display, or delivery of goods belonging to oneself
- only maintains inventories of goods belonging to oneself for the purpose of storage, display, or delivery
- only maintains inventories of goods belonging to oneself for the purpose of processing by third parties
- only maintains the place of business in question for the purpose of purchasing goods or collecting information for oneself
- only maintains the place of business for the purpose of engaging in any other preparatory or auxiliary activity for oneself, or
- only maintains the place of business in question for the purpose of any combination of activities referred to above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

Other taxes

Value-added tax (VAT)

A basic VAT rate of 22% applies to all taxable supplies.

A lower VAT rate of 9.5% generally applies to foodstuffs, live animals, seeds, plants, water supplies, medicines, medical equipment, transport of passengers, books, admission fees, royalties for writers and performers, certain works of art, certain residential properties, renovation of residential properties, cleaning of residential properties, hotel accommodation, use of sport facilities, burial and cremation services, public hygiene services, minor repairs of bicycles, shoes and clothing, domestic care services, hairdressing services, and supply of flowers.

Exempt supplies without credit entitlement include financial and insurance/reinsurance services, rent and lease of immovable goods (with exceptions), tax and court stamps, lottery services, trade of land, health and social services, etc. There are also other VAT-exempt transactions without a credit entitlement as well as exempt taxable supplies with a credit entitlement.

VAT grouping is not possible within Slovenia.

The threshold for VAT registration is EUR 50,000.

Customs duties

Goods imported from non-European Union (EU) countries are subject to import customs clearance, and goods being exported from the EU customs territory must be declared for export customs clearance. The person responsible for paying the customs debt is the declarant. The declarant is the person making the customs declaration in its own name or the person in whose name the customs declaration is made. The customs declaration should be made in the prescribed form and manner (in writing or by another action specified by law). Import or export duties are customs duties and other charges payable on the import or export of goods (excise duties, environmental tax, and motor vehicle tax).

For purposes of communication with the customs offices, each person has to be identified by an Economic Operator Registration and Identification (EORI) Number, which is registered by the customs authorities on request. EORI registration is mandatory for customs clearance.

Import VAT is charged based on customs declaration at the time of the import. However, if certain conditions are met, taxpayers are able to pay the import VAT through the VAT return at the end of the month. Accordingly, the importers are not forced to finance their import VAT, as they are able to account for it and deduct it in the same VAT return.

Excise tax

Excise tax is charged on the release into free tax circulation or import of tobacco products, alcohol and alcoholic drinks, fuel and mineral oils, and electricity. The table below presents the valid rates of excise tax.

Product	Excise tax rate
Cigarettes	From EUR 71.3238 per 1,000 pieces. In case the retail price of a pack of 20 cigarettes amounts to less than EUR 3.51, the excise tax is a minimum of EUR 109 per 1,000 pieces
Beer	EUR 12.10 per 1 volume % alcohol in 1 hl
Alcohol drinks (except wine)	EUR 132 per 1 hl
Ethyl alcohol	EUR 1,320 per 100 volume % alcohol in 1 hl
Unleaded petrol	EUR 507.80 per 1,000 l
Natural gas	EUR 0.0184 per m^3 for heating purposes and EUR 0.092 per m^3 for propelling purposes
Heating oil	EUR 15.02 per 1,000 kg
Electricity	EUR 3.05 per 1 MWh Usage of more than 10,000 MWh per year: EUR 1.80 per 1 MWh

Property tax

Currently, there is no specific tax levied on immovable property in Slovenia. However, charge for the use of building land is levied on vacant and constructed building land in possession of legal persons and individuals. Charge is set by local communities for vacant building land based on the area of the building land planned for building, and for constructed building land based on the useful area of the residential house or business premises thereon.

Real estate transfer tax

Real estate transfer tax of 2% is charged on real estate transfers and financial leases of real estate, unless VAT has been charged on the transaction.

Stamp tax

There is no stamp duty in Slovenia.

Payroll taxes

There are no payroll taxes other than social security contributions and withholding of personal income tax (PIT) in Slovenia. *The tax tables applicable to individuals are provided in the Taxes on personal income section of Slovenia's Individual tax summary at www.pwc.com/taxsummaries.*

Social security contributions

Both employer and employee must make social security contributions. Contributions are withheld by the Slovene employer at the payment of income. The basis for calculation of the social security contributions is the gross amount of income. The types of contributions are as follows:

Type of contribution	Employee (%)	Employer (%)
Pension insurance	15.50	8.85
Health insurance	6.36	6.56
Unemployment	0.14	0.06
Injury at work	0	0.53
Maternity leave	0.10	0.10
Totals	22.10	16.10

Financial services tax

Slovenia levies tax on financial services provided by banks and other financial institutions. The tax rate is 8.5% and is applied to the fee of the financial service.

Insurance premium tax

Insurance premium tax is levied on insurance premiums at the rate of 8.5% and paid by insurance companies, unless the insurance lasts for at least ten years.

Environmental tax

Environmental tax is charged on carbon dioxide (CO_2) emissions, waste disposal, lubricating oils and fluids, used tyres, and used motor vehicles.

Motor vehicle tax

Motor vehicle tax applies to all vehicles that are registered for the first time in Slovenia. The taxpayer is the entity that imports the vehicle from EU or non-EU countries. The tax rate depends on fuel range, engine power, and emission of CO_2 and ranges from 0.5% to 31%.

In addition to the motor vehicle tax described above, the government imposes an additional tax on motor vehicles with engine displacement above 2,500 ccm that ranges from 0% to 16%, depending on the engine size.

Water vessel tax

The existing water vessel tax is imposed on:

- vessels exceeding five metres in length that are entered in vessel registers, with the exception of vessels under construction
- vessels exceeding five metres in length whose owners are residents of the Republic of Slovenia and that comply with the technical conditions required for entry into the vessel registers referred to in the first bullet but have not yet been entered into these registers, and
- vessels exceeding five metres in length whose owners are residents of the Republic of Slovenia and that comply with the technical conditions required for entry into the vessel registers referred to in the first bullet but have not been entered into these registers because they are registered abroad.

In addition to the water vessel tax described above, the government levies an additional tax on water vessels, depending on the length of the vessel:

Class of vessel length (in metres)		General part of tax liability (in EUR)	The liability per metre of length (in EUR)	The liability per kilowatt propulsion power (in EUR)
Above	To			
5	8	2.00	0.50	0.10
8	12	10.00	2.00	1.00
12		20.00	3.50	2.00

The tax liability decreases by 5% per each year of age of the vessel. The tax cannot, however, be lower than 50% of the tax liability calculated for a new vessel.

Branch income

If a branch meets the conditions, as set out in the tax legislation and relevant double tax treaty (DTT), to be treated as a PE, then it will be liable to pay tax in Slovenia on profits that are attributable to the PE.

The profit that is attributed to a PE is determined broadly in line with OECD principles. Generally, the attributable profit is the profit that would be expected to be earned by the PE if it were an independent taxpayer performing the same or similar activities and/or businesses.

A branch whose activities do not create a PE is not subject to CIT in Slovenia.

Income determination

Taxable profits are assessed in accordance with Slovenian Accounting Standards 2006 or International Financial Reporting Standards (IFRS) and modified for certain revenues and certain expenses, which are partly or wholly tax non-deductible.

Inventory valuation

Slovenian law allows the application of all the most commonly used inventory valuation methods, including the first in first out (FIFO), weighted average cost, and floating average prices methods.

Capital gains

Under certain circumstances, the gains made by a Slovenian taxpayer on the disposal of an equity shareholding are effectively 47.5% exempt from taxation. Similarly, 50% of a loss arising on the disposal of such a shareholding would not be deductible for CIT. This treatment applies to the disposal of shareholdings of at least 8% that have been held for at least six months and where the taxpayer disposing of the holding employed at least one person during the six-month holding period.

The above treatment is not available for the disposal of a shareholding of a company that is resident in a country that:

- is outside the European Union
- has a corporate tax rate less than 12.5%, and
- is included in a list published by the Ministry of Finance.

Dividend income

Dividends and similar income received by a Slovenian taxpayer are generally 95% exempt from taxation as long as the distributor was subject to Slovenian CIT or to a comparable profits tax. The exceptions to this are where dividends represent untaxed reserves of the distributor or where the distributor is tax resident in a country that:

- is outside the European Union
- has a corporate tax rate less than 12.5%, and
- is included in a list published by the Ministry of Finance.

Interest income

Interest and similar income received by a Slovenian taxpayer is included in the taxable base and can, in principle, reduce tax liability in the amount of withholding tax (WHT) paid abroad. Interest between related parties needs to be calculated in accordance with the arm's-length principle.

Royalty income

Royalties and similar income received by a Slovenian taxpayer are included in the taxable base and can, in principle, reduce tax liability in the amount of WHT paid abroad.

Foreign income

Foreign income, except dividends, received by a Slovenian entity from foreign sources is included in taxable income for CIT purposes in the same tax year as it arises unless the applicable DTT provides for an exemption.

Deductions

In general, business expenses that are necessary to generate taxable revenues are fully tax deductible.

Depreciation and amortisation

Depreciation of tangible fixed assets, amortisation of intangible assets, and depreciation of investment property are recognised as expenditures in line with the accounting treatment, up to a maximum of the amount calculated using the straight-line depreciation method and the maximum tax depreciation rates listed below. Any accounting depreciation in excess of these rates is not tax deductible in the period concerned, but may be deductible in subsequent tax periods until the asset is fully depreciated or disposed of.

The maximum annual depreciation rates are as follows:

Depreciation category	Types of assets	Annual depreciation rate (%)
1	Buildings, including investment property	3
2	Parts of buildings, including investment property	6
3	Equipment, vehicles, and machinery	20
4	Parts of equipment, and equipment for research activities	33.3
5	Computer equipment, hardware, and software	50
6	Crops lasting several years	10
7	Breeding animals	20
8	Other fixed assets	10

Goodwill

In general, if goodwill is impaired for accounting purposes, then the impairment cost may be treated as tax deductible. The amount that may be treated as tax deductible in any one tax period is limited to 20% of the initial value of the goodwill.

However, based on the amendments of the CIT Act, recognition of expenses from the amortisation of goodwill are, as of 1 January 2017 onwards, considered as non-deductible expenses.

Start-up expenses

In accordance with Slovene legislation, costs that occur prior to the entry of a legal entity into the court register may not be treated as tax deductible. Such a principle arises from a common legal principle whereby an entity may be subject to rights and obligations only after its establishment date. The date of entry into the court register is deemed to be the date of the establishment.

Related-party interest

Companies may deduct interest expense on loans from their owners or other associated parties up to a maximum of the amount calculated by using the prescribed interest rate published by the Ministry of Finance. Taxpayers must increase taxable profits by the amount of any excess interest expense unless they can prove that they could have received the loan on comparable terms from an unrelated party.

Provisions

Certain provisions are only 50% tax deductible when accrued, with the remaining 50% being treated as tax deductible when the provision is utilised. The provisions that are subject to this treatment are provisions for warranties granted when selling products or providing services, reorganisations/redundancies, anticipated losses from onerous contracts, pensions, long-service bonuses, and severance payments on retirement.

Bad debt

Bad debt provisions are only tax deductible if the amount does not exceed the lower of:

- the arithmetic mean of the bad debts written-off in the past three tax periods, under certain conditions specified in the tax law, and
- the amount corresponding to 1% of taxable revenues of the tax period.

In order to take advantage of this deduction, a company must be able to calculate amounts for both tests and then take the lower of the two amounts so calculated. If the company is not able to determine the amount for either, the cost of the bad debt provision is not tax deductible until the provision is utilised.

Costs of bad debts are tax deductible when the debt is finally written-off, provided there is a finalised court procedure, the creditor can demonstrate that it would cost more to pursue the debtor than the debt is worth, or the creditor can demonstrate that it has done everything required by good business practice to try to recover the debt.

Charitable contributions

A taxpayer may claim a reduction of its taxable profits for donations made for humanitarian, disabled, charitable, scientific, educational, medical, sports, cultural, ecological, and religious purposes to residents of Slovenia or of EU or European Economic Area (EEA) member states, up to 0.3% of the taxable person's taxable revenues. An additional allowance of 0.2% of the taxpayers' taxable revenues is available for payments made for cultural purposes and to voluntary organisations that work for the public interest to protect the public from natural and other disasters.

Compensation

Salaries and other payments relating to employment (e.g. wage compensation, holiday allowances, employer's social security contributions, long-service awards, severance benefits paid upon retirement, solidarity assistance, reimbursement of business related expenses) are generally fully tax deductible.

The costs of benefits in kind are also tax deductible if such benefits are taxed for the individual under the Personal Income Tax Act.

Pension allowances

Under certain conditions, a tax-deductible allowance for voluntary supplementary pension insurance may apply, of up to 24% of compulsory contributions for pension and disability insurance for insured employees, but may not exceed EUR 2,390 annually per employee.

Fines and penalties

Costs relating to compulsory collection of taxes and other levies are, in accordance with Slovene legislation, not tax deductible.

Taxes

Taxes paid by a shareholder as a natural person and VAT that was not deducted as an input VAT, even though there was a right to deduct, are not tax deductible. In addition, interests on late payment of taxes are not tax deductible.

Other significant items

The following expenses are considered unnecessary for the generation of taxable revenues and are not deductible for tax purposes:

- Expenses that are not directly necessary for performing business activities or are not incurred as a consequence of a business activity.
- Expenses of a private character.
- Expenses that do not correspond to standard business practice.

Some of the most common non-deductible expenses include:

- Penalties and the cost of bribes.
- Input VAT that could have been reclaimed in accordance with the VAT Act.
- Entertainment costs, which are only 50% tax deductible.
- Costs relating to the supervisory board, which are only 50% tax deductible.
- Legal and other costs of incorporation, which may be deductible for the parent company but not for the entity being incorporated.

Net operating losses

The use of retained tax losses is limited to a maximum of 50% of the actual tax base. Despite this limitation, tax losses may still be carried forward to subsequent years without a limitation, but loss carrybacks are not permitted. Loss relief may not exceed the amount of current taxable income. Generally, losses that are generated in multiple tax years are absorbed chronologically. The right to carry losses forward may be forfeited if the ownership of the capital or voting power of the taxpayer claiming the loss carryforward changes by more than 50% within the tax period and the taxpayer either has not performed business activities for two years prior to the change of ownership or substantially changes its business activity two years prior to or after the change in ownership.

Treatment of tax losses mentioned in the preceding paragraph does not apply for those losses that are generated in the year of the change of ownership or prior tax periods.

Payment to foreign affiliates

Payments to foreign affiliates are normally subject to WHT if there is no right to apply exemptions in accordance with Slovenian legislation or DTT. Payments similar to dividends, including disguised distribution of profit, are not tax deductible. Any other payments to foreign affiliates are tax deductible if they are made in accordance with the arm's-length principle.

Group taxation

Group tax returns were abolished with the introduction of the CIT Act on 1 January 2007.

Transfer pricing

Prices between a Slovenian entity and its related parties must be set, for tax purposes, at fair market value using the arm's-length principle. Broadly speaking, taxpayers are related by direct, indirect, or common shareholdings of over 25%; through a participation in management; or by control through other means, including through contractual terms.

For transactions between two related Slovenian tax residents, provided neither is in an 'advantaged' position (advantaged usually means having unutilised tax losses), there is no actual requirement for the companies to adjust their tax returns to reflect an arm's-length price.

Taxable persons must prepare transfer pricing documentation. The Slovenian rules regarding such documentation follow the EU Code of Conduct on transfer pricing documentation for associated enterprises in the EU (EU TPD).

Country-by-country (CbC) reporting

From January 2017 onwards, provisions of the Slovene Tax Procedure Act are in force imposing a CbC reporting obligation on the multinational enterprises with annual consolidated group revenue equal to or exceeding EUR 750 million. The first submission of CbC reporting was thus required for the financial year 2017, whereas the deadline for the submission of CbC reporting was within 12 months after the end of financial year (i.e. 31 December 2017). The CbC report will be first communicated to other member states in the year 2018 for the 2017 fiscal year.

Thin capitalisation

Interest payments on loans granted, or guaranteed, by a related party (a party that directly or indirectly owns at least 25% of the shares or voting rights in the taxpayer) are not tax deductible to the extent that the loan amount exceeds the thin capitalisation threshold specified in law. This does not apply to loan recipients who are banks or insurance companies.

Sister entities (i.e. entities with the same owner) also fall under the definition of the above-described rules.

Generally speaking, the thin capitalisation threshold is exceeded if the debt-to-equity ratio exceeds 4:1.

Controlled foreign companies (CFCs)

There are no specific provisions in Slovenia regarding CFCs; however, there are general anti-abuse provisions in place.

Tax credits and incentives

Foreign tax credit

Tax paid abroad can be credited against tax liability in Slovenia. The amount of tax that can be credited is the amount of final and actually paid tax. If there is a DTT made between countries in question, the amount of tax that can be credited is the amount calculated at the rate determined in the DTT. A taxpayer needs to provide proof of the amount of foreign tax, the basis for calculation of the tax, and the amount of the tax paid.

Investment allowances

A tax allowance for investment in equipment and intangible assets is available for investments made after 1 January 2008. The tax allowance is limited to 40% of the value of the assets (also intangibles) invested into.

Research and development (R&D) allowances

A 100% investment allowance is granted for investments in R&D within the tax period, regardless of the location of establishment of the company within Slovenia. Such an investment tax allowance may be obtained for expenditures on:

- internal R&D activities within the company and
- the purchase of R&D equipment from related or unrelated parties or from a private research institution.

Allowances for employing certain individuals

A taxpayer that employs trainees or students to undertake practical work may reduce its taxable profits by an additional 20% of the average monthly payment paid to such persons for every month the person carries out the work.

A taxpayer that employs disabled persons may decrease its taxable profits by an additional 50% of the salary paid to such persons (in addition to the deduction for their actual salary cost). A taxpayer that employs a severely disabled person or a person with a combination of total hearing loss and speech impairment may reduce its taxable base by an additional 70% of the salary paid to such a person (in addition to the deduction for their actual salary cost).

Tax relief for investments in the Pomurje region

Entities based in the Pomurje region of Slovenia may claim additional employment incentives and additional tax relief for investments. These extra benefits are available from 2010 to 2019. As a result, provided certain conditions are met, entities with their seat in Pomurje are entitled to a 70% tax allowance for investments in equipment and intangible assets as well as to certain employment allowances.

Tax relief for employment of hard-to-place workers

A taxpayer who employs a hard-to-place worker may be able to benefit from a tax allowance for both CIT and tax on activity. A hard-to-place worker is a person younger than 26 or older than 55 who has been registered as unemployed for at least six months and who has not been employed by the taxpayer or a related party in the past 24 months. The tax allowance equates to 45% of the salary paid to the person during the first 24 months of their employment, up to the amount of the tax base.

As of the beginning of 2016 and until the end of 2019, an additional tax relief is available for taxpayers employing a person older than 55 who has been registered as unemployed for at least six months prior to employment. A taxpayer will be exempt from paying all compulsory social security contributions (16.10%) for the first two years after employing such a person in case the employment contract is concluded during the above-mentioned period.

Withholding taxes

In Slovenia, tax must be calculated and withheld on the payments made by residents and non-residents on Slovenian-sourced income to recipients outside Slovenia.

Payments to which the WHT rules apply include payments for dividends, interest, copyrights, patents, licences, leases on real estate situated in Slovenia, services of performing artists, and services charged from low-tax jurisdictions.

Slovenia

The WHT rate is 15%.

If a DTT exists, the WHT rate may be reduced in line with the provisions of the treaty. Similarly for payments of interest, royalties, and dividends within Europe, the Interest and Royalties Directive and the Parent Subsidiary Directive, respectively, may also reduce this WHT rate to zero.

Furthermore, WHT is not deducted on dividends paid to a parent company in another EU member state if those dividends are subject to an exemption from tax in the hands of the recipient, provided certain conditions are met.

Subject to certain conditions, tax is not required to be withheld on interest on non-exchangeable debt securities issued outside Slovenia by a Slovenian tax resident corporation through a public placement on an international clearing system (i.e. Euroclear).

WHT is applicable only for explicitly determined types of services (i.e. consulting, marketing, staffing, administration, information, and legal services), provided they were made to countries with an average CIT rate not exceeding 12.5%, where such a country was also stated on a separate list published by the Ministry of Finance.

Treaties in force

	WHT (%)		
Recipient	**Dividends (1)**	**Interest (2)**	**Royalties**
Non-treaty	15	15	15
Treaty:			
Albania	5/10	7	7
Armenia	5/10	10	5
Austria	5/15	5	5
Azerbaijan	8	8	5/10 (8)
Belarus	5	5	5
Belgium	5/15	10	5
Bosnia and Herzegovina	5/10	7	5
Bulgaria	5/10	5	5/10 (5)
Canada	5/15	10	10
China, People's Republic of	5	10	10
Croatia	5	5	5
Cyprus	5	5	5
Czech Republic	5/15	5	10
Denmark	5/15	5	5
Estonia	5/15	10	10
Finland	5/15	5	5
France	0/15	5	5
Georgia	5	5	5
Germany	5/15	5	5
Greece	10	10	10
Hungary	5/15	5	5
Iceland	5/15	5	5
India	5/15	10	10
Iran	7	5	5
Ireland	5/15	5	5

Recipient	WHT (%)		
	Dividends (1)	Interest (2)	Royalties
Israel	5/10/15 (4)	5	5
Italy	5/15	10	5
Japan	5	5	5
Kazakhstan	5/15	10	10
Korea	5/15	5	5
Kosovo	5/10	5	5
Kuwait	5	5	10
Latvia	5/15	10	10
Lithuania	5/15	10	10
Luxembourg	5/15	5	5
Macedonia	5/15	10	10
Malta	5/15	5	5
Moldova	5/10	5	5
Netherlands	5/15	5	5
Norway	0/15	5	5
Poland	5/15	10	10
Portugal	5/15	10	5
Qatar	5	5	5
Romania	5	5	5
Russian Federation	10	10	10
Serbia/Montenegro	5/10	10	5/10 (6)
Singapore	5	5	5
Slovakia	5/15	10	10
Spain	5/15	5	5
Sweden	5/15	0	0
Switzerland	0/15	5	5
Thailand	10	10/15 (9)	10/15 (7)
Turkey	10	10	10
Ukraine	5/15	5	5/10 (6)
United Arab Emirates	5	5	5
United Kingdom and Northern Ireland	0/15	5	5
United States	5/15	5	5
Uzbekistan	8	8	10

Treaties not yet in force (3)

Recipient	WHT (%)		
	Dividends (1)	Interest (2)	Royalties
Egypt	8/13	13	15
Morocco	7/10	10	10

Notes

1. Under certain treaties, the WHT rate depends on whether, and to what extent, the recipient participates in the capital of the distributor. Generally, if the recipient holds a participation of more than 25% in the distributing company, the dividends are subject to a lower 5% WHT rate. The higher WHT rate is, however, normally due when the participation is less than 25%.
2. Some DTTs include specific provisions whereby interest payments are subject to a 0% WHT rate if certain conditions are met.
3. Ratified international treaties that are not yet in force and are not used in Slovenia.
4. 5% rate if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividend; 10% rate if the beneficial owner is a company that

directly holds at least 10% of the capital of the company paying the dividends and the dividends are paid out of profits which by virtue of the law of the state in which the payer is a resident are exempt from company tax or subject to company tax at a rate that is lower than the normal rate in that state; 15% rate applicable in all other cases.

5. 5% rate applicable to the gross amount of: (i) royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work (but not including cinematograph films) and (ii) royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment, 10% rate applicable in all other cases.
6. 5% rate applicable to royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting; 10% rate applicable to royalties for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
7. 10% rate applicable to royalties for the use of, or the right to use, any copyright of literary or artistic work including motion pictures, live broadcasting, film, tape, or other means of the use or reproduction in connection with radio and television broadcasting, and for the use of, or the right to use industrial, commercial, or scientific equipment; 15% rate applicable to royalties in all other cases.
8. 5% rate applicable to copyright, as defined by the Copyright and Related Rights Act; 10% rate applicable to other property rights.
9. 10% rate applicable to the gross amount of interest if received by a financial institution (including an insurance company); 15% rate applicable to the gross amount of interest in all other situations.

Tax administration

Taxable period

The tax period should be the calendar year. However, a tax period may differ from the calendar year but may not exceed a period of 12 months. In this case, the tax authorities must be informed about the chosen tax period, and the taxable entity will not be allowed to change its tax period for the following three years.

Tax returns

A tax return must be submitted to the tax authorities by the end of the third month following the end of the tax year.

Payment of tax

CIT is paid in advance in monthly instalments (if the amount of prepayment exceeds EUR 400 per month) or in quarterly instalments (if the amount of prepayment is less than EUR 400 per month) determined on the basis of the previous year's assessment.

The final CIT payment must be made within 30 days of the tax return submission.

Tax audit process

Slovene legislation does not define an audit cycle. However, we understand that the Slovene tax administration has its own criteria for how to determine audit targets, which is in accordance with their annual tax plan.

Statute of limitations

Under Slovene legislation, a tax inspection may be initiated within five years from the date when a tax return was due for submission to the tax authorities. However, the five-year period runs following each interrupting act (generally, certain actions by the Tax Office or the taxpayer within the tax period may be considered as interrupting acts), but may not surpass a maximum of ten years counting from the date when the tax return is due. A concluded tax inspection will foreclose any further tax authorities' inspection only for the period and the items that were subject of the concluded tax inspection. Any issue not examined remains open for a future tax inspection. The right of the tax authorities to assess and collect tax permanently expires after ten years counted from the date when the tax return is due.

Topics of focus for tax authorities

Recently, we have noticed that tax authorities focus on appropriateness of transfer pricing for multinational companies.

Fiscal verification of invoices

According to the Act on Fiscal Verification of Invoices, all legal and natural persons that perform cash transactions and are obligated to keep books and records must use certified tax registers. No exceptions are envisaged, so electronic confirmation of invoices applies to anyone that is obligated to use receipts in accordance with the VAT Act. Certified cash registers are connected to the central information system of the financial authority via the Internet, so processed invoices are verified and saved in real time.

Other issues

State aid

Slovene law does not regulate state aid specifically; however, as the EU Treaty, relevant EU Regulations and Directives, and EU Court case law are of direct application in Slovenia, Slovene courts follow the same policy as reflected in the noted documents and case law. Thus, state aid in Slovenia is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities and causing distortion of the competition.

Multilateral Convention (MLI)

With the ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) in mid-March 2018, certain provisions of DTTs that Slovenia has in place will be affected. More specifically, from 1 July 2018 onwards, the MLI shall generally apply to DTTs that Slovenia has in place with Austria, Isle of Man, Jersey, and Poland. In addition to the minimum standards on treaty abuse (Articles 6 and 7 of MLI), Slovenia shall also adopt changes to dividend transfer transactions, threshold for PE, arbitration, etc.

Base erosion and profit shifting (BEPS)

The transfer pricing landscape of Slovenia remains relatively unchanged, but is nonetheless dependent on the updated or added guidance published by the OECD as a result of the BEPS action plan. It can be anticipated that the changes due to the BEPS project will also have an appropriate impact on the transfer pricing environment, legislation, and practices in Slovenia.

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 2 June 2014, the Republic of Slovenia concluded an Agreement to Improve International Tax Compliance and to implement FATCA (the Agreement) with the United States that entered into force on 1 July 2014, which further defines the obligations of Slovenian financial institutions and the Financial Administration of the Republic of Slovenia related to FATCA implementation. The Agreement supplements the existing rules on cooperation between the Republic of Slovenia and the United

States in the field of avoidance of double taxation and exchange of information and will contribute to the reduction of administrative burden to Slovenian financial institutions.

The conclusion of the Agreement, which is based on the Model 1 Intergovernmental Agreement (IGA), ensures the implementation of FATCA provisions on the basis of reporting and exchange of information in accordance with the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital. According to the Agreement, Slovenian financial institutions are required to report information as determined in the Agreement to the Financial Administration of the Republic of Slovenia, which reports the information to the US Internal Revenue Service (IRS). Reciprocally, Slovenia is receiving information from the US IRS about the funds of Slovenian taxpayers in the United States.

South Africa

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Significant developments

- From 1 April 2018, the value-added tax (VAT) rate increased from 14% to 15% (the VAT rate was last increased in the early 1990s).
- It has been proposed that regulations prescribing foreign electronic services subject to VAT be broadened to include cloud computing and other online services.
- The Carbon Tax Bill is expected to be enacted before the end of 2018, bringing the Carbon Tax into effect from 1 January 2019.
- The introduction of National Health Insurance, in terms of which universal health coverage will be provided with all individuals contributing to a national health fund based on their ability to afford the contributions, is currently under debate (it appears that the introduction of National Health Insurance has been accepted, and it is merely the mechanisms in terms of which it will be implemented that are under debate).

Taxes on corporate income

A South African (SA)-resident company is subject to corporate income tax (CIT) on its worldwide income, irrespective of source. Non-residents are taxable on SA-source income.

In South Africa, the CIT rate applicable for corporate income of both resident and non-resident companies for tax years ending between 1 April 2018 and 31 March 2019 is a flat 28%.

Small business corporations (i.e. companies with only natural persons as members/owners and with gross income of not more than 20 million South African rand [ZAR]) are taxed at the following rates:

- 0% on the first ZAR 78,150 of taxable income.
- 7% on taxable income above ZAR 78,150 but not exceeding ZAR 365,000.
- 21% on taxable income above ZAR 365,000 but not exceeding ZAR 550,000.
- 28% on taxable income exceeding ZAR 550,000.

Special CIT rates apply in certain industries, such as mining and long-term insurance (*see below*).

Alternative turnover-based tax for very small companies

To reduce the compliance costs for very small companies, a turnover-based presumptive tax is available. Companies with a turnover of less than ZAR 1 million per year can elect to pay this tax instead of normal CIT, at a rate ranging from 0% to 3%, depending on the level of turnover.

Dividends tax

Dividends tax is imposed at 20% on dividends declared and paid by all resident companies as well as by non-resident companies in respect of shares listed on a South African exchange (i.e. generally the Johannesburg Stock Exchange [JSE]).

Dividends are tax exempt if the beneficial owner of the dividend is an SA-resident company, SA-retirement fund, or other prescribed exempt person.

The tax must be withheld by the company that pays the taxable dividend or, where the dividend is paid by a ‘regulated intermediary’, by the regulated intermediary (generally, this applies to listed shares). In the case of *in specie* dividends (i.e. dividends paid ’in kind’, or dividends other than dividends paid in cash), the company declaring the *in specie* dividend is liable for the dividends tax (and not the beneficial owner of the dividend).

Exemptions from dividends tax and treaty-imposed reduced rates only apply if the beneficial owner of the dividend has made a prescribed declaration and undertaking to the paying company or regulated intermediary.

CIT for mining companies

Special rates of normal tax, based on a standard formula, are prescribed for companies mining for gold. Companies mining for other minerals are subject to the same 28% rate of normal tax that applies to ordinary companies.

CIT for long-term insurance companies

Life insurance companies are required to follow the ‘five-funds approach’, with policies divided into five funds, depending on the nature of the beneficiary. Each fund is then allocated assets according to the risk carried by the fund. Each of the five funds is treated as a separate taxpayer and taxed at the rate applicable to that type of fund. These rates are 30% for individual policyholder funds, 0% for untaxed policyholder funds, and 28% for company policyholder funds, risk policy funds, and corporate funds (a corporate fund being the company itself).

Local income taxes

No local government taxes on income apply to either SA-resident or non-resident companies.

Corporate residence

A company is resident in South Africa if it is incorporated, established, or formed in South Africa or has its place of effective management in South Africa. However, a company that is deemed to be exclusively resident in another country in terms of a double taxation agreement (DTA) is excluded from SA residency.

In terms of an Interpretation Note issued by the South African Revenue Service (SARS), the place of effective management is regarded as the place where key management and commercial decisions that are necessary for the conduct of its business as a whole are, in substance, made. This approach is consistent with internationally accepted principles.

Permanent establishment (PE)

South Africa does not, as a general rule, tax non-residents on the basis of having a PE in South Africa. Rather, non-residents are subject to income tax in South Africa on income derived from a South African source. The primary exception to this rule is in relation to capital gains, where non-residents are subject to tax on assets attributable to a PE in South Africa. A PE is defined with reference to the definition thereof in the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention.

Other taxes

Value-added tax (VAT)

VAT is an indirect tax that is largely directed at the domestic consumption of goods and services and at goods imported into South Africa. The tax is designed to be paid mainly by the ultimate consumer or purchaser in South Africa. It is levied at two rates, namely a standard rate and a zero rate (0%).

With effect from 1 April 2018, the standard rate of VAT is 15% (prior to that date, the standard rate was 14%).

Very few business transactions carried out in South Africa are not subject to VAT. The tax is collected by businesses that are registered with the SARS as 'vendors' on all taxable supplies throughout the production and distribution chain. Sales or supplies by non-vendors are not subject to VAT.

VAT registration and administration

All suppliers of goods and services having an annual turnover exceeding ZAR 1 million are required to register as VAT vendors and to charge output VAT. Other vendors may elect to register as VAT vendors, provided their annual turnover exceeds ZAR 50,000. Two exceptions apply. Firstly, non-resident suppliers of electronic services are required to register once aggregate supplies of ZAR 50,000 have been made. Secondly, persons likely to make taxable supplies only after a period of time may register if the activities are of a nature set out in regulations. If they do not register, they are prohibited from charging VAT on goods or services they supply and claiming an input tax (rebate of VAT paid) on goods and services that they acquire.

Under the VAT system, vendors normally pay VAT on expenses (input tax) and charge VAT on supplies made (output tax). This mechanism, therefore, ensures that only the so-called 'added-value' is taxed. Due to VAT being a self-assessment system, the output tax collected may be reduced by input tax paid. Thereafter, the net amount is payable to, or refundable by, the SARS. The self-assessment returns are due regularly within prescribed periods (tax periods).

Taxable supplies

Standard-rated and zero-rated supplies are known as taxable supplies. Other supplies are known as exempt and non-supplies.

South Africa

Goods and services

For a liability for VAT to exist, there must be a supply or importation of goods or services. Goods are corporeal movable things, fixed property, and real rights in such things and property. The meaning of 'services' is very broad and includes the granting, assignment, cession, or surrender of any right or the making available of any facility or advantage.

Electronic services

Non-resident suppliers of electronic services are required to register for VAT on the payments basis and account for VAT on supplies of electronic services to SA residents.

Imports

Services imported by a vendor and utilised or consumed by the vendor for the making of taxable supplies are not subject to VAT. In addition, the VAT Act has a schedule that lists goods that are exempt from VAT on importation, whether by a vendor or an unregistered person.

Zero-rated supplies

The VAT Act contains a list of the supplies of goods or services that are taxed at the zero rate. Most of the items refer to exports and international transport, but other specified goods utilised for farming purposes, the sale of an enterprise as a going concern, certain basic foodstuffs, fuel subject to the fuel levy, and deemed supplies by welfare organisations are also zero-rated.

A zero-rated supply made by a vendor is subject to VAT but at a rate of 0%. Under a zero-rated supply, a vendor does not charge VAT on the consideration for the supply and obtains a refund or credit for the VAT paid on taxable supplies utilised in the making of the zero-rated supplies.

Exempt supplies

In addition to zero-rated supplies, the VAT Act contains a list of the supplies of goods or services that are exempt from VAT. While all fee-based financial services are subject to VAT, interest charged is exempt. Other exempt supplies include residential rentals, non-international passenger transport by road or rail, and educational services.

In the case of an exempt supply made by a vendor, the vendor does not charge VAT on the supply and is not entitled to a deduction or credit for the VAT paid on goods and services supplied for the making of the exempt supply. Accordingly, vendors treat the VAT paid by them, and for which they do not obtain a deduction or credit, as another cost and recover it in the consideration they charge for the making of the exempt supply.

Customs duties

Customs duties are charged on importation of goods into South Africa at rates ranging between 3% and 45%. In addition, import duties may also include anti-dumping and countervailing duties of up to 150%. No customs duties are charged on trade between South Africa and Botswana, Lesotho, Namibia, and Swaziland, as these five countries constitute the Southern African Customs Union.

Excise duties

Excise duty is levied on certain locally manufactured goods as well as their imported equivalents. A specific duty at a pre-determined amount is levied on tobacco and liquor, and an *ad valorem* duty (calculated as a percentage of price) on certain luxury goods and automobiles. Relief from excise duty is available for exported products and for certain products produced in the course of specified farming, forestry, and (limited) manufacturing activities.

Property taxes

Local municipalities levy rates on land. These rates are based on a percentage of the municipal valuation of land and improvements and vary from municipality to municipality. Generally, a higher rate is levied on properties zoned for business use.

Transfer duty

Transfer duty levied on the sale of immovable property is payable by the person acquiring the property within six months from the date of acquisition at the following rates:

Purchase price (ZAR)	Transfer duty rate
Not exceeding 900,000	0%
900,001 to 1,250,000	3% on value above 900,000
1,250,001 to 1,750,000	10,500 plus 6% on value above 1,250,000
1,750,001 to 2,250,000	40,500 plus 8% on value above 1,750,000
2,250,001 to 10,000,000	80,500 plus 11% on value above 2,250,000
Exceeding 10,000,000	933,000 plus 13% on value above 10,000,000

Transfers of immovable property subject to VAT are exempt from transfer duty.

Securities transfer tax (STT)

STT is levied at a rate of 0.25% of the taxable amount in respect of the transfer of a security. The taxable amount is usually the consideration for which the security is purchased or the market value of the security if the consideration declared is less than the market value or if no consideration was paid. STT is payable by the company that issued the securities in question. However, the company can recover the tax from the person acquiring the shares. Slightly different rules apply in the case of listed securities.

Payroll taxes

Employers are liable to withhold pay-as-you-earn (PAYE) on behalf of their employees. PAYE is payable to SARS on a monthly basis, calculated on the remuneration paid to an employee. The rates vary depending on the employee's remuneration.

Skills Development Levy (SDL)

SDL is a compulsory levy to fund education and training. It is payable by an employer and cannot be deducted from the remuneration payable to an employee. Small employers with an annual payroll of less than ZAR 500,000 are exempt from the levy. SDL is levied at the rate of 1% of payroll. It is payable monthly, together with income tax that the employer has withheld on its employees' salaries.

Unemployment Insurance Fund (UIF) contributions

Employers are required to contribute on behalf of their employees on a personalised basis to the UIF. The rate of contributions is 1% of gross remuneration payable to an employee, with a monthly cap of ZAR 148.72 per employee. Another 1%, subject to the same cap, is payable by the employee and withheld by the employer.

Compensation for Occupational Injuries and Diseases Act (COIDA) fund

Employers are liable for making annual contributions to the COIDA fund. COIDA contributions are a payroll cost that cannot be deducted from the employee's salary, with a maximum salary cap per employee of ZAR 430,044 *per annum*. The rates vary depending on the employer's industry.

Donations tax

Disposals of assets below an adequate consideration are a deemed donations and subject to donations tax. Donations tax is payable by resident companies at a rate of 20% of the value of property donated to the extent that this value does not exceed ZAR 30 million, and at a rate of 25% of the value of property disposed of that exceeds ZAR 30 million. An annual exemption of ZAR 10,000 is available for companies.

Public companies, comprised of mostly listed companies, are exempt from donations tax. An exemption is also available for donations made to certain charities and other non-profit organisations.

Vehicle emissions tax

An environmental levy is levied on new passenger motor vehicles at a rate of ZAR 110 per gram of CO2 produced per kilometre over the first 120g of CO2 per kilometre, and at a rate of ZAR 150 per gram of CO2 produced per kilometre over the first 175g of CO2 per kilometre (in the case of double cab passenger vehicles).

Fuel levy

A fuel levy is included in the price of petroleum fuel sold. The general fuel levy for 2018/19 is 337 cents per litre of petrol and 322 cents per litre of diesel. A refund of the diesel fuel levy may be claimed in certain industries, such as agriculture, fishing, and mining.

Electricity levy

To support energy efficiency, the government has implemented a levy on electricity generated from non-renewable sources at 3.5 cents per kWh. The levy is paid at source by the electricity producer and recovered in the price to the consumer.

Tyre levy

A tyre levy is applicable at a rate of ZAR 2.30/kg.

Sugar tax

A tax on sugar-sweetened beverages, in the form of the Health Promotion Levy on Sugary Beverages, was introduced on 1 April 2018. The base on which the levy is applied is the sugar content of the beverage. The rate of the levy is 2.1 cents per gram for sugar content in excess of 4g/100ml. For powder and liquid concentrates, sugar content is calculated on the total volume of the prepared beverage.

Air passenger tax

Passengers departing on international flights must pay air passenger tax at the rate of ZAR 100 on flights to Botswana, Lesotho, Namibia, and Swaziland, and ZAR 190 on other flights. The tax is added to the price of the ticket.

Branch income

SA branches of foreign companies are not considered to be separate legal entities for tax purposes, and no tax is withheld on transfers of profits to the head office. Branches of foreign companies are taxed at a rate of 28% and are not liable for dividends tax or any branch profits repatriation tax.

Note that a branch must register as a taxpayer and submit tax returns. Separate financial statements must be drawn up for the SA branch. For all practical purposes, the SARS will treat the branch as a separate entity. For example, inter-branch cost recoveries levied by the head office incurred in the production of SA income normally will be allowed as a deduction by the branch, although this treatment is not extended to interest on inter-branch loans.

In terms of DTAs, the taxation of branches is limited to cases where the branch constitutes a PE.

Income determination

Inventory valuation

Inventories generally are stated at the lower of cost or net realisable value. Write-downs of inventory for slow-moving and obsolete items must be justified, and a general policy on a percentage basis is not permitted. Last in first out (LIFO) is not accepted for tax purposes.

Capital gains

Although the capital gains tax forms part of income tax, the two taxes are not fully integrated. While gains realised by companies are taxed at the normal CIT rate, only 80% of gains are included in taxable income, making the effective capital gain tax rate for companies 22.4%.

Dividend income

Dividends are generally taxed in the hands of the beneficial owner at a rate of 20% (*see Dividends tax in the Taxes on corporate income section*). Dividends tax is withheld by the company declaring the dividend on behalf of the shareholder receiving it. *In specie* dividends are subject to tax in the hands of the company and not the beneficial owner.

Foreign dividends received by or accrued to an SA-resident taxpayer are included in income based on a formula and taxed at the normal CIT rate, which results in an effective tax rate of 20%. Qualifying foreign dividends are also generally not subject to tax where they are received by resident shareholders holding in excess of 10% of the equity shares and voting rights of the company declaring the dividend. Dividends received by residents holding less than 10% of such shares will generally be taxable in South Africa, subject to a tax credit for foreign taxes payable by the recipient shareholder.

Stock dividends
Stock dividends (capitalisation issues of shares) are not subject to CIT or dividends tax.

Interest income
Interest income of resident companies is taxed at the normal CIT rate.

Interest received by a non-resident company is only subject to CIT if the debt claim in respect of which it is paid is effectively connected with a PE of that non-resident company in South Africa during the tax year, and where that non-resident company is registered as a taxpayer in South Africa.

A 15% withholding tax (WHT) applies to interest paid on certain debt instruments to non-resident companies and where the interest is not subject to CIT.

Royalty income
Royalty income of resident companies is taxed at the normal CIT rate.

Royalty income received by a non-resident company is only subject to CIT if the property in respect of which the royalty income is paid is effectively connected with a PE of that non-resident company in South Africa during the tax year, and where that non-resident company is registered as a taxpayer in South Africa.

A 15% WHT applies to royalties paid to non-resident companies where the royalties are from a South African source and where the interest is not subject to CIT.

Foreign income
Foreign income of an SA-resident company is subject to tax in South Africa on the earlier of receipt or accrual. However, income that may not be remitted to South Africa in terms of the laws of the country where the amount arose is deferred until the income can be remitted. Double taxation may be avoided under certain DTAs or by way of unilateral credit or deduction for foreign tax payable on foreign income (*see Foreign tax credit in the Tax credits and incentives section*).

Deductions

Depreciation and depletion
A depreciation (wear and tear) allowance may be deducted on movable assets used for the purpose of trade. There are no statutory provisions relating to rates of wear and tear, but the SARS has published a table of periods over which the assets may be written off. The rates of wear and tear, based on the cash cost, are calculated either according to the straight-line or diminishing-balance method.

New and unused machinery used in a process of manufacture or in a similar process is depreciable at the rate of 40% in the first year of use and 20% in the three following years. If the machinery is not new and unused, an allowance of 20% per year over five years is available.

An accelerated depreciation allowance (50% in the first year of use, 30% in the second, and 20% in the third year) applies to the machinery and articles used in farming, production of biodiesel or bioethanol, and production of energy from certain renewable sources.

Specific allowances are also provided for pipelines, transmission lines, railway lines, rolling stock, airport property, ports, ships, mining operations, and other qualifying industrial assets.

Buildings and other permanent structures may not be depreciated, apart from an annual allowance for each of the following:

- Buildings used in a process of manufacture or a process similar to a process of manufacture: For buildings erected before 1 January 1989, a 2% rate applies per year. For buildings erected after 1 January 1989, a 5% rate applies.
- Hotel buildings: For buildings built prior to 4 June 1988, a 2% rate applies per year. For hotel buildings erected after 4 June 1988, a 5% rate applies. Improvements within the existing building framework that commenced on or after 17 March 1993 are depreciated at the rate of 20%.
- Agricultural cooperative storage buildings: For buildings built prior to 1 January 1989, a 2% rate applies per year. For buildings erected on or after 1 January 1989, a 5% rate applies.
- Housing projects of not less than five units: Housing projects of not less than five units of residential accommodation, which consist of more than one room and the erection of which commenced on or after 1 April 1982 and before 21 October 2008, are subject to a 2% rate of depreciation. After 21 October 2008, an allowance of 5% is available on this type of property. The 5% depreciation rate is available to the taxpayer provided that the unit is used by the taxpayer solely for trade purposes, the unit is situated in South Africa, and the taxpayer owns at least five units in South Africa used for the purposes of trade. An additional allowance is available for a low-cost residential unit. Additionally, from 21 October 2008, taxpayers are granted relief for the transfer of ownership on a contract for deed basis of employer provided low-cost residential units to employees.
- Buildings in urban development zones: Improvements to an existing building in an urban development zone, where the existing structural or exterior framework is preserved and brought into before 31 March 2014, qualify for an accelerated allowance of 20% per year. Buildings that are erected, extended, or added to in an urban development zone on or after 21 October 2008 and which are not covered by the first mentioned allowance qualify for a 20% allowance in the first year and an 8% allowance in the following ten years. As of 21 October 2008, new and unused low-income residential units located in urban development zone demarcations are subject to an additional annual depreciation allowance. The rate is 25% in the first year, 13% in the succeeding five years, and 10% in the year following the last year. Improvements are subject to a depreciation allowance of 25% over a period of four years.
- Commercial buildings: The cost to the taxpayer of any new and unused building owned by the taxpayer, or any new and unused improvement to any building owned by the taxpayer, if that building or improvement wholly or mainly is used by the taxpayer for trade purposes, other than the provision of residential accommodation, is subject to a 5% rate of depreciation. This allowance is applicable to any building or improvement contracted for on or after 1 April 2007 and the construction of which commenced on or after 1 April 2007.

An allowance for assets disposed of or scrapped during a year of assessment is determined by reference to the cost less allowances already granted and the proceeds on disposal (if any). Recoupments of allowances granted are taxable where disposal proceeds exceed the tax basis at the time of sale. Such recoupments cannot exceed the cost of the asset. Proceeds above cost will be taxed as a capital gain.

Book depreciation does not need to be consistent with tax depreciation.

No cost or percentage depletion is available for natural resources.

Goodwill

The sale and purchase of goodwill is generally a transaction on capital account, and the person paying for the goodwill will usually be unable to claim a deduction. No capital allowances are available for goodwill.

Start-up expenses

Special relief is provided for start-up (or pre-trade) expenditure to allow for a deduction in the year that trade commences. The expenses are only deductible if they would have been deductible had they been incurred after the commencement of trade. These expenses and any loss they create are ring-fenced and may only be deducted against income from the trade to which the start-up costs relate.

Interest expenses

Generally, interest expenditure incurred in the production of non-exempt income and for the purposes of trade is deductible. However, interest that is incurred to produce income that is exempt from tax will not be allowed as a tax deduction. A special dispensation applies to the deduction of interest on debt used to acquire shares in a company, provided certain requirements are met.

Special rules apply to determine the amount of interest and timing of any deductions taking into account all payments and receipts in respect of debt instruments with interest being determined on the basis of an internal rate of return.

Certain debt instruments that are convertible to shares or may be settled in shares or where repayment is subject to solvency or related to connected-party debt with a maturity of 30 years or more are treated as hybrid debt instruments and no interest deduction is allowed in respect thereof. Certain hybrid interest is also treated as a dividend.

In addition, the interest deduction for interest paid between related parties is limited where such interest is not subject to income tax or WHT on interest. In terms of these rules, interest deductions are limited to an amount determined with reference to a percentage of taxable income before interest and depreciation. The percentage is determined with reference to the repo rate with a ceiling of 60% of adjusted taxable income. Any excess interest may be carried forward to the following year for deduction. The transfer pricing and thin capitalisation rules continue to apply to such interest.

Further interest deduction limitations also apply to interest paid on debt used to fund acquisitions of shares or businesses under certain of the corporate rollover relief provisions (*see the Group taxation section*). In terms of these rules, with some amendments thereto only applying for years of assessment commencing on or after 1 January 2015, interest deductions on such transactions are limited to an amount determined with reference to a percentage of taxable income before interest and depreciation. The percentage is determined with reference to the repo rate with a ceiling of 60% of adjusted taxable income.

The deduction of cross-border interest paid to connected persons is subject to limitation under transfer pricing rules (*see Transfer pricing and thin capitalisation in the Group taxation section*).

Bad debt

Bad debts are tax deductible if the debt relates to an amount that has been included in the taxpayer's taxable income in any tax year if it is due at the end of the year of assessment. A tax allowance is also provided for in respect of specifically identified doubtful debts.

Any bad debts arising on loaned money is deductible if it was lent in the course of a money-lending business.

Charitable contributions

Donations to certain charitable organisations approved as public benefit organisations are tax deductible, up to a maximum of 10% of taxable income.

Cost of inventory

The cost of inventory is, in principle, deductible as soon as the inventory is acquired. However, at the end of each year, the cost of the inventory still on hand has to be added to the company's income. Then in the next year, it can be deducted again. This has the effect of timing the deduction of the cost of inventory to match the time of its realisation.

Assets acquired for shares issued

When assets are acquired by a company in return for shares issued to the seller, the purchaser of the assets is deemed to have incurred expenditure equal to the market value of the shares immediately after acquisition. Special rules apply in the case of a mismatch in the value of the shares and assets.

Fines and penalties

Any fine or penalty imposed in respect of an unlawful activity carried out in South Africa, or in any other country where it would be unlawful in South Africa, is not deductible for tax purposes.

Taxes

Most taxes (other than income taxes, donations tax, WHT on interest, and dividends tax) are deductible from taxable income for the corporation, provided they qualify for deduction under general rules.

Net operating losses

Losses may be carried forward indefinitely, provided an active trade or business of a similar nature is carried on without interruption. Loss carrybacks are not provided for in South Africa.

Payments to foreign affiliates

Deductions may be claimed for royalties, managerial service fees, and interest charges paid to foreign affiliates, provided such amounts approximate those that would be paid to an unrelated party in an arm's-length transaction.

Interest deductions may be limited in certain circumstances (*see Interest expenses above and Transfer pricing and thin capitalisation in the Group taxation section*).

Group taxation

Group taxation is generally not permitted in South Africa. However, relief is given for transactions between group companies to allow for reorganisations, provided certain requirements are met.

In general, the relief will only apply to transactions between companies within the same group. A group of companies is defined as a controlling company and one or more controlled companies in relation to that controlling company. A controlling company means a company holding, directly or indirectly, at least 70% of the equity shares of any other company. Foreign-incorporated companies do not form part of a group of companies for the purposes of this relief unless effectively managed in South Africa, although relief is extended to controlled foreign companies (CFCs) in certain circumstances.

Corporate rollover relief is available for asset-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions, and transactions relating to liquidation, winding-up, and deregistration.

The relief may cover the capital gains tax arising from the disposal of capital assets, income tax arising from the disposal of a depreciable asset, income tax arising from the disposal of trading stock, donations tax arising from the disposal of an asset, dividends tax, VAT, securities transfer tax, and transfer duty.

Transfer pricing and thin capitalisation

South Africa has transfer pricing legislation applying to cross-border transactions involving connected persons. The transfer pricing legislation applies the arm's-length standard.

The transfer pricing legislation does not separately address transfer pricing and thin capitalisation. Rather, thin capitalisation is simply treated as a potential breach of the general arm's-length standard (i.e. in relation to the level of funding).

Where a transfer pricing adjustment is required to be made, that adjustment is subject to a secondary adjustment where it is deemed to be either a dividend or a donation.

In addition, South Africa has formally adopted the OECD's three-tiered documentation approach, and certain taxpayers are required to electronically submit Country-by-Country Reports, Master File, and/or Local File returns within 12 months of the end of their financial year.

The SARS has also, in recent years, expanded the transfer pricing questions contained in the CIT returns. In answering these questions, taxpayers are required to make a full disclosure of all requested information, as well as any information that may be relevant.

Controlled foreign companies (CFCs)

If one or more residents together, directly or indirectly, hold more than 50% of the voting or participation rights in a foreign company, then it is a CFC in relation to those residents. The income of a CFC is imputed to the residents in proportion to their holdings, subject to certain exclusions and tax credits, where applicable. The most notable exclusions are for high-taxed CFCs and for income attributable to 'foreign business establishments'.

Tax credits and incentives

Foreign tax credit

The South African Income Tax Act makes provision for a rebate against CIT in respect of foreign taxes paid on foreign-sourced income or a deduction against income of foreign taxes paid on SA-sourced income. In both instances, the taxpayer must be an SA resident, the income must be included in taxable income, and that income must have been subject to a foreign tax that is not recoverable. The rebate is limited to the total normal tax payable calculated by applying the ratio of the total taxable income attributable to the foreign tax to the total taxable income. The deduction, however, may not exceed the income on which the foreign tax was levied.

Research and development (R&D)

The current costs related to certain R&D activities carried on in South Africa are 150% deductible, subject to pre-approval by a government-appointed approval committee. The cost of machinery and other capital assets acquired for the purposes of R&D may be depreciated 40% in the first year of use, 20% in the second, 20% in the third year, and 20% in the fourth year. Buildings used in the process of R&D may be written-off over a 20-year period.

Headquarter company regime

A 'headquarter company' regime encourages the use of South Africa as a location for intermediate holding companies.

The main benefits offered to a headquarter company are:

- Exemption from South Africa's CFC rules.
- Exemptions from dividend WHT on the headquarter company's dividend distributions.
- Exemption from the WHT on interest in certain circumstances.
- Exemption from South Africa's transfer pricing rules on back-to-back loans, outbound loans, back-to-back intellectual property (IP) licensing arrangements, and outbound IP licensing arrangements.
- The participation exemption for dividends received from, or gains derived on the disposal of, foreign qualifying holdings (these exemptions are not specific to headquarter companies but are available generally to SA-resident shareholders).

The requirements for a headquarter company are as follows:

- The headquarter company must be SA resident.
- Each shareholder in the headquarter company must hold at least 10% of the headquarter company's equity shares and voting rights. This means that a headquarter company can never have more than ten shareholders.
- At least 80% of the headquarter company's assets (measured on a 'cost' basis and excluding cash and certain bank deposits) must be comprised of certain assets

related to the foreign companies in which the headquarter company holds at least 10% of the equity shares and voting rights. Specifically, these assets must be:
  - the equity shares in those companies
  - loans to those companies, and
  - IP licensed to those companies.
- At least 50% of the headquarter company's gross income must be comprised of dividends, interest, royalties, rentals, service fees, or proceeds from the sale of equity shares or IP from its 10%-plus holdings, where the gross income exceeds ZAR 5 million.

Industrial policy projects

In 2008, a ZAR 20 billion incentive package for investors in energy efficient projects was announced. The incentive is available for industrial projects participating in the manufacturing sector (other than alcohol or alcohol-related products, tobacco or tobacco-related products, arms and ammunition, and biofuels, which have a negative impact on food security). Companies are divided into those with a qualifying status and those with a preferred status. The status is determined in terms of a point system.

The proposed project must either be a 'brownfield project' (expansion or upgrade of an existing industrial project) or a 'greenfield project' (a wholly new industrial project, which uses new and unused manufacturing assets). Approved projects may be granted a tax allowance known as an additional investment allowance equal to 55% (100% if located in an industrial development zone) of the cost of any manufacturing asset used in an industrial policy project with preferred status or 35% (75% if located in an industrial development zone) of the cost of any manufacturing asset used in any other approved industrial policy project.

The additional investment allowance may not exceed ZAR 900 million in the case of any greenfield project with a preferred status, ZAR 550 million in the case of any other greenfield project, ZAR 550 million in the case of any brownfield project with a preferred status, or ZAR 350 million in the case of any other brownfield project.

In addition to the above, a company may also claim a deduction known as an additional training allowance.

Special Economic Zones (SEZs)

An SEZ incentive has been introduced for companies carrying on business in an SEZ comprising of a reduced corporate tax rate of 15% as well as a 10% allowance in respect of the cost of new and unused buildings owned by a qualifying company or any new or unused improvements to any building owned by a qualifying company.

In addition, employment incentives have also been introduced for employers carrying on a trade in an SEZ that will allow for an employees' tax reduction for the employer in respect of qualifying employees, up to a prescribed monthly amount.

Energy efficiency savings

The energy efficiency savings incentive provides an income tax deduction to qualifying taxpayers. The deduction equates to ZAR 0.95 for each kilowatt hour (or equivalent) saved by the taxpayer during the relevant year of assessment against a baseline from the beginning of the year.

International shipping incentive

Income from international shipping of a resident company that holds a share in a South African flagged ship is exempt from income tax. Qualifying shipping companies can also use a currency other than the rand as their functional currency.

Venture capital companies

In order to assist small and medium-sized businesses to raise capital to finance businesses, a tax incentive for investors in small and medium-sized enterprises through venture capital companies was introduced.

A deduction is allowed from the income of a taxpayer in respect of expenditures actually incurred by that person in respect of shares issued to that person by a venture capital company.

Withholding taxes

Payments to residents

The only payments to residents that are subject to WHT are in respect of dividends, although resident companies are exempt from the dividend WHT.

Royalties payable to non-residents

Royalties and know-how payments made to non-residents for the use of or right to use IP rights in South Africa are deemed to be from an SA source. The payer of the royalty or know-how payment is obligated to deduct a WHT of 15% of this payment, which is a final tax payable by the recipient of such income.

Dividends payable to non-residents

A dividend WHT of 20% applies to any dividend paid by a resident company to a non-resident or by a non-resident company to a non-resident where the shares in respect of which the dividends are paid are listed on a South African exchange. The tax is imposed on the beneficial owner of the dividend and not on the company, with the exception of *in specie* dividends. The payer of the dividend or regulated intermediary is required to deduct the 20% WHT from the payment. The treaty rate is the maximum allowable rate to be charged by the treaty countries; where this rate is higher than the domestic tax rate, the latter will apply.

Interest payable to non-residents

A 15% WHT on interest applies to interest payable from an SA source to non-residents on certain debt instruments. The resident payer of the interest is required to deduct the 15% WHT from the payment.

Treaty rates for dividends, interest, and royalties

The WHT may be reduced by the terms of the relevant tax treaty, as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	20	15	15
Treaty:			
Algeria (1, 11)	10/15	10	10
Australia (1, 2, 12D)	5/15	10	10

Recipient	WHT (%)		
	Dividends	Interest	Royalties
Austria (11D)	5/15	0	0
Belarus (1, 2, 6, 11D, 27)	5/15	5/10	5/10
Belgium (1, 11)	5/15	10	0
Botswana (1, 2, 11)	10/15	10	10
Brazil (1, 2, 7, 11)	10/15	15	10/15
Bulgaria (1, 2, 6, 8, 11D)	5/15	5	5/7/10
Cameroon (11)	10/15	10	10
Canada (1, 4, 12D, 33)	5/15	10	6/10
Chile (11)	5/15	5/15	5/10
China, People's Republic of (1, 5, 35, 38, 39, 40)	5	10	7/10
Croatia (11, 26)	5/10	0	5
Cyprus (1, 12, 26)	5/10	0	0
Czech Republic (1, 11D, 26)	5/15	0	10
Democratic Republic of Congo (1, 11, 35)	5/15	10	10
Denmark (1, 11, 26)	5/15	0	0
Egypt (1)	15	12	15
Ethiopia (1, 2)	10	8	20
Finland (1, 12, 26)	5/15	0	0
France (1, 2, 12D, 28)	5/15	0	0
Germany (2, 13D)	7.5/15	10	0
Ghana (1, 2, 12, 32)	5/10	5/10	10
Greece (1, 2, 9, 11D)	5/15	8	5/7
Grenada (29, 36, 37)	15	15	15
Hong Kong (12, 42)	5/10	0/10	5
Hungary (1, 11D, 26)	5/15	0	0
India (1)	10	10	10
Indonesia (1, 12)	10/15	10	10
Iran (1)	10	5	10
Ireland (1, 12D, 26)	5/10	0	0
Israel (2, 3)	25	25	0/15
Italy (1, 14)	5/15	10	6
Japan (1, 15)	5/15	10	10
Kenya	10	10	10
Korea, Republic of (1, 11D)	5/15	10	10
Kuwait (1, 2, 10, 26)	0	0	10
Lesotho (1)	15	10	10
Luxembourg (1, 11D, 26)	5/15	0	0
Malawi (2, 22, 29)	15	10	0
Malaysia (1, 2, 11)	5/10	10	5
Malta (1, 12, 16, 35)	5/10	10	10
Mauritius (1, 12, 41)	5/10	0/10	5
Mexico (1, 2, 12)	5/10	10	10
Mozambique (1, 2, 11)	8/15	8	5
Namibia (1, 11)	5/15	10	10
The Netherlands (1, 2, 12, 25, 26)	5/10	0	0
New Zealand (1, 11, 34)	5/15	10	10
Nigeria (1, 2, 12)	7.5/10	7.5	7.5

Recipient	WHT (%) Dividends	Interest	Royalties
Norway (1, 2, 11D, 26)	5/15	0	0
Oman (1, 10, 12, 26)	5/10	0	8
Pakistan (1, 12)	10/15	10	10
Poland (1, 11D)	5/15	10	10
Portugal (1, 2, 17D)	10/15	10	10
Qatar (12, 38, 41)	5/10	10	5
Romania (1)	15	15	15
Russia (2, 18)	10/15	10	0
Rwanda (1, 11)	10/20	10	10
Saudi Arabia (1, 2, 12D)	5/10	5	10
Seychelles (1, 2, 12, 26)	5/10	0	0
Sierra Leone (29, 36, 37)	15	15	15
Singapore (1, 12, 26)	5/10	7.5	5
Slovak Republic (1, 11D, 26)	5/15	0	10
Spain (1, 2, 11D)	5/15	5	5
Swaziland (1, 11)	10/15	10	10
Sweden (1, 2, 19, 28)	5/15	0	0
Switzerland (1, 2, 20D)	5/15	5	0
Taiwan (1, 12D)	5/15	10	10
Tanzania (1, 21)	10/20	10	10
Thailand (1, 11, 30)	10/15	10/15	15
Tunisia (1, 31)	10	5/12	10
Turkey (1, 11D)	10/15	10	10
Uganda (1, 11)	10/15	10	10
Ukraine (1, 20)	5/15	10	10
United Arab Emirates (1, 12)	5/10	10	10
United Kingdom (2, 22, 26)	5/10/15	0	0
United States (1, 2, 23)	5/15	0	0
Zambia (2, 24, 26)	15	0	0
Zimbabwe (2, 24, 29)	15	15	0

Notes

'D' refers to direct capital holding.

1. Recipient is the beneficial owner of the royalty.
2. Royalty is subject to tax in recipient country.
3. 15% is levied on royalties for cinematographic or television films.
4. The maximum rate for copyright royalties, royalties for use of computer software, and patents concerning industrial, commercial, and scientific experience is 6% of the royalties paid; otherwise, 10%.
5. Maximum rate of 10% on royalty of the adjusted amount (being 70% of the gross royalties) for use of industrial, commercial, or scientific equipment.
6. The 5% rate applies to royalties for the use of a copyright. A 7% rate applies to royalties for the use of patents, trademarks, designs, models, etc.
7. In respect of right to use industrial, commercial, or scientific equipment and transport vehicles, a 10% rate applies.
8. The lower rate of 5% applies to any cultural, dramatic, musical, or other artistic work (but not including royalties in respect of motion picture films) as well as industrial, commercial, or scientific works. The rate of 10% applies in all other cases.
9. The 5% lower rate applies to use of literary, artistic, and scientific works. The 7% lower rate applies to right of use of patents, trademarks, designs, and models.
10. No right to tax dividends in payor state if the beneficial owner of the dividend is resident in the payee state.

11. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 25% of capital, and the higher rate applies in other cases.
12. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 10% of capital, and the higher rate applies in other cases.
13. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 25% of voting shares, and the higher rate applies in other cases.
14. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 25% of capital and a minimum 12-month holding period prior to the end of the accounting period prior to the dividend payment, and the higher rate applies in other cases.
15. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 25% of voting shares and a minimum six-month holding period prior to the end of the accounting period prior to the dividend payment, and the higher rate applies in other cases.
16. SA resident payor to Maltese resident beneficial owner (Maltese resident payor to SA resident beneficial owner is limited to tax on profits).
17. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 25% of capital and a minimum two-year uninterrupted holding period prior to the dividend payment, and the higher rate applies in other cases.
18. Lower rate applies to a beneficial owner who has a minimum holding of 30% of capital and a minimum direct investment of 100,000 United States dollars (USD) in the company declaring the dividend, and the higher rate applies in other cases.
19. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 10% of capital, and the higher rate applies in other cases. However, a 'most favoured nations' clause applies, which will limit the above rates to the lowest treaty rate in terms of any other treaty.
20. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 20% of capital, and the higher rate applies in other cases.
21. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 15% of capital, and the higher rate applies in other cases.
22. Lower rate of 5% applies to a beneficial owner that is a company and has a minimum holding of 10% of capital. Lower rate of 10% applies in all other cases. 15% rate applies to all dividends from property investment companies.
23. Lower rate applies to a beneficial owner that is a company and has a minimum holding of 10% of voting power (directly), and the higher rate applies in other cases.
24. The treaty contains no provisions regarding dividends WHT, thus the domestic rate will apply.
25. The Netherlands Protocol has a 'most favoured nation' provision whereby the rate most favourable in any other treaty will apply over the default treaty rate. This, however, only applies to treaties concluded after this treaty.
26. No right to tax interest in payor state if the beneficial owner of the interest is resident in the payee state.
27. The 5% rate applies to interest derived by a bank or any other financial institution, and the 10% rate applies in other cases.
28. No right to tax interest in payor state if the beneficial owner of the interest is resident in the payee state and provided interest is taxable in that other state.
29. No specific provision is made for interest in the DTA.
30. The 10% rate applies to interest received by a financial institution (including an insurance company), and the 15% rate applies in other cases.
31. The 5% rate applies to interest on loans made by banks, and the 12% rate applies in other cases.
32. The 5% rate applies if the interest is paid to a bank; the 10% rate applies in other cases.
33. In Canada, a beneficial owner that is a company controls a minimum of 10% of the voting power (directly/indirectly), but excludes non-resident owned investment corporation resident in Canada.
34. In New Zealand, dividends are taxed at a flat rate of 15%.
35. No right to tax interest in payor state if the beneficial owner is the government of the other state or a government entity.
36. No specific provision is made for royalties in the DTA.
37. No right to tax interest on stocks and securities issued by any government other than South Africa, even if business is carried on in South Africa, if taxed in residence state.
38. Lower rates for royalties do not apply if attributable to a PE in the payor state or the right or property on which royalty is paid is attributable to PE in payor state.
39. The 10% rate applies if the beneficial owner is resident in the payee state.
40. Lower rate of 5% applies to the dividend if beneficial owner is resident in payee state.
41. The interest exemption in the source country is only retained for interest paid or received by a government or central bank, or for interest on debt instruments listed on a recognised stock exchange.
42. The interest exemption applies if the beneficial owner of the interest is the Hong Kong Special Administrative Region (HKSAR) Government, the Hong Kong Monetary Authority, the SA Government, the SA Reserve Bank, or institutions wholly or mainly owned by them.

Non-resident entertainers and sportspersons

A WHT at the rate of 15% applies to all payments made to non-resident entertainers and sports persons in respect of their activities exercised in South Africa.

Disposal of immovable property by non-residents

Any person who pays an amount to a non-resident in respect of the sale of immovable property in South Africa must withhold from the amount payable an amount equal to:

- 7.5% if the non-resident seller is an individual
- 10% if the non-resident seller is a company, or
- 15% if the non-resident seller is a trust.

No WHT is levied if the amount is less than ZAR 2 million.

The amount so withheld is not a final tax for the non-resident seller. Instead, this amount is regarded as an advance payment of the non-resident seller's normal tax liability for the year of assessment during which the property is disposed of. The non-resident seller is still required to submit an income tax return for that year.

Tax administration

Taxable period

The corporate tax year is the same as the company's financial year. It may be changed upon application showing reasonable cause.

Tax returns

Annual income tax returns must be submitted within one year from the end of the company's tax year. The annual tax return includes a supplementary reconciling return where requested. Furthermore, schedules apply for CFCs, short-term insurers, mining companies, headquarter companies, and learnership allowances.

'Signed off' financial statements are required to be submitted with the annual tax return.

Payment of tax

Payments are made with provisional returns filed at six-month intervals from the tax year-end based on an estimate of taxable income for the year. Interest is charged on any underpayment outstanding for more than six months after the tax year-end, except in the case of February year-ends, in which case it is seven months. Any balance (together with interest) is then paid following assessment.

Tax audit process

There is no prescribed audit process, and an audit can be initiated by any factor as determined by the SARS. The audit or inspection will commence with a request from the SARS for the taxpayer to make available any such records or information as may be required.

Statute of limitations

Tax debts to the state prescribe after a period of 15 years. Tax returns submitted that have been assessed may not be reopened after a period of three years from date of assessment by the SARS or five years if it is a self-assessment by the taxpayer, unless there has been fraud, misrepresentation, or non-disclosure by the taxpayer.

The prescription period may be extended by three years in the case of an assessment by the SARS or by two years in the case of self-assessment in respect of certain complex matters, such as transfer pricing and general anti-avoidance cases.

Topics of focus for tax authorities

The SARS, in their 2015/16 to 2019/20 Strategic Plan, stated that they will focus on the following areas:

- Large business and transfer pricing.
- The construction industry.
- Illicit cigarettes.
- Undervaluation of imports in the clothing and textile industry.
- Small business and cost of compliance.
- Collaboration with other jurisdictions on tax base erosion.

Other issues

Intergovernmental agreements (IGAs)

South Africa entered into an agreement with the United States to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA). The date of entry into force is 28 October 2014.

South Africa is also a party to the Multilateral Convention on Mutual Administrative Assistance on Tax Matters as well as a number of bilateral tax information exchange agreements. As a signatory to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, also referred to as the Common Reporting Standard (CRS), South Africa enacted domestic enabling legislation. The first exchange date was September 2017. South Africa also has bilateral CRS agreements with Hong Kong and Singapore.

Base Erosion and Profit shifting (BEPS)

South Africa is a member of the OECD's Inclusive Framework on BEPS and has been amongst the first adopters of BEPS Actions in general. Notably, South Africa:

- was amongst the first batch of signatories to the so-called Multilateral Instrument (MLI) in June 2017, and
- enacted (in 2016 and 2017) domestic regulations to enact transfer pricing documentation requirements aligned with Chapter V of the OECD's 2017 Transfer Pricing Guidelines (also referred to as BEPS Action 13), including the exchange of Country-by-Country Reports.

Spain

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Significant developments

Over the past year, the following significant amendments have been made to Spanish law on the taxation of companies:

- On 28 June 2017, Law 3/2017, the General State Budget for 2017, was published in the Official State Gazette. The main measures contained in this law that affect companies taxes are:
  - For tax years commencing on or after 1 January 2017, the percentages and limits applicable to tax credits for investments in cinematographic productions, audio-visual series, and live performances of performing and musical arts have been increased.
  - A reduction of the value-added tax (VAT) applicable to live cultural events (e.g. theatres, circuses, bullfights, concerts). The rate applicable to services provided on or after 29 June 2017 is 10% instead of 21%.

Taxes on corporate income

The general corporate income tax (CIT) rate in Spain is 25%. Other tax rates may apply, depending on the type of company that is taxed and the type of business carried out.

Resident companies are taxed on their worldwide income.

For permanent establishments (PEs) in Spain of foreign companies, non-resident income tax (NRIT) is chargeable on income that may be allocated to the PE at a 25% tax rate.

NRIT is also chargeable on non-established foreign companies/individuals that obtain income in Spain (*see the Withholding taxes section*).

Newly created companies

Newly created companies are taxed at a 15% tax rate for both the first tax period in which they obtain a profit and the following tax period. This tax rate is not applicable to companies that, by law, are considered equity companies or to newly created companies that are part of a national or international group.

The reduced rate may also be inapplicable if such business activity was previously carried out by a related entity or individual.

Business and professional activities tax

The business and professional activities tax is a local direct tax levied annually on the performance in Spain of business, professional, or artistic activities, regardless of whether or not they are carried out in a particular premises. The tax payable depends on different factors, such as the type of activity carried out and the location and size of the premises where the activity is carried out. As regards limits, it may not exceed 15% of the presumed average profits of the professional/economic activity.

CIT payers and non-resident companies carrying on an activity in Spain through a PE are exempt from this tax if their net turnover for the tax year of the last CIT/NRIT return filed prior to the date of accrual of the local tax (1 January) was less than 1 million euros (EUR).

Corporate residence

A company is resident in Spain and subject to CIT on its worldwide income when:

- it has been incorporated in accordance with Spanish law
- its registered office is in Spain, and/or
- its 'effective' head office is in Spain.

Under Spanish law, a company's 'effective' head office is in Spain when its business activities are managed and controlled from Spain.

Companies established in a country or territory where no tax is levied or that is a tax haven are deemed to be tax resident in Spain in the following cases:

- When the company's main assets consist, directly or indirectly, of property located or rights fulfilled or exercised in Spain.
- When the company's core business activity is carried on in Spain.

This presumption may be refuted by the company if it can prove that it is effectively administered and managed in the country or territory in which it is established and that it was incorporated and operates for valid economic and business reasons and not merely for the purpose of managing securities or other assets.

Permanent establishment (PE)

Taxpayers operating in Spain through a PE are subject to NRIT.

Most Spanish tax treaties for the avoidance of double taxation contain a definition of PE in line with Organisation for Economic Co-operation and Development (OECD) criteria.

In the absence of a tax treaty, internal law states that an individual or company is considered to operate through a PE when, by any legal means, one has continuous or habitual work facilities in Spain or a place to do any kind of work where one performs all or part of one's activity, or when one acts in Spain through an agent with powers to enter into an agreement in the name and on behalf of the non-resident individual or company, provided said powers are exercised on a regular basis.

In particular, management offices, branches, offices, factories, workshops, warehouses, shops or other establishments; mines, oil or gas wells, quarries, farms, forestry facilities, livestock farms, or any other site where natural resources are collected; and construction, installation, or assembly sites whose duration lasts more than six months will be considered PEs.

It should be noted that the Spanish High Court has issued several judgements and is adopting a functional approach to the subject of the existence of a PE. In this regard, it has afforded a flexible interpretation of what has to be considered a PE, and specifically, of the concepts of dependent agent and fixed place of business.

Other taxes

Value-added tax (VAT)

Spanish VAT is payable on supplies of goods and services carried out in Spanish VAT territory and on imports/intra-European Union (EU) acquisitions of goods and services. There are three rates for the different types of goods and services, which are as follows:

- Ordinary rate of 21%, applied on regular supplies of goods and services.
- Reduced rate of 10%, applied on basic necessities (e.g. food and agricultural products not included in the 'super reduced' 4% rate, dwellings, other qualifying services). Since 29 June 2017, live cultural events (e.g. theatres, circuses bullfights, concerts) are taxed at the reduced rate of 10% too.
- Super reduced rate of 4%, applied on basic necessities other than those classified under the reduced rate (e.g. bread, milk, books, medicine).

In the Canary Islands, a specific tax is applied instead of VAT, called the Canary Island General Indirect Tax (IGIC). The ordinary IGIC rate is 7%, and the other IGIC rates are 0%, 3%, 9.5%, and 13.5% (20% for tobacco). IGIC is similar to VAT, but it has some significant differences, such as the exemption established for telecommunications services. Imports of tangible goods into the Canary Islands are subject to this tax.

In Ceuta and Melilla, sales tax is applied instead of VAT.

Customs duties

Many goods imported into Spain from outside the European Union are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff and vary widely.

Excise duties

Excise duties are chargeable on most hydrocarbon oil products, alcoholic drinks, and tobacco products imported into or produced in Spain. Purely as examples, most road fuels carry a duty of about EUR 0.33 per litre, cigarettes carry a duty of about EUR 24.7 per thousand plus 51% of the maximum retail sale price (with a minimum tax of EUR 131.5 per 1,000 cigarettes, to be increased up to EUR 141 if the retail price is less than EUR 196 per 1,000 cigarettes), tobacco of about EUR 23.5 per kg plus 41.5% of the maximum retail sale price (with a minimum tax of EUR 98.75 per kg, to be increased up to EUR 102.75 if the retail price is less than EUR 165 per kg), most wines of EUR 0 per litre, and spirits of about EUR 9.59 per litre of pure alcohol included.

Tax on tax-haven-resident companies owning real estate in Spain

Companies resident in a tax haven for tax purposes that own real estate or hold real property rights in Spain are subject to a special levy accrued on 31 December and declared and paid in January of the following year in the place and manner established by law. The tax is equal to 3% of the assessed value of the real estate.

Transfer tax

A transfer tax, which is usually 5% to 11%, depending upon the region, is generally levied on *inter vivos* transfers, including real estate transfers and real estate leases that are exempt from VAT.

Second and subsequent transfers of buildings are exempt from VAT; consequently, they are, in principle, subject to transfer tax.

Residential leases are exempt from VAT and therefore subject to transfer tax.

Transfers of quoted or unquoted (listed or unlisted) securities are, in principle, exempt from both transfer tax and VAT. This exemption will not apply for transfers of unlisted securities of a company in the secondary market that tries to evade the tax that is payable on a direct transfer of real estate that it owns. For this purpose, Spanish law establishes certain cases where it is understood that there is an intention to evade tax.

This exception will not apply to transfers of securities received as a result of the incorporation by banks of asset management companies and to transfers of securities of banks affected by the integration plans regulated by Law 9/2012, which will therefore be exempt from transfer tax. In addition, acquisitions of assets in the Canary Islands may be exempt from transfer tax (and from IGIC) when certain requirements are complied with.

Restructuring transactions are also exempt from transfer tax. For these purposes, mergers, spin-offs, exchanges of shares, and certain in-kind contributions are considered to be restructuring transactions.

Stamp duty

Stamp duty is mostly levied on notarial instruments and records documenting transactions that have an economic value and need to be registered in public registries (e.g. company, land, and industrial property registries). Stamp duty is incompatible with transfer tax and capital duty, but compatible with VAT. The general rate is between 0.75% and 1.5%, depending on the region of Spain and the taxable event.

Stamp duty is also levied on certain commercial (e.g. bills of exchange, promissory notes), court, and administrative documents.

Capital duty

1% capital duty is levied on capital reductions and company dissolution, and is payable by the shareholders.

Capital duty is incompatible with transfer tax and stamp duty in certain cases, but it is compatible with VAT.

Payroll taxes

Employers are required to withhold a percentage of their employees' salaries and benefits as a payment on account of their personal income tax (PIT). The rate of withholding is a progressive rate of between 19% and 45%, depending on the employee's personal circumstances and income.

Social security contributions

Employers are required to pay social security contributions. The rate of the contributions under the general social security contribution regime is the fixed rate of 29.9% plus a variable rate for occupational accidents (e.g. 1% for office work).

Employees are also required to pay social security contributions. Under the general social security contribution regime, the rate of social security contributions is 6.35%. Employers should deduct this amount from the amounts that they pay to employees.

The rates of social security contributions stated above should be applied on the employee's total monthly gross employment income, whether in cash or in kind, with a minimum monthly contribution base of between EUR 858.60 and EUR 1,199.10, depending on the employee's professional category, and a maximum monthly contribution base of EUR 3,751.20.

Both parts of the social security contributions (employer and employee) should be paid by the employer to the Social Security Treasury.

Other local taxes

In addition to the taxes stated above, the following other local taxes may be charged on companies:

- Real estate tax, levied annually by local authorities on the ownership of real estate.
- Local tax levied on the increase in the value of urban land, chargeable when urban real estate is sold.
- Motor vehicle tax, charged on the ownership of vehicles.
- Tax on constructions, installations, and building works, charged on the cost of certain works that require town planning licences.
- Waste collection fees.

Branch income

Income obtained by a branch in Spain of a non-resident company is taxed at the standard CIT rate of 25%.

When calculating the tax base for taxpayers resident in other EU member states that do not have a PE, a distinction is made between individuals and companies, and tax-deductible expenses are established in accordance with PIT and CIT legislation, respectively.

Payments made by a branch to its head office or a PE of its head office for royalties, interest, commissions, or technical assistance fees are not tax deductible. Management and general administrative expenses incurred by the foreign head office that can be allocated to the branch are tax deductible if the payments for these expenses are made following a criteria of continuity and rationality and provided that certain documentary requirements and other formalities are fulfilled.

Under Spanish law, income obtained by a branch that is repatriated to its head office is taxed at source at the general withholding tax (WHT) rate of 19%. This tax is not chargeable in the case of a PE of a company resident in the European Union (unless the company is resident in a tax haven). Most tax treaties signed by Spain do not establish any provisions on this matter, and, in such cases, no tax is chargeable on income repatriated by branches. Some tax treaties, such as the treaties with Canada, Indonesia, and the United States (US), expressly establish a tax on income repatriated by branches. For example, US head offices are taxed at a 10% rate on the repatriated profits of a Spanish branch under the US/Spanish tax treaty.

Income determination

The general rule for determining income for CIT purposes is that accounting rules must be followed unless tax law establishes otherwise. In order to maintain this consistency, CIT/PE NRIT returns include pages in which the company's accounting/commercial balance sheet and profit and loss account figures must be entered.

In Spain, the tax authorities are authorised to modify accounting results exclusively for the purpose of determining tax results if they observe that a company's accounting results have not been calculated in accordance with Spanish Generally Accepted Accounting Principles (GAAP).

Inventory valuation

Inventory is valued at acquisition price or production cost under the average and first in first out (FIFO) valuation methods (the replacement and base stock valuation methods may only be used in exceptional cases). Again, since there are no specific tax rules for determining taxable income, accounting rules are also applicable for calculating valuation and obsolescence provisions for inventory.

Capital gains and losses

Capital gains are taxable in the tax year in which they arise. They are treated as normal income and taxed at the standard CIT rate of 25%.

For operations where payment is deferred or paid in instalments, the income is obtained proportionally as the corresponding payments are made, unless the taxpayer opts to be taxed in accordance with the accrual criteria.

As a general rule (there are certain exceptions), capital gains arising on the transfer of companies resident in Spain in which at least a 5% interest (or an interest with an acquisition value of over EUR 20 million) has been held for at least one year are exempt from tax. The period during which the interest is held by another group company is also taken into account for this rule.

Capital losses arising from the transfer of shares will only be tax deductible if they relate to shareholdings of less than 5% (with a cost of less than EUR 20 million) and, in the case of holdings in the capital or equity of non-resident entities, the investee entity has been subject to and is not exempt from a foreign tax identical or analogous in nature to CIT at a nominal rate of, at least, 10% or is resident in a country with which Spain has concluded a double tax treaty (DTT), and it contains an exchange of information clause.

Negative income generated in the event of the extinguishment of the investee entity will, in any event, qualify for deduction for tax purposes unless such extinguishment results from a restructuring operation.

In such cases, the negative income will be reduced by the amount of the dividends received in the ten years prior to the date of extinguishment, unless such dividends have reduced the acquisition value, and provided that they qualified for the application of an exemption or deduction regime for the elimination of double taxation for the same amount.

Tax losses generated on transfers of assets to another company in the same corporate group are not tax deductible when the transfer takes place. Their tax deductibility is deferred to the moment when the assets are written off the acquirer's balance sheet transferred out of the group or when the transferor or acquirer cease to form part of the group. In the case of depreciable/amortisable assets, however, the undeducted amount should be included in line with its depreciation/amortisation by the acquirer.

Dividend income

Dividends received from companies resident in Spain in which at least a 5% interest has been held for at least one year, including ownership by other group companies, (or with an acquisition value of over EUR 20 million) are exempt from tax. Dividends received from companies resident in Spain in which an interest of less than 5% is held (and with an acquisition value of less than EUR 20 million) are taxable in their entirety for the recipient.

Special rules apply to, amongst others, the following:

- Dividends received from companies that obtain dividends or capital gains generated from transfers of interests in other companies, provided that such dividends and capital gains exceed 70% of the company's gross income.
- Capital gains arising from transfers of interests in companies that receive dividends or capital gains generated from transfers of interests when such dividends and capital gains exceed 70% of the company's gross income.

Please see Foreign income below for a description of the taxation of dividends received from foreign companies.

Stock dividends

CIT is not levied on bonus shares (i.e. shares partially or totally given to shareholders in a capital increase charged against distributable reserves), although they must be taken into account when calculating the average cost of shares held for the levying of tax when the shares are sold.

Interest income

Interest income is treated as normal income and taxed at the standard CIT rate of 25%.

Royalty income

Royalty income is included in the taxable base jointly with the other kinds of income.

However, a 60% reduction may be applied on the net income obtained from licensing certain intangible assets if certain requirements are met (the effective tax on this net income would generally be 10%).

Effective as of 1 July 2016, the rules to calculate the patent box tax incentive have been modified to bring this tax incentive in line with the EU and OECD Agreement. With this reform, income generated from assigning the use of certain intangible assets may be eligible for a reduction in the taxable base of the percentage resulting from multiplying by 60% a coefficient that may not be greater than one (i.e. the maximum reduction will be 60%).

Other significant items

The following items, amongst others, are excluded or deferred from taxable income:

- Distributed dividends corresponding to profits obtained by companies in tax periods in which the flow-through tax regime (internal and international) has been applied.
- Assets written up in accordance with revaluation laws and tax-protected restructuring transactions involving accounting capital gains.

Foreign income

Tax relief on foreign income

Resident companies are taxed on their worldwide income. For foreign-source income, total or partial tax relief in the form of tax credits or exemptions is given if tax is levied on the income in both Spain and the foreign country where the income has been generated.

This tax relief may be available for the following:

- Economic double taxation, which is when the same income is taxed in the hands of two different taxpayers. For example, another government taxes a foreign company on the income earned in that country and a Spanish resident shareholder is taxed on the dividends that it receives from the foreign company or the capital gains from transfers of its shares.
- Juridical double taxation, which is when the same income is taxed in two countries in the hands of the same taxpayer. For example, the income is taxed (via a WHT) in the country where the income is generated and again in the other country where the recipient is resident.

The main characteristics of double tax relief are discussed below.

Dividends or profit-sharing income received by a Spanish company from a foreign company are tax exempt, subject to compliance with the following requirements:

- The Spanish company has at least a 5% interest in the foreign company (or an interest with an acquisition value over EUR 20 million) that has been held for at least one year. This one-year holding period is deemed to be complied with if it is completed after the dividend is distributed. The period in which the interest is held by another group company is also taken into consideration for this rule.
- The investee has been taxed by a tax that is identical or similar to Spanish CIT at, at least, a 10% nominal tax rate in the tax year in which the distributed profits were obtained. This requirement is complied with when the investee is resident

in a country with which Spain has signed a tax treaty containing an exchange-of-information provision.
- The tax exemption would not apply with respect to the amount of dividends or profit sharing whose distribution generates a tax deductible expense in the paying entity.

Capital gains arising from the sale of shares in foreign companies also qualify for a tax exemption if the requirements stated above are complied with during the holding period.

Both the dividends and capital gains exemptions are not applicable when the investee company is resident in a tax haven, unless it is an EU member state and the company can prove that it has been incorporated and operates for valid business reasons and that it carries on business activities.

Tax exemption is limited in certain cases.

Special rules apply to, amongst others, the following:

- Dividends received from companies that obtain dividends or capital gains generated from transfers of interests in other companies, provided that such dividends and capital gains exceed 70% of the company's gross income.
- Capital gains arising from transfers of interests in companies that receive dividends or capital gains generated from transfers of interests when such dividends and capital gains exceed 70% of the company's gross income.

As an alternative to this 'tax exemption' regime and applicable to dividend distributions only, a tax credit based on imputation is established. This tax credit allows the crediting of the foreign tax paid abroad on the income from which the dividends are paid and the foreign WHT paid on the profit distribution, up to the limit of the tax that would have been paid on the gross amount in Spain. The only requirement for the application of this 'tax imputation' regime is that the Spanish company has at least a 5% interest in the foreign company during the 12 months prior to the date on which the dividend is due and payable. This one-year holding period is deemed to be complied with if it is completed after the dividend is distributed. The tax credit can be carried forward for an unlimited number of years.

Spanish legislation provides for CIT relief on 'juridical' double taxation by applying the 'tax imputation' regime. Under this regime, gross foreign income (including foreign WHT paid) is included for Spanish tax calculation purposes, and a tax credit for the foreign WHT paid is applicable up to the amount of the CIT that the company would have paid if such gross income had been obtained in Spain. The part of the tax paid abroad with respect to which the taxpayer is not entitled to this tax credit may be considered tax deductible, provided that it corresponds to the foreign company's business activities carried out abroad. The tax credit can be carried forward for an unlimited number of years.

Under Spanish tax treaties and implemented EU tax directives, several methods have been established to avoid double taxation. The main one is the traditional deduction of a tax credit from tax effectively paid. However, some treaties establish a tax exemption or the exclusive right to tax. Also, a tax-sparing clause is included in some treaties, which allows for the deduction of not only the tax actually paid but a higher amount of tax.

Deductions

Depreciation, amortisation, and depletion

All assets, except land, are depreciable/amortisable for tax purposes. Guideline tables of tax depreciation/amortisation rates are established that state maximum *per annum* rates and maximum years of useful life for each asset type, classified by business sector.

Please see the table below as an example of the maximum *per annum* rates and maximum years of useful life established in the tables for some assets that are typically depreciated/amortised:

Asset	Maximum per annum depreciation/amortisation rate (%)	Maximum useful life (years)
Industrial buildings	3	68
Warehouses	7	30
Administrative and commercial buildings	2	100
Internal transport elements	10	20
External transport elements	16	14
Furniture	10	20
Computers	25	8
Software	33	6
Tools	25	8

The straight-line depreciation/amortisation method is normally used, calculated over the asset's useful life and applied on the asset's cost or written-up value (if such a write-up is acceptable for tax purposes). Off-book adjustments must be included in tax assessments if accounting depreciation/amortisation exceeds tax depreciation/amortisation.

Qualifying assets with a useful life of more than one year can also be depreciated/amortised using declining-balance methods. Buildings, furniture, and fittings cannot be depreciated using the declining-balance methods.

For tax periods starting in 2013 and 2014, the tax deduction of recorded depreciation of tangible fixed assets and investment property was limited to 70% of the maximum depreciation permitted by the regulations implemented under Spanish CIT law. This limitation did not apply to small or medium-sized companies. Recorded depreciation that was not deducted as a result of this limitation could be carried forward and is deductible either on a straight-line basis over ten years or, alternatively, over the asset's useful life, from the first tax period starting in 2015. For tax periods starting in or after 2015, a tax credit may be applied on gross tax payable. The tax credit is 5% of the amounts included in the tax base resulting from depreciation charges not deducted in tax periods starting in 2013 and 2014. This tax credit compensates the reduction of CIT rates and ensures that the 70% tax depreciation limit only has a financial effect.

Mining assets and assets used for research and development (R&D), amongst others, but not including buildings, can be freely depreciated/amortised for tax purposes.

Free depreciation

Unrestricted depreciation of investments in new tangible fixed assets and investment property was regulated for investments made by taxpayers in tax periods starting in

2011, 2012, 2013, 2014, and 2015. This tax relief was also available for tax periods starting in 2009 and 2010, but it could only be availed of if the requirement that the taxpayer's staff levels were maintained or increased was met.

Due to the tax reform carried out by Royal Decree Law (RDL) 12/2012, this tax incentive was repealed effective 31 March 2012.

A transitional regime is provided for investments made prior to that date. Under this transitional regime, unrestricted depreciation tax relief may be applied to these investments, although with certain limits.

Amortisation of intangibles

For tax years starting in or after 2016, goodwill is amortised under Spanish GAAP during its useful life, which is estimated to be ten years unless otherwise proven. However, it can be amortised for tax purposes at a maximum annual rate of 5%, irrespective of whether or not the assets in question were acquired from a company of the same corporate group. Goodwill acquired from another group company in tax periods starting prior to 1 January 2015 does not qualify for a deduction.

Intangible assets may be amortised during their useful life. When the useful life may not be reliably estimated, the assets will be amortised over ten years, unless otherwise established by law or the regulations implemented under law. This amortisation is tax deductible irrespective of whether or not the assets in question have been acquired from a group company. When the useful life of intangible assets cannot be reliably estimated, the amortisation is tax deductible up to the limit of 5%.

The amortisation of intangible assets acquired from another group company in tax periods starting prior to 1 January 2015 is not tax deductible.

For tax periods starting in or after 2015, taxpayers to whom the 70% limit for tax deductible amortisation applied in 2013 and 2014 are entitled to a deduction against their gross tax payable of the amounts included in their tax base resulting from amortisation not deducted in tax periods starting in 2013 and 2014. The deduction is 5% for tax periods starting in or after 2016. This deduction compensates the reduction of CIT rates and, consequently, ensures that the 70% tax deductible amortisation limit only has a financial effect.

Depletion

Depletion is allowed for mining companies and companies involved in exploring/investigating natural oil resources as established in applicable legislation.

Financial goodwill

To promote the internationalisation of Spanish companies, in 2002 a rule was introduced that financial goodwill arising from the acquisition of an interest in a non-resident company (financial goodwill being, in this case, the excess price paid for the acquisition of the business over its net book value at the date of the acquisition that cannot be allocated to the non-resident company's assets in Spain) could be amortised up to a maximum of 5% per year.

To apply this tax relief, the following requirements had to be met:

- A minimum 5% interest had to be held in the non-resident company.

- The non-resident company had to be subject to a similar tax to Spanish CIT.
- The income obtained by the non-resident company had to be generated from business activities carried out abroad in accordance with Spanish CIT law.

Decisions of the European Commission dated 28 October 2009 (regarding interest in non-resident EU companies) and 12 January 2011 (regarding interest in non-resident non-EU companies) considered that this tax relief was unlawful state aid.

According to the Commission's decisions, only acquisitions of interests in non-resident companies carried out before 21 December 2007 (or before 21 May 2011 for majority interests in non-resident companies established in countries with explicit obstacles to cross-border business combination transactions outside the European Union) can continue applying this tax relief until the financial goodwill is wholly amortised.

The provisions related to financial goodwill tax relief laid down in the CIT Act were amended by Law 31/2011, passed on 4 October 2011, and take effect for tax periods ending on or after 21 December 2007. Under the amended regulation, the financial goodwill tax relief is not applicable for acquisitions of interests in non-resident companies carried out on or after 21 December 2007 (or on or after 21 May 2011, when there is evidence which proves that there is an explicit obstacle for cross-border business combination transactions outside the European Union).

In its decision of 17 July 2013, the Commission has asked the Spanish tax authorities to suspend their rule that allowed for the tax deduction of financial goodwill arising from second or bottom-tier non-resident companies.

On 7 November 2014, two resolutions from the EU General Court annulled the aforementioned decisions of the European Commission on the grounds that the Spanish financial goodwill tax relief did not constitute state aid that was incompatible with the internal market, amongst other reasons, because it could not identify a category of undertakings that benefited from the measure or selectivity.

However, in a decision delivered on 21 December 2016, the Court of Justice of the European Union concludes that the fact that the European Commission failed to identify a particular category of undertakings that benefitted from the financial goodwill amortisation was not an appropriate ground for annulment of the European Commission decisions. The EU General Court should have instead examined whether the European Commission had effectively analysed and established that the measure at issue was discriminatory.

The Court of Justice of the European Union has not given a final judgment in the cases that have now been sent back to the EU General Court for a second hearing.

Start-up expenses

According to Spanish GAAP, start-up expenses are considered to be expenses in the financial year in which they are incurred. As no special rule is provided for tax purposes, they are deductible for CIT purposes in the year in which they are incurred.

Financial expenses

General limits on the deduction of financial expenses

The amount of net deductible financial expenses in the tax period is generally reduced to 30% of operating profit (similar to earnings before interest, taxes, depreciations, and amortisation [EBITDA], applying certain adjustments) for the year, financial expenses of less than EUR 1 million (or the proportional part for tax periods of less than one year) being deductible regardless of the 30% limit. For such purposes, net financial expenses will be considered to be the excess of financial expenses (excluding the non-deductible expenses mentioned below) with respect to income deriving from the assignment of capital to third parties accrued in the tax period.

For companies taxed under the tax consolidation regime, the deduction limit will refer to the tax group. Nonetheless, the company's net financial expenses available for deduction at the time of its inclusion in the group will be deducted, up to the limit of 30% of its operating profit. When a company stops forming part of the group or the group is extinguished and there are net financial expenses available for deduction, the rule will be similar to that for assigning tax losses to the companies that formed part of the group.

Limits on the deduction of financial expenses will not be applicable for dissolved companies for the tax period in which they are dissolved, unless the company is dissolved as a result of a restructuring operation.

Finally, limits on the deduction of financial expenses will not apply to (i) insurance companies or to (ii) credit institutions. Financial expenses that have not been deducted due to the application of this limit can be deducted in subsequent tax periods for an unlimited period of time.

Specific limit on the deduction of financial expenses on the acquisition of interests in the capital or equity of any type of company

A specific limit is introduced for financial expenses generated from debts incurred to acquire interests in the capital or equity of any type of company. These expenses are deductible, subject to an additional limit of 30% of the acquirer's operating profits, excluding the operating profits of any company that may merge into the acquirer or that may join its tax group during the four years following the acquisition (besides this specific limit, the general limit on tax deductibility will also apply to these financial expenses).

This specific limit is not applicable when the debt associated with the acquisition of the interest reaches a maximum of 70% and is reduced, as of the time of the acquisition, by at least the proportional part corresponding to each of the following years until a level equal to 30% of the acquisition price is reached.

This specific limit does not apply to restructuring operations carried out before 20 June 2014 or to restructuring operations carried out on or after 20 June 2014 between companies that formed part of a tax consolidation group during tax periods starting before that date.

Financial expenses that have not been deducted due to the application of this limit can be deducted in subsequent tax periods for an unlimited period of time.

Specific limit on the deduction of intra-group financial expenses on acquisitions of interests in other group companies or contributions to capital or equity of other group companies

Over the past few years, a large number of tax inspections have adjusted the tax effects of acquisitions of shares from group companies with intra-group debt. Many of these operations were acquisitions of shares in non-resident companies, so that the dividends and capital gains arising from the acquisition of the shares were covered by the exemption for the avoidance of double taxation established in Article 21 of the Spanish CIT Act. In addition, the lenders of these operations were usually located in low-tax territories.

In the absence of specific limitation rules on the tax deductibility of financial expenses in previous years, the reaction of the tax authorities to these kinds of operations has been to apply general anti-abuse rules.

With this scenario, RDL 12/2012 introduced a limitation rule for the deduction of intra-group financial expenses that is applicable for tax periods starting on or after 1 January 2012. In accordance with this rule, financial expenses arising from debts with group companies generated from acquisitions of interests in other group companies or contributions to capital or equity of other group companies will not be deductible unless there is evidence that there are valid economic reasons for such expenses.

Participating loans

Interest on participating loans contracted by group companies on or after 20 June 2014 is, by law, a return on equity and is not deductible for tax purposes. In the recipient's tax returns (if the recipient is a Spanish CIT payer), they should be treated as dividends and the recipient may be eligible, when appropriate, for a tax exemption for the avoidance of double taxation of dividends.

Bad debt provisions

Provisions for covering the risk derived from possible bad debts are tax deductible when, at the time the tax accrues, any of the following circumstances exists:

- Six months have elapsed since the obligation became due.
- The debtor is declared bankrupt.
- The debtor is prosecuted for an offence of embezzlement.
- The obligations have been claimed judicially or are the subject of a legal dispute or arbitration proceedings, and collection depends on the solution thereof.

Provisions for the credits listed below are not tax deductible:

- Credits owed by public law entities, unless they are being examined in an arbitration or court proceeding brought to establish their existence or amount.
- Receivables from related persons or companies, unless they are going through bankruptcy proceedings and the court has declared the initiation of the liquidation phase.
- Credits based on overall estimates of the bad debt risk corresponding to trade and other debtors.

Special rules apply to bank entities.

Time apportionment of certain allocations or welfare system provisions

Positive adjustments arising from certain allocations to bad debt or welfare system provisions that are non-deductible under the Spanish CIT Act should be reversed in the corresponding year in accordance with this Act, up to a maximum, which depends on the company's net turnover in the 12 months prior to the start of the tax period:

- If net turnover is less than EUR 20 million, positive adjustments to these provisions may be reversed up to 70% of the tax base prior to the capitalisation reserve adjustment and to the offset of tax loss carryforwards.
- If net turnover is at least EUR 20 million but less than EUR 60 million, positive adjustments to these provisions may be reversed up to 50% of the tax base prior to the capitalisation reserve adjustment and to the offset of tax loss carryforwards.
- If net turnover is at least EUR 60 million, positive adjustments to these provisions may be reversed up to 25% of the tax base prior to the capitalisation reserve adjustment and to the offset of tax loss carryforwards.

In all cases, positive adjustments to these provisions may be reversed up to EUR 1 million. Any excess will be allocated to subsequent years, subject to the same limits and provided that a deferred tax asset has been recognised.

Equity investments in companies

Impairment allowances for share capital or equity investments in companies are generally not deductible.

As an exception, if the shareholding is less than 5% (with an acquisition value under EUR 20 million) and, in the case of shareholdings in the capital of non-resident entities, if the investee entity has been subject to and not exempt from a foreign tax identical or analogous in nature to CIT at a nominal rate of at least 10% or is resident in a country with which Spain has concluded a DTT, which contains an exchange of information clause, the impairment will be deductible as a result of the transfer or disposal of the shareholdings, provided that the above requirements are met during the year prior to the transfer or disposal.

Impairment on shareholdings that was tax deductible in tax periods prior to 2013 is reversed: (i) in the case of unlisted entities, when there is an increase in equity or payment of dividends, and (ii) in the case of listed entities, when there is an increase in the book value of the shareholding.

However, the obligation concerning a minimum annual reversal of impairment losses on securities that were considered deductible for tax purposes is introduced. Thus, the net amount of the valuation adjustment that would have been tax deductible is included, as a minimum, in equal parts in the tax base for each of the five tax periods commencing as of 1 January 2016.

Severance pay

Severance pay is tax deductible for CIT purposes when it does not exceed, for each recipient, EUR 1 million or, if it exceeds this amount, up to the amount that is exempt under Spanish PIT law.

Charitable donations

Donations are considered to be non-deductible expenses for CIT purposes.

This notwithstanding, a tax credit may be availed for donations to non-profit organisations that comply with certain requirements. The tax credit in this case is 35% of the donation. However, if during the two immediately preceding tax periods, deductible donations or contributions have been made to the same company for an amount equal to or exceeding, in each case, those made in the previous tax period, the deduction percentage applicable to the deduction base for the company is 40%.

In addition, the tax credit is not limited to 25% of the donating company's gross tax payable less the deductions for international double taxation and tax relief for income obtained in Ceuta and Melilla, for export activities, and for local public services, which is applicable for other tax credits (*see CIT relief in the Tax credits and incentives section*).

The tax credit base cannot exceed 10% of the taxable income of the financial year. Any excess may be carried forward for a period of ten years.

For donations to listed priority sponsorship activities, the tax credit may be increased by 5% and the 10% tax credit base limit can be increased to 15%.

Fines and penalties

Penalties imposed due to the failure to pay taxes and surcharges for late filing/payment or for other tax infringements are not tax deductible.

The Spanish tax authorities usually consider that late payment interest recorded as an expense is tax deductible; however, some case law in Spain questions whether this interest is a taxable expense.

Taxes

Taxes, other than CIT, that are recorded as an expense due to their nature (e.g. business and professional activities tax, but not withholdings) are tax-deductible expenses. In some cases, indirect taxes, such as non-deductible VAT or transfer tax, can be added to the value of assets for depreciation purposes.

Net operating losses

Tax losses may be carried forward for an unlimited amount of time. As a general rule, tax losses cannot be carried back. There are no tax loss 'baskets' (operating/capital). Notwithstanding, companies whose turnover in the previous tax period was under EUR 10 million may reduce their positive tax base by up to 10% of their amount by establishing a non-distributable reserve for the amount of the reduction (reserve for the levelling-off of tax losses). The reduction may not exceed EUR 1 million and should be reversed in line with the tax losses obtained by the company, subject to a five-year time limit.

The tax losses of any type of company can be offset against positive income generated in the ensuing tax periods. The amount of tax losses that may be offset will depend on the company's net turnover in the 12 months prior to the start of the tax period:

- If net turnover is less than EUR 20 million, the previous regulations will apply, i.e. tax loss carryforward may be offset up to 70% of the tax base prior to the capitalisation reserve and their offset.
- If net turnover is at least EUR 20 million but less than EUR 60 million, tax loss carryforward may be offset up to 50% of the tax base prior to the capitalisation reserve and their offset.
- If net turnover is at least EUR 60 million, tax loss carryforward may be offset up to 25% of the tax base prior to the capitalisation reserve and their offset.

In any event, tax losses for an amount of up to EUR 1 million may be offset.

The above limits do not apply: (i) in the tax period in which the company is extinguished, unless this is due to a restructuring operation carried out under the tax neutrality regime, and (ii) to any income corresponding to debt relief or deferral resulting from an agreement with creditors.

Complex rules may limit the use of tax losses of a company dissolved as a result of a restructuring operation and, in certain circumstances, when it has a change of shareholders.

Payments to foreign affiliates

Supplies of goods or services by a company not established in Spain to a Spanish group company must be valued at arm's length. If recorded expenses for such goods/services exceed the arm's-length price, the tax deductibility of the excess amounts could be challenged in a tax inspection. The tax deductibility of expense charges received from tax havens is fully disallowed unless proper evidence of an actual service valued at arm's length can be provided.

Management services received from outside Spain and recorded as distributions of costs of a group centre do not have to be documented in a written agreement entered into before the commencement of the services to ensure the tax deductibility of the expenses (as previously was the case), although it would be recommendable to have such an agreement. For any other types of services, an agreement recorded before a notary public is not obligatory under Spanish law, but it is advisable.

As regards the taxation in Spain of the foreign company that supplies services, the WHT rate to be applied on the gross income obtained by the company is 24% (19% for residents in other EU member states or European Economic Area [EEA] countries with which there is an effective exchange of tax information). Dividends, interest, and capital gains generated as a result of a transfer of assets are taxed at a 19% WHT rate. If management services, technical assistance, or the performance of studies are solely used outside Spain and are linked to business carried on abroad, then no WHT is applicable. In addition, under most tax treaties signed by Spain, 'business profits' obtained in Spain by non-residents are exempt from WHT. However, 'business profits' is a miscellaneous residual category. For instance, if the amount obtained qualifies as a royalty payment, WHT is applicable at the reduced tax treaty rates if the foreign company can obtain a document from the tax authorities of its country of residence certifying its tax residence. If no tax treaty applies, then the above 24% (19% for residents in other EU member states or EEA countries with which there is an effective exchange of tax information) WHT rate is applicable (*see the Withholding taxes section for more information*).

PEs and interests in joint ventures

Losses obtained outside Spain by means of a PE are not tax deductible. Losses generated from interests in joint ventures that carry on a business activity outside Spain are not tax deductible either.

Negative income generated from the transfer of a PE is not tax deductible.

Negative income derived from the discontinuation of the PE's activity is deductible. However, such negative income will be reduced by the amount of the net positive income obtained previously that has qualified for the exemption or deduction for double taxation.

Group taxation

Tax groupings for CIT purposes

Under Spanish tax law, companies can form a group and apply a special tax consolidation regime for CIT purposes. Companies forming a tax group must formally pass a resolution agreeing to do so before the beginning of the first tax year in which the tax consolidation regime will be applied.

To apply the tax consolidation regime, the controlling company of the tax group must hold a 75% or higher interest, either directly or indirectly, and the majority of the voting rights in the companies forming the tax group at the beginning of the first tax year in which the tax consolidation regime is applied, and this interest and voting rights must be maintained during the year unless the dependent company is dissolved. The interest requirement is 70% for companies listed on a stock exchange.

A non-resident company can also be the controlling company of a tax consolidation group, provided that it has legal personality, is taxed by a foreign tax identical or analogous in nature to Spanish CIT, and is not resident in a tax haven. When the controlling company is a non-resident company, the group is made up of all the resident controlled companies and one of the companies is required to be appointed as the representative of the group and will be responsible for complying with all of the group's obligations and formalities.

Resident companies that meet the minimum holding and voting rights requirements through non-resident companies should be included in the tax consolidation group.

These rules allow for the possibility of horizontal consolidation.

The main characteristics of the tax consolidation regime are as follows:

- The taxable income of the tax group is the sum of the taxable incomes of each of the companies forming the group.
- The tax losses of any of the companies forming the group can be offset against the tax profits of any of the other group companies.
- For the calculation of consolidated taxable income, the tax profits (losses) generated from transactions carried out between group companies are eliminated and only included in consolidated taxable income when:
  - they are carried out with third parties
  - a group company participating in the internal operation ceases to form part of the tax group, and
  - the tax consolidation regime is no longer applied by the group for whatever reason.
- Specific limitations apply regarding the offsetting of tax losses or the application of tax credits generated by the group companies before they formed part of the tax group. Tax credits may be applied by the tax group up to the limit that would have applied to the entity that generated the tax credit in the general CIT regime, taking into account the relevant eliminations and additions corresponding to such entity. As regards tax losses generated by a group company before it entered the group, they may be offset up to the following limits:
  - If net turnover in the 12 months prior to the start of the tax period is less than EUR 20 million, besides the general limits that apply at the group level, the offsetting of prior tax loss carryforwards will be subject to the limit of 70% of

the individual tax base, taking into account any eliminations and additions that correspond to such entity.
- If net turnover is at least EUR 20 million but less than EUR 60 million, besides the limits on the offsetting of tax loss carryforwards that apply at the group level, the offsetting of prior tax loss carryforwards will be limited to 50% of the individual tax base, taking into account any eliminations and additions that correspond to such entity.
- If net turnover is at least EUR 60 million, besides the limits on the offsetting of tax loss carryforwards that apply at the group level, the offsetting of prior tax loss carryforwards will be limited to 25% of the individual tax base, taking into account any eliminations and additions that correspond to such entity.

- No WHT is chargeable on payments made between companies of the tax group (e.g. interest, dividends).

Tax groupings for VAT purposes

Groups of companies may also choose to be taxed under a special tax consolidation regime for VAT purposes. This special regime is optional, but once it has been opted for, it must be applied for a minimum of three years, which is extendible unless it is expressly waived by the companies.

The VAT consolidation regime may only be applied by companies resident in Spanish VAT territory that do not form part of any other VAT grouping.

The controlling company of the group must be a legal entity or PE that is not dependent on any other entity established in Spanish VAT territory, and its interest in the capital or voting rights of the subsidiary companies of the group should be over 50% for the entire calendar year. Group companies should be associated in three different ways: economic, financial, and organisational.

With the application of the VAT consolidation regime, there are two different options for taxation:

- The aggregation system, where the balances of the VAT returns of the individual companies of the group are totalled. The right to a tax deduction is exercised by the individual companies.
- The consolidation system, where an individual company can opt to reduce VATable income for inter-company operations, which is limited to the 'external' cost.

Transfer pricing

All related-party transactions must be valued at market price, following the arm's-length principle (e.g. the value that in normal market conditions would have been established between unrelated parties).

For this purpose, related persons or entities shall be:

- A company and its shareholders or members.
- A company and its board members or directors, except insofar as concerns the remunerations of the latter.
- A company and the spouses of or persons related to its shareholders or members, board members, or directors, either in a direct line or collaterally, by consanguinity or affinity up to the third degree.
- Two companies of a group.

- A company and the board members or directors of another company, when both companies form part of a group.
- A company and the spouses of or persons related to the shareholders or members of another company, either in a direct line or collaterally, by consanguinity or affinity up to the third degree, when both companies form part of a group.
- A company and another company in which the former company has at least a 25% holding, held indirectly, in its share capital or shareholders' equity.
- Two companies in which the same shareholders or members or their spouses, or persons related to them either in a direct line or collaterally, by consanguinity or affinity up to the third degree, have at least a 25% holding, whether directly or indirectly, in their share capital or shareholders' equity.
- A company resident in Spanish territory and its PEs abroad.
- A company not resident in Spanish territory and its PEs in Spanish territory.
- Two companies forming part of a group taxed under the tax regime for groups of cooperative companies.

For cases where association exists as a result of a shareholder/member-company relationship, the shareholding must be 25% or more. The reference to directors shall include *de facto* and *de jure* directors.

The determination of the market value by taxpayers must be done through the application of one of the following transfer pricing methodologies: comparable uncontrolled price (CUP) method, cost plus (CP) method, resale price method (RPM), profit split method (PSM), or transactional net margin method (TNMM). There is no longer an order of priority in the use of these valuation methods. When it is not possible to apply one of the methods established by the law, other generally accepted valuation methods and techniques based on the arm's-length principle can be used.

Documentation is also a requirement, with taxpayers required to produce group-level and taxpayer-specific documentation for each tax year. Related persons or entities must keep such documentation available for the tax authorities as of the end of the voluntary return or assessment period in question. Some exceptions are established for these documentation requirements.

Documentation is always required for transactions with entities, whether related parties or otherwise, that are resident in tax havens.

Please note that specific penalties may be imposed in the event of the absence of documentation or where data are omitted, inaccurate, or false.

Country-by-country (CbC) reporting

Spanish resident parent companies of a commercial group that are not controlled by another company and Spanish resident subsidiaries controlled by a non-resident company that, at the same time, is not controlled by another company or by PEs of non-resident companies must submit information annually 'country by country' whenever the group's turnover during the 12 months before the beginning of the tax period is at least EUR 750 million.

Spanish resident subsidiaries of a commercial group that submits the 'country-by-country' information in a country that has signed a bilateral automatic exchange of information agreement with Spain for CbC reporting obligations must submit annually the information regarding the group company and the country where this information would be submitted by the group.

Thin capitalisation

Thin capitalisation rules have been repealed.

Controlled foreign companies (CFCs)

Spanish CFC rules seek to avoid the effects produced when Spanish tax resident companies or individuals place their capital in low-taxed foreign companies to avoid including passive income generated by such capital in their taxable bases or the effects produced when a subsidiary located in a low-taxed jurisdiction provides services to its Spanish resident parent company that reduces the latter's taxes.

Under this regime, Spanish tax resident companies pay Spanish CIT on the income obtained by a non-resident subsidiary upon meeting certain requirements, including, specifically, the requirement that the Spanish parent company must own, individually or together with other related companies or individuals, over 50% of the non-resident subsidiary's share capital, equity, profits, or voting rights, and the CIT payable by the non-resident subsidiary must be under 75% of the tax that would be payable in Spain.

CFC rules are not applicable to EU resident companies if they are set up for economic reasons and carry on a business activity or to the Collective Investment Institutions regulated in EU Directive 2009/65/CE other than those established in Section 54 of the Spanish CIT Act and domiciled in an EU member state.

There are two types of CFC:

- A 'global CFC' regulation applies if the non-resident company does not have at its disposal an adequate structure of material and human resources unless it can justify that its operations are performed using material and human resources existing in a non-resident company of its same corporate group or that there are valid economic reasons for its incorporation and operations. With this regulation, all income obtained by the company not resident in Spanish territory should be included in the Spanish company's tax base. However, dividends, stakes in profits, or income arising from the transfer of an interest should not be included when the interest exceeds 5%, the minimum ownership period is one year, and the interest is held for the purpose of directing and managing the investee if the investee has an adequate structure of material and human resources and, by law, it is not an equity company.
- When the conditions for applying the international tax transparency regime are met and the requirements for the application of the 'global CFC' are not met, the following income obtained by non-resident investees should be included in the Spanish company's tax base:
    - Income generated from real estate assets not assigned to a business activity.
    - Income generated from an interest held in the equity of any type of company and from the assignment of own capital to third parties.
    - Capitalisation and insurance operations in which the beneficiary is the company itself.
    - Income generated from industrial and intellectual property, technical assistance, real estate, image rights, and the leasing or sub-leasing of businesses and mines.
    - Income generated from transfers of the aforementioned assets and rights.
    - Income generated from lending, financial, and insurance activities and the provision of services if they generate a taxable expense in the Spanish resident company. The positive income obtained in this case will not be included if over 50% of the gross income obtained by the non-resident company due to these services comes from services provided to non-related companies.

- Income generated from derivative financial instruments.

The types of income indicated above should not be imputed when the sum of these amounts is less than 15% of the total income obtained by the non-resident company, unless the income is generated from derivative financial instruments, which should be imputed in its entirety.

In addition, the ordinary level of CFC will not apply if the income indicated above corresponds to non-taxable expenses incurred by Spanish tax resident companies.

Tax credits and incentives

Foreign tax credit

See Foreign income in the Income determination section for a description of double tax relief.

CIT relief

No specific tax relief is established in Spanish law for foreign investors. Relief may be availed of by Spanish and foreign-owned companies alike. The tax relief available under CIT law in Spain is as follows.

Most of the tax credits that have been established to promote certain investments have been eliminated. However, the largest tax credits are maintained (tax exemption/deduction credit to prevent internal and international double taxation, tax credit for R&D, and tax credit for technological innovation).

Tax relief for business activity/place of business activity

- 50% tax credit on CIT levied on income obtained in Ceuta and Melilla through companies established and carrying on activities during a full business cycle in these enclaves because of their specific geographic location.
- 99% tax credit on the CIT levied on income obtained from the supply of local public services, except when the state company in question is owned, partially or wholly, by a quoted/non-quoted company or individual.

R&D and technological innovation credits

A 25% tax credit can be availed of for expenses incurred from R&D activities. If the expenses are higher than the average R&D expenses incurred by the company during the previous two years, the tax credit is 42% for the excess amount.

An additional tax credit of 17% can be availed of for staff expenses incurred for staff exclusively carrying out and qualified to carry out R&D activities.

An 8% tax credit can be availed of for investments made in tangible fixed assets (excluding buildings) and intangible assets that are exclusively assigned to R&D activities.

A 12% tax credit can be availed of for technological innovation activities.

Tax relief for R&D and technological innovation can be excluded from the limits on tax relief applied on tax liabilities (*see below for Limits on the amount of tax credit applied*), which will have a cost of 20% of the tax relief applied, meaning that, if certain requirements are met, 80% of the tax relief for R&D and technological innovation may reduce tax liability after double tax deductions and tax allowances to zero, and any excess tax relief (up to its 80%) may be refunded by the tax authorities.

The requirements for the exclusion of the R&D and technological innovation tax reliefs from the tax relief limits are as follows:

- One tax period has passed since the tax relief was generated and the tax relief has not been applied.
- An amount equal to the tax relief applied or paid has been allocated to R&D and technological innovation expenses or to investments in tangible fixed assets or intangible assets used exclusively for R&D and technological innovation activities, excluding real property, within 24 months of the end of the tax period when the tax relief was applied or paid.
- The taxpayer's average number of staff (staff in general or staff assigned to R&D and technological innovation activities) has not decreased between the end of the tax period when the tax relief was generated and the end of the reinvestment period.
- The taxpayer has a report that certifies that the activities are R&D and technological innovation activities or it has made an advance agreement with the Spanish tax authorities regarding the valuation of the expenses and investments of the project.

The following should also be taken into consideration:

- The tax relief applied or paid for technological innovation in accordance with the foregoing comments may not exceed a total of EUR 1 million per year.
- The sum of the tax relief applied or paid for technological innovation and the tax relief applied or paid for R&D innovation in accordance with the foregoing comments may not exceed a total of EUR 3 million per year.

If R&D expenses for the year exceed 10% of turnover, an additional amount of EUR 2 million per year of tax credit for R&D can be applied or paid without limitation and with a 20% discount.

Tax relief for invested profits

Tax relief for invested profits has been eliminated for tax periods starting on or after 1 January 2015.

This tax relief gave small companies a 10% reduction of their taxable profits, provided that such profits were reinvested in new tangible fixed assets or real property investments used for business activities and certain requirements were met.

Taxpayers may avail of this tax relief for profits generated in tax periods starting between 1 January 2013 and 31 December 2014 even when the investment is made and the other requirements are met in tax periods starting in or after 2015.

Reinvestment of extraordinary income

The tax credit for reinvestment of extraordinary income has been eliminated for tax periods starting on or after 1 January 2015.

Taxpayers may continue to avail of the tax credit for income obtained in tax periods starting prior to 1 January 2015 when the reinvestment is made and the other requirements are met in tax periods starting after that date.

The tax credit can also be applied for sales with instalment payments, although, in this case, the tax credit is 10% if the income is included in the tax base for tax periods starting in or after 2016.

Capitalisation reserve

The tax base can be reduced by 10% of the increase in equity made in the preceding year, provided that the equity is maintained for a period of five years (except when losses are made), subject to a limit of 10% of the positive tax base of the period prior to this reduction. If this tax base is insufficient, pending amounts may be offset in subsequent tax periods. To apply this tax relief, a reserve should be allocated for the amount of the reduction, which should be undistributable for a period of five years.

Tax credits for film productions and live performing arts and musical shows

Investments in Spanish feature-length film productions and the production of audio-visual fiction, animation, or documentary series, where physical copies can be produced prior to serialised industrial production, entitle the producer to a 25% tax credit on the first EUR 1 million of the tax credit base and a 20% tax credit for any excess tax credit base. The tax credit may not exceed EUR 3 million.

A territory requirement is introduced, and this tax relief may only be applied for productions mainly carried out in Spain.

For foreign productions, a tax credit of 20% of expenses incurred in Spain can be applied if certain requirements are met. The tax credit may not exceed EUR 2.5 million. The limit of 25% of gross tax payable does not apply in the case of this tax credit, meaning that gross tax payable (*see below for Limits on the amount of tax credit applied*) may be reduced in its entirety, and if tax payable is not sufficient, the taxpayer may request the difference from the tax authorities in its CIT return.

Taxpayers are eligible for a 20% tax credit for expenses incurred for producing and performing live performing arts and musical shows. This tax credit may not exceed EUR 500,000.

Tax credit for increases in the number of disabled workers

A tax credit can be applied for increases in the number of disabled workers contracted per year on a permanent and full-time basis. The tax credit is EUR 9,000 per worker contracted whose level of disability is 33% or more, but less than 65%, and EUR 12,000 per worker contracted whose level of disability is 65% or more. This increase is calculated by taking the average number of company workers of each of these categories in the tax year in question that meet the established requirements and comparing it with the company's average number of staff in the same category in the previous tax year.

Reserve for levelling-off of tax losses

The possibility of reducing the positive tax base of small companies by up to 10% by establishing a non-distributable reserve for the amount of the reduction is introduced (reserve for the levelling-off of tax losses). The reduction may not exceed EUR 1 million and should be reversed in line with the tax losses obtained by the company, subject to a five-year time limit.

Limits on the amount of tax credit applied

The combined sum of all investment tax credits may not exceed 25% of the company's gross tax payable less deductions for international double taxation and tax relief for income obtained in Ceuta and Melilla, for export activities, and for local public services. When R&D and technological innovation tax credits for expenses and investments in the year exceed 10% of the company's gross tax payable, less tax credits and relief mentioned above, the limit will be 50%.

In addition, a limit of 50% of gross tax payable is established for the application of deductions for international or internal double taxation (generated or pending application). This limit will only apply to companies with a net turnover of at least EUR 20 million.

Time limits for the application of tax credits

Tax credits that are not applied in the tax period owing to insufficient tax payable may be applied in tax periods ending in the 15 years immediately thereafter. However, R&D and technological innovation tax credits may be applied in tax periods ending in the 18 years immediately thereafter, and tax credits for the avoidance of double taxation may be applied in the ensuing tax periods with no time limits.

Special tax regimes

Special tax regimes are applicable, among others, in the following cases:

Spanish and European Economic Interest Groupings and Temporary Consortia of Entities

- Spanish Economic Interest Groupings (SEIGs) that meet certain requirements will not be subject to Spanish CIT on the part of the taxable income that corresponds to members resident in Spain for tax purposes. Such part of the positive or negative taxable income shall be deemed to be the profits/losses of the SEIG members. The proportional part of tax credits and payments in advance will also be assigned to the Spanish tax resident members of the SEIG where they are subject to CIT or PIT. Dividends distributed to SEIG members that have been subject to imputation will not be taxed under CIT or PIT on distributions. Dividends distributed to Spanish non-resident SEIG members will be taxed in accordance with the Spanish NRIT law and Conventions for the Avoidance of Double Taxation.
- European Economic Interest Groupings (EEIGs) will be taxed under the above-mentioned regime with the following exception: EEIGs will not be subject to Spanish CIT.

  If the EEIG is not resident in Spain for tax purposes, Spanish tax resident members will include the corresponding part of the profits or losses determined for the grouping, corrected by applying the rules for determining taxable income for CIT or PIT purposes, as applicable. When the activity carried out by the members through the grouping determines the existence of a PE abroad, the rules provided for in this law or in the respective treaty for the avoidance of double international taxation will be applicable.

  Non-Spanish tax resident members will only be subject to Spanish NRIT when the activity they perform through the grouping determines the existence of a PE in Spanish territory.

Dividends distributed to non-Spanish tax resident members that have been subject to imputation will not be taxed in Spain on the distribution.

- Temporary Consortia of Entities (TCEs) are taxed under the SEIG regime. Members of a TCE operating abroad may apply the exemption for double taxation on income obtained by the TCE abroad through a PE or the deduction for the avoidance of international double taxation on income obtained by the TCE abroad. Losses obtained abroad by members of TCEs are not tax deductible.

Restructuring transactions

The special tax regime for restructuring transactions is a tax neutrality regime implemented under EU Directive 2009/133. As a general rule, under this regime, asset transfers carried out through such transactions do not have any tax implications (either from a direct, indirect, or other Spanish tax perspective) for the parties involved (transferor, beneficiary, and shareholder), until a subsequent transfer takes place that is not protected by this regime.

The transactions that can be taxed under this regime are mergers, global transfers, spin-offs of business units/majority interests, splits, share-to-share transactions, contributions of business units, and contributions of assets (this last transaction is not fully tax-protected). Each of them must comply with a series of requirements for the application of the regime.

Transfers of registered offices of an EU company or cooperative society between EU member states will not generate any tax for the company/cooperative society's shareholders on their income, profits, or capital gains.

The tax credit position of a company dissolved as a result of a tax-protected restructuring transaction is 'acquired' in full by the beneficiary company in the case of universal succession.

The 'acquired' tax credits only include tax credits that are obtained in relation to assets transferred in transactions where the transferor is not dissolved or the succession is not a full succession for Spanish commercial purposes.

Tax losses may be transferred not only when the transferring company is dissolved but also when a line of business is transferred (in the latter case, only tax losses related to this line of business will be transferred), subject in both cases to certain restrictions.

Financial goodwill arising in a merger transaction in which the acquirer owns an interest of at least 5% in the capital of the transferor is amortised for tax purposes at a maximum annual rate of 5% at the level of the Spanish beneficiary company of the merger, provided that such interest was acquired in a tax period that, for the transferor, commenced before 1 January 2015. Amortisation of financial goodwill does not have to be recorded in the income statement for it to be tax deductible.

When the interest has been acquired in a tax period that, for the transferor, commenced on or after 1 January 2015, this tax incentive, which aims to correct double taxation, will not be applicable, as, initially, the whole transferring company's capital gain will benefit from the tax exemption for the avoidance of double taxation, provided that the transferring company is a Spanish CIT payer.

This tax regime cannot be applied if the transaction is carried out for the purpose of tax fraud or evasion (anti-abuse clause). An additional anti-abuse clause in line with the clause established by the EU directive is established in Spanish law to ensure that the tax regime cannot be applied if the transaction is not carried out for valid economic reasons, such as the streamlining of activities or group restructuring to gain efficiency, but to obtain a tax benefit. If the tax authorities decide, as a result of its verification procedures, that the special tax regime is not applicable, either fully or partly, as there are no valid economic reasons for the transaction, the only implication will be that the effects of the tax benefit obtained will be eliminated.

The special tax neutrality regime is applicable by default to restructuring operations. When these operations are carried out, the tax authorities should be notified of the type of operation and, when the case, whether the taxpayer opts not to apply the special tax regime. Failure to notify the tax authorities of this matter is a serious tax offence and carries a fine of EUR 10,000.

For debts incurred to acquire companies, the interest should be deducted for tax purposes taking into consideration the acquirer's operating profits, excluding the operating profits of any company with which the acquirer may merge during the four years following the acquisition. These financial expenses should also be taken into account for the purpose of the general financial expenses limit applicable.

Expenses that are not tax deductible owing to the application of this special rule can be deducted, subject to the above limits, in subsequent tax periods for an unlimited period of time. The limit is not applicable when the debt associated with the acquisition of the interest in the company reaches a maximum of 70% and is reduced, as from the time of the acquisition, by at least the proportional part corresponding to each of the following years until a level equal to 30% of the acquisition price is reached.

This limit does not apply to restructuring operations carried out before 20 June 2014 or to restructuring operations carried out on or after 20 June 2014 between companies that formed part of the same tax consolidation group in tax periods starting on or after that date.

Tax transparency

Tax transparency (under international CFC rules) is not applicable for companies resident in the European Union, provided that the taxpayer can prove that the non-resident company has been set up and operates for valid economic reasons and carries out a business activity or that it is a collective investment institution regulated in EC Directive 2009/65/CE and not established in Section 54 of Spanish CIT Act that has been set up and is domiciled in an EU member state.

See CFCs in the Group taxation section for more information.

Venture capital companies and funds

Venture capital companies (VCCs) and funds (VCFs) may benefit from the following tax regime if certain requirements are met:

- Dividends from target companies may benefit from the tax exemption for the avoidance of double taxation, irrespective of the percentage of the interest or the holding period.

- Capital gains arising from the transfer of shares in target companies that do not meet the requirements for the application of the tax exemption for the avoidance of double taxation may be 99% exempted from CIT, provided that such shares have been held for a period between 2 and 15 years.
- Profit distributions to VCC and VCF shareholders may benefit from the tax exemption for the avoidance of double taxation, irrespective of the percentage of the interest or the holding period, if the shareholders are Spanish tax residents or have a PE in Spain. Income from profit distributions to non-Spanish tax resident shareholders without a PE in Spain is not subject to taxation in Spain unless it is obtained through a tax haven. The same regime applies to the transfer of shares in VCCs and VCFs.

Collective Investment Institutions (CIIs)

CIIs are subject to CIT at a reduced rate of 1%. They are not entitled to apply the tax exemption for the avoidance of double taxation on dividends and capital gains arising from the transfer of shares or a deduction for the avoidance of international double taxation. Dividends distributed by these institutions are subject to the general WHT regime. Shareholders are taxed on dividends received from the CII and on capital gains obtained for the transfer of the CII without being entitled to the application of the tax exemption for the avoidance of double taxation on dividends and capital gains arising from the transfer of shares or a deduction for the avoidance of international double taxation.

Lease transactions

Financial leasing contracts with a purchase option that may be exercised at the end of the lease period may benefit from a special tax regime if they meet certain requirements. According to this regime, the lessee may deduct the following expenses from its taxable income:

- The part of the lease payments that corresponds to the financial charge (interest) paid to the lessor.
- The part of the lease payments that corresponds to the recovery of the cost of the leased object. Tax deductibility for this amount may not exceed the result of applying twice the straight-line depreciation/amortisation rate applicable on the leased object in accordance with the official depreciation/amortisation tables.

Spanish holding companies of foreign companies (Entidad de Tenencia de Valores Extranjeros or ETVE) regime

Spanish resident companies whose corporate purpose includes the holding and management of foreign companies' shares and that, by law, are not equity companies (i.e. companies that do not carry on a business activity) are granted some tax benefits, subject to compliance with certain requirements.

The tax authorities must be notified of the application of this tax regime.

In addition, the distribution of profits by the holding company to non-resident companies or individual shareholders is not taxable in Spain if such profits come from income generated from non-resident companies and may benefit from the tax exemption for the avoidance of double taxation on dividends and capital gains arising from the transfer of shares or from income obtained abroad through a PE that may benefit from the exemption for the avoidance of international double taxation of income obtained through a PE unless the profits are distributed to a tax haven.

Resident company shareholders are entitled to an internal tax credit on dividends under Spanish law.

Small and medium-sized companies

Small and medium-sized companies are eligible for tax relief, such as accelerated depreciation/amortisation or more favourable bad debt provision treatment. To be eligible for this relief, turnover in the previous tax year must not exceed EUR 10 million and, by law, the company must not be considered an equity company (a company that does not carry on a business activity). In the case of a group, the turnover of all the companies must be considered for this purpose. Companies that generate a turnover of EUR 10 million that have met the requirements to be considered small and medium-sized companies in the tax period in which they obtained such turnover and in the two previous tax periods may be eligible for this tax relief during the three periods immediately after the period in which they obtain this turnover.

The applicable CIT rate is the general rate (25%).

Special tax regime for companies that lease housing

Companies whose main business activity is the lease of housing located in Spain that they have constructed, promoted, or acquired may apply a special tax regime that significantly reduces CIT liability, provided that certain requirements are met.

Real Estate Investment Trust Regime (SOCIMI)

A special tax regime is established in Spain for listed companies that make investments in the real estate market (called SOCIMIs in Spain) and meet certain requirements. SOCIMIs apply a 0% CIT rate and have strict profit distribution obligations.

Special economic and tax regime of the Canary Islands

Due to the remoteness and isolation of the Canary Islands, they have traditionally enjoyed a special economic and tax regime with specific economic and tax measures different to those established for the rest of Spain. As a result, they have one of the most profitable tax regimes in Europe.

Regarding direct taxes, the Canary Island economic and tax regime establishes the following tax benefits for companies and businesses domiciled in the Canary Islands or with a PE in the Canary Islands:

- Up to 90% of annual undistributed accounting profits can be allocated to a special investment reserve and not taxed, provided that they are invested within a four-year period (including the period during which the profits are obtained) in qualifying assets in the Canary Islands or in certain public debt securities or shares in other companies operating in the Canary Islands that invest in qualifying assets.
- Most Spanish CIT deductions are 80% higher for companies and businesses located in the Canary Islands (the tax credit is increased by at least 20%).
- A 25% tax credit can be availed of for investments in new tangible fixed assets and, subject to compliance with certain requirements, second-hand assets.
- A tax credit of 50% of the CIT liability is granted for taxable income generated from the production of tangible goods while carrying on agricultural, farming, industrial, and fishing activities.
- A tax credit of 90% of the CIT liability is granted for profits of shipping companies generated from ships registered in the Canary Islands Special Ships and Shipping Companies Register. For sailors of such ships, a 50% tax exemption can be applied

to PIT levied on their employment income and a 90% reduction to the part of their Social Security contributions paid by their employers.
- A CIT credit is applicable for companies that make investments in certain countries in Africa. The tax credit is 15% of the investments made.
- Another CIT credit is applicable for advertising expenses incurred for product launches, opening and prospecting of markets abroad, and attending exhibitions and fairs. This tax credit is 15%.

Regarding indirect taxes, in addition to lower taxation through the Canary Island general indirect tax (IGIC at the general rate of 7%) compared to VAT and specific IGIC exemptions, the following should be noted:

- Companies domiciled in the Canary Islands that are CIT payers and are newly incorporated, start new activities, or improve their existing activities may benefit from the following tax relief:
  - Exemption from IGIC/transfer tax on supplies and imports of capital goods if the company has a deduction percentage that is not 100%.
  - Shipping companies qualify for an exemption from transfer tax for any contracts related to ships registered in the Canary Islands Special Ships and Shipping Companies Register.
  - Customs Free areas are available. Upon EU demand, there are restrictions on the application of certain tax relief (special investment reserve, tax credits for production, and new business indirect tax relief) for the following industrial sectors: shipbuilding, synthetic fibres, automobile, iron and steel, and coal.

Canary Islands Special Zone tax regime

In January 2000, a Canary Island Special Zone tax regime (ZEC) was approved by the European Union. The main regulations of this regime, established by the Spanish government, are as follows:

- New companies and branches may qualify for the application of this tax regime and, on the approval of the tax authorities, may be registered up to 31 December 2020 (applying the tax regime up to 31 December 2026). This may be extended by the European Union.
- To qualify for this tax regime, the company must:
  - covenant to make an investment in fixed assets of at least EUR 100,000 in Gran Canaria or Tenerife, or EUR 50,000 in Fuerteventura, Lanzarote, La Palma, El Hierro, or La Gomera, within the first two years of their business activity
  - covenant to create at least five new jobs in Gran Canaria or Tenerife, or three in the other islands
  - provide a description of the business activities to be carried out that support the company's solvency, viability, international competitiveness, and contribution to the economic and social development of the Canary Islands
  - establish its registered office and place of effective management in the Special Area
  - have at least one company director who resides in the Canary Islands or a legal representative in the case of branches, and
  - carry out one of the qualifying business activities.
- The territory where this tax regime can be applied includes all the Canary Islands.
- Companies applying the tax regime may operate outside the Canary Islands through branches if separate accounting books are kept.

- Activities for which the tax regime can be applied include a wide range of industrial and commercial activities, most services and holdings. Credit and insurance entities are excluded, and no stock exchanges are allowed.
- The tax liability on which the Canary Island Special Zone tax regime will apply is determined in accordance with the following rules: (i) companies that meet the requirement of creating a minimum number of jobs may apply the special tax regime on a tax liability of EUR 1.8 million, (ii) the tax liability on which the special tax regime will be applied is increased by EUR 500,000 for each job created over the minimum threshold, up to 50 jobs. If more than 50 jobs are created, the Canary Island Special Zone tax regime will apply to the full amount of tax liability even if another limit, which in practice is not applied so often, may apply. These thresholds are considerably high and the tax relief is not usually capped. The general CIT regime establishes a 25% tax rate for Spanish companies, while the ZEC tax rate applicable to the valid ZEC tax base amounts to 4%.
- Under this tax regime, companies can avail themselves of large tax exemptions for IGIC, transfer tax, and stamp duty, and large reductions and simplified regulations for local taxes.
- Interest and some other returns from moveable goods paid by companies under this tax regime are exempt from Spanish NRIT, except when paid to residents in tax havens.
- Benefits established in the EU Parent-Subsidiary Directive are extended to non-EU residents. These benefits are not applicable when the income is paid to residents in tax havens.
- A fee of EUR 850 is payable to be registered as a company that applies this tax regime, and an annual fee (EUR 1,500 for companies in Tenerife and Gran Canaria and EUR 1,300 for companies on other islands) is payable to continue to be registered as qualifying for the tax regime.

Withholding taxes

Ordinarily, WHT is the mechanism by which the Spanish tax authorities collect the final tax levied on non-residents. In the case of resident beneficiaries, however, it is simply an advance payment of a tax that is then normally self-assessed by the resident taxpayer in the final annual tax return.

The advance payment system of WHT for resident beneficiaries referred to above also applies if non-resident companies/individuals not established in Spain sell their title to Spanish real estate. In this case, the acquirer of the real estate must levy a 19% WHT on the selling price on account of the tax chargeable to the seller on its capital gain. Other capital gains (for instance, from a sale by a non-resident of a substantial interest in a Spanish company where neither a tax treaty nor internal rules establish a tax exemption) are taxed in the hands of the non-resident transferor, but the mechanics of levying the tax are not those of a WHT. In this case, the non-resident's tax is paid directly, through its representative or by the depositor or manager of the assets in question, if any.

The following table states the general WHT rates on income obtained by resident/non-resident companies. The most significant peculiarities regarding the rates for each type of income are stated in footnotes to the table.

Spain

Withholding rates

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations and individuals	19 (1a)	19 (2a)	19 (2b)
Non-resident corporations and individuals:			
Non-treaty	19 (3)	19 (4)	24 (1b, 5)
Treaty *:			
Albania	10 (6)	6 (10, 22)	0
Algeria	5 (7)	5 (8, 9, 10, 11)	7 (12)
Andorra	5 (7)	5 (8, 9)	5
Argentina	10 (106)	12 (107)	15 (108)
Armenia	10 (104)	5	10 (105)
Australia	15	10	10
Austria	10 (3, 16)	5 (4)	5 (5)
Barbados	0 (98)	0	0
Belgium	15 (3, 15, 18)	10 (4, 18, 19)	5 (5, 18)
Bolivia	10 (13, 18)	15 (8, 9, 10, 14, 18)	15 (17, 18, 20)
Bosnia	5 (21)	7 (22)	7
Brazil	10 (13, 134)	15 (9, 24, 25)	15 (26, 134)
Bulgaria	5 (3, 27)	0 (4)	0 (5)
Canada	5 (121)	10 (122)	10 (20, 28)
Chile	5 (29)	15 (17, 30)	10 (17, 31)
China	10	10	10 (32)
Colombia	5 (33)	10 (17, 34, 123)	10 (17)
Costa Rica	12 (17, 35)	10 (17, 34, 36)	10 (17)
Croatia	0 (13, 18)	0	0
Cuba	5 (13, 18)	10 (18, 37)	5 (18, 20)
Cyprus	0 (110)	0	0
Czech Republic	5 (3, 27)	0 (4)	5 (5, 38)
Dominican Republic	10 (111)	10 (112)	10
Ecuador	15	10 (39)	10 (40)
Egypt	12 (41)	10 (42)	12
El Salvador	12 (17, 43)	10 (17, 22)	10 (17)
Estonia	5 (3, 13, 17, 18)	0 (4, 9, 10, 11, 18)	0 (5, 17, 18)
Finland	10 (3, 13)	10 (4)	5 (5)
France	15 (3, 45)	10 (4, 46)	5 (5, 47)
Georgia	0 (99)	0	0
Germany	5 (3, 7, 48)	0 (4, 48)	0 (5)
Greece	5 (3, 49)	8 (4, 50)	6 (5)
Hong Kong	10 (15)	5 (59)	5
Hungary	5 (3, 13)	0	0
Iceland	5 (13, 18)	5 (9, 18)	5 (18)
India	15	15 (9, 51, 52)	10 (17, 53)
Indonesia/Timor Oriental	10 (13)	10 (9, 54, 55)	10
Iran	5 (56)	7.5 (9, 10, 11)	5
Ireland	15 (3, 18)	10 (4, 18, 55)	10 (5, 18, 57)
Israel	10 (18)	10 (9, 18, 58)	7 (18, 40)
Italy	15 (3)	12 (4, 9)	8 (5, 60)
Jamaica	5 (17, 49, 61)	10 (17, 22, 61)	10 (17, 61)

	WHT (%)		
Recipient	Dividends	Interest	Royalties
Japan	10 (23)	10	10
Kazakhstan	5 (90)	10 (8, 9, 97)	10
Kuwait	5 (84)	0	5
Latvia	5 (3, 18, 49)	10 (4, 9, 10, 17, 18, 124)	10 (5, 17, 31)
Lithuania	5 (3, 13, 18)	10 (4, 9, 10, 17, 18)	10 (5, 17, 18, 31)
Luxembourg	10 (3, 62)	10 (4, 9, 63)	10 (5, 64)
Macedonia	5 (7)	5 (65)	5
Malaysia	5 (18, 66)	10 (8, 9, 17, 18)	7 (18, 67)
Malta	5 (3, 68)	0	0
Mexico	10 (127)	10 (8, 9, 17, 51, 69, 125, 126)	10 (17, 20, 38)
Moldova	0 (70)	5 (22)	8
Morocco	10 (13)	10	10 (40)
Netherlands	15 (3, 71, 128)	10 (4)	6 (5, 72)
New Zealand	15 (17)	10 (17)	10 (17)
Nigeria	10 (17, 114, 117)	7.5 (17, 115, 117)	3.75 (17, 116, 117)
Norway	10 (13)	10 (9, 10, 55, 129)	5 (64, 73a)
Oman	0 (119, 120)	5 (9) (119)	8 (119)
Panama	5 (100, 101)	5 (10, 44)	5
Pakistan	10 (73b)	10 (8, 9, 97)	7.5
Philippines	10 (74)	15 (75)	15 (76, 130)
Poland	5 (3, 13)	0 (4)	10 (5, 20)
Portugal	10 (3, 13, 18)	15 (4, 18)	5 (5, 18)
Qatar	5 (133)	0	0
Romania	10 (3, 13)	10 (4, 77)	10 (5)
Russian Federation	15 (18, 78)	5 (8, 9, 18, 79)	5 (18)
Saudi Arabia	5 (68)	5 (8, 9)	8
Senegal	10	10 (113)	10
Serbia	5 (17, 131)	10 (9, 17)	10 (17, 80)
Singapore	0 (102)	5 (103)	5
Slovakia	5 (3, 27)	0 (4)	5 (5, 38)
Slovenia	5 (3, 13, 18)	5 (4, 8, 9, 18)	5 (5, 18)
South Africa	5 (13, 18)	5 (18, 81)	5 (18)
South Korea	10 (13)	10 (9, 82)	10
States of the former USSR (except Russia)	18	0	5
Sweden	10 (3, 16)	15 (4)	10 (5)
Switzerland	15 (83)	0	5 (85)
Thailand	10 (17)	15 (86a)	15 (86b)
Trinidad and Tobago	0 (70, 87a)	8 (8, 9, 63, 82, 87a)	5 (87a)
Tunisia	5 (87b)	10 (88)	10
Turkey	5 (13)	15 (89)	10
United Arab Emirates	5 (9, 90)	0	0
United Kingdom	10 (3, 109)	0	0
United States	10 (13)	10 (8, 9, 65)	10 (57, 91a)
Uruguay	5 (91b)	10 (8, 9, 92)	10 (93)
Uzbekistan	5 (23)	5 (118)	5
Venezuela	0 (49)	0 (17, 94, 95)	5

Spain

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Vietnam	7 (17, 18, 96)	10 (9, 17, 18, 63)	10 (17, 18, 31, 132)

Notes

The general rates in the table above are for guidance only and should not be treated as tax advice.

The rates above are for income obtained by non-residents that is not related to any PEs that they may have in Spain.

* Aside from these tax treaties, the following tax treaties are not yet in force, as they are currently being negotiated or are not yet approved or published: Azerbaijan, Bahrain, Belarus, Cabo Verde, Montenegro, Namibia, Peru, and Syria.

1.
   a. If a corporate taxpayer, as a shareholder, is entitled to a tax exemption for the avoidance of double taxation on the dividends received, no WHT is levied. As a general rule, corporate shareholders with at least a 5% interest held for at least one year may apply this tax exemption on the dividends received.
   b. For residents of other EU member states or EEA countries with which there is an effective exchange of tax information, the rate is 19%.
2.
   a. The 19% WHT rate does not apply if, amongst other cases, the recipient is a resident bank or savings or other financial institution subject to CIT, provided that this income is not portfolio income. In addition, no WHT is levied on interest arising between companies taxed under the tax consolidation regime.
   b. A 19% WHT rate is levied on income generated under royalty and technical assistance agreements, from leases or from the granting of rights when ownership is not transferred. A 24% rate is levied on fees received by a company for the transfer of rights to an image or consent or authorisation to its use.
3. Implementation of the EU Parent-Subsidiary Directive in Spanish law gives EU shareholders a WHT exemption on dividends from Spanish companies, subject to compliance with certain requirements. Luxembourg recipients of income that are companies under paragraph 1 of the Protocol to the Tax Treaty with Spain (holding companies) are not allowed this exemption.
4. The EU Interest and Royalties Directive WHT exemption for interest obtained by EU lenders is applicable when appropriate.
5. Taxable income from supplies of services, technical assistance, or assembly/installation work under engineering contracts provided or carried out by non-resident companies with no PE in Spain does not follow the general rule for gross income. In such cases, total income can be reduced by related staff costs, certain supplies (water, electricity, telephone), and materials used for the services/work, provided that, in the case of staff costs, evidence can be furnished that they were actually taxed in Spain. According to the EU Interest and Royalties Directive, royalties paid to other EU member state associate companies are exempt from WHT.
6. A 5% WHT is levied if the recipient is a company that holds at least 10% of the capital of the company paying the dividends; no WHT is levied if the recipient company holds at least 75% of the capital of the company paying the dividends.
7. Levied if the recipient is a company holding at least a 10% interest in the paying company; otherwise, a 15% rate is levied.
8. Interest paid by certain public institutions is tax exempt.
9. Interest paid to certain public institutions is tax exempt.
10. Interest arising from the acquisition of commercial, industrial, or scientific equipment is tax exempt.
11. Interest paid on loans granted by a bank or other financial institution is tax exempt.
12. For royalties for any copyright of artistic, scientific, or literary work (including cinematograph films and films or tapes for radio or television broadcasting), the rate levied is 14%.
13. Levied if the recipient is a company holding at least a 25% interest in the paying company; otherwise, a 15% rate is levied.
14. No WHT is levied on interest when both contracting states agree this and the loan is for no less than five years.
15. No WHT is levied on dividends if the beneficial owner is a company (other than a partnership) that holds at least 25% of the capital of the company paying the dividends.
16. Levied if the recipient is a company holding a direct interest of at least 50% in the paying company for at least one year; otherwise, a 15% rate is levied.
17. A 'most-favoured nation' clause is included in the Convention or Agreement for the Avoidance of Double Taxation between this country and Spain.
18. Reduced WHT rates or exemptions are not levied/applied if the income is paid to a company resident in a contracting state more than 50% of whose shares are directly or indirectly held by non-

residents. This clause will not apply if the company can prove that it carries out important industrial or commercial activities and does not merely manage or hold shares.

19. A tax exemption can be applied to interest on commercial loans, loans guaranteed by public bodies for the promotion of exports, and on current accounts in banks or nominative advances between banks of both contracting states.
20. Royalties for any copyright of literary, theatrical, musical, or artistic work (with some exceptions, such as films and TV programs) are exempt from WHT.
21. 5% WHT is levied if the recipient (beneficial owner) is the shareholder of the paying company with at least a 20% interest; otherwise, 10% WHT is levied.
22. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; (iii) the interest arises from a loan or credit granted or guaranteed by a contracting state or its political divisions; (iv) the recipient is a financial institution; or (v) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend.
23. Levied if the recipient is a company that directly holds at least 25% of the capital of the paying company; otherwise, a 10% rate is levied. However, if, under the provisions of Spanish CIT legislation and any future amendments, a company resident in Spain is not taxed by Spanish CIT on the dividends that it receives from a company resident in Uzbekistan, the 5% WHT rate shall be reduced to 0%.
24. The maximum WHT is 10% for interest paid to financial institutions for loans and credits granted for a minimum term of ten years for the purchase of capital equipment.
25. Interest arising from securities issued by a contracting state is exempt from WHT.
26. A 10% WHT rate is levied on royalties for copyrights of any literary, scientific, or artistic work (including films and TV programs).
27. Levied if the beneficial owner is a company (excluding partnerships) with at least a 25% interest in the paying company held directly or indirectly; otherwise, a 15% rate is levied.
28. A reduced WHT rate is only levied if the income is taxed in Canada; otherwise, the general rate is levied.
29. Levied if the recipient is a company with at least a 20% interest in the paying company held directly or indirectly; otherwise, a 10% rate is levied.
30. Interest arising from bank or insurance company loans, bonds, some securities that are regularly negotiated on stock markets, and credit sales of industrial equipment are taxed at a 5% tax rate.
31. A 5% WHT rate is levied on royalties for the use of industrial, commercial, or scientific equipment.
32. A 6% WHT is levied on gross royalties for the use of industrial, commercial, or scientific equipment.
33. A 0% WHT rate is levied if the recipient is a company with at least a 20% interest in the paying company held directly or indirectly.
34. No WHT is levied if: (i) the beneficiary is a contracting state, one of its political subdivisions or one of its local entities; (ii) interest is paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state; or (iii) interest is paid on a loan granted by a bank or financial institution resident in a contracting state.
35. A 5% WHT is levied if the beneficial owner is a company that directly holds at least 20% of the capital of the company paying the dividends.
36. 5% WHT is levied if the interest is paid on a long-term loan (more than five years).
37. No WHT is levied if: (i) the beneficiary is a contracting state, one of its political subdivisions or one of its local entities; (ii) interest is paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state; or (iii) interest is paid on a long-term loan (five or more years) granted by a bank or financial institution resident in a contracting state.
38. Royalties for copyrights of any literary, theatrical, musical, or artistic work, excluding films and TV programs, are tax exempt if the recipient is resident in the other contracting state and taxed on such income in such state.
39. A 5% WHT rate is levied on interest arising from the sale of industrial, commercial, or scientific equipment, the sale of merchandise from one business to another business, or the financing of construction, installation or assembly works. No WHT is levied if the interest is paid on a long term loan (more than five years) or if the interest is paid to the other contracting state or one of its political subdivisions or a financial institution totally owned by the other contracting state or one of its political subdivisions.
40. A 5% WHT rate is levied on royalties for copyrights of any literary, theatrical, musical, or artistic work (excluding films and TV programs).
41. A 9% WHT rate is levied on the gross amount of the dividends if the beneficiary owner is a company (other than a partnership) that has at least a 25% direct interest in the company paying the dividends.
42. WHT is not levied on interest if the recipient is a contracting state, one of its political subdivisions, or one of its public bodies or local authorities, or if the interest is paid to the Central Bank of the other contracting state.
43. No WHT is levied if the recipient is a company with at least a 50% direct interest in the company paying the dividends, provided that the dividends are distributed from profits taxed in Spain.
44. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions, (iii) the interest arises from a loan or credit granted by a contracting state or its political divisions, (iv) the recipient is a qualifying financial institution; or (v) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend.
45. No WHT is levied if the French company has at least a 10% direct interest in the company distributing the dividend.

46. No WHT is levied if the French company receives interest (i) from the other contracting state or any of its political divisions; (ii) from a resident in the other contracting state from an underlying commercial or industrial activity; (iii) in connection with a credit sale of industrial, commercial, or scientific equipment; or (iv) for a loan granted by a financial institution.
47. No WHT is levied on royalties on copyright of any literary or artistic work (excluding films and TV programs) if the recipient is the beneficiary owner or royalties paid for the use or licensing of containers and bare hull vessels or aircraft used in international trade.
48. Dividends and interest may be taxed at source under domestic law when (i) they are generated from any right (including credits) that allows for shares in profits (such as shares, bonds, or participating loans) and (ii) they are tax deductible for the debtor. Notwithstanding, WHT may not exceed 15% when the beneficial owner is tax resident in the other contracting state.
49. Levied if the recipient is a company with at least a 25% direct interest in the paying company; otherwise, a 10% rate is levied.
50. No WHT is levied on interest if: (i) the interest is paid by a contracting state, one of its political subdivisions, or one of its local entities; (ii) the interest is paid to the other contracting state, one of its political subdivisions, or one of its local entities or to a body (including financial institutions) of such contracting state; or (iii) the interest is paid to another body (including financial institutions) in relation to loans granted by virtue of an agreement between both contracting states.
51. No WHT is levied on interest paid to the Central Bank of the other contracting state.
52. No WHT is levied on interest paid to companies in the other contracting state if the operation that generates the debt has been authorised by the government of the state where the company paying the interest is resident.
53. The 10% WHT rate will be applicable to all royalties due to the most favoured nation clause.
54. No WHT is levied on interest if the recipient is a contracting state, one of its political subdivisions, or one of its local entities or if the interest is paid to the Central Bank or a financial institution controlled by the other contracting state, its political subdivisions, or its local entities.
55. No WHT is levied on interest arising from the credit sale of industrial, commercial, or scientific equipment.
56. Levied if the recipient is a company with at least a 20% interest in the paying company; otherwise, a 10% rate is levied.
57. Royalties for copyright on literary, theatrical, musical, or artistic work are taxed at a 5% WHT rate. Royalties on films or other means of audio or video transmission, for the use or right to use industrial, commercial, or scientific equipment, or on scientific works or under agreements between both states are taxed at an 8% rate.
58. A 5% WHT rate is levied on interest arising from the sale of industrial, commercial, or scientific equipment, the sale of merchandise from one business to another business, or loans granted by a financial institution.
59. No WHT is levied on interest if the beneficial owner of the interest is a resident of the other contracting state and: (i) the beneficial owner of the interest is that contracting state, its central bank, a political subdivision, or a local authority; (ii) the interest is paid by the contracting state in which the interest arises or by a political subdivision, a local authority, or non-profit-making statutory body thereof; (iii) the interest is paid in respect of a loan, debt-claim, or credit that is owed to, or made, provided, guaranteed, or insured by that contracting state or a political subdivision, a local authority, or an export facilitating agency thereof; (iv) the beneficial owner of the interest is a financial institution; or (v) the beneficial owner of the interest is a qualifying pension fund and the income of that fund is generally exempt from tax in that other contracting state.
60. A 4% WHT rate is levied on royalties for copyright on literary, theatrical, musical, or artistic work (excluding films and TV programs).
61. Reduced WHT rates are not levied when more than 75% of the shares of the recipient company resident in a contracting state are owned, directly or indirectly, by non-residents and the income generated by the paying company is not taxed in its country of residence.
62. Levied if the recipient is a company with at least a 25% interest in the paying company; otherwise, a 15% rate is levied.
63. No WHT is levied on interest arising from a loan guaranteed by a contracting state.
64. Consideration received for waiving, either totally or partially, the use or right to use goods or rights is considered to be a royalty.
65. No WHT is levied on interest paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state or on interest paid on a long-term loan (five or more years) granted by a bank or credit institution resident in a contracting state.
66. No WHT is levied if the recipient is a company with at least a 5% direct interest in the paying company.
67. A 5% WHT rate is levied on royalties for technical services.
68. No WHT is levied on dividends paid to a shareholder resident in the other contracting state of the company distributing the dividend with at least a 25% interest.
69. Due to the application of the most favoured nation clause, a 5% WHT rate is levied on certain interest, such as that received by a bank (beneficial owner).
70. Levied if the recipient is a company with at least a 50% direct interest in the paying company. A 5% WHT rate is levied if the recipient is a shareholder with at least a 25% direct interest; otherwise, a 10% rate is levied. WHT is reduced to 5% if the recipient company is not taxed in the Netherlands for this dividend.
71. WHT is reduced to 10% if the recipient is a Dutch company with at least a 50% direct interest in the paying company or if the recipient holds 25% of its capital and another Dutch company holds at least the other 25%.

72. No WHT is levied on capital gains from sales of assets/rights when they are considered to be a royalty.
73.
    a. No WHT is levied on fees paid for the use or licensing of containers and bare hull vessels or aircraft used in international trade.
    b. A 5% WHT is levied if the beneficial owner is a company that has owned directly, during a period of six months, at least 50% of voting shares of the company paying the dividends; a 7.5% WHT is levied if the beneficial owner is a company that has owned directly, during a period of six months, at least 25% of voting shares of the company paying the dividends.
74. Levied if the recipient is a shareholder of the paying company holding voting rights with at least a 10% direct interest; otherwise, a 15% rate is levied.
75. A 10% WHT rate is levied on interest paid for bonds or similar securities generally offered to investors and related to transfers of industrial, commercial, or scientific equipment. No WHT is levied on interest from bonds or similar securities issued by the state or a local entity or from loans given or guaranteed by either of the two contracting states, Central Banks, or financial institutions as agreed between the contracting states.
76. A 20% WHT rate is levied on royalties for films or audio or TV tapes.
77. No WHT is levied on interest from loans granted or guaranteed by a contracting state.
78. If the recipient has invested more than EUR 100,000 in the company that pays the dividend or the dividend is tax exempt in its country of residence, the WHT rate levied is 10%. If both of these requirements are fulfilled, the rate applicable is 5%.
79. Interest on loans with a maturity period of over seven years is tax exempt.
80. A 10% WHT rate is levied on any patents, trademarks, designs or models, plans, secret formulae, or processes and computer software, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experiences. A 5% WHT rate is levied on any copyright of literary, artistic, or scientific work, excluding computer software and including cinematographic films or tapes used for radio or television broadcasting.
81. No WHT is levied on interest paid to a contracting state, one of its political subdivisions, or one of its local entities or interest paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state or interest paid on any long-term loan (seven years minimum) granted by a bank resident in a contracting state.
82. No WHT is levied on interest arising from the credit sale of industrial, commercial, or scientific equipment or merchandise.
83. No WHT is levied on dividends when they are paid to a shareholder with at least a 10% interest held for at least one year, provided that the company distributing the dividends is effectively taxed.
84. No WHT is levied on dividends when they are paid to a shareholder with at least 10% direct interest.
85. No WHT is levied if the royalties are paid between associated companies, affiliated by at least a 25% direct interest held for at least two years or both held by a third company with at least a 25% interest in both companies held for at least two years, and CIT is levied on all of the companies.
86.
    a. A 10% WHT rate is levied on interest received by financial and insurance entities. No WHT is levied on interest from loans granted by the government, Central Bank, or certain institutions.
    b. A 5% WHT rate is levied on royalties for any copyright of literary, artistic, theatrical, musical, or scientific work (excluding cinematograph films and films or tapes for radio or television broadcasting); an 8% WHT is levied on financial leasing related with the use or the right to use industrial, commercial, or scientific equipment.
87.
    a. Reduced WHT rates or exemptions are not levied/applied if the income is paid to a company resident in a contracting state more than 75% of whose shares are directly or indirectly held by non-residents and such income is not subject to taxation in such contracting state.
    b. Levied if the recipient is a shareholder of the paying company with at least a 50% interest; otherwise, a 15% rate is levied.
88. A 5% WHT rate is levied for long-term loans (more than seven years).
89. The WHT rate is 10% if the interest arises from a loan granted by a bank or is related to a credit acquisition of merchandise or equipment.
90. Levied if the recipient is a shareholder of the paying company with at least a 10% interest; otherwise, a 15% rate is levied.
91.
    a. No WHT is levied on royalties paid for the use or licensing of containers used in international trade.
    b. No WHT is levied on dividends when they are paid to a company holding at least a 75% direct interest in the paying company.
92. No WHT is levied if the interest is paid on a long-term loan (more than three years) to finance investment projects if the interest is paid to a pension fund that meets certain requirements or if the interest is paid in relation to a credit acquisition of merchandise, equipment, or services.
93. A 5% WHT is levied on royalties for any copyright of literary, artistic, or scientific work.
94. No WHT will be applicable on any interest due to the application of the most favoured nation clause.
95. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the interest is paid by one contracting state or its political divisions, (iii) the interest arises from a loan or credit granted or guaranteed by a contracting state to promote exports and development, (iv) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income generated from the fund is tax exempt in the contracting state paying the dividend, or (v) the interest is paid in relation to the credit acquisition of industrial, commercial, or scientific equipment.

96. Levied if the recipient is a shareholder of the paying company with at least a 50% interest. A 5% WHT is levied if the recipient is a company with at least a 70% interest. A 10% WHT rate is levied if the recipient is a company with at least a 25% direct interest; otherwise, a 15% rate is levied.
97. No WHT is levied on interest arising from loans granted or guaranteed by qualifying public institution or interest paid to public financial institutions.
98. No WHT is levied if the recipient is a company (other than a partnership) with at least a 25% direct interest in the paying company; otherwise, a 5% rate is levied.
99. No WHT is levied if the recipient is a company with at least a 10% direct interest in the paying company; otherwise, a 10% rate is levied.
100. 5% WHT rate is levied if the recipient (excluding partnerships) is a shareholder with at least a 40% direct interest in the paying company; otherwise, a 10% rate is levied. No WHT is levied if the recipient is a shareholder with at least an 80% direct interest in the paying company, and (i) its shares are listed on a stock exchange, (ii) the recipient is at least 50% owned by residents from either of the two countries, (iii) the recipient is owned by shareholders resident for tax purposes in third countries by a proportion of less than 25%, and (iv) the recipient is owned (an interest of more than 25%) by residents in third countries, provided that a tax treaty for the avoidance of double taxation has been signed with the country of the company paying the dividends and that this tax treaty establishes the same or more favourable conditions. No WHT is levied for dividends paid to pension funds.
101. Reduced rates/exemptions are not applicable when a Panama tax-resident company pays dividends, interest, or royalties to a Spanish tax resident and such income has been obtained either in Spain or in a country that has not signed a tax treaty for the avoidance of double taxation with Spain.
102. Levied if the recipient is a company (excluding partnerships) with at least a 10% direct interest in the paying company; otherwise, a 5% rate is levied. In the case of distributions made out of a real estate investment trust, 5% is levied if the beneficial owner holds, directly or indirectly, less than 10% of the value of the capital in such trust.
103. No WHT is levied on interest if: (i) the recipient is a contracting state of the treaty, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; (iii) the payer is a financial institution of a contracting state and interest is paid to a financial institution of the other contracting state; (iv) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend; (v) the interest is paid in respect of a loan, debt-claim, or credit that is owed to, made, provided, guaranteed, or insured by an export financing agency of a contracting state or political division, or guaranteed or insured by that state or political division; (vi) the recipient is an institution wholly or mainly owned by a contracting state as may be agreed from time to time between the competent authorities; or (vii) the recipient is the government of Singapore Investment Corporation Pte Ltd.
104. No WHT is levied on dividends if the beneficial owner is a company resident in the other contracting state whose capital is wholly or partly divided into shares and it has held at least 25% of the capital of the company paying the dividends for at least two years before the date of such payment and such dividends are not subject to profit tax in the other contracting state.
105. 5% WHT rate is levied on royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films or films and tapes used for radio or television broadcasting.
106. Levied if the recipient is a company with at least a 25% direct interest in the paying company; otherwise, a 15% rate is levied.
107. No WHT is levied on interest if: (i) the interest is paid by a contracting state, one of its political subdivisions, or one of its local collectivities; (ii) the interest is paid to the government of the other contracting state or one of its local collectivities or to a body (including financial institutions) fully owned by such contracting state or its local collectivities; (iii) the interest is paid to another body (including financial institutions) in relation to loans granted under an agreement signed between both contracting states for a term of at least five years; or (iv) the interest is paid in relation to the acquisition of industrial, commercial, or scientific equipment.
108. (i) 3% WHT is levied on royalties paid for the use of, or the right to use, news; (ii) 5% WHT is levied on royalties paid for the use of, or the right to use, copyright on literary, theatrical, musical, or artistic works; and (iii) 10% WHT is levied on royalties paid for the use of, or the right to use, patents, designs, models, plans, secret formulae, processes or computer software, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experiences or technical assistance services.
109. 15% WHT is levied if the dividends are paid out of income generated, either directly or indirectly, from immovable property through an investment vehicle that distributes most of its income annually and whose income is tax exempt. In addition, no WHT is levied if the recipient is a company that directly or indirectly holds at least a 10% interest in the paying company or if the recipient is a pension plan of the other contracting state.
110. Levied if the recipient is a company with at least a 10% direct interest in the paying company; otherwise, a 5% rate is levied.
111. No WHT is levied on dividends if the beneficial owner is a company (excluding unlimited liability companies) that directly holds at least 75% of the capital of the company paying the dividends.
112. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; (iii) the interest arises from a loan or credit granted or guaranteed by a contracting state, its political divisions, or an export credit agency; (iv) the interest is paid in relation to the acquisition of any equipment, goods, or services; or (v) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend.

113. No WHT is levied on interest if: (i) the interest is paid by a contracting state or one of its political divisions or (ii) the interest is paid to the government of the other contracting state or one of its political divisions or to a body (including financial institutions) fully owned by such contracting state or its political divisions.
114. 7.5% WHT rate is levied if the recipient is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividend.
115. No WHT is levied on interest if the recipient is the beneficial owner and it is the government of the other contracting state, one of its political subdivisions, one of its local entities, the Central Bank, or a financial institution controlled by the other contracting state.
116. 7.5% WHT is levied on royalties if the recipient is a company.
117. If under any agreement or arrangement between Nigeria and a member state of the OECD Nigeria declared exempt from taxation the dividends, interest, or royalties from a Nigerian source, or limited the tax charged in Nigeria on such dividends, interest, and royalties at rates below those established in the DTT with Spain, such exemption or lower rate shall automatically apply to dividends, interest, or royalties from the Nigerian source beneficially owned by a Spanish resident.
118. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; or (iii) the interest arises from a loan or credit granted by a contracting state or its political divisions.
119. The provision in this article shall not apply if: (i) a company of a contracting state paying dividends, interest, or royalties to a company resident in the other state has generated its income from a jurisdiction that does not have a double taxation agreement with that other contracting state; and (ii) that income is exempt from or not subject to tax in the first contracting state.
120. No WHT is levied if the beneficial owner is a company that directly holds at least 20% of the capital in the paying company; otherwise, a 10% rate is levied.
121. 5% rate is applicable if the beneficial owner is a company that directly holds at least 10% of the capital in the paying company; otherwise, a 15% rate is levied.
122. Notwithstanding:
    a. Interest arising in a contracting state and paid to a resident of the other contracting state shall not be taxable in the first-mentioned contracting state if the beneficial owner of the interest is a resident of the other contracting state and is dealing at arm's length with the payer. This shall not apply where all or any portion of the interest is paid or payable on an obligation that is contingent or dependent on the use of or production from property or is computed by reference to revenue, profit, cash flow, commodity price, or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a company.
    b. Interest arising in Spain and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed, or insured, or a credit extended, guaranteed, or insured by Export Development Canada.
    c. Interest arising in Canada and paid to a resident of Spain shall be taxable only in Spain if it is paid in respect of a loan, debt-claim, or credit that is owed to or made, provided, guaranteed, or insured by Spain or a political subdivision, local authority, or export financing agency thereof, provided the loan, debt claim, or credit is in respect of exports.
123. 5% WHT is levied on interest received by assurance institutions.
124. 5% WHT is levied on interest received by banks or paid to banks.
125. Interest paid on loans granted (three years) by public institutions are tax exempt.
126. Interest paid by pension funds is tax exempt.
127. No WHT is levied on dividends when they are paid to a shareholder (whose capital is totally or partially divided into shares or participations) with at least 10% direct interest or if the recipient is a pension fund.
128. WHT is reduced to 5% if the recipient is a Spanish company with at least a 50% direct interest in the paying company or if the recipient holds 25% of its capital and another Spanish company holds at least the other 25%.
129. No WHT is levied if the interest is paid on a long-term loan (more than five years).
130. A 10% WHT rate if royalties are paid by a company registered with the Philippine Board of Investments.
131. Levied if the recipient is a company holding at least a 25% interest in the paying company; otherwise, a 10% rate is levied.
132. 5% WHT is levied on royalties paid for the use of, or the right to use, patents, designs, models, plans, secret formulae, processes, and industrial or scientific experiences (not commercial).
133. No WHT is levied on dividends when they are paid to a shareholder (whose capital is totally or partially divided into shares or participations) with at least 10% direct interest; or when are paid to the state, a political subdivision, a local authority or a statutory body thereof, or an entity wholly owned by that state or authority, provided that it directly holds at least 5% of the capital; or when paid by a company substantially and regularly traded on a stock exchange and the beneficial owner directly holds at least 1% of the capital.
134. A 'most-favoured nation' clause is included in the Convention or Agreement for the Avoidance of Double Taxation between Brazil and Spain if Brazil signs an agreement with another non Ibero-America nation. Please note that this clause only applies to dividends and royalties paid from Brazil to Spain.

Tax administration

Taxable period

The tax year for CIT purposes is the company's accounting year. The tax year cannot exceed 12 months. Incorporation, change of accounting year, or dissolution of a company can give rise to a period of less than one year.

Tax returns

The tax system in Spain is a self-assessment system, and tax returns may be inspected by the tax authorities.

Annual CIT returns must be filed within 25 calendar days following the six months subsequent to the end of the tax year (i.e. if the tax year coincides with the calendar year, the return must be filed between 1 July and 25 July of the following calendar year).

Payment of tax

For CIT, three advance payments of the annual tax payment must be made during the first 20 calendar days of April, October, and December. The final CIT payment must be made with the annual CIT return.

For companies whose turnover, in accordance with Spanish VAT law, for the 12 months prior to the beginning of a tax period exceeds EUR 6,010,121.04, the advance payments are calculated by applying 17% to the taxable income (reduced by any applicable tax-loss carryforwards) for each advance-payment period, i.e. at 31 March, 30 September, and 30 November (percentage applicable to companies that are taxed at the general CIT rate).

Small and medium-sized companies can opt to calculate their advance payments in the same way as large companies (applying a percentage of 17%) or to apply a rate (currently 18%) on the tax liability of their last advance CIT return filed on 1 April, 1 October, or 1 December.

Variable capital investment companies, financial investment funds, real estate investment companies, real estate investment funds, mortgage market regulation funds, and pension funds that meet certain requirements and are taxed at a 1%, or even a 0%, tax rate should not make advance payments and are not required to file the corresponding tax return.

EUR 2,500 limit on cash payments

Payments in cash over EUR 2,500 are not allowed for transactions in which at least one of the parties is a person carrying on a business or professional activity, and fines of up to 25% of the amount of the transaction can be imposed on both the payer and the recipient of these cash payments.

Tax inspections

The Spanish tax authorities have a tax inspection department that is responsible, amongst other things, for verifying that taxpayers' obligations are correctly complied with and, if necessary, for making adjustments to their tax affairs by issuing one or more tax assessments.

As part of its responsibilities, the tax inspection department may investigate a taxpayer's tax affairs to ensure that they are correct and verify the accuracy of filed tax returns.

Taxpayers' tax returns to be examined by the tax inspection department are chosen on the basis of different criteria, such as: (i) by random sample, (ii) if debt push down restructuring transactions have been carried out that involve Spanish companies with material debt levels, (iii) if companies have recurring tax-loss carryforwards, or (iv) if companies are related to a family group and lack a production or commercial structure and where their personal and business assets are not clear.

If taxpayers disagree with a tax assessment issued by the tax inspection department as a result of a tax inspection, they may file an appeal firstly with the Spanish economic-administrative tribunal for tax appeals and then, if the appeal is not upheld by the tribunal, with the ordinary courts.

If taxpayers have paid incorrect amounts of tax to the tax authorities, they may claim a refund of any excess tax paid from the authorities within the statute of limitation period (four years) by means of a special procedure that commences with the filing of a request with the tax authorities.

Statute of limitations

The statute of limitations for taxes in Spain is generally (with some exceptions) four years starting from the day following the date of termination of the voluntary tax filing period.

This four-year period may re-start for a tax if the tax authorities carry out any actions or procedures, with the formal acknowledgement of the taxpayer, to acknowledge, adjust, review, inspect, guarantee, or collect all, or any part of, a tax obligation, or due to actions by the taxpayer, such as the filing of a new or late tax return, that alters or rectifies a previous tax return or the filing of an appeal or claim by the taxpayers regarding the tax.

The tax authorities' entitlement to verify or investigate tax-loss carryforwards, tax relief availed of for carrying on certain activities, and deductions for the avoidance of double taxation is time barred after ten years.

At the end of the ten-year period, evidence of the origin and amount of tax losses must be given by presenting the relevant tax assessment or self-assessment and accounting records and, in addition, giving evidence that such assessments and records were filed and deposited with the Companies Registry during this period.

Topics of focus for the tax authorities

Every year, the Spanish tax authorities issue general guidelines on the authorities' annual tax and customs control plan. These guidelines identify areas where the tax authorities intend to adopt a greater role of verification, inspection, and monitoring during a certain tax year.

Obligation to disclose assets located overseas

Assets, such as accounts, shares, or real estate, that are located overseas must be disclosed. Severe fines are imposed (a minimum of EUR 10,000) for breaching this obligation.

In addition, assets regarding which the information disclosure obligation is not complied with by the established time limits are treated as unreported income for CIT payers and allocated to the earliest tax period of those that are not statute barred. Breaches of the obligation to declare this income are a very serious infringement, and fines of 150% of the gross tax liability are imposed.

Other issues

Automatic and standardised exchange of tax information agreements

The US Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 to detect and prevent offshore tax evasion. Although, due to its name, it may seem that FATCA is for financial institutions, many global companies outside the financial services industry may be affected by FATCA if companies of their worldwide network fall under the purview of FATCA or have operational areas that make or receive payments subject to FATCA.

Multinational companies that are withholding agents are already required to report, withhold on payments, and record payees, but FATCA requires that changes be made to these activities. FATCA has established that multinational businesses should assess company payees differently, engage in withholding on certain gross proceeds transactions (a change from historic processes), and report other information to the US Internal Revenue Service (IRS).

The withholding provisions of FATCA came into effect on 1 July 2014. Compliance with FATCA may require changes to existing systems and processes across business units and regions, the renewal of policies and day-to-day practices, as well as other new tasks, such as registering with the IRS.

Spain and the United States have signed an intergovernmental agreement (IGA) aimed at improving compliance of international tax laws and enforcing FATCA. Under this agreement, financial institutions in Spain and the United States are required to provide their tax authorities with information on taxpayers from the other signatory country. This information will then be automatically exchanged between those tax authorities through a standardised procedure.

Base erosion and profit shifting (BEPS)

In July 2013, the OECD published a 15-point Action Plan to address BEPS by multinational companies. The Action Plan identifies actions needed to address BEPS, sets deadlines to implement these actions, and identifies resources and methodology needed to implement these actions.

Some jurisdictions and the European Union already started implementing parts of the actions into their local law. Moreover, the European Union adopted two Anti-Tax Avoidance Directives (ATAD and ATAD-II) that include certain minimum standards to combat tax avoidance. The ATAD directive must be primarily implemented into national laws by 31 December 2018, whereas the ATAD-II must be implemented into national laws by 31 December 2019.

Spanish legislation is already very similar to ATAD. This notwithstanding, some minor changes should be made before 31 December 2018.

On the other hand, together with numerous other countries, Spain signed a so-called 'Multilateral Instrument' (MLI) on 7 June 2017. However, Spain has not yet implemented any changes in the domestic law regarding this MLI.

Special tax regime applicable in the Basque Country

The three provinces that make up the region of the Basque Country (Álava, Guipúzcoa, and Vizcaya) have an 'economic agreement' with Spain's central government (laid down in and regulated by Law 12 of 23 May 2002) in accordance with which these provinces are entitled to establish their own tax regimes.

There are certain provisions in Law 12 of 23 May 2002 regarding CIT that make this region of Spain more attractive for companies, and three CIT Acts have come into effect for each of the three provinces for tax periods beginning on or after 1 January 2014.

Additionally, it is important to remark that the Provincial Regions of the Basque Country have recently introduced modifications in the CIT regulations. The tax reform was approved in March 2018 for Álava and Vizcaya, although the modifications are effective for tax periods initiated from 1 January 2018.

In the case of Guipúzcoa, the Guipúzcoa Tax Administration has not published the new tax provincial regulation yet. However, a draft has been published with the same terms.

General tax rate

As of 1 January 2019, the general tax rate will be reduced from 28% to 24%. However, for tax periods initiated between 1 January 2018 and 31 December 2018, the general tax rate will be 26%.

Lower tax rates and other tax benefits

Small companies

As of 1 January 2019, the general tax rate for small companies will be reduced from 24% to 20%. However, for tax periods initiated between 1 January 2018 and 31 December 2018, the general tax rate will be 22%.

A small company is considered to be a company that meets the following requirements in the year prior to the application of the special tax regime:

- It carries on a business activity.
- Its net turnover or assets is under EUR 10 million.
- Its average number of staff is under 50.
- An interest of 25% or more in the company is not held, directly or indirectly, by a company that does not meet the above requirements.

Other benefits are as follows:

- Free depreciation for new tangible fixed assets (except buildings).
- General bad debt provision of up to 1% of credit sales and services.
- Net operating losses can be offset by up to the 70% of the positive tax base.
- No CIT payment in advance is required.

Micro companies

As of 1 January 2019, the general tax rate for micro companies will be reduced from 24% to 20%. However, for tax periods initiated between 1 January 2018 and 31 December 2018, the general tax rate will be 22%.

A micro company is considered to be a company that meets the following requirements in the year prior to the application of the special tax regime:

- It carries on a business activity.
- Its net turnover or assets is under EUR 2 million.
- Its average number of staff is under 10.
- An interest of 25% or more in the company is not held, directly or indirectly, by a company that does not meet the above requirements.

Other benefits are as follows:

- General bad debt provision of up to 1% of receivables.
- Total depreciation/amortisation charges of up to 25% of net tax value or free depreciation for new tangible fixed assets (except buildings).
- Net operating losses can be offset by up to the 70% of the positive tax base.
- No CIT payment in advance is required.
- As of 1 January 2019, the general tax relief will be decreased from a 20% to 10% (15% in financial year [FY] 2018) of prior positive taxable income given as a 'tax compensation' for the difficulties faced by companies of this size.

Holding companies

For holding companies, including, amongst others, real estate companies, the tax rates are as follows:

Taxable income (EUR)	Tax rate (%)
0.00 to 2,500.00	20
2,500.01 to 10,000.00	21
10,000.01 to 15,000.00	22
15,000.01 to 30,000.00	23
30,000.01 and over	25

The requirements to be taxed under these rates are as follows:

- The company's shareholders representing at least 75% of its capital are persons, holding companies, or other companies associated with such persons or companies. This requirement should be met throughout the tax period.
- For at least 90 days of the tax period, over half of the company's assets are made up of securities or are not used to carry on business activities. Leased real estate is not considered to be used to carry on a business activity when the company does not have at least five employees on average in a year who work exclusively for the company on a full-time basis.
- Companies where at least 80% of their income is generated from assignments of use of real estate that is not considered to be a real estate leasing business activity (*see previous paragraph*) or is generated from transfers of own capital to third parties or from provisions of services to associated parties and that do not have sufficient personal and material resources may also be taxed under this tax regime.

This tax regime establishes the following rules, which are applicable to these types of companies:

- All expenses, excluding those stated below, cannot be considered tax deductible.
- An amount equal to 20% of gross income generated from leases of housing and their financial expenses may be considered tax deductible.
- An amount equal to 30% of gross income generated from leases of other real estate and their financial expenses may be considered tax deductible.
- Net income for each leased property cannot be negative.

Tax-loss carryforwards

For the tax periods initiated since 1 January 2018, the offset of net operating losses will be limited (previously, there was no quantitative limit). Therefore, the net operating losses to be offset in each tax period cannot exceed 50% of the positive tax base (prior to that compensation). The limit will be 70% for micro and small entities.

Additionally, the temporary limit to offset the net operating losses will be modified, from 15 years to 30 years.

Tax deductibility of amortisation of goodwill and intangible assets

Intangible assets should be considered to have a definite useful life.

Amortisation recorded for intangible assets is considered tax deductible over the assets' useful lives. However, if the useful life cannot be determined, amortisation would be tax deductible up to a maximum annual limit of 10% if the following requirements are met:

- The assets have been acquired for consideration.
- The acquiring and transferring companies are not associated companies.

Furthermore, due to the above-mentioned amendment of the Audit Law, goodwill is amortisable assuming a useful life of ten years. However, this accounting amortisation would not be tax deductible, and the corresponding book-to-tax adjustment should be made.

From a tax perspective, goodwill amortisation is tax deductible up to a maximum annual limit of 12.5% if the following requirements are met:

- The goodwill has been acquired for consideration.
- The acquiring and transferring companies are not associated companies.

It is not required to recognise an unavailable reserve for this purpose.

However, if an impairment loss is recognised or if the goodwill is transferred, the tax amortisation should be reversed.

Financial goodwill

Financial goodwill is tax deductible up to a maximum annual limit of 12.5% when at least a 5% interest is acquired in a company and the shares are not quoted on a stock exchange or at least a 3% interest if the shares are quoted on a stock exchange.

If the company from which the shares have been acquired has an interest in another company, the equity, assets, and rights recorded in the group's consolidated annual accounts must be taken into consideration when calculating the financial goodwill. The part of the financial goodwill for income obtained by previous owners that have availed of a double tax exemption for income obtained from transfers of shares will not be tax deductible. Amounts deducted for this concept will increase taxable income if there are impairment losses (*see Impairment losses below*).

The requirements for the shares are as follows:

- A 5% interest (or 3% in the case of quoted companies) should be held for one year.
- The subsidiary should be subject to and not exempt from CIT or a similar tax.
- At least 85% of the subsidiary's income should be generated from business activities.

If the shares are not acquired on a stock market, the company that acquires the shares must not be in any of the situations provided for in Article 42 of the Spanish Commercial Code in relation to the transferring company.

Depreciation/amortisation periods

Depreciation/amortisation periods for assets are shorter than those established by state CIT law.

Reinvestment of extraordinary income

Income obtained from the sale of tangible fixed assets or intangible assets can be deducted from taxable income if the following requirements are met:

- The amount obtained from the sale is reinvested in similar types of assets or in the acquisition of shares that comply with certain requirements within a four-year period (as of one year prior to the sale up to three years after the sale).
- The asset in which the reinvestment is made is held for five years (three in the case of movable assets) or, if less, the asset's useful life.

From FY 2018 onwards, the possibility of carrying out the reinvestment through the acquisition of participation in companies has been eliminated.

Income generated from intellectual or industrial property

From 1 July 2016, companies may deduct 70% of income (revenue less amortisation and expenses) obtained from transfers of intellectual or industrial property rights from taxable income upon complying with certain requirements only if the company has created the intellectual or industrial property itself.

If the intellectual or industrial property has been partially acquired or developed by related companies, this 70% reduction can only be applied if the ratio of expenses incurred with related parties does not exceed 30% of the expenses incurred in the development carried out by third parties or by the company on its own. However, if this ratio exceeds 30%, the reduction will be reduced proportionally.

The following features regarding this reduction have also been introduced:

- The income to be reduced will be determined as the difference between the revenues obtained and the amortisation and expenses directly related to the intellectual or industrial property that is transferred.
- This reduction is no longer applicable to the income obtained as a consequence of the transfer of trademarks.

- Certain limitations are applicable if a company applies this reduction and obtains negative income in previous or future years.
- A transitional regime is envisaged for the transfers of intellectual or industrial property rights carried out before 1 July 2016. This transitional regime is applicable until 30 June 2021 and its application is optional.

In addition, in Álava and Vizcaya, companies may reduce taxable income by 5% of the acquisition price or production cost of intellectual or industry property assets used to carry on their own business activities if they fully own such assets. This reduction cannot exceed 0.5% of income obtained from the business activity in which these assets are used.

The additional reduction envisaged in the last paragraph is not applicable in Guipúzcoa.

Additionally, the new tax regulation in force since 1 January 2018 has introduced modifications to the patent box regime. This incentive is limited to income derived from the transfer of the right to use or exploitation of patents, utility models, medications protection and plant protection products supplementary certificates, or advanced registered software obtained as a result of R&D projects. Therefore, the exclusion area of this regime is expanded, among others, to the rights on information related to industrial, commercial, or scientific experiences ('know-how').

Limitation to the deductibility of financial expenses

From FY 2018 onwards, the tax deductibility of financial expenses is limited to 30% of the operating profit of the tax period (in accordance with stipulations in the European Directive (EU) 2016/1164 of the Council, of 12 July 2016), according to the following rules:

- Net financial expenses of the tax period will be deductible, in any case, up to EUR 3 million.
- A carryforward method is implemented to deduct net financial expenses, which have not been deducted in the following tax period, jointly with the ones of the corresponding tax period, under the aforementioned limit. In addition, when net financial expenses of the tax period do not reach the above limit, the difference between this limit and the net financial expenses of the tax period shall be added to the limit of the tax periods concluded in the immediate following five years, until that difference is deducted.

In addition to the abovementioned, the application of the thin capitalisation rule to the taxpayers that apply the interest-capping rule will not be compatible. In this sense, as of 1 January 2018, the thin capitalisation rule will only be applicable if the limitation of deductibility of financial expenses mentioned above does not apply.

The general thin capitalisation tax system is established to restrict the tax deductibility of financial expenses, which establishes a 3:1 debt-to-equity ratio for tax purposes.

This limit applies to borrowings with any associated companies, whether they are resident in Spain, the European Union, or any other countries. The limit does not apply when a company's net borrowing with associated companies does not exceed EUR 10 million at any time during the tax period.

Companies may ask the tax authorities to propose a different ratio that they can apply.

Finally, as of 1 January 2018, the new tax regulation establishes the non-deductibility of those expenses derived from transactions carried out with related parties (persons or entities) that, because of a different tax qualification at their level, do not generate an income or are exempt or subject to a nominal tax rate lower less than 10%.

Limit for tax relief for expenses incurred for representation, gifts, and certain transportation

Expenses incurred for representation, gifts, and certain transportation are tax deductible, with certain limits.

In addition to these limits, the allocation rule is maintained for 50% of vehicles used for both business activities and private purposes. In addition, for passenger and other similar cars, the maximum amount of what is understood to be a reasonable acquisition price (EUR 25,000) is maintained, and only expenses for vehicles that do not exceed this acquisition price will be tax deductible.

Impairment losses

Losses for impairment of shares in companies are tax deductible in accordance with the following regulations:

- If an interest of less than 5% is held in unquoted companies or, otherwise, in quoted companies that are group companies, jointly-controlled companies, or associates, then the difference between shareholder's equity at the beginning and the end of the year in proportion to the interest held is tax deductible, taking into account any capital contributions or reimbursements made.
- If an interest of 5% or more is held in unquoted companies or 3% in quoted companies, then the difference between the acquisition price and shareholder's equity is deductible in proportion to the interest held, adjusted for tacit capital gains at the valuation date.

Shareholder's equity shall be the shareholder's equity recorded in the consolidated annual accounts (*see Financial goodwill above*).

Elimination of double taxation for dividends and income obtained from transfers of shares in resident and non-resident companies in Spain (exemption mechanism)

Dividends or shares in profits

To apply the tax exemption for interests in companies resident in Spain, the following requirements established for interests in non-resident companies should be met:

- A 5% interest (or 3% in the case of quoted companies) should be held for one year.
- The subsidiary should be subject to and not exempt from CIT or a similar tax.
- At least 85% of the subsidiary's income should be generated from business activities.

Notwithstanding, for dividends generated from resident subsidiaries that do not comply with these requirements, 50% of the amount of the dividends may be deducted from taxable income. This rule therefore applies to:

- Interests below 5% (or 3% in the case of quoted companies) in companies resident in Spain.
- Interests in companies resident in Spain that do not comply with the requirement that 85% of their income is generated from business activities.

According to the CIT regulation, in order to comply with the 'subject to tax' test, it is required that the company that distributes the dividend is subject to a tax that is identical or analogous in nature to the Basque CIT (i.e. Biscay) at a tax rate not lower than a nominal 10% rate. Therefore, as of 1 January 2018, for companies taxed at a tax rate lower than 10%, the tax exemption for double taxation does not apply, even if they are resident in a country where a DTT with Spain is subscribed.

Income obtained from transfers of shares

Capital gains obtained from disposals of interests in resident and non-resident companies are not included in taxable income. The requirements to be met to not include them are the same as the requirements for the application of dividend exemption, which should be met for all financial years when the interest is held, except for the requirement regarding the percentage of the interest (5%, or 3% in the case of quoted companies), which should be met on the day when the transfer is made.

According to the CIT regulation, in order to comply with the 'subject to tax' test, it is required that the company that distributes the dividend is subject to a tax that is identical or analogous in nature to the Basque CIT (i.e. Biscay) at a tax rate not lower than a nominal 10% rate. Therefore, as of 1 January 2018, for companies taxed at a tax rate lower than 10%, the tax exemption for double taxation does not apply, even if they are resident in a country where a DTT with Spain is subscribed.

If any of the requirements are not met, the part of the income corresponding to a net increase of undistributed profits will not be included in taxable income in proportion to the profits generated in financial years when the requirements are met, and the part that does not correspond to such net increase will be presumed to be generated linearly during the time when the interest is held. In the case of resident subsidiaries that do not comply with the requirements of being subject to CIT or a similar tax and of carrying on business activities, an amount equal to the net increase of undistributed profits that may be allocated to the interest in the subsidiary generated during the time when the interest is held (excluding the part that would not have been included in taxable income with the offsetting of tax-loss carryforwards) will not be included in taxable income (up to the limit of calculated income).

Income obtained by PEs

From FY 2018 onwards, the exemption will not be applied when the PE's income is tax exempt in the state in which it is located or is taxed by an analogous or identical tax to the CIT at a nominal tax rate lower than 10%.

Participating loans to carry out new business activities or projects

Income generated from variable interest on participating loans is not included in taxable income if it is related to the borrower's profits. The exemption does not apply to remuneration generated from fixed interest.

The following requirements should be met in this case:

- The lender should have a 25% direct or indirect interest in the borrower (15% for quoted subsidiaries, and this participation should be held for one year).
- The loan should be used to finance new business activities or projects.
- The exempt income not included in taxable income should be used to grant new participating loans, with the same requirements, or be set aside to the

special reserve to foster business capitalisation or the special reserve to boost entrepreneurship and production activities (*see below*).
- The variable interest may not exceed the following limits:
  - 20% of profits (before interest on the participating loan) of the borrower for the percentage of the lender's interest.
  - 1.5 times the late payment interest on the average balance of the loan during the tax period.

The withholdings made on interest not included in taxable income are not deductible (general 19% tax rate).

Measures to foster companies' capitalisation

Some measures were introduced to improve the tax treatment of structures based on an increase in shareholder's equity and a reduction of the need to resort to borrowing. These measures are:

Reserve to foster business capitalisation

Companies may reduce their taxable income by an amount equal to 10% of the amount by which shareholder's equity is increased for tax purposes compared to the shareholder's equity of the previous year, and this amount should be set aside to a non-distributable reserve for at least five years. During this five-year period, the company's shareholder's equity should remain the same or be increased unless it is decreased due to accounting losses.

The application of this deduction may not give rise to a negative taxable income or an increase in negative taxable income although amounts not deducted due to insufficient taxable income may be deducted in the following tax periods.

Special reserve for levelling-off of profits

Companies may reduce taxable income by the amount of accounting results set aside to the special reserve for 'levelling-off of profits' up to a maximum amount of 10% of the part of these results that may be freely distributed under company law and up to the limit of 15% of taxable income for the financial year. In addition, the balance of the special reserve may not exceed 20% of shareholder's equity for tax purposes at all times.

This reserve will be allocated to offset tax-loss carryforwards, in which case such tax-loss carryforwards cannot be offset in future years. Consequently, this is a way to offset tax-loss carryforwards earlier. If, within a period of five years, the company does not generate tax-loss carryforwards, the reserve will be treated as taxable income. In this case, the effect will be a temporary deferral of tax.

Special reserve to boost entrepreneurship and production activities

Companies may reduce taxable income by 60% of the accounting profit of the year, which should be set aside to the special reserve to boost entrepreneurship and production activities, up to a maximum amount of 45% of their taxable income. In addition, the balance of this reserve may not exceed 50% of shareholder's equity for tax purposes at all times.

This reserve is not freely distributable and should be used within a period of three years for, amongst others, new non-current assets, assets that give rise to a tax credit for environmental investments, or for investments in companies under development.

Investments in new tangible fixed assets

A 10% tax credit can be applied for investments in new tangible fixed assets upon complying with certain requirements. The minimum depreciation period for the assets, excluding computer equipment, is five years. The tax credit is 5% for investments in non-current assets that are considered to be improvements or investments in leased assets carried out by lessees.

The investment should exceed 10% of the carrying amount (less depreciation/ amortisation) of the company's tangible fixed assets, buildings, and software recorded for the previous year.

As of 1 January 2018, this incentive is improved by facilitating the application of this tax credit when the annual amount of the investment in new fixed assets exceeds the amount of EUR 5 million, even though this investments does not exceed the abovementioned 10%.

Research and development (R&D)

A 30% tax credit can be availed of for expenses incurred from R&D activities. If the expenses are higher than the average expenses incurred by the company during the previous two years, the tax credit is 50% on the excess amount.

An additional tax credit of 20% can be availed of for the following expenses:

- Staff expenses incurred for staff exclusively carrying out and qualified to carry out R&D activities.
- Expenses incurred for projects contracted from certain universities and public organisations.

A 10% tax credit can be availed of for investments made in tangible fixed assets (excluding buildings) and intangible assets that are exclusively assigned to R&D activities.

Participation in projects of R&D and technological innovation

Under the Basque Country legislation, from FY 2017 onwards, a deduction is foreseen as applicable for the taxpayers who participate in the financing of projects made by third parties.

The funder of the project has the right to apply the R&D deductions with the limit of 1.2 multiplied by the amount paid regarding the project. The excess can be applied by the taxpayer who carries out the project.

Expenses incurred for technological innovation

A 20% or 15% tax credit can be availed of for certain expenses incurred for technological innovation.

Expenses incurred for environmental conservation and improvement and for conservation of energy

Companies are eligible for a 30% tax credit for investments made in the equipment listed in the Basque List of Environmental Technologies upon complying with certain requirements.

Companies may also qualify for a 15% tax credit for investments made and expenses incurred in respect of tangible fixed assets upon complying with certain requirements.

Job creation

From FY 2018 onwards, in order to benefit from the tax deduction on employment creation, the average increase in the workforce must correspond to employees with an indefinite contract and with a salary higher than the minimum inter-professional salary, increased by 70%.

Additionally, the deduction will be 25% of the gross salary of the employee with the limit of EUR 5,000 for each employee and financial year.

On the other hand, the company's average number of staff with permanent employment contracts must be increased by at least the same number of contracts that generated the tax credit, and this increase must be maintained by the company for two years.

Time limits for the application of tax credits

As of 1 January 2018, the temporary limit for the application of the tax credits is increased from 15 to 30 years.

Limits on the amount of tax credit applied

In line with the above, from 1 January 2018 onwards, the following quantitative limits have been established:

- Tax credits different from R&D and technological innovation: 35% of the amount resulting to reduce the taxable base multiplied by the applicable rate in tax credits for the avoidance of double taxation (previously, 45%)
- R&D and technological innovation: 70% of the amount resulting to reduce the taxable base multiplied by the applicable rate in tax credits for the avoidance of double taxation (previously, there was no limit). In case that other credits different from R&D and technological innovation are applied, the limit of 70% will apply on the amount resulting to reduce the taxable base multiplied by the applicable rate in tax credits for the avoidance of double taxation reduced by the tax credits to which 35% limit applies.

Effective tax rate and minimum tax

The Basque Country CIT regulation establishes a minimum tax to determine a company's effective CIT liability. Tax credits applied in the tax period cannot reduce effective CIT liability below this minimum although this limit does not apply for R&D and technological innovation tax credits.

As of 1 January 2018, the percentage of minimum taxation increased from 13% to 17% (which will be 15% in 2018), which also affects the application of tax credits. However, if an entity maintains or increases the average of its employees with indefinite contracts with regard to the preceding financial year, the percentage of minimum taxation will be reduced by two points.

Thus, the application of tax credits to determine the effective tax liability of a company that obtains positive taxable income (except for R&D and technological innovation tax credits) cannot give rise to an effective CIT liability that is lower than the following rates:

FY 2018

	General tax rate (%)	Minimum tax rate (%)	Minimum reduced tax rate (%)
General companies	26	15	13
Small and micro companies	22	13	11

FY 2019 onwards

	General tax rate (%)	Minimum tax rate (%)	Minimum reduced tax rate (%)
General companies	24	17	15
Small and micro companies	20	15	13

The minimum reduced tax rate applies to companies that maintain or increase their average number of staff of the previous year indefinitely.

Advance CIT payments

The new CIT regulation has also introduced an annual payment in advance, which must be self-assessed in the first 25 calendar days of October each year. The amount of this prepayment will be 5% of the tax base of the last tax period whose submission deadline has expired on 1 October. Such prepayment will be deductible from the effective tax liability.

Tax groups

The economic agreement establishes that the same rules should apply to the Common Territory and Basque companies regarding the composition of tax groups, the definition of controlling and subsidiaries, and the tax treatment of internal operations carried out in tax groups.

Therefore, the recent tax reform for the Spanish Common Territory would apply to Basque tax groups. On this matter:

- A non-resident company or company resident in the Spanish Common Territory may be the controlling company of a Basque tax group (horizontal consolidation).
- The incorporation in a Basque tax group of companies indirectly owned by companies that do not form part of the group (non-resident or resident in the Spanish Common Territory) is permitted.

As established in the Spanish Common Territory regulations, when the controlling company is a non-resident company, one of the companies that makes up the group is appointed as their representative and is responsible for complying with the group's statutory requirements and formalities. Under Basque regulations, the representative company of a Basque tax group should be:

- The controlling company if this company is resident in the Spanish territory, or
- The Basque company of the tax group with the highest turnover in the previous tax year (if no other company resident in the Spanish territory complies with the requirements established in the tax regulations to be considered the controlling company).

However, the non-resident controlling company may appoint any other company of the Basque tax group of companies as the group's representative as long as the appointed company is subject to the tax regulations applicable to the company of the tax group with the highest turnover in the previous tax year.

Exit tax regime

In accordance with the provisions of the European Directive (EU) of the Council, of 12 July 2016, the exit tax regime in the change of residence cases and cessation of PEs will be modified from FY 2018 onwards, replacing the deferral regime by a fractionation system (fractioning over the tax periods that are concluded in the five immediate years following the exit).

Obligation to disclose assets located overseas

The obligation to disclose assets located overseas, such as accounts, shares, real estate, or vehicles, is also established in the three Basque territories. Taxpayers in these territories should file a tax return (Form 720) annually between 1 January and 31 March to disclose these assets. Severe fines are imposed (a minimum of EUR 10,000) if CIT payers fail to comply with this obligation.

In addition, assets regarding which the information disclosure obligation is not complied with by the established time limit will be treated as unreported income for CIT payers and allocated to the earliest tax period of those that are not statute barred. Failure to comply with the obligation to declare this income is a very serious infringement and fines of 150% of the gross tax liability are imposed.

Sri Lanka

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Significant developments

The significant development in the Sri Lanka tax scene is the enactment of the New Inland Revenue Act, No. 24 of 2017, which took effect from 1 April 2018. The New Inland Revenue Act is aimed at simplifying the tax system, make the tax system more equitable and efficient, and help generate more revenue for social and economic development purposes. The New Act deports from the hitherto practice of granting liberal tax exemptions and concessions, provides tax relief for a limited category of investment incentives, eliminates multiplicity of corporate tax rates by introducing a three tier corporate rate structure, and simplifies the expense deductibility rule. It seeks to enhance revenue generation by broadening the tax base, in particular by eliminating the vast range of tax holidays, partial tax holidays, reliefs, and other concessions; introducing taxation of capital gains; and expanding the coverage of withholding taxes (WHTs).

The rules and procedures in relation to corporate income tax (CIT), which are set out in sections that follow, are based on the provisions of the New Inland Revenue Act, No. 24 of 2017.

Taxes on corporate income

Resident companies and public corporations are liable for CIT on their worldwide taxable income. Further, a friendly society, building society, pension fund, provident fund, retirement fund, superannuation fund, or similar fund or society are also deemed a company. A partnership having more than 20 partners who have limited liability for the debts of the partnership also treated as a company. Similarly, a unit trust or a mutual fund that does not conduct an eligible investment business is also treated as a company, and in all such cases corporate tax is applicable. Non-resident companies are liable for CIT in respect of any business, investment, or other source to the extent that the income arises in or is derived from a source in Sri Lanka.

Prior to year of assessment 2018/19, CIT rates are based on the nature of the income and the institution earning the income, as provided in the following table.

Income/Institution	2017/18 CIT rate (%)
Undertaking for manufacture of any product for export or for supply to an exporter for export, being a product having domestic value addition over 65% and a Sri Lanka brand name with patent rights received in Sri Lanka	10
Undertaking for operation and maintenance of facilities for storage, local development of software, or supply of labour	10

Income/Institution	2017/18 CIT rate (%)
Agricultural undertakings referred to in Section 16 of the Act	10
Educational services	10
Undertaking (not being a holding company, subsidiary company, or any associate company of a group of companies) with an annual turnover not exceeding 750 million Sri Lankan rupees (LKR), other than buying and selling activities	12
Undertaking (not being a holding company, subsidiary company, or any associate company of a group of companies) with an annual turnover not exceeding LKR 500 million, other than buying and selling activities	-
Unit trusts and mutual funds *	10
Unit trust management companies	10
Profits on poultry farming	10
Shipping agents approved by the Director of Merchant Shipping in respect of profits attributable to agency fees connected to transhipment activity and received in foreign currency	12
Companies engaged in non-traditional export (other than exempt), including deemed exporters and suppliers of specified services to garment exporters; performance of any service of ship repair, ship breaking, and refurbishment of marine cargo containers; and provision of computer software, programmes, systems, or recording of computer data paid for in foreign currency	12
Undertakings engaged in agriculture, manufacture of animal feed, promotion of tourism, or construction work carried on by a resident person	12
Venture capital companies	12
Petroleum exploration	12
Local manufacture of handloom products	12
Healthcare services	12
Joint venture between a grower cum manufacturer or a manufacturer of tea with a tea exporter for exporting Sri Lanka tea in value added form, on the manufacturing income attributable to the quantum of tea purchased	12
Profits from operating any mini hydropower project or other alternative energy source	12
Profits on supply of goods manufactured in Sri Lanka or provision of services to foreign ships for payment in foreign currency	12
Profits on sale of any product manufactured in Sri Lanka for payment in foreign currency through a foreign exchange earning account	12
Profits on export of organic tea in bulk	12
Undertaking for the manufacture of sugar	12
Sale of goods manufactured in Sri Lanka by an export-oriented Board of Investment (BOI) enterprise, up to the quantity approved by the BOI, to: • any BOI enterprise enjoying tax holiday under Section 16C, 16D, or 17A of the Inland Revenue Act or the Strategic Development Projects Act that is permitted to import project-related goods or raw materials on a duty-free basis during the project implementation period, or • any person eligible to import specific goods on a duty-free basis under any government authority. (Treated as deemed export of the manufacturer.)	12
Profits and income of any company listing its shares on or after 1 April 2013 and issuing more than 20% of its shares to the general public for the tax year in which such shares are listed and for two years of assessment immediately succeeding that year of assessment	50% of the applicable rate
Research and development (R&D) activities	20
Branch of commercial bank dedicated to development banking	24
Banking and financial services, insurance industries, trading activities (including any primary preparation for the adapting for sale of any article)	28
Manufacture and sale, or import and sale, of liquor or tobacco products	40

Income/Institution	2017/18 CIT rate (%)
Business of lottery, betting, or gaming activity	40
Profit and income from business, other than stated above	28
Other sources (e.g. dividends, interest income, royalties)	28

* Unit trusts and mutual funds are treated as resident companies for CIT purposes if such unit trust or mutual fund does not conduct eligible investment business. Eligible business means a business or investment comprising predominantly of owning, investing, or trading in capital assets, financial instruments, or other similar assets.

Commencing from the year of assessment 2018/19, companies are taxed only under three income tax rates: 14%, 40%, and 28%, as listed below. In order to apply a lower tax rate for an undertaking, it should have more than 80% from such identified undertaking which is considered predominant.

Income/ Institution	CIT rate (%)
Small and medium enterprises (SMEs) that conduct business in Sri Lanka, which do not have an associate that is an entity and with an annual turnover less than LKR 500 million	14
Predominantly conducting of a business of exporting goods and services (exports includes specified undertakings *)	14
Predominantly conducting of a business of an agricultural business	14
Business consisting of betting and gaming, liquor, and tobacco	40
Companies predominantly providing educational services	14
Companies predominantly engaged in an undertaking for the promotion of tourism	14
Companies predominantly providing information technology services	14
Profits and income from business other than stated above (including unit trusts and mutual funds)	28
Gains from the realisation of investment assets	10

* Specified undertaking means an undertaking that is engaged in:

- Entrepot trade involving import, minor processing, and re-export.
- Offshore business where goods can be procured from one country or manufactured in one country and shipped to another country without bringing the same into Sri Lanka.
- Providing front-end services to clients abroad.
- Headquarters operations of leading buyers for management of financial supply chain and billing operations.
- Logistic services such as bonded warehouse or multi-country consolidation in Sri Lanka.
- Transhipment operations.
- Freight forwarding.
- Supply of services to any exporter of goods or services or to any foreign principal of such exporter directly, being services which could be treated as essentially related to the manufacture of such goods or provision of such services exported by such exporter either directly or through any export trading house, including any service provided by an agent of a ship operator to such agent's foreign principal, and the payment for such services are made by such exporter or foreign principal to such person in Sri Lanka in foreign currency.
- Production or manufacture and supply to an exporter of non-traditional goods.
- The performance of any service of ship repair, ship breaking repair, and refurbishment of marine cargo containers, provision of computer software, computer programmes, computer systems or recording computer data, or such other services as may be specified by the Minister by notice published in the Gazette, for payment in foreign currency.
- Sale for foreign currency of any gem or jewellery, being a sale made in Sri Lanka by any person authorised by the Central Bank of Sri Lanka to accept payment for such sale in foreign currency.

Dividend tax

A dividend tax is payable at 14% (prior to 1 April 2018, it was at 10%) on the gross dividends distributed by a resident company, other than such dividends distributed out of any dividend received from another resident company. Any dividend distributed prior to 1 April 2019 out of dividends from which WHT has been deducted at 10% prior to 1 April 2018 will not be subject to dividend tax under the new Inland Revenue Act No. 24 of 2017.

Remittance tax

Where profits of a non-resident company are remitted in a tax year, a remittance tax of 14% of the remittances is payable (prior to 1 April 2018, it was at 10%).

Local income taxes

There is no local or provincial income tax applicable to corporates in Sri Lanka.

Corporate residence

A company is treated as resident for tax purposes in Sri Lanka for a year of assessment if it is incorporated or formed under the laws of Sri Lanka, registered or the principal office is in Sri Lanka, or at any time during the year the management and control of the affairs of the company are exercised in Sri Lanka.

Permanent establishment (PE)

PE is a treaty concept in Sri Lanka. If a non-resident company creates a PE in Sri Lanka in terms of a double tax treaty (DTT), then such company is liable to Sri Lanka CIT. In the absence of a DTT, the domestic tax laws will apply. However, the New Inland Revenue Act, No. 24 of 2017 incorporates the concept of a 'permanent establishment', which is defined to mean a place in Sri Lanka where a non-resident person carries on business or that is at the disposal of the person for that purpose and includes:

- a place in Sri Lanka where a person has, is using, or is installing substantial equipment or substantial machinery
- a place in Sri Lanka where a person is engaged in a construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project
- the provision of services in Sri Lanka, but only if activities of that nature continue (for the same or a connected project) for a period of 183 days or more in any 12-month period, and
- a place in Sri Lanka where an agent performs any function on behalf of the business of a non-resident person:
  - including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in Sri Lanka, but
  - excluding a case involving a general agent of independent status acting in the ordinary course of business as such.

Further, under the transfer pricing provisions of the New Act, 'permanent establishment' is defined:

- in relation to a country with which an agreement has been entered into on avoidance of double taxation means, a permanent establishment defined in an agreement for the relief of double taxation where an agreement is in force between the government of Sri Lanka and the government of any territory in which any person and their agencies, branches, or establishments in Sri Lanka is resident, or

- in relation to a country with which an agreement has not been entered into on avoidance of double taxation, includes any business connection or a fixed place of business through which the business of the enterprise is wholly or partly carried out irrespective of the number of days of such business carried out in Sri Lanka.

Other taxes

Value-added tax (VAT)

VAT is payable on imported goods and on the supply of goods (including wholesale and retail trade where the turnover liable supplies per quarter is not less than LKR 3 million) and services in Sri Lanka. Provisions are made for filing returns monthly or quarterly, based on specified criteria. Even where returns can be filed quarterly, the tax payments are required to be made on a monthly basis by manufacturers and on a half-monthly basis by others. Certain specified imports and domestically supplied goods and/or services are exempt.

VAT is payable on the prescribed valuations of imports and domestic supplies at a standard rate of 15%. Exports and certain specified international services are zero-rated.

Registration for VAT arises only if the quarterly value of taxable supplies exceeds LKR 3 million or the annual value of taxable supplies exceeds LKR 12 million, except for supplies from wholesale and retail activities unless the total supplies (whether taxable, excluded, or exempted) exceed LKR 12.5 million per quarter.

The input tax paid on the imports and supplies of goods (including capital goods) and services in a month, and used in the business of making taxable supplies in that month, can be deducted from the tax payable (output tax) on such supplies, subject to a limitation of the lesser of 100% of output tax or the actual input tax paid.

Refunds of excess VAT paid are available to zero-rated supplies and to new businesses registered under Section 22 (7) of the VAT Act. A simplified VAT scheme is in place to relieve zero-rated suppliers and other qualified suppliers from the burden of paying input VAT, thereby obviating the need for the issue of refunds.

Customs duties

Customs duty is levied on the value for customs duty (i.e. transaction value). World Trade Organization (WTO) rules on customs valuations are implemented. Sri Lanka has a simplified three-tier tariff structure. The rates are published in the government gazettes. The current rates are 15%, 30%, and 0% (applies to few goods).

Special Commodity Levy

Special Commodity Levy is imposed on certain commodity items at the rate specified by the Minister by order published in the gazette at the point of importation of such commodities. The collection of Special Commodity Levy is undertaken by the Director General of Customs.

Special Commodity Levy is a composite levy, and no other tax, duty, levy, cess, or other charge is imposed in terms of any other laws specified as applicable in respect of the commodities specified in any such order.

Excise duties

Excise duties and special excise levies are charged on tobacco, cigarettes, liquor, motor vehicles, selected petroleum products, paints, air conditioners, dishwashers, household washing machines, and other products at various rates and at unit rates.

Stamp duty

Stamp duty is payable on specified instruments and documents at rates prescribed in the Gazette.

Payroll taxes

Employees Provident Fund (EPF)

Employers and employees are required to contribute specified percentages (employer 12%, employee 8%) of each employee's monthly emoluments/salary to the EPF established by the government. Alternatively, employers and employees can contribute to certain private provident funds approved by the labour authority.

Employees Trust Fund

Employers are also required to contribute a specified percentage (currently 3%) of each employee's monthly emoluments/salary to the Employees Trust Fund established by the government.

Share transaction levy

Share transaction levy at the rate of 0.3% is chargeable from both the buyer and the seller on the sale value of listed shares transacted through the Colombo Stock Exchange (CSE).

Economic Service Charge (ESC)

ESC is payable quarterly by all businesses at 0.5% of the aggregate turnover of the trade, business, profession, or vocation if the total turnover exceeds LKR 12.5 million for that quarter. ESC so paid is deductible from the CIT payable for that tax year. ESC is not refundable but can be carried forward for two immediately succeeding tax years to be set off against CIT payable.

Nation Building Tax (NBT)

NBT is chargeable at 2% from every person (a person includes a company) who imports any article on the 'liable turnover' from such importation, who carries on the business of manufacture of any article, who provides a service of any description, or on the wholesale or retail sale of any article (other than such sale by the manufacturer of that article) on the liable turnover of the relevant quarter. Certain specified articles or services are exempt from NBT.

The threshold for NBT is LKR 3 million per quarter, or LKR 12 million *per annum*.

Liable turnover means:

- In the case of importers, the value of any article ascertained under Section 6 of the VAT Act for the purpose of importation.
- In the case of manufacturers, the proceeds receivable, whether received or not, from the manufacture and sale of goods in Sri Lanka.
- In the case of service providers, the proceeds receivable, whether received or not.

- In the case of wholesale or retail traders, the proceeds receivable, whether received or not, other than pharmaceuticals, gems and jewellery sold for payment in foreign currency, and any article subject to the Special Commodity Levy sold by an importer.

In case of wholesale and retail traders, 50% of the liable turnover will be taxed at a zero rate and the remaining 50% will be taxed at 2%. In the case of a distributor as defined in the ESC Act, 75% of the liable turnover will be taxed at a zero rate and the remaining 25% will be taxed at 2%.

Bad debts, VAT, excise duty (other than such excise duty paid on importation) rebate under export development, or services in relation to an international event should not be included in the liable turnover.

Tourism development levy

Tourism development levy is payable by tourist hotels and institutions licensed under the Tourist Development Act on the turnover of such institutions at the rate of 1%.

Local taxes

Taxes (more usually called rates) are currently assessed and collected annually from the owners of land and premises by the local authorities of the areas in which the properties are located. These authorities also charge and collect annual licence fees from certain businesses.

Branch income

Foreign companies are permitted to register a place of business as an 'overseas company' in Sri Lanka under local company law, where the business carried on conforms to the stipulations made under the Foreign Exchange Act, No. 12 of 2017.

An overseas company registered under the Companies Act may also carry on in Sri Lanka any non-commercial, non-trading, or non-industrial activities, such as the activities undertaken or carried on by a liaison office, representative office, regional office, or other similar office, provided such activities do not directly or indirectly provide any income to the company.

In addition to paying the standard CIT, a trading branch is also subject to the 14% remittance tax on remittance of its after tax profits to its foreign head office.

The Sri Lanka-source income of foreign companies from a local 'place of business' is taxed at the CIT rate. However, under most DTTs that Sri Lanka has entered into, the income of a project carried out will not be liable for CIT if its duration is less than the period specified in the treaty concerned.

Further approval granted under the Inland Revenue Act No. 10 of 2006 for ascertainment of profits of a project as a percentage of receivables can be continued from year of assessment 2018/19 until the project is completed.

Income determination

Business accounting for CIT purposes should, unless otherwise specified by the tax statute, conform to Sri Lanka Financial Reporting Standards.

Inventory valuation

Inventories should be measured at the lower of cost and market value.

Capital gains

A gain made by a company on the realisation of an investment asset or liability (which is the amount by which the sum of the consideration received for the asset or liability exceeds the cost of the asset or liability) is subject to tax at 10%. Gains made on realisation of shares quoted in any official list published by any stock exchange licensed by the Securities and Exchange Commission of Sri Lanka are exempt from income tax. Such gains are subject to the share transaction levy chargeable at 0.3% on the seller as well as the buyer on the transaction value.

Dividend income

Resident company dividends paid on shares held by resident or non-resident persons are not assessable to the recipients if income tax is withheld on such dividends (*see the Withholding taxes section*) or the dividends are paid out of dividends received from resident companies.

Stock dividends

A capitalisation of profits, whether by way of a bonus share issue, increase in the amount paid-up on shares, or otherwise, whether distributed or not, is treated, by definition, as a dividend and is subject to the WHT of 14%.

Interest income

Interest income forms part of the total assessable income.

Interest accruing to any non-resident person or to any licensed commercial bank in Sri Lanka, on moneys invested in any sovereign denominated in foreign currency, issued on or after 21 October 2008, by or on behalf of the government of Sri Lanka, is exempt from income tax.

Royalty income

Royalty income can be business income or investment income that forms part of the total assessable income, which is liable to income tax at the standard rate of 28%.

Foreign income

Foreign income of a resident person forms part of the total assessable income.

Deductions

In calculating the income from a business or investment for a year of assessment, expenses incurred during the year, in the production of income from the business or investment, are permitted to be deducted.

Depreciation

Capital allowance for depreciation of assets acquired/constructed is granted based on the number of years applicable to the relevant depreciable asset as follows:

Depreciable assets	Number of years
Computers and data handling equipment, together with peripheral devices	5
Buses and minibuses, goods vehicles; construction and earthmoving equipment, heavy general purpose or specialised trucks, trailers, and trailer-mounted containers; plant and machinery used in manufacturing	5
Railroad cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; any depreciable asset not included in another class	5
Buildings structures and similar works of a permanent nature	20
Intangible assets, excluding goodwill	20 or the actual useful life

The allowance for depreciation for capital assets (e.g. plant and machinery) and qualified buildings constructed/acquired before 1 April 2018 can be computed and deducted as per the respective provision of the Inland Revenue Act No. 10 of 2006.

Goodwill

Capital allowance is not granted on the acquisition of goodwill.

Formation or liquidation expenses of a company

Expenses incurred in the formation or liquidation of a company are not allowed in computing the taxable income, as such expenses are not incurred in the production of income during the year.

Interest expenses

Interest paid or payable on borrowings for purposes of business are deductible, subject to the thin capitalisation rules (*see the Group taxation section*).

Bad debts and doubtful debts

A sum equal to the bad debts incurred in any business or investment that have become bad debts during the period for which the profits are being ascertained is allowed for tax purposes.

In the case of a bank or a financial institution, deductibility of a specific bad debt provision as may be specified by the Commissioner General of Inland Revenue (CGIR) would be allowed.

Charitable contributions

Relief is available as a deduction from taxable income for contributions in money to an approved charity, provided the charity is established for the provision of institutionalised care for sick or the needy, and contributions in money or in kind to the government of Sri Lanka. The deduction for the former is subject to a ceiling of one-fifth of the taxable income of the company or LKR 500,000, whichever is less. In the case of the latter, there is no limit to the deduction; however, and any un-recouped excess of such contributions over the taxable income cannot be carried forward and deducted from the following year's taxable income.

Investment and other allowances

Any balance allowance as at 31 March 2018 deductible from taxable income under the Inland Revenue Act, No. 10 of 2006 can be deducted in accordance with provisions of the new Inland Revenue Act No. 24 of 2017 (subject to conditions) from the year of assessment 2018/19.

Finance lease allowances

Any profit, loss, receipt, or payment of a finance lease agreement entered into prior to 1 April 2018 can be computed in accordance with the respective provisions of the Inland Revenue Act, No. 10 of 2006.

According to the provisions of Inland Revenue Act No. 24 of 2017, payments made under finance lease agreements entered into after 1 April 2018 shall be treated as interest and a repayment of capital under a loan made by a lessor to lessee, and accordingly interest payments on a finance lease are deductible from profits and income while capital allowances are claimed for capital repayments of leased assets.

Termination gratuities

Termination gratuities paid to employees on cessation of business and contributions made by an employer to an employee's account with a pension, provident, or savings fund or savings society approved by the CGIR are deductible.

Royalties and ground rents

Any royalty or ground rent payable is deductible, subject to the general rule of being incurred in the production of income during the year, and, if WHT has been deducted, it has been remitted to the CGIR.

Interest, fines, and penalties

Interest, fines, and penalties paid or payable to a government or a political subdivision of a government of any country for breach of any written law are not deductible for tax purposes.

Taxes

Sri Lanka income tax payable and taxes or other levies specified by the CGIR are not deductible.

Non-deductible expenses

In ascertaining the total income liable to CIT from the financial accounts filed by a company, the following deductions, including any expense of a capital nature (other than repairs and improvement expenses subject to certain restrictions, R&D, and agricultural start-up expenses), are not be allowed:

- Domestic expenses incurred by the person.
- Income tax payable.
- Interest, fines, and penalties payable to a government or a political subdivision of a government of any country for breach of any written law.
- Expenditure to the extent incurred by a person in deriving exempt amounts or final withholding payments.
- Retirement contributions, unless they are included in calculating the income of an employee or consist of a contribution by an employer to a pension, provident,

or savings fund or a savings society that is approved by the CGIR, subject to any specified conditions.
- Dividends of a company.
- Outlays or expenses for entertainment.
- An amount that a person has transferred, in one's financial accounts, to a reserve or provision for expenditures or losses not yet incurred but expected to be incurred in a future year of assessment.
- Amounts incurred on lotteries, betting, or gambling, other than amounts incurred from conducting a business of lotteries, betting, or gambling.
- Taxes or other levies specified by the CGIR.

Also, no deduction is allowed where a person is required to withhold tax from certain payments until the tax withheld has been paid to the CGIR.

Net operating losses

In calculating the income from a business for a year of assessment, the following shall be deducted:

- an unrelieved loss of the person for the year from any other business, and
- an unrelieved loss of the person for any of the previous six years of assessment from the business or any other business.

However, the loss can be deducted only in calculating income taxed at the same rate, a lower reduced rate, or exempt amounts.

Unrelieved losses from a business may be deducted in calculating income from an investment, whereas unrelieved losses from an investment can be deducted only in calculating income from an investment.

Any balance loss as at 31 March 2018 shall be deemed to be a loss incurred in the year of assessment 2018/19 and be deductible in accordance with provisions of the new Inland Revenue Act No. 24 of 2017 (within six years without being subject to the 35% of the statutory income limitation but subject to other restrictions).

A gain from the realisation of an investment asset cannot be set off against any loss on the disposal of another investment asset.

Payments to foreign affiliates

Any payment made to an affiliate is allowed for tax purposes, provided such payment is in the nature of revenue and is incurred in the production of income.

Group taxation

There are no special provisions for taxation of companies in a group in Sri Lanka. Each company is taxed independently of others in the group.

Transfer pricing

Any income, gains, and profits arising, derived, or accruing from, or any loss incurred in, any transaction entered into between two associated enterprises shall be ascertained with regard to the arm's-length price.

Thin capitalisation

Interest payments (financial cost) made to any person are restricted to the debt-to-equity ratio of 3:1 for manufacturing companies and 4:1 for other companies. Any excess amount of finance costs arising due to this restriction can be carried forward and treated as incurred during any of the following six years of assessment, subject to the above limitation.

Controlled foreign companies (CFCs)

There are no provisions in the tax statute regarding CFCs.

Tax credits and incentives

The following exemptions and incentives granted under the provision in another law or an agreement that is in force on date of commencement (1 April 2018) of the New Inland Revenue Act, No. 24 of 2017 will continue to be in force:

- Any unexpired part of the exemptions as at 31 March 2018 granted under sections 16C, 16D, 16E, 17, 17A, 18, 20, 24A of the Inland Revenue act No. 6 of 2010 will continue to be exempt under the new Inland Revenue Act No. 24 of 2017.
- Fully or partly exempt profits or profits taxed at reduced rate of income tax under the provisions of previous Inland Revenue Acts of an enterprise/company that has entered into an agreement with the Board of Investment of Sri Lanka under section 17 of the Board of Investment of Sri Lanka Law will continue to be exempt or be liable to tax at the rate provided in the agreement under the new Inland Revenue Act No. 24 of 2017 as well.

  Any unexpired part of the profits and income liable for concessionary rates under 59D, 59I, 59J, 59K, 59L, 59M of the Inland Revenue Act, No. 10 of 2006 as at 31 March 2018 will continue as specified in those provisions under the new Inland Revenue Act No. 24 of 2017 as well.

Further, the carried forward notional tax credit relating to treasury bills and treasury bonds, as per the Inland Revenue Act, No. 10 of 2006, can be carried forward to be set off against the income tax liability within three consecutive years from the year of assessment 2018/19.

Enhanced depreciation allowance

A person who invests in Sri Lanka (other than the expansion of an existing business) during a year of assessment shall be granted enhanced depreciation allowances in addition to the depreciation allowances, computed on the expenses incurred during the year of assessment on depreciation assets, other than intangibles assets.

Investment amount during the year of assessment	Place of investment	Rate of depreciation (%)
Exceeds 3 million United States dollars (USD) but does not exceed USD 100 million	Any part of Sri Lanka other than Northern Province	100
Exceeds USD 100 million	Any part of Sri Lanka other than Northern Province	150
Exceeds USD 250 million by a state-owned company	On the assets and liabilities of a state-owned company in any part of Sri Lanka	150
Exceeds USD 3 million	Northern Province	200

Exemption of certain dividends from WHT

If a company has incurred more than USD 1,000 on depreciable assets (other than intangible assets) in Sri Lanka, the dividends paid by such company to a non-resident member does not attract WHT in Sri Lanka.

Exemption of employment income from WHT

If a company that pays dividends has incurred more than USD 1,000 on depreciable assets (other than intangible assets) in Sri Lanka, where the number of expatriate employees is not exceeding 20, the rate of tax to be withheld from a payment made by that company (employer) to an expatriate employee shall be zero.

Foreign tax credit

A foreign tax credit is to be granted in respect of any foreign income tax paid or payable in respect of foreign income, which should be calculated separately for each year of assessment, separately for assessable foreign income from each employment, business, investment, or other source, and further separately for each gain from the realisation of an investment asset. Such credit should not exceed the average rate of Sri Lankan income tax of the person for the year, applied to the person's assessable foreign income.

A foreign tax credit shall be allowed only if the foreign income tax is paid within two years after the end of the year in which the foreign income to which the tax relates was derived by the resident person or within such further time as the CGIR may allow.

Withholding taxes

Resident companies are required to withhold tax at 14% on interest, discount, charge, natural resource payment, rent, royalty, premium or retirement payment, or pay amounts as winnings from a lottery, reward, betting, or gambling, and where the payment or allocation has a source in Sri Lanka.

Every bank and financial institution is required to withhold income tax at 5% on the amount of any interest paid to a company on any sum of money deposited with it. The depositor is entitled to receive a certificate setting out the gross amount of interest, the amount of tax withheld, and the net amount of interest paid. With respect to Treasury bills and Treasury bonds issued by the Central Bank, no WHT is deductible at the time of the sale of the Treasury bills and Treasury bonds by the Central Bank in the primary market.

Payment	WHT rate (%)
Dividends:	
Paid by a resident persons	14
Non-resident company on remittance of profits (remittance tax)	14
Interest	14
Interest or discount paid by banks and financial institutions to resident and non-resident persons (WHT will not apply to interest or discount paid to any person on security or Treasury bond or Treasury bill)	5
Rent:	
Paid to a resident person	10
Paid a non-resident person	14
Service fee and contract payments:	
Royalty premium	14

Payment	WHT rate (%)
Payments to resident individuals exceeding LKR 50,000 (no deduction if such payments are chargeable with ESC)	5
Winnings from a lottery, reward, betting, and gambling	14
Service fee or an insurance premium with a source in Sri Lanka to a non-resident person (no deductions if such payments are chargeable with ESC), subject to rates specified in DTTs	14
Payments made by a person to a non-resident person who is in the business of transport or telecommunication	2

Treaty WHT rates

Currently, Sri Lanka has entered into 44 DTTs as set out below:

	WHT (%)		
Recipient	Dividends	Interest	Royalties
Non-resident	14	20	20
Treaty (9):			
Australia	15	10	10
Bangladesh	15	15	15
Belarus	7.5/10 (7)	10	10
Belgium	15	10	10
Canada	15	15	10
China	10	10	10
Denmark	15	10	10
Finland	15	10	10
France	15	10	0/10 (1)
Germany	15	10	10
Hong Kong (4)	-	-	-
India	7.5	10	10
Indonesia	15	15	15
Iran	10	10	8
Italy	15	10	10
Japan	10	15 (2)	0/7.5 (1, 3)
Korea, Republic of	10/15 (5)	10	10
Kuwait (4)	-	-	-
Luxembourg	7.5/10 (7)	10	10
Malaysia	15	10	10
Mauritius	10/15 (6)	10 (2)	10
Nepal	15	10/15 (8)	15
Netherlands	10/15 (5)	10 (2)	10
Norway	15	10	0/10 (1)
Oman (4)	-	-	-
Pakistan	15	10	20
Palestine	10	10	10
Philippines	10	10	10
Poland	15	10	10
Qatar	10	10	10
Romania	12.5	10	10
Russia	10/15 (5)	10	10
Saudi Arabia	-	-	-
Seychelles	7.5/10 (7)	10	10

Recipient	WHT (%) Dividends	Interest	Royalties
Singapore	7.5/10 (7)	10	10
Sweden	15	10	10
Switzerland	10/15 (5)	10	10
Thailand	15	10	15
United Arab Emirates	10	10	10
United Kingdom	15	10	10
United States	15	10	10
Vietnam	10	10	15

Notes

1. 0% for copyright royalties.
2. 0% in certain circumstances.
3. 50% of normal tax, which is 7.5%.
4. These treaties are limited to the avoidance of double taxation of income from international transport by air.
5. 10% applies if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends. In all other cases, the rate is 15%.
6. 10% applies if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends. In all other cases, the rate is 15%.
7. 7.5% of the gross amount of the dividends if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
8. 10% applies to banking business only.
9. When the treaty rate is higher than the rate specified by the domestic tax statute, the lower rate can be applied subject to obtaining a confirmation from the International Tax Branch of the tax authority.

Tax administration

Taxable period

A tax year is any period of 12 consecutive months reckoned from 1 April in any calendar year to 31 March of the following year.

Tax returns

Return of income is due within eight months from the end of the year of assessment.

Payment of tax

Sri Lanka has a pay-and-file system under which the CIT payable for each tax year is required to be paid in four instalments. In the case of companies with year ended 31 March, CIT instalments should be paid respectively for the first, second, third, and fourth quarters, on or before 15 August, 15 November, and 15 February of the tax year and 15 May immediately following the end of the tax year. In the case of companies with year ended other than 31 March, each tax instalment is due on or before the 15th day after each three-month period.

Tax audit process

The tax authority may select tax files for an audit on a random basis or if there is any specific information relating to a taxpayer that warrants investigation.

Statute of limitations

No assessment on income tax payable can be raised on a taxpayer who has duly filed a return of income after the expiry of a period of 30 months from the date the taxpayer filed the return.

Topics of focus for tax authorities

Tax authorities, in their audit, primarily focus on whether disallowable expenses have been added back to taxable profits and on profit margins reported. With the requirement to obtain tax clearance for remittance of fees and other payments abroad, increasing attention is paid to remittance of royalties, fees, and other payments to non-resident persons. Transfer pricing audits are also now taking place.

Swaziland

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Significant developments

There have been no significant corporate tax developments in Swaziland during the past year.

Taxes on corporate income

Income tax is levied on all income derived from sources generated within or deemed to be generated within the country, irrespective of whether the recipient of the income is actually resident in Swaziland.

All companies generating income within Swaziland are taxed on that income at a flat rate of 27.5%.

Corporate residence

Permanent establishment (PE)

PE in Swaziland is determined according to physical presence.

Other taxes

Value-added tax (VAT)

VAT is charged at the standard rate of 14%.

Customs duties

Swaziland has a provision for customs duties for various goods imported into the country. Details are available in the Harmonized Tariff Schedule (HTS).

Excise duties

Swaziland has an excise duty provision for various goods manufactured in the country.

Goods	Excise duty rate (%)
Cigarettes	6.34
Cigarette tobacco	8.00
Cigars	6.19
Other tobacco products	16.10

Goods	Excise duty rate (%)
Spirits	8.90
Beer	8.20
Alcoholic fruit beverage	8.30
Wine	8.10

Property taxes

There are no property taxes in Swaziland.

Transfer taxes

Transfer taxes are applied on a variable rate basis to property transfers based on the fair market value of the property being transferred.

Stamp taxes

Swaziland has a provision for stamp taxes on various documents. The tax is determined either by way of a set fee or on a sliding scale percentage basis.

Payroll taxes

Pay-as-you-earn (PAYE) is to be deducted from employees on a monthly basis and according to the tax tables applicable to individuals, *which are provided in the Taxes on personal income section of Swaziland's Individual tax summary at www.pwc.com/taxsummaries*.

Social security contributions

There are no social security contributions in Swaziland.

Branch income

Income tax on registered branch profits is calculated as for a resident company, and a branch profits tax of 15% is assessed for deemed repatriated income. In practice, however, branches are rare since most foreign companies incorporate local subsidiary companies.

	SZL*
Net profit before tax	100.00
Tax @ 27.5%	(27.50)
Repatriated income	72.50

* Swaziland lilangeni

Income determination

Inventory valuation

Inventory valuation is not specific but is effectively at the lower of cost (i.e. first in first out [FIFO] or average cost) and net realisable value.

Capital gains

Capital gains are not subject to income tax, provided it can be demonstrated that the gains are of a capital and not an income nature (i.e. not recurring transactions).

Dividend income

Dividend income is taxable via withholding tax (WHT) for non-residents (*see the Withholding taxes section*). No tax is due if received from another local company.

Inter-company dividends

Inter-company dividends are not subject to income tax.

Stock dividends

Stock dividends are paid out of taxed profits. Such dividends are not subject to income tax when received by a local company, but they are subject to taxation in the hands of local individual taxpayers at the rate of 10%.

Interest income

Interest income sourced in Swaziland is taxable.

Foreign income

Foreign income is not subject to income tax unless it is deemed to be from a Swaziland source.

Deductions

Depreciation

Depreciation (wear-and-tear) allowances calculated by the net-reducing-balance method are available as follows:

Asset	Depreciation rate (%)
Aircraft	25
Casino equipment	15
Construction equipment	25
Computer hardware	33.33
Computer software	33.33
Furniture and fittings	10
Hotel soft furnishings, including carpets	10
Legal and professional libraries	5
Lifts and elevators	25
Motor vehicles:	
Buses	33.33
Cars	20
Light delivery vehicles	25
Lorries	33.33
Office equipment	10
Plant and machinery	10
Sound and projection equipment	20
Television sets	20
Tractors	25

Asset	Depreciation rate (%)
Trailers	20
Video recorders	33.33
Videotapes	25

For the first year after the addition of an asset, the wear-and-tear allowance is calculated on a monthly basis. With respect to leased assets, the lessor's claim for wear-and-tear allowance is usually spread over the lease period.

An initial allowance of 50% is granted for plant and machinery used in a manufacturing process, including hotel equipment. An initial allowance of 50% is granted for industrial buildings used for manufacturing purposes and hotels, together with a 4% annual allowance.

Goodwill

The write-off of any goodwill is not allowed for tax purposes.

Start-up expenses

It is departmental practice to not allow the deduction of any start-up expenses.

Interest expenses

Interest is deductible as long as it is incurred in the production of income.

Bad debt

Swaziland does allow a deduction for bad debts, subject to the Commissioner's approval and provided that the debts were included in the taxpayer's income in the year of assessment or in years past.

Charitable contributions

Subject to the Commissioner's approval in regard to the amount allowable as a deduction in the year of grant and subsequent years, Swaziland allows a deduction for, among other things, grants made to the government for the building of schools and hospitals.

Fines and penalties

Fines and penalties resulting from late payment of any tax or levied as payable under any Act administered by the Commissioner will be a non-deductible expense.

Taxes

Taxes are not deductible.

Net operating losses

Losses may not be carried back but may be carried forward for as long as trading continues (i.e. indefinitely). If any break in trading occurs, however, the losses are forfeited.

Payments to foreign affiliates

Deductions may be claimed for payments of management service fees, interest, and royalties to foreign affiliates, provided the payments are made under a written agreement, are reasonable, and receive exchange control approval for transfers outside the rand monetary area. Note that this approval is routinely given without any significant delay for *bona fide* transactions.

Group taxation

Swaziland does not have group taxation legislation. All companies are assessed on their individual profits and losses.

Transfer pricing

Swaziland does not have transfer pricing legislation; however, under the anti-avoidance provision, the Revenue Authority will look for arm's-length transactions.

Thin capitalisation

Swaziland does not have thin capitalisation rules.

Controlled foreign companies (CFCs)

Swaziland does not have any legislation regarding CFCs.

Tax credits and incentives

Foreign tax credit

Swaziland does not have a foreign tax credit regime.

Development Approval Order

The Minister of Finance, along set guidelines and with prior consent of the Cabinet, may nominate a business as a developmental enterprise (i.e. a business the Minister deems to be beneficial to the development of the economy) for a grant of a Development Approval Order. If approved, the business generally will be granted tax concessions, such as a lower corporate tax rate.

Withholding taxes

Non-resident WHTs are levied as follows.

Dividends

WHT for dividends is payable at the rate of 15% (12.5% for companies registered in Botswana, Lesotho, and the Republic of South Africa).The rate drops to 10% under the double taxation agreement (DTA) with South Africa where the holding company owns more than 25% of the shares. Non-resident shareholders' WHT is payable within 30 days of the date on which the dividend is payable.

Interest

WHT for interest is payable at the rate of 10%. Non-resident WHT on interest is payable within 14 days of the date of the accrual of the interest.

Royalties and management fees

WHT for royalties and management fees is payable at the rate of 15%. Upon application, 5% may be refunded if there is a DTA in place.

Entertainers and sportsmen

WHT is payable at the rate of 15% on income earned in Swaziland by entertainers and sportsmen. This tax relates only to public entertainers and sportsmen not ordinarily resident in Swaziland. The payer is required to deduct the tax and pay it within 15 days.

Contractors or professionals

WHT is payable at the rate of 15% on services provided by contractors or professionals in Swaziland (materials are not taxed to the extent that materials are incidental to the overall charge). The Commissioner of Taxes must be notified of any agreement relating to construction operations or professional services under which payments are made to non-resident persons within 30 days after entering into the agreement. It is required that the tax be paid within 15 days from the date of payment.

Tax administration

Taxable period

The tax year runs from 1 July to 30 June. Companies are required to have a 30 June year-end unless another year-end date is approved by the Commissioner of Taxes; such approval is routinely given.

Tax returns

Income tax returns should be submitted within 120 days of 30 June, unless an extension of time for submission is granted, which also is routinely given if all tax requirements for the prior year are up to date and the provisional tax has been paid in accordance with the law. The extension of time is usually granted for a further 60 days, which effectively gives the taxpayer six months to submit their income tax return.

Payment of tax

Notice of the date of payment is usually given on the tax assessment.

Provisional tax payments

With respect to companies, provisional tax is payable in two instalments: one payment is due within six months of the company's financial year-end, and the other payment is due no later than the last day of the company's financial year.

The estimate of taxable income for provisional tax purposes should not be less than the taxable income assessed for the latest preceding year of assessment for which an assessment has been issued that is not less than 21 days before the date the estimate is made. This rule does not apply if the taxpayer can convince the Commissioner of Taxes that the taxable income for the current year will be less than the taxable income for the preceding year.

A provisional taxpayer becomes liable to pay a penalty if the estimate for taxable income for the second payment of provisional tax is found to be both less than 90% of the taxable income as finally determined and less than the taxable income as assessed for the immediately preceding tax year.

Tax audit process

All assessments are subject to a tax audit. Current departmental practice is to perform tax audits going back four years.

Statute of limitations

There is no statute of limitations in Swaziland.

Topics of focus for tax authorities

Currently, the tax authorities are conducting full tax audits.

Sweden

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Significant developments

The Swedish government has recently proposed new interest deduction limitation rules that are proposed to enter into effect on 1 January 2019 (given that the Parliament approves them when voting on 13 June 2018), and apply from financial years commencing after 31 December 2018. The proposed limitation on interest expense deduction implies that the European Union (EU) Anti-Tax Avoidance Directive and Organisation for Economic Co-operation and Development's (OECD's) recommendation against base erosion and profit shifting (BEPS) are implemented on the basis of Swedish law.

According to the proposal, the existing framework regarding deduction of intra-group interest expenses will remain, but with some modification of the rules. In addition, a new general limitation on the right of deduction is to be introduced for negative net interest in the corporate sector. The right of deduction will be based on a so-called earnings before interest, taxes, depreciation, and amortisation (EBITDA) rule with a 30% deduction limit. Negative net interest, which is not allowed to be deducted according to this EBITDA rule, is to be carried forward during a period of a maximum of six years. However, negative net interest up to 5 million Swedish kronor (SEK) will not be covered by the EBITDA rule and may be deducted for tax purposes.

In addition to the more restricted interest deduction rules, the corporate tax rate will be decreased in two stages from the current 22% to 21.4% in 2019 and to 20.6% in 2021.

Furthermore, leasing rules are to be introduced that address the interest portion (but not the right of depreciation). It is also proposed that rules against so-called hybrid mismatching are to be introduced to prevent international tax planning.

A primary deduction of 12% for rental housing is proposed to apply on expenses for new construction and reconstruction during the first six years.

Taxes on corporate income

State (national) income tax

Resident legal entities are liable for tax on their worldwide income unless tax treaties or special exemptions apply. Non-resident entities are taxed on income that is deemed to have its source within Sweden.

Taxable income is subject to corporate tax at a flat rate of 22%. All income of corporate entities is treated as business income. Please note that the Swedish government has proposed an amendment of the tax rate (*see the Significant developments section*).

Local income taxes

No municipal or local income taxes apply to Swedish corporations.

Corporate residence

A company is considered to be a tax resident in Sweden if it is incorporated in Sweden.

Permanent establishment (PE)

The term 'permanent establishment' is defined in Sweden as a fixed place of business through which the business is carried on from a specific establishment, such as a place of management, branch, office, factory, or workshop. Places where construction work is carried on are also regarded as PEs, as well as if an agent who is dependent upon the foreign company habitually exercises authority in Sweden.

Other taxes

Value-added tax (VAT)

The Swedish VAT system is harmonised with the EU rules. The general VAT rate of 25% is chargeable on most goods and services. Reduced rates apply to a few goods and services, such as hotel accommodation, foodstuffs (excluding alcoholic beverages), restaurant meals, and low or non-alcoholic drinks (12%), as well as newspapers, magazines, books, passenger transport, maps, musical notes, some cultural services, transport in ski lifts, etc. (6%). Certain financial and insurance services are exempted from VAT.

VAT returns are filed and tax is paid monthly or quarterly. VAT returns must be filed monthly if the VATable turnover is estimated at more than SEK 40 million (estimated yearly sales excluding any reverse charge or import acquisitions). Companies with VATable turnover below SEK 40 million report VAT quarterly or may choose to report VAT on a monthly basis. For companies with a turnover of less than SEK 1 million, VAT is reported on a yearly basis in the VAT return, and these companies may also choose to report VAT quarterly or on a monthly basis.

New definition of 'property'

A new definition of the term 'property' was implemented in the Swedish VAT Act and entered into force on 1 January 2017. The new definition is based on an EU regulation (no. 1042/2013) and will affect the VAT liability regarding letting and transfer of properties, reverse-charge mechanism in the building sector, as well as the provisions regarding adjustment of investment made on properties.

In connection hereto, the provisions stating that electricity, gas, water, and heat supplied as part of a letting of property are exempted from VAT have been removed.

New amounts for deductions regarding business entertainment with food and beverage

In case of external and internal business entertainment, the new provisions allow reasonable VAT deductions; however, not on a tax base exceeding SEK 300 per person.

Customs duties

As a member of the European Union, Sweden is also part of the Customs union enforcing the Community Customs code. Most EU Customs duties are calculated as a percentage of the value of the goods being imported. All imported goods must be classified according to the EU Customs tariff (TARIC), and the duty rates applied depend on the economic sensitivity of the goods. The actual duty rate to be applied also depends on other factors, such as the country of origin of the product and any free trade agreements that may be applicable.

Excise duties

The three main Swedish excise duties are harmonised with EU rules. These are the alcohol tax, the tobacco tax, and the tax on fuels and electricity. There are, however, still differences in local legislation between the member states, and the taxation of fuels is partly EU harmonised, partly national. Fuels are subject to energy tax, carbon dioxide tax, and sulphur tax. Depending on the use of fuels, taxes may be partly or fully reduced. For bio-fuels, certain exemptions may also apply.

Real estate tax

The annual real estate tax rate on business premises is 1% of the tax assessed value. For industrial property, the tax rate is 0.5%. Other rates exist for special property.

Stamp tax

Stamp tax at 4.25% is payable on a direct transfer of real estate. The tax base consists of the highest of the purchase consideration or the tax assessed value of the real estate. Stamp tax on an intra-group transfer of real estate may be deferred as long as the real estate remains within the group.

Payroll taxes

There are no payroll taxes other than social fees (*see below*).

Social fees

Mandatory social security charges payable by employers on remuneration to employees (or by the self-employed) are levied at approximately 31%. A reduced rate is applicable for very old people. Social security charges are deductible for corporate tax purposes.

Pension benefits beyond the mandatory system are customary amongst most Swedish employers. A special salary tax is levied at approximately 24% on these additional pension premiums/commitments and is deductible for corporate tax purposes.

Branch income

Branch income (i.e. PE income) is taxed at the corporate tax rate of 22%, and general corporate tax rules apply for branch offices in Sweden. No withholding tax (WHT) is levied on the outbound repatriation of taxed profits.

The receipt of Swedish-source royalties or fees for use of tangible or intangible assets by a foreign resident is also (subject to treaty restrictions) regarded as a special form of PE income.

Income determination

Inventory valuation

Inventories (stock-in-trade) are valued at acquisition cost or market value, whichever is lower. As an alternative, inventories may be valued at 97% of the total acquisition cost, which is determined on a first in first out (FIFO) basis. The last in first out (LIFO) method is not permitted. Generally, inventories should be stated at the same amount for tax and accounting purposes.

Capital gains

There is a capital gains tax exemption for Swedish corporate entities on gains related to the disposal of shares held for business reasons.

Shares in Swedish corporations can qualify as shares held for business reasons. Unquoted/unlisted shares will always be considered as held for business reasons. Quoted/listed shares are considered held for business reasons if the company has a holding corresponding to at least 10% of the voting rights or the shares are held in the course of the business. An additional condition regarding quoted/listed shares is that the shares must be held for a period of at least one year. Under certain conditions, tax exemption also applies to shares in foreign companies.

Note that non-tax-exempt capital gains are included in business income and taxed at the corporate tax rate of 22%.

Shares in partnerships (tax transparent entities) and indirect holdings via partnerships are also included in the participation exemption regime.

An exception from the capital gains tax exemption applies for the sale of shares in a ‘shell company’, which is a company or partnership where the market value of cash, shares and other marketable instruments (other than shares held for business reasons), and similar assets exceeds 50% of the consideration paid for the shares. The sale of a shell company results in harsh taxation of the gross consideration. Provided certain formalities are fulfilled, however, it is possible to avoid such taxation.

A consequence of the participation exemption is that capital losses on shares or participations held for business reasons are not deductible.

Capital losses on portfolio holdings of shares, share options, convertible debentures, and similar financial instruments are allowed only as an offset to capital gains on the same group of financial instruments.

Certain special rules apply to computation of capital gains and losses on real estate.

Dividend income

A participation exemption applies for dividends received on shares held for business reasons (*see above*) and on qualifying holdings via partnerships. A tax deductible dividend paid by a foreign company (i.e. not only EU/European Economic Area [EEA] companies) under a hybrid arrangement is though subject to Swedish corporate tax for the recipient Swedish company.

Interest income

Interest received by a corporation is included in the corporate tax basis.

Royalty income

Royalty received by a corporation is included in the corporate tax basis.

Foreign income

Companies resident in Sweden are taxed on their worldwide income. Non-resident entities are taxed on income that is deemed to have its source within Sweden.

A Swedish corporation is taxed on foreign branch income. Double taxation normally is avoided by means of either a deduction of foreign tax or a foreign tax credit.

Dividends and capital gains from foreign subsidiaries are generally exempt from taxation according to the participation exemption provisions applicable to shares held for business reasons (*see above*).

Deductions

Depreciation, amortisation, and depletion

Depreciation on fixed assets

Land improvements may be depreciated at the rate of 5% per year of the acquisition cost. The maximum allowance is 100% of the tax basis of the improvement.

Buildings may be depreciated at rates between 2% and 5% per year of the taxable basis, depending on type and usage of the building. The maximum allowance is 100% of the tax basis of the building.

For machinery and equipment, the depreciation for tax purposes should correspond to the depreciation charged in the books and accounts, as long as the total net value of the assets is not less than the 70% of net value in previous accounts plus additions less proceeds of sales (i.e. 30% declining-balance depreciation) or cost less 20% per year (i.e. 20% straight-line depreciation on remaining assets). An alternative 25% declining-balance method without correspondence to the books also exists.

Immediate deduction of certain assets

The cost of assets having an expected life of no more than three years and the cost of assets not exceeding certain limits, depending on size of operations, may be deducted immediately. Certain costs for repairs, maintenance, and modifications of buildings may also be deducted immediately.

Amortisation of intangibles and goodwill

The amortisation of patents, leaseholds, and acquired goodwill follows the same rules as depreciation for machinery and equipment, provided these assets have been acquired from another party (*see above*).

Depletion of mines and quarries

The entire cost of mines and quarries may be depleted over their expected exploitation period. These depletion amounts may be deducted annually but are limited to 100% of the acquisition cost of the mine or quarry.

Start-up expenses

General start-up expenses for generating and maintaining business income are, as a rule, deductible for Swedish tax purposes.

Interest expenses

Interest expenses on external loans are fully deductible, whereas interest paid to affiliated companies are deductible only if an exception applies under the Swedish interest stripping restrictions and to the extent that the arm's-length principle is complied with. Under the interest stripping restrictions, and in brief, a deduction is not allowed for interest accruing on an intra-group loan unless the true creditor within the affiliated group (i.e. the person entitled to the interest) is taxed on the interest income at a rate of at least 10% or it is shown that the debt is based on commercial reasons. Regardless, a deduction may be refused if the debt structure has been put in place mainly for the group to achieve a substantial tax benefit.

Please note that the Swedish government has proposed an amendment of the Swedish interest expenses rules (*see the Significant developments section*).

Bad debt

Business bad debts are deductible if they are proven wholly or partially worthless.

Charitable contributions

Purely charitable contributions are generally non-deductible.

Fines and penalties

Fines and penalties are non-deductible for Swedish tax purposes.

Taxes

Generally, Swedish taxes are not deductible for tax purposes. However, specific taxes, fees, and foreign taxes may be deductible. Recoverable VAT is not treated as an expense or cost.

Net operating losses

Tax losses may be carried forward indefinitely but may become subject to restrictions and/or forfeiture upon ownership changes, mergers and demergers, dispositions with creditors, and certain other reorganisations. No carryback of losses is possible.

Payments to foreign affiliates

Transactions with affiliates not liable to tax in Sweden must be at arm's length. Formal transfer pricing documentation requirements apply.

Group taxation

Swedish companies are not taxed on a consolidated basis. However, it is possible for qualifying groups (i.e. a holding greater than 90% of the capital, which must have been upheld during the whole fiscal year) to effectively offset operating losses of one Swedish company against operating profits of another Swedish company by way of group contributions, which are tax deductible for the contributor and taxable for the recipient. EEA companies are regarded as Swedish companies for these purposes if the recipient is taxable in Sweden.

A similar Swedish deduction is, under certain circumstances, also available for cross-border group relief at the Swedish parent's level within the EEA for final foreign subsidiary losses.

Transfer pricing

The Swedish transfer pricing regime is generally an OECD type of regime. Sweden has formal transfer pricing documentation requirements in place.

County-by-country (CbC) reporting

A multinational group with a Swedish parent company, with annual group consolidating revenue exceeding SEK 7 billion shall, within 12 months after the closing of the financial year, submit certain financial data about their business for each tax jurisdiction in which the group operates, on an annual basis. All Swedish entities and foreign PEs within a multinational group shall, before the ending of the financial year, notify the Swedish Tax Agency which entity in the group is submitting to the CbC report.

Thin capitalisation

There are no thin capitalisation rules for tax purposes in Sweden; however, interest stripping restrictions exist (*see Interest expenses in the Deductions section*).

Controlled foreign companies (CFCs)

Sweden's CFC provisions aim at taxing a Swedish resident shareholder for shareholdings in low-taxed foreign entities. A Swedish resident shareholder with a holding in a CFC entity will annually be taxed for its ownership portion of the CFC's income, according to provisions applicable to a Swedish corporation. For a corporation, the portion will be taxed at the Swedish corporate tax rate. Only holdings, direct or indirect through other foreign entities, corresponding to at least 25% (capital or voting rights) in the foreign entity could lead to CFC taxation. A foreign company is considered low taxed if the income in the company, calculated in accordance with Swedish provisions, is taxed at a rate below 12.1%. However, if the foreign entity is resident in an 'approved country', CFC taxation should not arise. Approved countries appear in an official 'black/white' list. Active EEA entities are, under certain circumstances, not considered low taxed.

In the light of the EU Anti-Tax Avoidance Directive, certain amendments to the Swedish CFC provisions are proposed to enter into force on 1 January 2019. Notable changes are that companies could be deemed as affiliated due to a holding requirement of 25% (previously the threshold was 50%), implying that additional foreign entities could be covered by the Swedish CFC rules, depending on the ownership structure. Thereto, the 'white' list will apply in fewer situations (e.g. in essence exempting Malta from the list). Further, royalties and other income from intellectual property (IP) rights will be covered by the CFC rules.

Tax credits and incentives

There are no specific tax incentives in Sweden for corporations. However, some generally applicable regimes exist.

For example, Sweden has an accruals reserve regime. The accruals reserve regime allows for a tax-deductible appropriation for corporations of 25% of the taxable profit before appropriation to a reserve. Each year's appropriation forms a separate reserve that must be reversed to income no later than the sixth year following the appropriation. However, a standardised interest income is imposed on former years' appropriations at 72% of the interest rate on governmental debt notes.

Foreign tax credit

A foreign tax credit is generally available, provided certain conditions are fulfilled, and the tax credit allowed is limited to an amount corresponding to the Swedish tax on the foreign income. Unutilised foreign taxes may be carried forward for five years. Tax treaty implications may exist.

Withholding taxes

There are no Swedish taxes on interest and service fees paid to non-resident corporations or individuals. Such payments to resident corporations and individuals are taxed as ordinary income.

WHT on dividends, royalties, and certain rentals vary according to domestic law and tax treaties, as shown below.

Pursuant to the amendment of the Parent Subsidiary Directive (EU general anti-avoidance rule [GAAR]), a minor change in the Swedish WHT Act (for outbound dividends) has been made, targeting structures put in place to obtain WHT exemption through the use of decoy arrangements. This anti-avoidance provision has long existed under current Swedish law, but an explicit clarification is made as of 1 January 2016 that the provision can also be applicable in cases covered by the Parent Subsidiary Directive.

Apart from the highlighted treaties, Sweden has concluded agreements on exchange of information in tax matters and partial tax treaties. Since 1 April 2017, when the tax information exchange agreement (TIEA) with the United Arab Emirates entered into force, Sweden has information exchange agreements with all the world's tax jurisdictions. It could also be noted that amendments to the EU Directive on administrative cooperation in the field of taxation have been implemented in Swedish legislation with effect as of 1 January 2017.

A ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) is proposed by the Swedish government and is awaiting for approval from the Parliament. As five jurisdictions have deposit instruments of ratification, the MLI will enter into force on 1 July 2018. However, it is not possible to foresee a date for the entry into force into Swedish law as the Swedish government has not yet proposed necessary amendments in respect of tax treaties.

	WHT (%)	
Recipient	**Cash dividends (1, 2)**	**Royalties, certain rentals (3)**
Resident corporations	0 (4)	0 (5)
Resident individuals	30 (4)	0 (5)
Non-resident corporations and individuals:		
Non-treaty	30	22 (5)

	WHT (%)	
Recipient	**Cash dividends (1, 2)**	**Royalties, certain rentals (3)**
Treaty:	(6)	
Albania	5/15	5
Argentina	10/15 (7)	3/5/10/15 (7)
Armenia (28)	0/5/15	5
Australia	15	10
Austria	5/10 (6)	0/10 (8)
Azerbaijan (29)	5/15	5/10 (34)
Bangladesh	10/15	10
Barbados	5/15	0/5 (9)
Belarus	0/5/10	3/5/10 (10)
Belgium	5/15 (6)	0
Bolivia	0/15	15
Botswana	15	15
Brazil	15/25	15/25 (27)
Bulgaria	10 (6)	5
Canada	5/10/15	0/10 (11)
Chile (12)	5/10	5/10 (31)
China, People’s Republic of (13)	5/10	10
Cyprus	5/15 (6)	0
Czech Republic (14)	0/10 (6)	0/5 (9)
Denmark (15, 16)	0/15 (6, 16)	0 (16)
Egypt	5/20	14
Estonia	5/15 (6)	5/10 (17)
Faroe Islands (15, 16)	0/15 (16)	0 (16)
Finland (15, 16)	0/15 (6)	0
France	0/15 (6)	0
Gambia	0/5/15	5/12.5 (18)
Georgia	0/10	0
Germany	0/15 (6)	0
Greece	0 (6)	5
Hungary	5/15 (6)	0
Iceland (15, 16)	0/15 (16)	0 (16)
India	10	10
Indonesia	10/15	10/15 (19)
Ireland, Republic of	5/15 (6)	0
Israel	5/15	0
Italy	10/15 (6)	5
Jamaica	10/22.5	10
Japan	0/10	0
Kazakhstan	5/15	10
Kenya	15/25	20
Korea, Republic of	10/15	10/15 (20)
Latvia	5/15 (6)	5/10 (17)
Lithuania	5/15 (6)	5/10 (17)
Luxembourg	0/15 (6)	0
Macedonia	0/15	0
Malaysia (12)	0/15	8
Malta	0/15 (6)	0
Mauritius	0/15	0

Sweden

	WHT (%)	
Recipient	**Cash dividends (1, 2)**	**Royalties, certain rentals (3)**
Mexico	5/15	10
Namibia	0/5/15	5/15 (21)
Netherlands	0/15 (6)	0
New Zealand	15	10
Nigeria	7.5/10	7.5
Norway (15, 16)	0/15 (16)	0 (16)
Pakistan	15/30	10
Philippines	10/15	15
Poland (12)	5/15 (6)	5
Portugal	0/10 (6)	10
Romania	10 (6)	10
Russia	5/15	0
Saudi Arabia	5/10	5/7 (32)
Singapore	10/15	0
Slovak Republic (14)	0/10 (6)	0/5 (9)
South Africa	0/5/15	0
Spain	10/15 (6)	10
Sri Lanka	15	10
Switzerland	0/15	0
Taiwan	10	10
Tanzania	15/25	20
Thailand	15/20/30	15
Trinidad and Tobago	10/20	0/20 (22)
Tunisia	15/20	5/15 (23)
Turkey	15/20	10
Ukraine	0/5/10	0/10 (33)
United Kingdom	0/5/15 (6, 30)	0
United States	0/5/15	0
Venezuela	5/10	7/10 (24)
Vietnam	5/10/15	5/15 (25)
Yugoslavia (former) (26)	5/15	0
Zambia	5/15	10
Zimbabwe	15/20	10

Notes

1. According to domestic law, there is no WHT on dividends to a foreign company on shares held for business reasons (*for the definition of shares held for business reasons, see Capital gains in the Income determination section*), provided that the foreign company is similar to a Swedish limited liability company (and some other legal entities) and is subject to income tax at a level similar to that imposed on a Swedish company. Further, there is no tax liability for a legal entity of a member state of the European Union if the entity owns 10% or more of the share capital in the distributing company and fulfils the conditions of the Directive (90/435) regarding a parent company and subsidiaries.
2. The reduced rate shown before a stroke (/) refers to payments to corporations having requisite control. Where appropriate, the particular treaty should be consulted to see whether the reduced rate is applicable.
3. Swedish-source royalties and certain rental fees are treated as a special form of PE, taxable at the corporate tax rate, subject to treaty reduction or waiver. Royalties paid from Sweden to a company within the European Union should not be taxed in Sweden if one of the companies holds at least 25% (capital) of the other or, where there are two companies concerned, at least 25% are held by another company within the European Union. Indirect participation does not benefit from the legislation. Both the payer and the recipient must be legal entities under the EU directive.
4. Payments to resident corporations and individuals are taxed as ordinary income. Only resident banks and similar entities are required to withhold tax on payments of cash dividends to resident individuals.

5. Royalties and certain rentals paid by Swedish licensees are treated as business income taxable in Sweden and do not incur WHT (*see Note 3*).
6. Note also the domestic provision stating a 0% WHT on dividends distributed to qualifying entities based on EU Directive (90/435) and/or where the shares are held for business purposes (*see Note 1*).
7. Dividends: 10% of the gross amount if the company receiving the dividends owns at least 25% of the foreign company's capital.

   Royalties: of the gross amount paid for the use of, or the right to use:
   - News: 3%.
   - Copyright of literary, dramatic, musical, or other artistic work: 5%.
   - Any patent, trademark, design or model, plan, or secret formula or process; industrial or scientific equipment or information concerning industrial, commercial, or scientific experience; payments for the rendering of technical assistance: 10%.
   - All other cases: 15%.
8. Royalties are normally taxable only in the recipient's home country. However, where the royalty is paid by a Swedish legal entity that is more than 50% owned by one Austrian recipient, entity or individual, the tax in Sweden is a maximum of 10%.
9. Literary, artistic, or scientific royalties: 0%; other royalties: 5%.
10. Royalties for use of industrial, commercial, or scientific equipment: 5%; with respect to patents, secret formulas or processes, or for information concerning industrial, commercial, or scientific experience: 3%; other royalties: 10%.
11. Royalties for use of copyright and literary, dramatic, musical, and artistic royalties: 0%. Other royalties: 10% (treaty should be consulted).
12. The treaty has effect on income derived on or after 1 January 2006.
13. The double taxation treaty does not include Hong Kong.
14. The same treaty is applicable to the Czech Republic and the Slovak Republic.
15. According to the Nordic multilateral tax treaty.
16. Dividends are exempt from tax if the recipient of the dividends is a company directly owning at least 10% of the capital of the company paying out the dividends. Certain rentals are subject to tax if there is a PE in a country other than the home country and the claim is connected with the business carried on from the PE. Concerning Iceland, dividends are normally exempt from tax for companies, but the tax rate is 15% if the dividends have been deducted from the income of the distributing company.
17. Royalties for the use of industrial, commercial, or scientific equipment: 5%; other royalties: 10%.
18. Royalties with respect to patents, secret formulas or processes, or for information concerning industrial, commercial, or scientific experience: 5%; other royalties: 12.5%.
19. Royalties for the use of industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experience: 10%; other royalties: 15% (treaty should be consulted).
20. Literary, artistic, or scientific royalties including films: 15%; other royalties: 10% (treaty should be consulted).
21. Royalties with respect to patents, secret formulas or processes, or for information concerning industrial or scientific experience: 5%; other royalties: 15%.
22. Commercial royalties, including films: 20%; copyright, literary, dramatic, musical, or artistic royalties: 0%.
23. Commercial royalties, including films: 15%; literary, dramatic, musical, or artistic royalties: 5%.
24. Literary, artistic, scientific, or film royalties: 10%; other royalties: 7%.
25. Royalties with respect to patents, designs or models, secret formulas or processes, or for information concerning industrial or scientific experience or for the use of industrial, commercial, or scientific equipment involving a transfer of know-how: 5%; other royalties: 15%.
26. Former Yugoslavia refers to the countries of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Slovenia, and the autonomous province of Kosovo. The treaty is applicable to all republics and autonomous provinces of the former Yugoslavia with the exception of Macedonia, with which Sweden has concluded a bilateral treaty.
27. Royalties arising from the use or the right to use trademarks: 25%; other royalties: 15%.
28. The first tax treaty between Sweden and Armenia entered into force on 1 June 2017.
29. The first tax treaty between Sweden and Azerbaijan entered into force on 31 December 2016.
30. Dividends are exempt from tax if the beneficial owner is a company that controls at least 10% of the voting power of the paying company. For other cases, dividends are taxable at a maximum rate of 5%. A maximum rate of 15% applies to dividends paid out of income (including gains) from immovable property by an investment vehicle that distributes most of the income annually and whose income from the immovable property is tax exempt.
31. Royalties for the use of, or the right to use, industrial, commercial, or scientific equipment: 5%; other royalties: 10%.
32. Royalties for the use of, or the right to use, industrial, commercial, or scientific equipment: 5%; other royalties: 7%.
33. Royalties for patents relating to industrial know-how of manufacturing methods and royalties attributable to agriculture, pharmaceuticals, computers, computer software and construction, secret formula or processes, or for information concerning industrial, commercial, or scientific nature: 0%. Other royalties: 10%.
34. Royalties paid for the use of, or the right to use, patent, trademark, design or model, plan, or secret formula or process, or information concerning experience of industrial, commercial, or scientific nature: 5%. Other royalties: 10%.

Tax administration

Taxable period

If the income is derived from business, the basis for tax assessment is the financial year. The year-end for a company may be fixed at any calendar month ending, provided it comprises 12 calendar months and ends on the last day of a month. Swedish subsidiaries of foreign parents may generally be permitted to adopt the same year-end as the parent company.

Tax returns

Every corporate entity or registered branch must file an annual corporate tax return. The applicable due date for tax return submissions depends on the month in which the financial year ends: tax returns for financial years ending in January through April are due on 1 November in the same year; tax returns for financial years ending in May or June are due on 15 December in the same year; tax returns for financial years ending in July or August are due on 1 March in the following year; and tax returns for financial years ending in September through December are due on 1 July in the following year. The financial year of most Swedish companies follow the calendar year; consequently, most tax returns are subject to the 1 July due date.

The annual assessments are made by the Swedish Tax Agency during the calendar year following the income year and should be completed about a year after the expiry of the financial year.

Payment of tax

Income taxes are collected during the year in which the income is earned, under a preliminary tax system. A corporate entity's preliminary tax liability is determined by a preliminary tax assessment based either on the latest available final tax assessment or on a preliminary tax return filed by the company. The preliminary taxes are payable in monthly instalments. Interest surcharges on underpayment of preliminary taxes, however, generally apply after two months from the end of the fiscal year (the end of a fiscal year is one of 30 April, 30 June, 31 August, or 31 December).

Once a tax assessment decision has been made by the Swedish Tax Agency, any balance owed by the taxpayer is payable in 90 days. Any balance owed to the taxpayer is automatically refunded within a year from the end of the fiscal year.

Tax penalty

A taxpayer that submits incorrect or insufficient information in a tax return is charged a penalty of up to 40% of the tax that, if the incorrect information had been accepted, would have been imposed or credited. The penalty and the rate may vary depending on the type of the shortcoming. Late filing fees also apply.

Appeals

Taxes are assessed by the Swedish Tax Agency. Depending on the circumstances, reassessments and/or appeals generally can be initiated within two and/or six years after the expiry of the calendar year during which the financial year ended. The extended six-year period can generally be applied by the Swedish Tax Agency to the disadvantage of the taxpayer in cases of erroneous or misleading information having been provided by the taxpayer or the taxpayer's omission of information. Appeals can be made to the Administrative Court, onwards to the Administrative Court of Appeal and, in case granted trial dispensation, onwards to the Supreme Administrative Court.

Topics of focus for tax authorities

The Swedish Tax Agency has, for quite some time, focused on challenging interest deductions on inter-company loans made under the view that the interest rate deviates from the arm's-length rule. This particular focus has resulted in a number of court cases. The Swedish Tax Agency is currently also focusing on interest deduction restrictions under current limitation rules.

Another focus of the Swedish Tax Agency has been to challenge individual owners of private equity companies on the taxation of carried interest.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 8 August 2014, Sweden signed a Model 1A FATCA agreement with the United States. The intergovernmental agreement (IGA) has been implemented through legislative means that entered into force as of 1 April 2015.

EU state aid

There is no Swedish-specific legislation regarding EU state aid.

Base erosion and profit shifting (BEPS)

Amendments to the Swedish tax legislation due to the BEPS action points, such as amendments to the current interest deduction limitation rules, are currently being prepared by the Swedish government. In general, there is no official information on how any additional rules may be designed available yet.

Common Reporting Standard (CRS)

In accordance with the OECD's CRS and EU Directive DAC 2, certain financial institutes are obligated to report certain financial information to the Swedish Tax Agency. The first year for submitting the CRS control data is 2017 (regarding financial year 2016).

Switzerland

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Significant developments

Base erosion and profit shifting (BEPS)

Based on the results of the BEPS project, Switzerland has launched several actions in order to implement BEPS measures into the Swiss tax law, in particular:

- Country-by-country (CbC) reporting: On 1 December 2017, the Multilateral Competent Authority Agreement on the Exchange of CbC reports, as well as the corresponding Swiss law, have entered into force. Generally, Swiss-headquartered multinationals with a revenue exceeding 900 million Swiss francs (CHF) are required to prepare a CbC report. They will have to draw up a first CbC report in the year 2019 for the year 2018. The automatic exchange of these reports between the partner states shall start in 2020.
- Spontaneous exchange of information: On 1 January 2017, the Swiss rules on the spontaneous exchange of information have entered into force. The rules are based on the Organisation for Economic Co-operation and Development (OECD)/ Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. A spontaneous exchange of information is an unrequested exchange of information available to the competent tax authorities that may be of interest to the competent foreign authority. A spontaneous exchange of information occurred, for the first time, in 2018.

The implementation of further BEPS actions into the Swiss tax law and double tax treaties (DTTs) is an ongoing process.

In this regard, Switzerland signed the Multilateral Instrument (MLI) on 7 June 2017. Switzerland will implement minimum standards either within the framework of the MLI or by means of the bilateral negotiation of DTTs. The MLI will be subject to the standard parliamentary approval process before entering into force (not expected before 1 January 2019).

Tax proposal 17

After having implemented two favourable corporate tax reforms, the Swiss people, on 12 February 2017, rejected the so-called 'corporate tax reform III' package.

The need for a corporate tax reform remains, however, undisputed by all political parties. Consequently, right after the poll, the Federal Council decided to draft a new corporate taxation proposal, called 'tax proposal 17' (TP17) with the aim to align Switzerland's tax laws to the latest international developments and to strengthen Switzerland's fiscal competitiveness as a business location with a focus on innovation and value creation.

The Federal Council, on 21 March 2018, issued the draft law together with the dispatch for the parliamentary debates. Depending on the legislative procedure, first measures could enter into force in 2019. The majority of the reform package is expected to enter into force on 1 January 2020.

The draft law includes, among other things, the following main cornerstones:

- Introduction of a patent box at the cantonal and communal level.
- Additional deductions for research and development (R&D).
- Abolition of the current tax privileges (*see Privileged cantonal tax regimes in the Tax credits and incentives section*).

Furthermore, it is expected that the majority of the cantons will lower their corporate income and possibly capital tax rates.

Value-added tax (VAT) law changes

The Swiss VAT law has been partially revised and includes, among other things, the following changes as of 1 January 2018:

- Swiss VAT rates:
  - Ordinary tax rate: 7.7% (until 31 December 2017: 8.0%).
  - Special tax rate: 3.7% (until 31 December 2017: 3.8%).
  - Reduced tax rate: 2.5% (remained unchanged).
- The tax liability of foreign companies that supply goods to Switzerland will newly be calculated on the worldwide turnover. Accordingly, if a company generates less than CHF 100,000 from the supply of goods to Switzerland, but at least CHF 100,000 in turnover globally, it will, from 1 January 2018, be liable for VAT in Switzerland starting with its first Swiss franc of turnover. As a consequence, an increased number of foreign companies will become liable to Swiss VAT. This will, however, allow such companies to recover related Swiss input VAT.
- Electronic newspapers, magazines, and books without advertising character will be subject to the reduced Swiss VAT rate of 2.5%.

Taxes on corporate income

Resident companies are subject to Swiss corporate income tax (CIT) on their taxable profits generated in Switzerland. CIT is levied at the federal, cantonal, and communal level. Foreign-source income attributable to foreign permanent establishments (PEs) or real estate property located abroad is excluded from the Swiss tax base and only taken into account for rate progression purposes in the cantons that apply progressive tax rates.

Non-resident companies may be subject to Swiss CIT if they are (alternatively) partners of a Swiss business, have a PE in Switzerland, own real estate property in Switzerland, have loan receivables secured by a mortgage on Swiss real estate property, or deal with or act as a broker of Swiss real estate property. Non-resident companies are taxed on their income generated in Switzerland (*see the Branch income section*).

Federal level

Switzerland levies a direct federal CIT at a flat rate of 8.5% on profit after tax. Accordingly, CIT is deductible for tax purposes and reduces the applicable tax base (i.e. taxable income), resulting in a direct federal CIT rate on profit before tax of approximately 7.83%. At the federal level, no corporate capital tax is levied.

Cantonal/communal level

In addition to the direct federal CIT, each canton has its own tax law and levies cantonal and communal corporate income and capital taxes at different rates. Therefore, the tax burden of income (and capital) varies from canton to canton. Some cantonal and communal taxes are imposed at progressive rates.

Overall tax rates

As a general rule, the overall approximate range of the maximum CIT rate on profit before tax for federal, cantonal, and communal taxes is between 11.5% and 24.2%, depending on the company's location of corporate residence in Switzerland. Reduced CIT rates usually apply for companies subject to a special cantonal tax regime (e.g. holding companies, domicile companies, mixed trading companies).

Corporate residence

A company is considered resident in Switzerland if its domicile is in Switzerland. Residency is also linked to the place of effective management, which may be the centre from which day-to-day activities are directed or the place from which managerial decisions are taken.

Permanent establishment (PE)

For Swiss tax law purposes, the term 'permanent establishment' means a fixed place of business through which the business activity of an enterprise is wholly or partly carried on. In particular, PEs are branches, factories, workshops, sales agencies, permanent representations, mines and other places of extraction of natural resources, as well as building or construction sites that are maintained for at least 12 months. This definition is generally in line with the criteria according to the current Article 5 paragraph 2 of the OECD Model Tax Convention on Income and Capital.

Other taxes

Value-added tax (VAT)

As a matter of principle, proceeds of sales made and services provided in Switzerland are subject to VAT at the standard rate of 7.7% as of 1 January 2018 (previously 8%). Goods for basic needs are subject to VAT at the reduced rate of 2.5% (this rate remains unchanged). Furthermore, services in connection with the provision of lodging are subject to VAT at the special rate of 3.7% (previously 3.8%).

Any person, regardless of legal form, objects, and intention to make a profit, is liable to VAT if that person carries on a business and is not exempt from the tax liability. A person carries on a business if the person independently performs a professional or commercial activity with the aim of sustainably earning income from supplies and acts externally under the person's own name. Taxable persons must register with the Swiss Federal Tax Administration of their own accord in writing within certain deadlines. Up to 31 December 2017, anyone who made, in Switzerland, an annual turnover of less than CHF 100,000 from taxable supplies was exempt from the aforementioned liability.

A registered taxpayer generally is entitled to offset the amount of VAT charged by suppliers or paid on imports against the VAT payable.

As of 1 January 2018, an increased number of foreign companies are subject to Swiss VAT. The tax liability of foreign companies that supply goods to Switzerland is now calculated on the worldwide turnover. Accordingly, if a company generates less than CHF 100,000 from the supply of goods to Switzerland, but at least CHF 100,000 in turnover globally, it will, from 1 January 2018, be liable for VAT in Switzerland from its first Swiss franc of turnover.

The VAT rates are dependent on the goods sold or the services provided. Some supplies are exempt from the tax without credit (e.g. hospital treatment, cultural services, insurance and reinsurance turnovers, specific turnovers in the field of money and capital transactions), and some supplies are fully exempt from the tax (e.g. supply of goods that are transported or dispatched directly abroad). The difference relates to the fact that the input VAT related to supplies exempt from the tax without credit cannot be deducted, whereas supplies exempt from the tax are fully eligible for input VAT deduction.

Customs duties

All goods arriving in Switzerland from abroad are generally subject to customs duty and import VAT. The customs duty is calculated on the gross weight of imported goods, where category-specific weight rates apply. Products like alcoholic drinks, tobacco products, food, and textiles are typical categories of higher duty rates. Furthermore, imported goods are subject to import VAT of generally 7.7% as of 1 January 2018 (previously 8%). A reduced rate of 2.5% applies on certain goods (e.g. food, non-alcoholic beverages, books, magazines, pharmaceutical products).

Excise taxes

In Switzerland, various excise taxes are levied. To name a few, the following excise taxes are levied at the federal level:

- VAT (*see above*).
- Petroleum tax.
- Performance-related Heavy Vehicle Fee.
- National road tax (motorway tax sticker).
- Beer excise tax/Tax on alcohol.
- Tobacco excise tax.
- Radio and television licence fee (radio-television fee as of 1 January 2019).

Property taxes

With regard to the ownership and the transfer of real estate property in Switzerland, property taxes may apply. Depending on the location of the real estate property, ownership-related property taxes are levied at the cantonal and/or communal level or do not exist at all.

In case of the sale of real estate property, real estate transfer tax and taxes on the capital gain may apply.

At the federal level, capital gain realised on the sale of real estate property is subject to ordinary CIT. At the cantonal and communal level, depending on the canton concerned, capital gain realised is either subject to the ordinary CIT (dualistic method) or subject to a special real estate capital gain tax (monistic method).

It is at the discretion of the authority of the cantons to decide how real estate capital gains shall be taxed within their territory.

Securities transfer tax

Swiss securities transfer tax (often known as 'securities turnover tax' or 'transfer stamp tax') is levied on the transfer of Swiss or foreign securities, in which Swiss security dealers participate as contracting parties or as intermediaries. The ordinary tax rate of Swiss securities transfer tax is 0.15% for securities issued by a tax resident of Switzerland and 0.3% for securities issued by a tax resident of a foreign country.

Swiss security dealers are defined as any person professionally engaged in the buying or selling of securities for one's own account or for another person, including Swiss banks and other Swiss bank-like institutions. The definition also includes companies holding taxable securities whose book value exceeds CHF 10 million and remote members of a Swiss stock exchange.

Taxable securities include, but are not limited to, shares and bonds. Options and many other derivative instruments are not subject to Swiss securities transfer tax. However, the exercise of such financial instruments or derivatives may result in a taxable transfer of a security.

Various transactions are exempt from the Swiss securities transfer tax. Generally, no Swiss securities transfer tax is levied in the case of a merger or a reorganisation in which a Swiss security dealer is involved and taxable securities (including participations) are transferred. Furthermore, the like-kind exchange of a participation by a Swiss security dealer is also exempt from the Swiss securities transfer tax. This is particularly important for holding companies, which may qualify as Swiss security dealers.

Issuance stamp tax

Issuance stamp tax (often known as 'capital duty') on equity contributions to Swiss corporations is levied at the rate of 1% on the fair market value of the contribution. An exemption on the first CHF 1 million of equity in exchange for ownership rights applies, whether made in an initial or subsequent contribution.

A multitude of transactions qualify for an issuance stamp tax exemption. In particular, special tax provisions allow for most reorganisations to take place on a tax neutral basis. In addition, an existing non-resident company may generally transfer assets to Switzerland without incurring Swiss issuance stamp tax. However, if the company was formed abroad and re-domiciled to Switzerland exclusively or mainly in order to avoid Swiss stamp taxes, issuance stamp tax may apply.

The issuance of Swiss bonds and money market instruments is not subject to Swiss issuance stamp tax.

In addition, the conversion of certain contingent convertible bonds (CoCos) into equity will also not trigger Swiss issuance stamp tax on the newly created equity. In more detail, this relief applies to CoCos according to the Swiss banking law only; other convertible bonds will still trigger Swiss issuance stamp tax if converted into equity.

Capital tax

Corporate capital tax is only levied at the cantonal and the communal level (not at the federal level). It is based on a corporation's equity (i.e. the taxable equity corresponds to the sum of nominal capital, paid in surplus, retained earnings, other equity reserves, and, according to Swiss thin capitalisation rules, potential deemed equity). The ordinary capital tax rates vary between 0.001% and 0.525%, depending on the company's location of corporate residence in Switzerland. Reduced capital tax rates usually apply for companies subject to a special cantonal tax regime (e.g. holding companies, domicile companies, mixed trading companies).

The cantons are allowed to foresee in their tax law that CIT is creditable against a corporation's capital tax. As of 1 June 2018, the following cantons have implemented such credit system: Argovie, Appenzell Innerrhoden, Bern, Basel-Land, Geneva, Neuchâtel, St. Gallen, Solothurn, Schwyz, Thurgau, and Vaud.

Wage tax withholding (tax at source)

Employees meeting certain criteria (e.g. Swiss tax resident foreign nationals without a permanent residence permit, non-Swiss tax resident individuals) are subject to wage tax withholdings. In such case, it's the employer's obligation to withhold the appropriate wage tax on the employee's gross salary. The wage taxes cover the employee's federal, cantonal, and communal taxes as well as church tax (if applicable) (*see the Taxes on personal income section of Switzerland's Individual tax summary at www.pwc.com/taxsummaries*).

Social security contributions

Employers, in general, are required to account for social security contributions on the salaries of their employees. If the employee is subject to the Swiss social security system, the following compulsory social security contributions are concerned (*see the Other taxes section of Switzerland's Individual tax summary at www.pwc.com/taxsummaries*):

- Old age, survivors', and disability insurance (10.25%; the employee's share is one half).
- Unemployment insurance/supplementary unemployment insurance (approximately 2.2%; the employee's share is one half).
- Family compensation fund (0.1% to 4%; usually fully employer financed).
- Occupational accident insurance (approximately 0.17%; fully employer financed).
- Occupational pension scheme (2nd pillar) (contributions depend on pension plan; the employee's share is usually half of the total contribution, where the employer bears the other half).

Branch income

Foreign legal entities having a branch in Switzerland become subject to limited taxation in Switzerland. Such branches generally qualify as PEs in line with the OECD Model Tax Convention on Income and Capital. The branch's income is, in general, subject to the same CIT rules that apply for Swiss corporations. It is worth noting that there is no Swiss withholding tax (WHT) on profit transfers from the Swiss branch to its foreign head office.

Income determination

The statutory accounts of a Swiss company (or in the case of a non-resident company, the branch accounts) serve as the basis for determining taxable income. There are generally very few differences between statutory profit and taxable profit apart from the participation relief for dividend income and capital gains (*see below*), adjustments required by the tax law, and the usage of existing tax loss carryforwards (*see Net operating losses in the Deductions section*).

Inventory valuation

Swiss CIT treatment does, in principle, follow underlying Swiss statutory accounting treatment. Inventory valuation is therefore determined according to the accounting rules of the Swiss code of obligations. As the Swiss code of obligations and hence the Swiss accounting rules favour the prudence principle, a valuation allowance is allowed to be recorded on the inventory in excess of the actual devaluation of the inventory due to a lower market value (*see Obsolete inventory provision in the Deductions section*). Such valuation allowance is accepted for tax purposes at up to a maximum of one-third of the inventory's acquisition costs or its productions costs, respectively its lower market value.

Accordingly, the maximum inventory value represents the inventory's acquisition costs or its production costs. In case these costs exceed the inventory's market value at the balance sheet date, the latter lower market value must be applied. In order to determine the inventory's acquisition or production cost, various methods exist.

It is at the corporate taxpayer's discretion to determine which method shall apply (e.g. weighted average method, first in first out [FIFO], last in first out [LIFO], highest in first out [HIFO]).

Participation relief

Participation relief is the name generally attributed to the tax relief on qualifying dividend income and capital gains from the disposal of a subsidiary. Participation relief is not an outright tax exemption, but rather a tax abatement mechanism. It is therefore also commonly referred to as 'participation deduction' or 'participation exemption'.

Participation relief is a percentage deduction from CIT that is equal to net participation income divided by taxable income. Net participation income consists of the gross participation income from qualifying dividends and (usually) qualifying capital gains less related administration and financing costs and any depreciation of the participation that is linked to the dividend distribution. In most cases, participation relief results in a full exemption of participation income from CIT, or one close thereto. Note that participation relief may be diluted in certain cases (e.g. if tax loss carryforwards are offset).

The participation relief on dividend income is mandatory at the federal CIT as well as at the cantonal/communal level. The participation relief on capital gains is voluntary for cantonal/communal tax purposes, but nonetheless implemented by all cantonal tax acts. Specific privileged cantonal/communal tax regimes may foresee more favourable rules for dividend income and capital gains than the participation relief (*see Privileged cantonal tax regimes in the Tax credits and incentives section*).

Dividend income

Dividends qualifying for participation relief are those from participations representing at least 10% of the share capital or 10% of profits and reserves of another company and/or those having a market value of at least CHF 1 million. Note that there is neither a minimum holding period nor a requirement that the dividend paying subsidiary is liable to CIT in its jurisdiction of residence.

Capital gains

Capital gains derived from the disposal of a qualifying participation are generally entitled to participation relief if the following conditions are cumulatively met:

- The participation sold was owned by the company for a period of at least one year.
- The participation sold constitutes at least 10% of the share capital or 10% of profits and reserves of the underlying subsidiary. If a residual participation is less than 10% due to a previously qualifying partial sale, further participation relief on a capital gain is only possible if the residual participation's market value at the beginning of the year amounted to at least CHF 1 million.

It is noteworthy that capital gains are only entitled to participation relief to the extent the sales price exceeds the original investment costs (commonly also referred to as 'acquisition costs') of the participation, whereas the so-called 'recaptured depreciation' (i.e. the amount of former depreciations) is taxable.

Interest income

Interest income earned is taxable income. It is of no relevance whether the payment of the interest was made by a related party (affiliated company or shareholder) or by a third party (*see Interest expense in the Deductions section*).

Royalty income

Royalty income represents taxable income. It is generally subject to ordinary CIT at the federal, cantonal, and communal level. As an exception to the rule, the canton of Nidwalden has introduced a patent box regime. This regime provides for a lower taxation of royalty income from the exploitation of intangible property at the cantonal and communal level.

Foreign exchange gains

Realised foreign exchange gains in relation to a transaction (transaction gains) are included in the tax basis of a corporation as taxable. Realised and, as a result of the prudence principle of the Swiss accounting rules, unrealised transactional foreign exchange losses are tax deductible. Based on a federal court decision in 2009, foreign gains (or losses) resulting from the translation of financial statements in a foreign (functional) currency to Swiss franc (presentation currency) are not taxable (respectively tax deductible).

Foreign income

Swiss tax resident corporations are basically taxed on their worldwide income. However, income attributable to a foreign PE (i.e. a PE outside of Switzerland) is not taxed in Switzerland. It may only be taken into account to determine the applicable tax rate, in case progressive tax rates apply. The same rule applies for income from real estate property situated abroad.

Dividends, interest, and royalties from Swiss or foreign sources are included in taxable income. However, in certain cantons, special methods of assessment may apply for dividend and other income originating outside Switzerland. For dividend income, a relief generally is available for CIT purposes at the federal, cantonal, and communal level (*see Participation relief above*). The irrecoverable portion of foreign WHT of most treaty countries can be credited against the related Swiss CIT on the same income. Foreign WHT of non-treaty countries generally is not creditable, but is deductible for CIT purposes.

There are no controlled foreign company (CFC) rules in Switzerland. Consequently, undistributed income of foreign subsidiaries is usually not taxed in Switzerland (*see Controlled foreign companies [CFCs] in the Group taxation section*).

Deductions

The statutory accounts of a Swiss company are the basis for determining taxable income. To be tax deductible, an expense has to be booked in the statutory accounts accordingly.

Generally, all business expenses that are booked in the statutory accounts are tax deductible, assuming they are economically/commercially justified from a tax perspective. If an expense is not a justifiable business expense in the sense of the tax law, it will be added back to taxable income. Examples typically include excessive depreciation, non-justified payments to related parties (e.g. hidden profit distributions), etc.

Depreciation and amortisation

Maximum depreciation/amortisation rates allowed for tax purposes are issued by the Swiss Federal Tax Administration. Higher depreciation/amortisation is allowed for tax purposes if the taxpayer can prove that such higher depreciation/amortisation is required (not only allowed) from a statutory accounting perspective. Some cantons follow the federal guidelines, whereas some cantons apply their own (more liberal) depreciation/amortisation rates.

The following summary of the rates specified by the Swiss Federal Tax Administration provides the general range of tax-accepted depreciation:

Assets	Declining-balance (%)	Straight-line (%)
Commercial buildings:		
Buildings alone	4	2
Buildings and land combined	3	1.5
Equipment:		
Office furniture and equipment	25	12.5
Computer hardware and software	40	20
Other assets:		
Motor vehicles	40	20
Intangible assets	40	20

Some cantons (e.g. Basel-City, Bern, Grisons, Zurich) take a more liberal approach and even permit, for tax purposes, an immediate write-down of certain assets (including fixed assets) to 20% or nil of the purchase price in the first year, provided that such write-downs do not, in the aggregate, result in a drastic decline in taxable income or even a tax loss. For tax purposes, such immediate write-downs must be booked in the statutory accounts and generally disclosed in the tax return. As the cantonal tax authorities are responsible for assessing not only cantonal/communal CIT but also federal CIT, the immediate write-down will typically be accepted for federal CIT purposes as well.

Goodwill

Only acquired goodwill (derivative goodwill) may be capitalised in the statutory accounts and be amortised. Amortisation is generally allowed straight-line over five years. Special limitations apply to acquired shares, where the purchase price for these shares partly represents inherent goodwill.

Start-up expenses

The Swiss code of obligations does not contain any specific Swiss statutory accounting provision with regard to start-up expenses. For Swiss statutory accounting purposes, start-up expenses shall be expensed as incurred. For Swiss CIT purposes, business-related start-up expenses as booked in the statutory profit and loss statement are likely fully tax deductible.

Interest expense

Interest paid by a corporation to a third party is a deductible business expense. Interest paid to related parties (affiliated company or shareholder) has to reflect the fair market rate and is subject to limitations (*see Thin capitalisation in the Group taxation section*).

With respect to related parties, the Swiss Federal Tax Administration annually issues safe harbour interest rates to be used on loans denominated in Swiss franc on the one hand and in foreign currencies on the other hand. The corporation may deviate from these safe harbour rates as long as it can prove with hard facts that the rates used are at arm's length and more appropriate in the present case. The cantons usually follow these federal guidelines.

The safe harbour rules for loans denominated in Swiss franc applicable as of 1 January 2018 are as follows:

For loans to related parties	Minimum interest rate (%)
Financed from equity	0.25
Financed from debt (actual costs plus at least):	
On amount up to and including CHF 10 million	0.50
On amounts of more than CHF 10 million	0.25
But in all cases at least	0.25

For loans from related parties	Maximum interest rate (%)	
Type of loan	Home construction/ agriculture	Industry and business
Real estate loans:		
A loan up to the amount generally acceptable for mortgages (i.e. ⅔ of the market value of the real estate)	1.00	1.50

For loans from related parties	Maximum interest rate (%)	
Type of loan	Home construction/ agriculture	Industry and business
Rest, whereby the following maximum interest rates for debt are applicable:		
Land, villas, condominiums, vacation homes, business premises up to 70% of the market value	1.75*	2.25*
Other real estate up to 80% of the market value		
Operational loans up to CHF 1 million:		
Granted to trading and production companies	-	3.00*
Granted to holding and asset administration companies	-	2.50*
Operational loans above CHF 1 million:		
Granted to trading and production companies	-	1.00*
Granted to holding and asset administration companies	-	0.75*

* In calculating the amount of the maximum interest permissible from a tax perspective, any potentially existing hidden equity (based on Swiss thin capitalisation rules) has to be considered.

Bad debt provision

Based on a longstanding practice in Switzerland, it is admissible to set up a statutory accounting provision for specific impaired receivables, which will be accepted for CIT purposes. Unlike most other countries, it is also possible to account for an additional ('lump sum') bad debt provision of 5% on all domestic and 10% on all foreign receivables (i.e. a provision in addition to the provision for specific impaired receivables), except for inter-company receivables and receivables to the public, enabling the taxpayer to defer the related tax liability until this provision has been released. Some cantons, such as Zurich, accept an even higher reserve (i.e. 10% on domestic and 20% on foreign receivables). This additional bad debt provision may have the character of a 'hidden' (i.e. undisclosed) reserve and is appropriate because the Swiss statutory accounting standards favour prudence over true and fair view accounting principles.

Obsolete inventory provision

Similarly to the bad debt provision, it is possible to account for a 'hidden' (i.e. undisclosed) reserve on a company's inventory. This provision, which must also be booked in the statutory accounts, is accepted for tax purposes (similar to the bad debt provision). Specifically, a company may book a provision for specific obsolete inventory as well as a general provision of 33.3% of the inventory value after deduction of the obsolete inventory.

Charitable contributions

At the federal level, charitable contributions of up to 20% of the net profit (after tax) of a company are tax deductible, provided certain criteria are met. In particular, the charitable contribution has to be remitted to (i) Swiss legal entities that are exempt from taxation based on their public welfare or exclusively charitable objective or to (ii) the Swiss Federation, a Swiss canton or municipality, or their agencies ('*Anstalten*'). The cantons usually apply the same rules and similar thresholds.

Sponsoring contributions are only tax deductible if commercially justified (without specific thresholds).

Royalties

Royalty payments are generally deductible for tax purposes as long as the royalty rate is at arm's length.

Costs of employee share plans and stock option plans

The cost of employee share plans and stock option plans are generally deductible, assuming the employees eligible for the plan are employed by the Swiss company. The same holds true for the recharge of costs for plans covering local employees.

Costs for job-related training and continuing education of employees

As far as they are recognised as an expense in the statutory books, costs incurred for job-related training and continuing education of employees are generally tax deductible.

Fines and penalties

Under Swiss tax law, tax fines are not tax deductible. The potential tax deductibility of other fines or penalties has to be analysed with respect to the specific case.

Tax expenses

Corporate income and capital taxes paid to the federal government, as well as to the cantons and the municipalities, are tax deductible. Indirect taxes (e.g. real estate transfer tax) are tax deductible as well.

Net operating losses

Tax losses can be carried forward for a maximum of seven years and can be offset against the taxable income of the following seven years. There is no carryback of tax losses in Switzerland.

Payments to foreign affiliates

Management and services fees paid by a Swiss company to a related party are generally tax deductible as long as the fees are at arm's length.

Group taxation

Tax is levied on each corporation as a separate entity. A parent company and its Swiss subsidiaries are taxed separately, and only the dividends from the subsidiaries (but not their profits) are taxable in the parent company's hands. However, usually for dividend income, participation relief is available (*see Participation relief in the Income determination section*). For corporate income and capital taxes, no rules on group taxation exist.

Transfer pricing

So far, Switzerland has not introduced specific transfer pricing regulations. There is, however, an increasing awareness of transfer pricing matters and a related concern on the part of the Swiss tax authorities that taxpayers may transfer profits without sufficient economic justification either to countries with strict transfer pricing rules and documentation requirements in order to avoid challenges by the respective local tax authorities or to offshore locations. In this context, Swiss tax authorities take an increasing interest in a company's transfer pricing position in order to defend their own position. Some cantonal, as well as the federal, tax authorities have started to particularly focus on low risk/low profit entities located in Switzerland.

Switzerland follows the OECD Guidelines as closely as possible and recognises the arm's-length principle based on interpretation of actual legislation. To clarify transfer pricing issues, Switzerland offers an informal procedure for agreeing to pricing policies in advance. Such agreements are subject to the spontaneous exchange of information (*see Automatic information exchange in the Other issues section*).

Thin capitalisation

Swiss thin capitalisation rules are, in general, only applicable for related parties. In case of a thin capitalisation, the related party debts can be treated as taxable equity. The respective circular letter issued by the Swiss Federal Tax Administration provides for debt-to-equity ratios as safe harbour rules. As an example, the debt-to-equity ratio is generally fixed at 6:1 for finance companies (safe harbour). Interest paid on loans that exceed the relevant ratios are generally not tax deductible; further, such interest may be deemed as a hidden distribution subject to Swiss WHT. There are no limitations on the financing of Swiss corporations by independent third parties (e.g. banks).

Interest rates paid to affiliated companies are also subject to periodically fixed safe harbour interest rates (*see Interest expense in the Deductions section*). The tax deduction of interest in excess of the permitted safe harbour rate may be disallowed and treated as a hidden distribution subject to Swiss WHT.

Controlled foreign companies (CFCs)

In Switzerland, no CFC or 'subject to tax' rules exist. Foreign companies are therefore recognised for Swiss tax purposes if they are managed and controlled offshore and are not set up purely for the reason of avoiding Swiss taxes.

Tax credits and incentives

Generally, cantons offer competitive CIT rates for cantonal and communal tax purposes. Depending on the specific cantonal and communal tax location in Switzerland, the ordinary overall (federal, cantonal, and communal) CIT rates applicable on profit before tax may vary between 11.5% and 24.2% (*see the Taxes on corporate income section*). The cantons continually try to improve their attractiveness as business locations. It is at the sole discretion of the cantons to credit CIT against the capital tax to reduce the overall tax burden (*see Capital tax in the Other taxes section*). As a further example, the canton of Nidwalden introduced a tax relief for certain licence income (so-called 'patent box'), whereupon net licence income from the use of intangible assets is taxed separately at a reduced CIT rate of one-fifth of the regular cantonal/communal rate (*see Royalty income in the Income determination section*).

In addition, many cantons offer tax incentives for newly established companies or for expansion investments, such as tax holidays or significant tax relief for cantonal and communal tax purposes for up to ten years. In some specific economic development regions and regional centres, a tax holiday may even be granted for federal CIT purposes if certain conditions are met.

Privileged cantonal tax regimes

Many cantons offer privileged corporate tax regimes. Upon request, it is usually possible to get an up-front confirmation from the relevant cantonal tax authorities that the planned business activities of an entity are meeting the requirements as foreseen by the relevant cantonal tax laws for a specific privileged tax regime. It should be noted that such up-front confirmation qualifies as an advance tax ruling that is subject to the spontaneous exchange of information.

One can expect that TP17 will abolish the privileged cantonal tax regimes, replacing them with other measures. Furthermore, transitional rules will be available (*see Tax proposal 17 in the Significant developments section*). A draft of the TP17 law is currently subject to the parliamentary debates. Depending on the legislative procedure, first measures could enter into force in 2019. The majority of the reform package is expected to enter into force on 1 January 2020.

Holding company tax regime

A qualifying holding company is exempt from all cantonal/communal CIT (with the exception of income from Swiss real estate, which is subject to tax after deduction of typical mortgage expenditures on such real estate).

Consequently, a holding company is, in principle, only subject to an effective CIT rate of 7.83% (i.e. federal CIT rate) prior to participation relief for qualifying dividends and capital gains. Further, usually a reduced capital tax rate at the cantonal/communal level applies.

Companies that meet the following conditions are eligible for the holding company tax status:

- The primary purpose of the company must be to hold and to manage long-term equity investments in subsidiaries, and this purpose must be stated in the by-laws.
- The company must not be engaged in a commercial activity in Switzerland.
- The company must pass an alternative asset or income test, whereby either two-thirds of the company's assets must consist of substantial shareholdings or participations or two-thirds of total income of the company must consist of participation income (dividend income or capital gains) from such shareholdings and participations.

An advance confirmation is obtainable from the cantonal tax authorities clarifying that a specific company will qualify for the criteria of the holding company status as foreseen by the relevant cantonal tax laws prior to forming such holding company.

Domicile company tax regime

Companies that only carry out administrative functions in Switzerland but have no commercial activities are typically eligible for the domicile company tax status.

Insofar as a company fulfils the above-mentioned criteria, it may benefit from the domicile company tax regime, which, if applicable, has the following implications at the cantonal/communal CIT level:

- A modest portion of foreign-source income (i.e. from 0% to 15%) is subject to tax in accordance with the importance of the administrative function in Switzerland.

- Income from qualifying participations (including dividends, capital gains, and re-evaluation gains) is usually tax exempt (whereas losses deriving from qualifying participations usually are not tax deductible).
- All income from Swiss sources is taxed at ordinary rates.
- Expenditures that are justified for business purposes are deductible from the income to which they have a business correlation.
- Reduced capital tax rates usually are applicable.

The conditions to qualify as a domicile company vary from canton to canton. This is particularly the case with regard to determining the percentage of income from foreign sources subject to tax in Switzerland and to the definition of exactly what type of income is considered foreign-source income.

A domicile company can expect to be subject to an effective tax rate of 8% to 11% on its foreign-source income.

Mixed trading company tax regime

The mixed trading company tax status, which is very similar to the domicile company tax status, was given different names by the cantons. Internationally, it is most often referred to as the 'mixed trading company' tax status.

Contrary to a company benefiting from the classical domicile company tax status, a company benefiting from the mixed trading company tax status is allowed to undertake limited commercial activities in Switzerland. As a general rule, at least 80% of the income from commercial activities of a mixed trading company must derive from non-Swiss sources (i.e. a maximum of 20% of income may be linked to Swiss sources). Many cantons additionally require that at least 80% of the costs must be related to activities undertaken abroad.

Insofar as a company fulfils the above-mentioned criteria, it may benefit from the mixed trading company tax regime. Depending on the concrete Swiss activity and infrastructure, the portion subject to cantonal and communal income taxes generally varies between 5% and 25% of the foreign-source income and is normally higher than it is for domicile companies. The exact portion, based on the specific business activities of a company, may need to be clarified with the responsible cantonal tax authorities if the general guidelines would not cover a specific case.

Foreign tax credit

Swiss tax resident corporations may suffer foreign non-recoverable WHTs on dividend, interest, and royalty income derived from foreign sources. As such foreign-source income is generally subject to corporate income taxation in Switzerland, a double taxation occurs. In case a DTT exists and in order to reduce or to eliminate double taxation, Switzerland usually applies the credit method. Specific conditions and formalities will need to be met to benefit from foreign tax credits.

Withholding taxes

This section shall provide a general overview and an indication of the residual WHT on outbound payments from Switzerland. There might be certain exceptions or further reductions available in the DTT, which, for the sake of clarity, are not reflected in the table below. Accordingly, the table below does not replace a thorough assessment of a specific case based on the applicable DTT in force.

The statutory rate of Swiss WHT is 35%. Relief, if any, is generally granted by refund. With respect to dividends between qualifying related companies, a mere notification/ reporting procedure may be requested for the fraction of the Swiss WHT exceeding the residual WHT (which is 0% in many cases). The table further below shows the residual/remaining tax for the recipient. Credit for the unrelieved portion of Swiss WHT may be available in the country of the recipient.

In Switzerland, there is no WHT on interest deriving from regular loan agreements. Swiss WHT of 35% is only levied on interest paid by banking institutions (or paid by entities tax-wise qualified as 'banking institutions') to non-banks, interest on bonds, and interest on bond-like loans. The residual rates in the table below show the standard treaty rates and do not reflect further reliefs available in certain DTTs (e.g. on traded bonds or other traded securities).

Many of the DTTs concluded between Switzerland and other jurisdictions contain a full relief if dividends or interest is paid to governments (including political subdivisions and other governmental institutions), central banks, or pension funds.

Note that in the DTTs concluded between Switzerland and other jurisdictions, the reduced WHT for substantial holdings usually is only available if the recipient of the dividend is a corporate body (e.g. not taxed as a partnership).

Interest paid on CoCos and on write-off bonds (bonds with claim waiver) of systematically important banks is exempt from Swiss WHT. The WHT exemption is restricted to bonds issued by the respective institutions between 2013 and 2021. Additionally, interest of certain bail-in bonds issued by the respective institutions between 2017 and 2021 is not subject to WHT. These bonds must, furthermore, fulfil specific criteria in order to benefit from the WHT exemption.

Capital contribution principle

The capital contribution principle allows the repayment of qualifying shareholders' capital contributions without deduction of Swiss WHT at the level of the distributing company and without income tax implications at the level of Swiss individual shareholders (holding the shares as private wealth). In general, the capital contribution principle applies for premiums, additional paid-in capital, and contributions into the reserves of a company without increasing the nominal share capital.

Treaties in force (as of 1 May 2018)

	Dividends				
		Substantial holdings			
Recipient	Portfolio (%)	(%)	Minimum shareholding (%)	Interest (%)	Royalties (%) (1)
Resident corporations and individuals	0/35 (2)	0	(3)	0	0
Non-resident corporations and individuals:					
Non-treaty	35	35	-	0/35 (15)	0
Treaty:					
Albania	15	5	25	5	0

	Dividends				
		Substantial holdings			
Recipient	Portfolio (%)	(%)	Minimum shareholding (%)	Interest (%)	Royalties (%) (1)
Algeria	15	5	20	10	0
Argentina	15	10	25	12	0
Armenia	15	5	25	10	0
Australia	15	5	10	10	0
Austria *	15	0	20	0	0
Azerbaijan	15	5 (4)	20 (4)	10	0
Bangladesh	15	10	20	10	0
Belarus	15	5	25	8	0
Belgium *	15	0 (5)	10 (5)	10	0
Bulgaria *	10	0 (5)	10 (5)	5	0
Canada	15	5	10	10	0
Chile	15	N/A	N/A	15	0
China	10	5	25	10	0
Colombia	15	0	20	10	0
Croatia *	15	5	25	5	0
Cyprus *	15	0 (5)	10 (5)	0	0
Czech Republic *	15	0 (5)	10 (5)	0	0
Denmark *	15	0	10	0	0
Ecuador	15	N/A	N/A	10	0
Egypt	15	5	25	15	0
Estonia *	10	0 (5)	10 (5)	0	0
Finland *	10	0	10	0	0
France *	15	0/15 (6)	10	0	0
Georgia	10	0	10	0	0
Germany *	15	0 (5)	10 (5)	0	0
Ghana	15	5	10	10	0
Greece *	15	5	25	7	0
Hong Kong	10	0	10	0	0
Hungary *	15	0	10	0	0
Iceland	15	0 (5)	10 (5)	0	0
India	10	N/A	N/A	10	0
Indonesia	15	10	25	10	0
Iran	15	5	15	10	0
Ireland *	15	0	10	0	0
Israel	15	5	10	10	0
Italy *	15	N/A	N/A	12.5	0
Ivory Coast	15	N/A	N/A	15	0
Jamaica	15	10	10	10	0
Japan	10	5/0 (7)	10/50 (7)	10	0
Kazakhstan	15	5	10	10	0
Korea (South)	15	5	10	10	0
Kuwait	15	N/A	N/A	10	0
Kyrgyzstan	15	5	25	5	0
Latvia *	15	5	20	10	0
Liechtenstein	15	0	10 (5)	0	0
Lithuania *	15	5	20	10	0

Recipient	Dividends: Portfolio (%)	Dividends: Substantial holdings (%)	Dividends: Substantial holdings: Minimum shareholding (%)	Interest (%)	Royalties (%) (1)
Luxembourg *	15	0/5 (8)	10	10	0
Macedonia	15	5	25	10	0
Malawi (16)	15	0	10	0	0
Malaysia	15	5	25	10	0
Malta *	15	0 (5)	10 (5)	10	0
Mexico	15	0	10	10	0
Moldova	15	5	25	10	0
Mongolia	15	5	25	10	0
Montenegro	15	5	20	10	0
Morocco	15	7	25	10	0
Netherlands *	15	0	10	0	0
New Zealand	15	N/A	N/A	10	0
Norway	15	0	10	0	0
Oman	15	5	10	0/5 (14)	8
Pakistan	20	10	20	10	0
Peru	15	10	10	15	0
Philippines	15	10	10	10	0
Poland *	15	0 (9)	10 (9)	0/5 (13)	0
Portugal *	15	0 (9)	25 (9)	10	0
Qatar	15	5/10 (10)	10	0	0
Romania *	15	0	25	0/5 (14)	0
Russia	15	5 (11)	20 (11)	0	0
Serbia	15	5	20	10	0
Singapore	15	5	10	5	0
Slovakia *	15	0	10	0/5 (14)	0
Slovenia *	15	0	25	0/5 (14)	0
South Africa	15	5	20	5	0
Spain *	15	0 (5)	10 (5)	0	0
Sri Lanka	15	10	25	10	0
Sweden *	15	0	10	0	0
Taiwan (Chinese Taipei)	15	10	20	10	0
Tajikistan	15	5	20	10	0
Thailand	15	10	10	15	0
Trinidad and Tobago	20	10	10	10	0
Tunisia	10	N/A	N/A	10	0
Turkey	15	5	20	10	0
Turkmenistan	15	5	25	10	0
Ukraine	15	5	20	10	0
United Arab Emirates	15	5	10	0	0
United Kingdom *	15	0	10	0	0
United States	15	5	10	0	0
Uruguay	15	5	25	10	0
Uzbekistan	15	5	20	5	0
Venezuela	10	0	25	5	0
Vietnam	15	10/7 (12)	25/50 (12)	10	0
Zambia (16)	15	0	10	0	0

* Switzerland and the European Union (EU) signed an Agreement regarding the Introduction of the Global Automatic Exchange of Information Standard on 27 May 2015, applicable as of 1 January 2017. The Agreement signed is a protocol of amendment that replaces the Savings Agreement between Switzerland and the European Union, which has applied since 1 July 2005. Article 9 of the Automatic Exchange of Information Agreement provides the same benefits as the former Savings Agreement, as follows:

Upon request, Swiss WHT on dividends paid by a Swiss subsidiary company to its EU parent company may be reduced to 0% (reduction at source) and is only subject to a notification/reporting procedure, provided the following key conditions are cumulatively met:

- Direct minimum holding of 25% of the subsidiary's capital for at least two years.
- Both companies are subject to CIT.

Upon request, WHT on interest and royalty payments made between associated companies or their PE resident, respectively situated in Switzerland and the European Union, may be reduced to 0% (reduction at source) in the source state, provided the following key conditions are cumulatively met:

- Direct minimum holding of 25% for at least two years (parent/subsidiary) or direct holding by a third company of minimum 25% in the capital of both companies for at least two years (sister companies).
- Both companies are subject to CIT.

The application of the Bilateral Agreement is subject to foreign and Swiss misuse conditions.

DTTs between Switzerland and EU countries with more favourable tax treatment of dividend, interest, and royalty payments remain unaffected.

Notes

1. There is no Swiss WHT on royalties, licences, and similar fees payable by Swiss individuals or corporations (provided that the dealing at arm's-length principle is met).
2. The statutory Swiss WHT rate of 35% is levied but refunded, provided that the respective earnings are declared as income for tax purposes.
3. Between Swiss group companies, Swiss WHT of 35% is usually fully refundable. Furthermore, in many cases, the tax liability can be met by the notification/reporting procedure. For this purpose, a direct investment of at least 20% in the share capital of the payer of the dividend is required.
4. 20% minimal shareholding plus foreign investment of at least 200,000 United States dollars (USD).
5. Only applicable if holding period is at least 12 months.
6. 15% residual tax for companies with more than 10% shareholding if the company receiving the dividend is directly or indirectly controlled by a shareholder not resident in the European Union or Switzerland and cannot prove that the company is not set up only to benefit from the 0% WHT on dividends.
7. 0% WHT if minimum shareholding is at least 50% for at least six months. 5% WHT if minimum shareholding is at least 10% for at least six months.
8. 5% WHT if the shareholding of 10% was held less than two years; 0% WHT if the shareholding of 10% was held longer than two years.
9. Only applicable if holding period is at least 24 months.
10. 5% WHT if dividend recipient is a corporate body; 10% WHT if dividend recipient is an individual.
11. 20% minimal shareholding plus foreign investment of at least CHF 200,000.
12. 10% WHT for shareholdings between 25% and 50%; 7% WHT for shareholdings of at least 50%.
13. Full relief if paid to a related entity in the form of a corporation.
14. 0% WHT if certain criteria are met.
15. Switzerland levies a WHT on interest paid on bonds issued in Switzerland and on bank accounts with Swiss banks. Generally, no WHT is levied on interest paid on loans. However, from a Swiss WHT perspective, a loan may be requalified as a bond under certain circumstances.
16. Application of the Double Tax Treaty between Switzerland and the United Kingdom.

Tax administration

Taxable period

The tax year is the business year. Thus, the basis for corporate taxation is the applicable accounting period, which may end at any date within a calendar year.

Tax returns

The tax system for corporate income and capital taxes is based on taxpayers' declarations, with subsequent assessments being issued by the tax authorities on the basis of the tax returns filed. The tax return has to be filed annually (an exemption exists in the first business year in case an extended business year shall apply). The filing deadlines vary from canton to canton (usually between six and nine months after the close of the business year). Companies are initially assessed on a provisional basis, with the final assessments being issued after the tax base was either subject of a tax audit or declared final by the authorities.

Payment of tax

Unless instalment payments are specifically requested, federal, cantonal, and communal taxes on income and capital are, in most cantons and for federal tax purposes, payable only upon receipt of a demand based on a provisional or final assessment.

Note that cantonal exceptions apply. As an example, based on the date of maturity of the respective tax year (30 September), the canton of Zurich levies late payment interest to the extent that the full (final) tax amount had not been paid in time (independent from any earlier provisional tax invoices). About one month before the due date, a (provisional) tax bill based on the latest tax return filed or the assessment of the preceding period is sent to the taxpayer. Payment is usually made in two or three instalments. If the entire amount is paid up front, a discount may be granted.

The provisional federal CIT is usually due by 31 March of the year following the tax period at question. The due date of the final federal CIT and the provisional or final cantonal CIT varies.

Tax audit process

Swiss CIT law does not outline specifics of the tax audit process. At first, the tax authorities review the tax return and its enclosures as filed by the taxpayer. Such review is usually desk-related work. The competent tax authorities are obligated and entitled to clarify all relevant information necessary to assess taxpayers on a true and complete base. The tax authorities may request further information/documentation or may inspect the taxpayer's premises.

Statute of limitations

As a general rule, the right to assess a taxpayer in relation to corporate income and capital taxes expires five years after the end of the corresponding tax period (relative statute of limitations). Under certain conditions (e.g. where the relative statute of limitations is interrupted), the absolute statute of limitations of 15 years applies.

In case of tax fraud ('*Steuerbetrug*') or tax evasion ('*Steuerhinterziehung*'; e.g. where specific information was not available to the tax inspector at the time of the assessment), finally assessed tax periods can be reopened. The statute of limitations to reopen finally assessed tax periods is ten years after the end of the corresponding tax period.

Topics of focus for tax authorities

The Swiss tax authorities do not communicate specific topics of focus. The tax authorities do normally start their assessment with reviewing the tax return and its enclosures as filed by the taxpayer (*see Tax audit process above*).

Other issues

Reorganisations

Most corporate reorganisations (e.g. mergers, de-mergers, transfer of business assets within a group of companies, vertical and horizontal spin-off of business or part of business, share-for-share transactions and cross-border reorganisations where the Swiss tax residence is maintained, and like-kind exchange of participations) are typically possible without triggering adverse Swiss tax consequences (tax neutrality). In addition, special rules provide for a legal framework to tax neutrally substitute assets and qualifying shareholdings. For reorganisations, it is best practice to apply for advance tax rulings with the competent tax authorities. Advance tax rulings covering certain cross-border reorganisation aspects may be subject to the spontaneous exchange of information.

Foreign Account Tax Compliance Act (FATCA)

In 2013, Switzerland and the United States (US) signed a bilateral FATCA agreement. The FATCA agreement will help Swiss financial institutions by means of simplifications in the implementation of the US FATCA legislation. The FATCA agreement and the implementing Swiss act entered into force on 2 June 2014 and 30 June 2014, respectively.

The FATCA agreement shall ensure that accounts held by US persons with Swiss financial institutions are disclosed to the US tax authorities either with the consent of the account holder or through ordinary administrative assistance channels (no automatic information exchange).

Automatic information exchange

In view of the OECD's developments on a new standard for the automatic exchange of information, Switzerland will switch to an automatic exchange of information between the competent authorities on a reciprocal basis.

Switzerland has agreed on the automatic exchange of information in respective agreements with numerous partner states (e.g. the EU member states, many offshore countries, as well as most of the OECD member states).

The first automatic exchange of information between Switzerland and its partner states shall occur in 2018.

Taiwan

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Significant developments

Change to the corporate income tax (CIT) rate, profit retention tax rate, and dividend withholding tax (WHT) rate

On 18 January 2018, the Legislative Yuan passed amendments to the Income Tax Act, increasing the CIT rate from the previous 17% to 20% and reducing the profit retention tax on undistributed earnings from the previous 10% to 5% for income earned from taxable year 2018 onwards. For companies having taxable income less than 500,000 new Taiwan dollars (TWD), the CIT rate will increase gradually by 1% per year from 2018 onwards up till 20%.

Further, the dividend WHT rate for foreign shareholders is increased from 20% to 21%. For dividends distributed to foreign shareholders, the profit retention tax on undistributed earnings can no longer be credited against dividend WHT, with the exception of 2018 (i.e. dividends distributed in 2018 can still utilise the tax credit).

New income tax system for provision of cross-border electronic services after 1 January 2017

A new tax system has been implemented to address income tax treatment of remuneration derived by foreign enterprises from provision of cross-border electronic services to Taiwanese consumers (including individuals and profit-seeking enterprises and organisations). This new tax system provides rules governing determination of Taiwan-sourced revenues, calculation of taxable income, and methods of taxation, and is effective from 1 January 2017 onwards.

Depending on the business model and situation of the taxpayer, costs/expenses can be deducted and the taxable income can be further reduced via use of a ‘contribution ratio’. Therefore, going forward there may be annual compliance requirements that need to be fulfilled.

Three tier transfer pricing documentation

Starting from 2017, in addition to the already required transfer pricing report, corporations will also need to provide a Master File and a Country-by-Country Reporting (CBCR) file. *See the Group taxation section for more information.*

Common Reporting Standard (CRS)

The Legislative Yuan passed amendments to Articles 5-1 and 46-1 of the Tax Collection Act on 26 May 2017, establishing the legal basis for implementation of Automatic Exchange of Information (Including Financial Account Information) for Tax Purposes. Subsequently, on 16 November 2017, the Ministry of Finance (MoF) announced

Regulations Governing Common Reporting for Financial Institutions. Under the announced Regulations, the CRS will be implemented in 2019 and exchange of information with foreign countries will start in 2020.

Anti-tax avoidance rules

The Income Tax Act was amended in July 2016 to include anti-tax avoidance rules in Article 43-3 (Controlled Foreign Company [CFC]) and Article 43-4 (Place of Effective Management [PEM]) of the Income Tax Act.

In general, profits retained at the CFC level, which is located in a low tax rate jurisdiction and without commercial substance, will be taxed in advance at the Taiwan parent company level. In the past, taxation of foreign investment income was deferred until the Taiwan parent company received dividend income. Going forward, qualified investment income will be deemed distributed and taxable in Taiwan in advance. As of 31 May 2017, the Ministry of Finance has announced draft Regulations Governing Controlled Foreign Companies, but the final version has yet to be promulgated.

For PEM rules, under this new tax regime, if a foreign company meets all three criteria triggering the PEM definition, including (i) decision making location, (ii) record keeping and maintenance location, and (iii) actual operating location are all in Taiwan, the foreign enterprise will be deemed as having its head office in Taiwan and will be subject to tax assessment in accordance with the Taiwan Income Tax Act and other tax regulations. The Regulations Governing Places of Effective Management were announced by the Ministry of Finance in May 2017.

However, the CFC and PEM taxation mechanisms have yet to take effect. The actual effective date is to be determined by the Executive Yuan.

Tax treaties

Recently, Taiwan's tax treaty network has increased to include treaties with Canada, Japan, Poland, and the Czech Republic. Apart from Czech Republic, the treaties have all come into effect as of 1 January 2018. The treaty with the Czech Republic will become effective after necessary domestic procedures are completed. Taiwan has also signed a treaty with China; however, this tax treaty has not yet come into effect.

Taxes on corporate income

With effect from 1 January 2018, the CIT rate in Taiwan is 20%. However, for profit-seeking entities with less than TWD 500,000 in taxable income, the CIT rate is 18% in 2018, 19% in 2019, and 20% in 2020 if taxable income exceeds TWD 120,000.

Resident companies in Taiwan are taxed on their worldwide income as follows:

Taxable income (TWD)	Tax thereon
Up to 120,000	Exempt
120,001 and over	20% of total taxable income*

* Note: If taxable income is less than TWD 500,000, the tax rate is 18% in 2018 and 19% in 2019.

A non-resident company is taxed on income derived from Taiwan sources. A non-resident company with a fixed place of business (FPOB) or business agent in Taiwan is taxed similarly to a resident company (i.e. subject to filing of an annual CIT return based on the same CIT rate provided above). A non-resident company having no FPOB or business agent in Taiwan is subject to WHT at source on its Taiwan-sourced income. WHT rates on dividends, interest, and royalties may be reduced if the recipient is a tax resident of a tax treaty country and the relevant treaty provides for a reduced rate. *See the Withholding taxes section for more information*.

Tonnage tax system

A qualifying enterprise having its head office in Taiwan engaged in maritime transportation may elect to be taxed under the tonnage tax system, where a lump sum tax is calculated on the net tonnage of their fleet. Once the application is approved, the enterprise must remain under the tonnage tax system and cannot switch to the regular tax system at its discretion for ten consecutive years. Furthermore, loss carryforwards and tax incentives are not eligible under the tonnage tax system.

Profit retention tax

An additional profit retention tax is imposed on any current earnings of a corporation that remain undistributed by the end of the following year. With effect from 1 January 2018, profit retention tax is 5% (previously 10%). Taiwan branches of foreign companies are not subject to profit retention tax.

Imputation tax system

Beginning 1 January 2018, Taiwan no longer operates an imputation system. Imputed tax credits can no longer be used by resident individuals or non-resident shareholders to offset their income tax liabilities or dividend WHT. However, an exception is granted for non-resident shareholders for 2018, whereby dividends distributed in 2018 can still utilise the profit retention tax credit. The profit retention tax credit is calculated based on a prescribed formula and subject to a ceiling, with only 50% of the credit from profit retention tax paid to be used to offset the dividend WHT.

Income basic tax (IBT)

All Taiwan resident companies, as well as non-resident companies with an FPOB or business agent in Taiwan, should calculate IBT if they earn certain income that is tax-exempt. The basic income of a company is the amount calculated in accordance with a formulae stipulated by the government, with a deduction of TWD 500,000. The IBT rate is 12%. If the IBT amount is greater than the regular CIT amount, taxpayers must pay income tax based on the regular CIT amount plus the difference between the IBT amount and the regular CIT amount. On the other hand, if the regular CIT amount is greater than the IBT amount, no special action is required.

Corporate residence

A company is a resident of Taiwan for CIT purposes if it is incorporated in Taiwan. A non-resident company that has an FPOB or business agent in Taiwan is obligated to file a CIT return in Taiwan on its Taiwan-sourced income.

Permanent establishment (PE)

The term 'permanent establishment' only exists in the underlying double tax agreements (DTAs) signed with Taiwan. Taiwan domestic tax regulations only refer to an FPOB and business agent, which generally follows the definitions of an FPOB and agency PE in the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention.

Other taxes

Business tax

All sales of goods and services in Taiwan, as well as the importation of goods into Taiwan, are subject to business tax. There are two types of business tax systems: value-added tax (VAT) and gross business receipts tax (GBRT).

Sellers and service providers are generally obligated to pay business tax for the sales of goods or services within Taiwan unless the law provides otherwise. For importation of goods, the business tax will be paid by the goods receivers or buyers via customs. For importation of services sold by foreign companies to Taiwanese buyers, business tax shall be paid by the service buyers. However, the service buyer (corporate entity) will not be required to pay business tax if it is exclusively engaged in taxable transactions subject to either 5% or 0% VAT.

Despite the above, Taiwan has formally implemented a new VAT mechanism starting 1 May 2017 for cross-border sales of business-to-consumer (B2C) electronic services. Under the new mechanism, sales of cross-border electronic services by corporate sellers to individual buyers require the foreign companies to register for VAT purposes in Taiwan, file VAT returns, and pay VAT if their annual sales exceed the promulgated threshold of TWD 480,000.

Value-added tax (VAT)

VAT is applicable to general industries, and the VAT rate is 5%. Under the VAT system, each seller collects output VAT from the buyer at the time of sale, deducts input VAT paid on purchases from output VAT, and remits the balance to the tax authority.

Gross business receipts tax (GBRT)

GBRT is applicable to specified industries (e.g. financial institutions, small businesses). For investment trust companies, securities and futures firms, short-term commercial paper enterprises, and pawnshops, the rate is 2%. The GBRT rate on revenues derived from the core business operations of banks and insurance enterprises is 5%. For re-insurance enterprises, the rate is 1%.

Customs duties

Taiwan uses the Customs Cooperation Council Nomenclature (CCCN) to classify goods and set duty rates. The customs duty is payable by the consignee or the holder of the bill of lading for imported goods, and is based on the dutiable value or the volume of goods imported.

Commodity tax

Commodity tax (excise duty) is levied on certain commodities, as specified in the Commodity Tax Act (including rubber tyres, beverages, cement, plate glass, oil and gas, electrical appliances, and vehicles), at the time when such goods are dispatched from a factory or when imported. Tax rates vary from 8% to 30% and are applicable to different types of commodities based on the value of the goods or its volume in specific circumstances.

Type of commodity	Tax rate
Rubber tyres	10% or 15%
Beverages	8% or 15%
Cement	TWD 280 to TWD 600 per ton
Plate glass	10%
Oil and gas	TWD 110 to TWD 6,830 per kilolitre or TWD 690 per ton
Electrical appliances	10% to 20%
Vehicles	15% to 30%

Property tax

Land and buildings are annually assessed for tax based on their officially assessed values as determined by the government authorities at the applicable rate. The land value tax rate ranges from 1% to 5.5% of the assessed land value. The building tax rate for commercial properties is 3% to 5% of the assessed value, and the rate for non-commercial properties is 1.2% to 3.6% of the assessed value.

Land value increment tax (LVIT)

The sale of land is currently subject to LVIT and payable by the seller. The tax is levied on the increase in the government-assessed value of the land during the ownership period, adjusted for inflation, at regular progressive rates ranging from 20% to 40%, or a special rate of 10%.

Real property transfer tax

The new real property transfer tax regime is applicable to all properties acquired on or after 1 January 2016, as well as those bought on or after 2 January 2014 if held for less than two years. The taxable base is the market value of the properties reduced by related costs, expenses, and the increase in government-assessed land value for LVIT purposes. A rate of 17% will apply on Taiwanese corporate taxpayers; whereas, a tax rate of 35% or 45% will apply on profit-seeking enterprises with foreign head offices located outside of Taiwan (i.e. Taiwan branch), depending on whether the property is held for more than or less than one year.

LVIT will remain unchanged by the implementation of the new real property transfer tax regime on property transactions. The total amount of land value increment is deducted from real estate transaction income to avoid double taxation. The old property tax regime still applies to properties purchased prior to 2 January 2014, or those bought on or after 2 January 2014 if held for more than two years, where only gain from sale of buildings is subject to CIT assessment, while gain from sale of land is exempt from CIT assessment, and LVIT applies to increment in government-assessed value of land instead.

Deed tax

Currently, transactions of immovable property involving sale, creation of *Dien*, exchange, bestowal, partition, or acquisition of ownership by virtue of possession are subject to deed tax. The deed tax rates range from 2% to 6%, depending on the types of transactions involved.

Stamp tax

Stamp taxes are imposed on each copy of the following documents executed within the territory of Taiwan (with the following respective tax rates):

- Monetary receipts must have a revenue stamp of 0.4% of the amount received per piece. However, a receipt for the money deposited by the bidder requires a revenue stamp of 0.1% of the amount received per piece.
- Contract or deed for the sale or purchase of movable property must have a revenue stamp of TWD 12 per piece.
- Contractual agreement under which one party agrees to complete a specific piece of work for the other party for consideration must have a revenue stamp of 0.1% of the contract price.
- Contract for the sale, transfer, and partition of real estate must have a revenue stamp of 0.1% of the contract price.

Securities transaction tax

Tax is levied on securities transactions at the rate of 0.3% on gross proceeds from the sale of domestic shares. Trading in corporate bonds and financial bonds issued by Taiwan companies is temporarily exempt from securities transaction tax assessment.

Luxury tax

A 10% luxury tax applies to the sale of passenger cars, private jets, and helicopters valued at TWD 3 million or more, as well as to the sale of yachts that are at least 30.48 metres (100 feet) long. Preserved wildlife products (including turtle shells, hawksbill, coral, ivory, furs, and their products), high-end furniture, and non-refundable memberships worth TWD 500,000 or more are also taxed at 10%.

As of 1 January 2016, luxury tax is no longer levied on sales of real estate properties.

Payroll taxes

There are no payroll taxes other than those for social security contributions (*see below*).

Social security contributions

There are compulsory social security programs that require contributions from employers and employees based on monthly insured salary, which is capped at various amounts for labour insurance, health insurance, and pensions. Taiwan social security programs include the following:

- Labour Insurance Program: Where a company hires five or more employees, it is obligated to insure all employees (including domestic and foreign employees) under the labour insurance program run by the government. Companies with less than five employees may also apply for labour insurance coverage for their employees. The premium rate for ordinary insurance is 9.5% on the employee's monthly insured salary up to TWD 45,800, with an additional 1% levied for unemployment insurance. The employer is required to contribute 70% of this premium.
- National Health Insurance Program: The premium rate for each insured person is set at 4.69% of a domestic/foreign employee's monthly insured salary, up to TWD 182,000. The employer is required to contribute 60% of this premium. Further, the employer bears the cost of both the employee itself and that of the average dependant, which amounts to 1.61 headcount per employee. Moreover, under the Second Generation National Health Insurance Program, the employer needs to bear a supplementary premium (at the rate of 1.91%) where the monthly pay (including both regular and non-regular pay) exceeds the monthly insured salary range, which is capped at TWD 182,000 for any individual.
- Labour Pension Program: An employer needs to make monthly contributions to a domestic employee's individual pension account set up with the Labour Insurance

Bureau. The monthly contribution rate borne by the employer should be at least 6% of the employee's monthly insured salary up to TWD 150,000.

Branch income

A non-resident company whose head office is located outside of Taiwan must keep separate books for its branch in Taiwan. A head office or regional headquarters' general and administrative expenses may be allocated to the branch under certain conditions. CIT is assessed only on the branch's profits. A Taiwan branch should complete an annual CIT return.

A Taiwan branch of a foreign company may remit after-tax profits to its foreign head office without further tax due.

Motion picture leasing

A foreign motion picture's branch in Taiwan can deem 45% of its revenue from leasing of motion pictures as cost. However, if a foreign enterprise with no branch office in Taiwan leases motion pictures through agents, 50% of the revenues can be deemed as taxable income.

Deemed-profit method

A non-resident company that is engaged in international transportation, construction contracting, provision of technical services, or machinery and equipment leasing within Taiwan, and where the cost and expenses are proven to be difficult to calculate, may apply for advance approval from the National Tax Administration (NTA) to adopt the deemed-profit method to determine the taxable income as 10% or 15% of the gross revenues. This will effectively reduce the WHT rate to 2% or 3% on gross revenues once the approval is obtained from the NTA.

For non-resident enterprises providing cross-border electronic services to Taiwanese buyers (including individuals and profit-seeking enterprises and organisations), the non-resident company may apply to the NTA to adopt a deemed-profit method based on its business model and industry.

Income determination

A Taiwan resident company is taxed on its net income, which is defined as gross annual income after deduction of costs, expenses, losses, and taxes. Except for certain exempt items, income from all sources, including offshore and onshore, is subject to CIT.

A non-resident company is only taxed on its Taiwan-sourced income. Article 8 of the Income Tax Act and the related Guideline defines the types of income that should be regarded as sourced from Taiwan. For example, fees received by a non-resident company for service performed entirely outside of Taiwan are exempt from income tax assessment, subject to supporting evidentiary documents.

Inventory valuation

Inventory must be valued at cost. If cost exceeds the net realisable value, the latter may be used as the valuation basis. Cost may be determined by the first in first out (FIFO), moving average, weighted average, specific identification, or any other method approved by the tax authorities. Conformity between financial and tax reporting is not required.

Capital gains

Gains on the disposal of fixed assets are taxable as current-year income of the company, with the exception of gains on the sales of land under the old real estate taxation regime. Capital gains on disposal of Taiwanese marketable securities and futures by resident companies and non-resident companies with an FPOB or business agent in Taiwan are exempt from CIT assessment, but are liable for IBT of 12%, with an exemption amount of TWD 500,000. Capital losses may be deducted against capital gains and carried forward for five years. 50% of capital gains can be tax exempt should the securities be held for more than three years. In addition, securities transaction tax is levied on the sales proceeds (*see the Other taxes section*).

Dividend income

Dividends received from resident investee companies by a resident corporate shareholder are not included in taxable income. However, dividends received from foreign subsidiaries are taxable, but credits are given for the WHT paid offshore, limited to the incremental tax liability that would result if the dividends were added to the Taiwan corporate shareholder's taxable income and taxed at the Taiwan CIT rate.

Interest income

Interest received on commercial paper and certain other interest-bearing financial instruments is subject to WHT of 10% and 15%/20% for resident and non-resident taxpayers, respectively (*see the Withholding taxes section*). This income should be reported as current-year income, and the WHT paid can be deducted against the income tax payable.

Royalties and technical service fees

Non-resident companies who receive royalties for licensing patents both registered in Taiwan and overseas, trademarks registered in Taiwan, and computer software copyright licensed to Taiwan companies, or who receive technical service fees in relation to construction of factories/plant/power plants to Taiwan companies incorporated as companies limited by shares, can apply for income tax exemption by obtaining advance approval from both the Industrial Development Bureau and the tax authorities. For licensing of patents and technical service fees, the Taiwan licensee company needs to be engaged in designated industries. The amendments to the relevant regulation governing the applicable criteria are effective retroactively for contracts concluded after 1 January 2011.

Foreign income

Taiwan adopts a worldwide tax system to tax its resident companies (including the Taiwan subsidiaries of foreign companies). In theory, taxation on foreign investment income of a Taiwanese company is deferred until cash is repatriated to Taiwan. However, given Taiwan also taxes undistributed profits based on net income shown on the income statement (*see Profit retention tax in the Taxes on corporate income section*), foreign investment income may still be taxed in Taiwan before cash is repatriated back to Taiwan.

Deductions

Depreciation

Depreciation on all fixed assets other than land, including premises, plants (buildings), and equipment, which are used to generate income, is allowed as a deduction. The straight-line, fixed percentage on diminishing book value, sum-of-years-digit, unit-of-production, and working-hour methods are acceptable depreciation methods to the tax office. The useful lives of typical assets are shown below:

Asset category	Useful life (years)
Computer equipment	3
Furniture and fixtures	5
Automobile	5
Building	50

With the approval of the tax authority, a company may revalue its fixed assets each time the government's wholesale price index increases by 25% over the base period. A company's base period is established at the time of purchase of fixed assets or at such time when a company revalues its fixed assets. Any increase in fixed assets may then be depreciated for tax purposes.

Goodwill

Goodwill is commonly realised from merger and acquisition, which should follow the purchase method as defined under Taiwan Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). Goodwill should be amortised for 15 years if a valuation report is issued by a creditable professional valuation firm and the net identifiable assets are valued separately. However, in practice, the amortisation of goodwill is frequently challenged by the Taiwan tax authority.

Start-up expenses

Start-up expenses during the start-up period can be deducted in the year incurred. The start-up period is from the preparatory stage to the date the business starts to generate significant revenue from its primary business operation.

Interest expenses

Interests on loans that are used for business purposes are deductible in the year incurred. However, for a loan from a non-financial institution, the interest rate shall not exceed 15.6% *per annum*. As for interest on inter-company loans, the deductible amount is subject to the thin capitalisation rule and transfer pricing regulations (*see the Group taxation section*).

Bad debt

Actual losses on bad debts are allowed for deduction when certain legal proceedings or time requirements have been satisfied. The loss should first be charged against the bad debt provision, which should not exceed either 1% of accounts receivable and notes receivable outstanding, or the actual average bad debt ratio for the past three years.

Charitable contributions

Charitable contributions to support national defence, troop morale, contribution to government of any level, and donation made with special approval of the MoF are not subject to any tax limit. Donations to other parties are subject to prescribed limits under the relevant regulations.

Fines and penalties

Fines and penalties arising from violation of various tax laws are generally not deductible.

Taxes

All taxes, other than income tax, are generally deductible, unless where such taxes are related to tax-exempt income. The tax associated with the acquisition of real estate should be included in the cost of the land or building.

Net operating losses

A company's net operating losses can be carried forward for ten years. Losses cannot be carried back.

Payments to foreign affiliates

Royalties, interest, and service fees paid to a foreign affiliate are subject to WHT. Royalties or service fees paid to a foreign entity may be tax-exempt if certain requirements are met and prior approval is obtained.

Group taxation

Group enterprises meeting certain criteria under the Financial Holding Company Act and Business Mergers & Acquisitions Act may file consolidated tax returns for the Taiwan parent and its first tier Taiwan subsidiaries. For other enterprises, group taxation is not permitted. The Taiwan parent is eligible to file consolidated tax returns if it continuously holds over 90% of the shares of the subsidiaries for 12 months in a tax year.

Transfer pricing

Transfer pricing regulations were established to constrain multinational corporations from leaving their profits in countries with lower tax rates. For applicable companies, the disclosure of related-party transactions in the CIT return and the preparation of a transfer pricing report is required. Upon request, the transfer pricing report will have to be submitted to the Taiwan tax authority within one-month of notice. The transfer pricing report must demonstrate the company's good faith effort to comply with the assessment rules. Without proper reason, failure to comply with such rules will result in additional tax payable and financial penalties. The types of transactions governed by these regulations include the following: transfer of tangible assets, use of tangible assets, transfer of intangible assets, use of intangible assets, rendering of services, use of funds, business restructuring, and other types of transactions prescribed by the MoF.

If related-party transaction amounts exceed certain thresholds laid out below, an advance pricing agreement (APA) with the tax authority may be obtained to eliminate risk of inter-company prices being challenged. The criteria for applying for an APA are as follows:

- The total amount of the controlled transaction covered under the APA is at least TWD 500 million or the annual amount of such controlled transaction is at least TWD 200 million.
- There has been no significant act of tax evasion in the past three years.
- The required documentation for the APA application has been well prepared, including the transfer pricing report.
- Other criteria specified by the MoF are satisfied.

Three tier transfer pricing documentation

In addition to a transfer pricing report, corporations also need to provide a Master File and a Country-by-Country Reporting (CBCR) file.

The Master File is to contain information on the corporation's group's value chain analysis, description of intangible assets, and financing activities. The threshold for being exempted from needing to prepare a Master File is each individual Taiwan local entity's total net operating revenues and non-operating income being less than TWD 3 billion, or over TWD 3 billion but with total absolute value of cross-border controlled transaction(s) amounting to less than TWD 1.5 billion in the current year.

The CBCR file is to contain information relating to the allocation of the corporation's group's profit/loss, resources, taxes paid, and primary activities performed by each entity. The threshold for being exempted from preparing a CBCR file is the corporation's group's consolidated group revenues and non-operating income being less than TWD 27 billion (approximately equal to the OECD's threshold of 750 million euros [EUR]) in the preceding year.

Thin capitalisation

Deductible interest expense on inter-company loans is capped at a prescribed debt-to-equity ratio of 3:1. The thin capitalisation rule generally applies to profit-seeking enterprises, except banks, credit cooperatives, financial holding companies, bills finance companies, insurance companies, and securities companies.

Controlled foreign companies (CFCs)

Currently, profits of overseas subsidiaries held by Taiwan companies are not subject to 20% CIT in Taiwan until such profits are repatriated to Taiwan as dividend income. However, under the new CFC mechanism expected to take effect in the future, qualified investment income will be deemed distributed and taxable in Taiwan in advance, even if profits have not actually been distributed.

Place of effective management (PEM)

Under the new tax regime, if a foreign company meets all three criteria triggering PEM definition, including (i) decision making location, (ii) record keeping and maintenance location, and (iii) actual operating location are all in Taiwan, the foreign enterprise will be deemed as having its head office in Taiwan and will be subject to tax assessment in accordance with Taiwan Income Tax Act and other tax regulations. A foreign enterprise may voluntarily apply to be subject to the PEM taxation mechanism, or the tax authorities may determine whether the PEM taxation mechanism should apply after conducting appropriate audits.

Tax credits and incentives

Certain tax incentives are provided to investors if they are located in prescribed areas, such as science parks, economic processing zones, free-trade-zones, etc. Other tax credits are granted to qualifying companies that invest in specific businesses or industries promoted by the government, such as biotech.

Research and development (R&D) tax incentives

Under the Statute for Industrial Innovation (SII), R&D credits are available for up to 15% of qualified R&D expenses incurred, with the maximum amount of tax credit capped at 30% of the tax payable for the year in which the expenses were incurred, including the 5% profit retention tax.

Effective from 1 January 2016 to 31 December 2019, amendments to the SII provide another alternative for companies to claim an R&D credit of 10% of qualifying R&D expenses against income tax payable within a period of three years, starting from the current year. In addition, to facilitate the circulation and application of innovative R&D results, and to promote industrialisation of innovative technologies, where individuals/companies derive income from transfer or license of their self-developed intellectual property (IP), the amendments also allow the individuals/companies to either deduct qualifying R&D expenses of up to 200% (capped at corresponding income received) within the current year or claim R&D tax credits against income tax payable.

Moreover, according to the Statute for Development of Small and Medium Enterprises (SMEs), enterprises qualifying as SMEs may elect one of the following methods to calculate R&D credits, subject to the 30% cap mentioned above:

- 15% of qualified R&D expenses for the current year, with credits limited to the same year, or
- 10% of qualified R&D expenses for the current year, which can be carried forward for two ensuing years.

According to Regulation Governing R&D Investment Tax Credit (ITC) Available to Profit-seeking Enterprises, a single annual application for R&D ITC should be made with the central competent authorities within four months prior to the CIT return filing due date. Information relating to R&D ITC should be provided with the CIT return.

Tax concessions on merger

A number of tax incentives are available under the Mergers and Acquisitions (M&A) Act to encourage M&A activities in Taiwan. Certain taxes, including business tax, deed tax, LVIT, securities transaction tax, and stamp tax, may be exempted or deferred in case of acquisitions, mergers, or corporate divisions (including spin-offs) that meet certain conditions.

After the merger, spin-off, or acquisition, any tax concession previously enjoyed by the merged entities will continue to be applicable to the surviving or newly-created company. However, it is required to manufacture the same products or provide the same services that were originally approved for tax concessions by the merged entities in order to continue the concessions obtained previously.

The unexpired and unutilised net operating losses of the participating entities prior to the merger or spin-off may be carried over to the surviving or newly-created entity according to the percentage of shareholding in the surviving or newly-created company held by all shareholders of the participating entities.

Income tax exemption is available if the shares acquired by a company as a result of transfer of its entire or substantial portion of business or assets to another company, or due to spin-off, is greater than 80% of the consideration of the entire transaction, and all the shares so acquired have been transferred to the shareholders of the transferor.

Free-trade-zones

According to the Statute for the Establishment and Management of Free-trade-zones, foreign companies or their branch offices in Taiwan that apply for establishment in the free-trade-zone or delegate companies already established in the free-trade-zone to store and/or perform simple processing in the free-trade-zone and sell goods to customers within and outside of Taiwan shall be exempted from CIT. However, in the event that the annual domestic sales exceed 10% of the total annual domestic and foreign sales, the portion in excess shall not be exempted from CIT.

Foreign tax credit

Taiwan uses the credit method to avoid double taxation of income. Foreign taxes paid on foreign-sourced income may be credited against a company's total Taiwan income tax liability. However, the credit is limited to the incremental taxes derived from the foreign-sourced income.

Withholding taxes

Resident corporations paying certain types of income are required to withhold tax as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations and individuals	N/A	10	10
Non-treaty	21	15/20 (1)	0/20 (2)
Treaty:			
Australia	10/15 (3)	10	12.5
Austria	10	10	10
Belgium	10	10	10
Canada	10/15 (15)	0/10 (16)	10
Denmark	10	10	10
France	10	10	10
Gambia	10	10	10
Germany	10	0/10/15 (10)	10
Hungary	10	10	10
India	12.5	10	10
Indonesia	10	10	10
Israel	10	7/10 (4)	10
Italy	10	10	10
Japan	10	0/10 (14)	10
Kiribati	10	10	10
Luxembourg	10/15 (13)	10/15 (13)	10
Macedonia	10	10	10
Malaysia (5)	12.5	10	10

Taiwan

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Netherlands	10	10	10
New Zealand	15	10	10
Paraguay	5	10	10
Poland	10	0/10 (17)	3/10 (18)
Senegal	10	15	12.5
Singapore	(6)	Not prescribed	15
Slovakia	10	10	5/10 (8)
South Africa	5/15 (7)	10	10
Swaziland	10	10	10
Sweden	10	10	10
Switzerland	10/15 (9)	10	10
Thailand	5/10 (11)	0/10/15 (12)	10
United Kingdom	10	10	10
Vietnam	15	10	15

Notes

1. For non-resident enterprises, a 15% WHT applies to interest income derived from short-term bills, securitised certificates, corporate bonds, government bonds, or financial debentures, as well as interest derived from repurchase transactions involving these bonds or certificates. The rate in all other cases is 20%, unless reduced under a tax treaty.
2. Royalties received by foreign enterprises that are specially approved in advance by the government are exempt from income tax.
3. A rate of 10% applies for shareholders that are companies (other than partnerships) with at least a 25% shareholding.
4. 7% of the gross amount of the interest arising in a territory and paid on any loan of whatever kind granted by a bank of the other territory.
5. The WHT rate on technical service fees is reduced to 7.5%.
6. The total tax burden of CIT and dividends tax is not to exceed 40% of the total profits of the company.
7. A rate of 5% applies for shareholders with at least a 10% shareholding.
8. A rate of 5% applies for the use of (or the right to use) industrial, commercial, or scientific equipment.
9. A rate of 10% applies for shareholders with at least a 20% shareholding.
10. A rate of 10% applies to all types of interests, except a rate of 15% applies for interest derived from real estate investment trusts and real estate asset trusts in Taiwan. Tax exemption applies to interests paid to public institutions of the other territory as mutually agreed between the competent authorities of both territories.
11. A rate of 5% applies for shareholders with at least a 25% shareholding.
12. A rate of 15% applies to all types of interests, except a rate of 10% applies for interest received by any financial institution (including an insurance company). Tax exemption applies to interests paid to the authority of the other territory as mutually agreed between the competent authorities of both territories.
13. A rate of 15% applies for shareholders/creditors that are a collective investment vehicle and treated as a body corporate for tax purposes.
14. A rate of 10% applies to all types of interests; however, tax exemption applies to certain interests paid to public institutions of the other territory or paid with respect to debt-claims guaranteed, insured, or indirectly financed by government institutions.
15. A rate of 10% applies for shareholders that are companies with at least a 20% shareholding percentage.
16. A rate of 10% applies to all types of interests; however, tax exemption applies to certain interests paid to public institutions of the other territory or paid in respect of a loan made, guaranteed, or insured by certain institutions.
17. A rate of 10% applies to all types of interests; however, tax exemption applies to certain interests paid to public institutions of the other territory or paid in respect of a loan granted, guaranteed, or insured by certain institutions.
18. A rate of 3% applies to royalties paid as a consideration for the use of industrial, commercial, or scientific equipment.

Tax treaties

Tax treaties entered into with Australia, Austria, Belgium, Canada, Denmark, France, Gambia, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Kiribati, Luxembourg, Macedonia, Malaysia, Netherlands, New Zealand, Paraguay, Poland, Senegal, Singapore, Slovakia, South Africa, Swaziland, Sweden, Switzerland, Thailand, the United Kingdom, and Vietnam relate to corporate and individual income tax.

Treaties with Canada, the European Union, Germany, Israel, Japan, Korea, Luxembourg, Macau, Netherlands, Norway, Sweden, Thailand, and the United States (US) relate to certain earnings from the operation of ships and/or aircraft.

Tax administration

Taxable period

The tax year in Taiwan runs from 1 January to 31 December. Businesses may request approval from the local collection authority to file CIT returns using a fiscal year-end other than 31 December.

Tax returns

Tax returns are filed on a self-assessment basis. CIT returns are due no later than five months after the end of the tax year.

Payment of tax

Tax is paid on a self-assessment basis in two instalments. The first payment is based on 50% of the tax liability of the prior year's tax return and is made in the ninth month of the enterprise's fiscal year. However, if the taxpayer meets certain requirements, it may self-assess the provisional tax based on the taxable income of the first half of the current fiscal year and deduct income taxes paid overseas against the provisional income tax payable if corresponding income is consolidated in the provisional tax return. The second payment is made at the time of filing the annual tax return. The returns are subsequently reviewed by the tax authorities, and a final assessment is issued.

Any overpaid tax as a result of the tax collection authority's mistake shall be refunded to the taxpayer within two years of the tax authority's acknowledgement of such mistake, and shall not be subject to the original five-year period for applying for refund where the taxpayer is responsible for the mistake.

Tax audit process

Taiwan does not have a fixed audit cycle. Tax audit can be carried out any time prior to the expiration of the statute of limitations. Companies may be selected for audit if certain criteria are met.

Statute of limitations

The statute of limitations in Taiwan is five years from the tax return filing date if the return is filed on time. Where a taxpayer fails to file an annual tax return within the statutory deadline or evades tax by fraud or any other unrighteous means, the statute of limitations is extended to seven years.

Tax ruling system

Corporate taxpayers may file an advance tax ruling application with the tax authorities, together with the relevant supporting documents, to clarify their tax position before initiating the specific transaction. The tax authorities are obligated to issue a response within six months after submitting the application.

Recent focus of Taiwan tax authorities

The tax authorities have developed sophisticated and comprehensive tax audit techniques and approaches over the years. The following sets out some of the common items frequently challenged or audited by the tax authorities:

- Management fees allocated from the foreign parent company or affiliates: The tax authorities frequently question the economic substance of the services rendered, the allocation method, and the availability of sufficient documents to support the tax deduction claim.
- Amortisation of goodwill: The tax authorities frequently challenge the valuation report supporting the calculation of goodwill and whether the transaction itself should give rise to goodwill.
- Amortisation of business rights: The tax authorities have taken a more conservative view, which limits 'business rights' to those explicitly authorised by laws (e.g. those regulated under certain public utilities act).
- Eligibility for R&D tax credits.
- WHT compliance.
- Transfer pricing compliance.
- Business tax audit.

Other issues

US Foreign Account Tax Compliance Act (FATCA)

A Model 2 Intergovernmental Agreement (IGA) was signed in December 2016. As such, financial institutions are to make relevant registration with and disclosure to the US tax authority.

Tajikistan

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Significant developments

The Tax Code was amended as follows:

- Laws establishing new taxes and new tax liabilities for taxpayers that worsen the position of taxpayers should not have retrospective force.
- Laws excluding or mitigating liability or obligation for violation of tax law and providing additional guarantees to protect the rights of taxpayers, tax agents, and their representatives could have retrospective force.
- All ambiguities/unclear provisions of the Tax Code are to be interpreted in favour of the taxpayer.

The first planned tax audit of a small-size business entity, which applies the simplified tax regime, is carried out not earlier than three years from the date of registration, instead of two years.

The planned tax audit of a taxpayer whose gross income is less than 25 million Tajikistan somoni (TJS) should be carried out not more than once every two years. Previously, the threshold for gross income was TJS 15 million.

Late payment interest has been decreased from 0.08% to 0.05% per day.

Taxes on corporate income

All Tajik legal entities are subject to CIT in Tajikistan. Tajik residents are taxed on their worldwide income. Non-residents are subject to CIT in Tajikistan only on Tajikistan-source income. Non-residents operating through a permanent establishment (PE) are generally subject to the same CIT provisions.

CIT is computed by applying the statutory 23% rate to taxable income (13% for enterprises producing goods), which is calculated based on gross income decreased by allowed deductions and losses carried forward from previous periods. CIT liability may not be less than 1% of aggregate income.

Simplified tax system

The simplified tax system for small business entities (hereinafter 'tax under the simplified system') is a special tax regime under which income tax for small business legal entities or income tax for individual entrepreneurs shall be paid under a simplified procedure. The simplified tax regime is applied by small businesses with aggregate annual income that does not exceed TJS 1 million.

Taxpayers who pay the tax under the simplified system are not liable for:

- Income tax, except for withholding tax (WHT).
- Road tax.
- Income tax from revenues of the individual entrepreneur, functioning according to the certificate, except for WHT.
- VAT, except for the import VAT and reverse-charge VAT.

The tax base for applying tax under the simplified system is the aggregate income. For activities related to production of goods, the tax rate is 5%; for other activities, the tax rate is 6%.

Local income taxes

There are no provincial or local income taxes in Tajikistan.

Corporate residence

Legal entities formed under Tajik law, as well as legal entities whose effective control (management) is in Tajikistan, are recognised as residents for CIT purposes.

Permanent establishment (PE)

Under general provisions of the Tax Code, any activity carried out through a fixed place on the territory of Tajikistan, including activity performed through a dependent agent, regardless of duration of such activities, will create a PE of a non-resident.

Further, a non-resident legal entity having business activities in Tajikistan may also create a PE in the following cases:

- 'Services PE': A non-resident enterprise renders services in Tajikistan through employees or other personnel engaged by the non-resident for such purposes, provided that these activities continue for more than 90 calendar days within any consecutive 12-month period.
- 'Construction PE': A construction site, assembly facility, performance of supervisory activities (connected with such objects), or project works/design works.
- 'Agency PE': A non-resident will be considered as having a PE in cases where a resident or non-resident has the contractual authority to represent the non-resident's interests in Tajikistan (i.e. act and/or sign contracts on behalf of the non-resident).

Other taxes

Value-added tax (VAT)

VAT is generally assessed on taxable turnover, which includes goods and services. The VAT rate is 18%. Individuals and businesses are required to register as VAT payers if the taxpayer's taxable turnover exceeds a threshold of TJS 1 million for the preceding 12-month period.

Generally, the Tax Code exempts the following from VAT: goods and services that are not provided in Tajikistan under the place of supply rules; sale, transfer, or rent of real property; financial services; certain medical services; and certain other goods and services.

Additionally, professional participants who carry out activity on the Tajikistan stock exchange are exempt from VAT.

For goods, the place of supply is determined as the initial point of transportation. Services are generally considered to be provided at the place of business of the service provider or the actual place where services are rendered. However, certain types of services are considered to be provided at the location of the buyer. Such services include legal, marketing, consulting, accounting, etc.

A VAT refund is generally available for qualified exporters if input VAT exceeds assessed VAT.

VAT returns, together with issued and received invoices, are filed monthly, not later than the 15th day of the month following the reporting month. Payments are due by the same date.

Customs duties

The tariff rates established by the government, ranging from 0% to 15%, are applied on an *ad valorem* basis, at a specific rate, or via a combination of the two. The tax rate of 0% is granted to certain types of goods (e.g. some types of printed publication, unwrought wool, gaseous hydrocarbons, electricity).

Note that Tajikistan is signatory to several free trade agreements, primarily among the following Commonwealth of Independent States (CIS) countries: Russia, Belarus, Kazakhstan, and Kyrgyzstan.

Customs fees

Customs clearance can’t be performed without certification of goods, for which the importer should pay a fee based on the time spent by a certification specialist. Fees for customs clearance range from approximately 10 United States dollars (USD) to USD 450, depending on customs value.

Excise taxes

Excise tax is assessed on beverages, tobacco products, fuel, tyres, passenger automobiles, jewellery, and mobile communications. Excise tax rates are established by the government.

Property taxes

Property tax is divided into two taxes, which are paid based on the taxable base.

Land tax

A tax on land plots is paid annually based on the rates established by the Tajikistan government applied to the area of the land plot, which vary depending on the location of the land plot.

Real estate tax

Tax on real estate is paid annually and applies to immovable real property, such as buildings, houses, and flats. The real estate tax rate varies from 3% to 15% and depends on territory coefficients.

Transfer taxes

There are no transfer taxes in Tajikistan.

Stamp taxes

There are no stamp taxes in Tajikistan.

Payroll taxes

There are no payroll taxes borne by an employer other than social tax (*see below*).

Social tax

An employer is obligated to make social tax payments at the rate of 25% of salary. In addition to an employer's portion, 1% social tax is withheld from employee's income.

Road tax

The formula for calculating road tax is total deductions of the reporting year multiplied by the 1% tax rate (0.25% for trade companies). If actual deductions do not exceed 70% of gross income, the tax base for road tax is 70% of gross income. It is contemplated that the tax will be eliminated in 2020.

Vehicle tax

Vehicle tax is computed as a percentage of the calculation index applied for horsepower of the vehicle engine. The percentage ranges from 2.5% to 15%.

Branch income

In addition to CIT, PEs are subject to branch profit tax at the rate of 15% of net profit after CIT, unless a lower rate is prescribed by an applicable double tax treaty (DTT).

Income determination

Income tax is assessed on taxable income, which is the difference between gross income and allowed exemptions and deductions.

Professional participants who carry out activity on the Tajikistan stock exchange are exempt from income tax.

Inventory valuation

Inventory accounting for tax purposes follows inventory accounting for financial reporting purposes. Public companies are required to apply International Financial Reporting Standards (IFRS). Other legal entities may apply IFRS or National Accounting Standards.

For tax purposes, the following inventory methods are permitted: last in first out (LIFO), first in first out (FIFO), and weighted average. For public companies, there can be a mismatch between the tax method and the book method, as LIFO is not permitted under IFRS. For other legal entities, the tax method will match the book method if the tax accounting follows National Accounting Standards.

Capital gains

In general, capital gains on securities are taxed as business profits.

Exemption is available for capital gains on the sale of securities on the Tajikistan stock exchange.

Dividend income

In general, dividends are subject to 12% income tax withheld at source. WHT exemption can only be applied to dividends paid as part of net income distribution to the government budget. Dividends withheld at source are not included in aggregate annual income.

In case dividends were not taxed at source, then such dividends should be included in annual aggregate income of a person receiving the dividends and taxed at the standard CIT rate.

Dividends received by residents and non-residents (investors) from securities listed on the Tajikistan stock exchange are exempt from taxation.

Interest income

The Tax Code defines interest income as income received from any fees associated with a debt obligation, including tax liability, payments for any loans, and contributions on deposit (accounts). Interest income is subject to CIT in Tajikistan and should be included in annual aggregate income.

Royalty income

Royalty income received by a resident entity should be included in the aggregate annual income and taxed at the standard CIT rate.

Royalty income received by a non-resident from a Tajikistan source is subject to WHT at the rate of 15%.

Foreign income

Tajik residents are taxed on their worldwide income. Non-residents are subject to CIT in Tajikistan only on Tajikistan-source income. There are no provisions in the Tax Code for tax deferral.

For information about Controlled foreign company (CFC) provisions, see the Group taxation section.

Deductions

In general, all business expenses (e.g. materials, payroll) are allowed as a deduction if the expenses are connected with the earning of income, not of a capital nature, and supported by proper documentation.

Depreciation

The deduction for costs related to fixed assets generally is made through depreciation at rates ranging from 7% to 20% using the declining-balance method.

Goodwill

There are no special provisions for goodwill deduction in the Tax Code; however, goodwill is not deductible in accordance with the general rules on intangible assets amortisation.

Start-up expenses

Start-up expenses are not deductible. However, in case of registration of a branch, the head office can deduct expenses related to the creation of such branch.

Interest expenses

Interest deductibility is generally limited to three times the refinancing rate of the National Bank of Tajikistan (currently 8%). For certain entities, additional limitations may apply.

Bad debt

A taxpayer is allowed a bad debt deduction in cases where the income associated with such bad debt is already recognised for CIT purposes. Bad debts are deductible when they are written-off in the accounting books. Special provisions apply for banks and other financial institutions.

Charitable contributions

Charitable contributions are limited to 10% of taxable income.

Fines and penalties

Fines and penalties paid to the budget of Tajikistan and other states are not deductible.

Taxes

Taxes paid to the budget of Tajikistan and other states are deductible, except for CIT and individual income tax.

Other significant items

Among other deductions specifically mentioned in the Tax Code are research and development (R&D), repair expenses, and geological and geophysical expenses.

Non-deductible expenses

Non-deductible expenses specifically mentioned by the Tax Code include meals and entertainment, personal expenses, passenger vehicles, and non-business expenses.

Net operating losses

Net operating losses may be carried forward for three years but may not be carried back.

Payments to foreign affiliates

No special provisions for deduction of payments to foreign affiliates exist in the Tax Code; consequently, general rules for deductibility of expenses should apply.

Group taxation

There are no rules permitting grouping for tax purposes in Tajikistan.

Transfer pricing

Under Tajikistan market pricing (transfer pricing) provisions, tax authorities have the right to adjust prices. The following transactions are subject to control and further feasible (potential) adjustment:

- Transactions between related parties.
- Barter transactions.
- Foreign trade agreements (contracts) where one of the parties is resident of a tax haven.
- Transactions where one of the participants receives tax benefits or tax incentives.
- Where the price of goods (services, works) deviates by more than 15% from the market price for identical (homogeneous) goods (services, works).

Thin capitalisation

There are no thin capitalisation rules in Tajikistan; however, interest deductibility is limited *as described in the Deductions section*.

Controlled foreign companies (CFCs)

The Tax Code contains CFC provisions, according to which, income received by the resident's subsidiary (more than 10% ownership) registered in countries with privileged taxation should be included in the income of the resident.

Tax credits and incentives

Foreign tax credit

Taxes paid outside Tajikistan may be credited against the same types of taxes in Tajikistan if appropriate supporting documents are provided. The amount of credit may not exceed the amount of tax assessed in respect of such income at the rates applicable in Tajikistan.

Free Economic Zones (FEZs)

Four FEZs were established by the government of Tajikistan to offer reduced taxes and customs fees to both foreign and domestic businesses located in these zones. Tax incentives include FEZs of Sogd, Panj, Ishkoshim, and Dangara. The legislation for the FEZs has been modified several times since the start of the process, but current law requires a minimum investment of USD 500,000 for manufacturing companies, USD 50,000 for trading companies, and USD 10,000 for consulting and service companies, before being eligible for the preferential tax treatment.

CIT exemptions

An exemption from CIT is available for taxpayers that have made a certain amount of investments into chartered capital of a production company, as follows:

- Two-year exemption if volume of investments is from USD 200,000 up to USD 500,000.
- Three-year exemption if volume of investment is from USD 500,000 up to USD 2 million.
- Four-year exemption if volume of investment is from USD 2 million up to USD 5 million.
- Five-year exemption if volume of investment exceeds USD 5 million.

Professional participants who carry out activity on the Tajikistan stock exchange are exempt from CIT for five years.

Tax benefits for specified taxpayers

Tax benefits for poultry farms and combined feed producers

Tax benefits are available for poultry farms and producers of combined feed for birds and animals if such producers will attract foreign investments of not less than USD 16 million. Tax benefits include a 12-year exemption from:

- Income taxes.
- VAT.
- Road tax.
- Property tax.
- Import VAT and customs duties.

The statute of limitation period is extended for the period of use of tax benefits.

Tax benefits for construction of a hydroelectric power plant

Under certain conditions, the construction project owner and the general contractor of a hydroelectric power plant can enjoy tax exemptions from the following taxes:

- VAT.
- Road tax.
- Income taxes.
- Vehicle tax.
- Property tax.
- Social tax with respect to foreign citizens involved in construction.
- Import VAT and customs duties.

Tax benefits for enterprises operating in full-cycle processing of raw cotton

Newly established enterprises operating in full-cycle processing of raw cotton can obtain tax exemptions from the following taxes if certain conditions are met:

- VAT.
- Income taxes.
- Property tax.

Tax benefits under production sharing agreements

An investors that satisfies the conditions of a production sharing agreement concluded with the government of Tajikistan Republic can enjoy the following tax benefits during the period when such production sharing agreement is effective:

- VAT (under certain conditions).
- Excise tax.
- Income taxes.

Tax exemptions for income derived from tourism services

Effective from 1 January 2017, a five-year CIT exemption is available on income derived from tourism services from the moment of state registration. In addition, import of equipment and construction materials for tourist objects are exempt from VAT. The list of tourist objects, titles, and amounts of imported equipment and construction materials is approved by the government of Tajikistan.

Withholding taxes

New requirements on tax residency certificates have been introduced and are effective from 1 January 2016. Thus, the tax residency certificates should be apostilled and legalised for the purpose of application of the DTTs.

Tajikistan-source income of non-residents is subject to WHT at its source at the rates shown in the following table:

Types of income at source of payment	Tax rate (%)
Dividends and interest	12
Insurance and reinsurance premiums	6
International transport and telecommunications	5 to 6
Royalties, rent, lease income, management fees, and other income	15

The information outlined in the table below is provided for application by business entities. Foreign legal entities that do not carry on activities in Tajikistan through a PE are subject to WHT on income from sources in Tajikistan, subject to the terms of a relevant DTT. Tajikistan has enforced DTTs with 29 countries and 3 DTTs that are pending. In cases where certain DTTs envisage the tax rates applying for taxation of dividends/interest that exceed the rates envisaged by the Tajikistan domestic tax legislation, we believe that such income is subject to taxation at rates envisaged by the above-mentioned domestic tax legislation. The below table does not represent tax provisions provided by respective DTTs for government-owned legal entities, governmental institutions, or governmental organisations (central/national banks).

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	12	12	15
Treaty:			
Armenia	10	10	10
Austria	5 (1a)/10	0 (2a)/8	8
Azerbaijan	10	10	10
Bahrain	8	8 (2b)	8
Belarus	15	0 (2c)/10	15
Belgium (pending)	0 (1b)/15	0 (2d)/10	10
Brunei (pending)	5 (1c)/10	10	10
China	5 (1d)/10	8	8
Czech Republic	5	0 (2e, 2f)/7	10
Finland	5 (1d)/15	0 (2e, 2f)/10	5
Germany	5 (1c)/15	0	5 (3a)
India	5 (1d)/10	0 (2g)/10	10
Iran	10	10	8
Kazakhstan	10 (1e)/15	10	10
Kuwait (pending)	5 (1f, 1g)	10	10
Kyrgyzstan	5 (1h)/15	10	10
Latvia	0 (1i)/5 (1d)/10	0 (2f)/7	5 (3b)/10

Tajikistan

Recipient	WHT (%) Dividends	Interest	Royalties
Luxembourg	0 (1b)/15	0 (2h)/12	10
Moldova	5 (1d)/10	5	10
Pakistan	5 (1d)/10	10	10
Poland	5 (1d)/15	10	10
Romania	5 (1d)/10	10	10
Russia	5 (1j)/10	0 (2i)/10	0
Saudi Arabia	5 (1d)/10	8 (2b)	8
South Korea	5 (1d)/10	0 (2j, 2k)/8	10
Switzerland	5 (1k)/15	0 (2j, 2k, 2f)/10	5
Thailand	10	0 (2e, 2f)/10	5 (3c)/10
Turkey	10	10	10
Turkmenistan	10	10	10
Ukraine	10	10	10
United Arab Emirates	0	0	10
United Kingdom	5 (1l)/10/15 (1m)	0 (2l)/10	7

Notes

1. Where one of the following conditions is met:
   a. Beneficial owner is a company (other than a partnership) that directly holds at least 15% of the capital of the company paying the dividends.
   b. Beneficial owner is a company resident of another contracting state and directly holds for an uninterrupted period of at least 12 months at least 10% of the capital of the company paying the dividends.
   c. Beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
   d. Beneficial owner is a company (other than a partnership) that directly holds at least 25% of the share capital of the company paying the dividends.
   e. Beneficial owner is a legal entity and directly holds no less than a 30% stake in the company paying the dividends.
   f. Beneficial owner is a company that directly holds at least 20% of the capital of the company paying the dividends.
   g. Beneficial owner is an individual.
   h. Beneficial owner is a company that holds at least 50% of the share capital of the company paying the dividends.
   i. Beneficial owner is a company (other than a partnership) that directly holds at least 75% of the capital of the company paying the dividends.
   j. Beneficial owner is a person who directly holds at least 25% of the share capital of the company paying the dividends.
   k. Beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends.
   l. Beneficial owner is a pension scheme or a company that directly holds at least 10% of the capital of the company paying the dividends.
   m. Beneficial owner is a resident of another contracting state and such dividends are paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle that is resident of a contracting state whose income from such immovable property is exempt from tax and which distributes most of that income annually.
2. Where one of the following conditions is met:
   a. Recipient is beneficial owner of the interest and such interest is paid: (i) with respect to indebtedness arising as a consequence of the credit sale of any equipment, merchandise, or services, and (ii) to a financial institution.
   b. Interest applied to income is deemed as income from debt-claims. The term ‘income from debt-claims” means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds, or debentures. Penalty charges for late payment should not be considered as income from debt-claims for the purpose of the corresponding DTT.
   c. Interest arising in a contracting state could be exempt from taxation at a certain amount approved by a government in such state if the recipient and beneficial owner of interest is resident of another contracting state and transaction resulting in a debt-claim was approved by a government of a contracting state.

   d. Interest is paid with respect to a loan given or a credit granted by an enterprise to another enterprise.
   e. Recipient is beneficial owner of the interest and such interest is paid in respect to credit sales of any merchandise or equipment.
   f. Recipient is beneficial owner of the interest and such interest is paid in respect to a loan or credit of any kind granted by a bank.
   g. Recipient and beneficial owner of the interest is an institution that could be agreed between the competent authorities of the contracting states.
   h. Recipient and beneficial owner is a financial institution or a collective investment vehicle in a contracting state.
   i. Interest is paid to supplier by customer on commercial credits on deferred payments basis for purchased goods, equipment, performed works, rendered services.
   j. Recipient is beneficial owner of the interest and such interest is paid in connection with the credit sale of any industrial, commercial, or scientific equipment.
   k. Recipient is beneficial owner of the interest and such interest is paid in connection with credit sale of any goods by an enterprise to another enterprise.
   l. Beneficial owner of the interest is a bank.
3. Where one of the following conditions is met:
   a. The term ‘royalties’ as used in the corresponding DTT means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience. The term ‘royalties’ shall also include payments of any kind received as a consideration for the use of, or the right to use, a person’s name, picture, or any other similar personality rights, or the recording of entertainers’ or sportsmens’ performances by radio or television.
   b. Royalties are paid for the use of, or the right to use, software or industrial, commercial, or scientific equipment.
   c. Royalties are paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work.

Tax administration

Maintaining of accounting documentation

The Tax Code stipulates the requirements for maintaining of accounting documentation in the Tajik language.

Taxable period

The Tax Code prescribes a calendar year as the tax year.

Tax returns

Annual CIT declarations are due by 1 April in the year following the tax year-end.

Taxpayers are required to submit their estimated calculation of monthly advance payments of CIT.

Payment of tax

With respect to CIT, advance payments are due every 15th day of the month. Payment of any outstanding CIT liabilities is required not later than 10 April following the reporting tax period.

The settlement of minimum income tax should be made by 10 April following the reporting tax period in cases where it exceeds CIT liability.

Fines and interest penalties

The fine for failure to file a tax return ranges from a minimum amount of 1 calculation index (CI), which is currently TJS 50, to a maximum fine of 100 CI, or TJS 4,000. The amount of the fine depends on the taxpayer’s category and should be assessed based on each ten days of delay. In the absence of tax returns, the tax authorities are entitled to assess taxes based on any information available.

Fines may be assessed in the amount of 10% to 20% of the understated tax liabilities. In severe cases, a violation may be considered a criminal offence.

A fine for failure to withhold and remit tax may be assessed in the amount of 3 to 200 CI (approximately TJS 120 to TJS 8,000) of the tax not withheld.

Interest penalties may apply to late tax payments in the amount of 0.05% of the underpaid tax amount for each day of tax underpayment.

Tax audit process

Tajikistan tax authorities have the right to conduct regular tax audits (once per year for planned tax audits). Generally, there are two types of audits:

- Planned tax audits. Planned tax audits are conducted according to the list of entities that fall under tax audit, published by the competent authority.
- Unplanned tax audits. Reorganisation or liquidation of a legal entity, the expiration of the contract on subsoil use, validation of the VAT amount that is charged for a return, etc., may trigger an unplanned tax audit.

Documentary tax audits may be further subdivided into comprehensive (i.e. covering all taxes), thematic (covering only specific type of taxes), or cross-check (covering only transactions with a particular counterparty). Comprehensive and thematic audits may be conducted once a year.

The first planned documentary tax audit of a small business, implementing the simplified tax system, can be carried out only after 36 full calendar months from the date of its registration.

The tax authority sends or presents a notice of a tax audit to a taxpayer no later than ten working days before the start of the documentary tax audit unless otherwise provided in the Tax Code.

The period of tax audits, specified in issued orders, shall not exceed 30 working days from the date of receipt of the order, unless otherwise provided in the Tax Code.

Statute of limitations

Taxpayers are allowed to make changes to prior period tax returns within the statute of limitations (three years). No fines should apply to corrections in this case.

Topics of focus for tax authorities

The tax authorities are currently paying particular attention to deals involving sale of shares and participation interests.

Other issues

Accounting and reporting requirements

In accordance with the governmental Resolution of the Republic of Tajikistan concerning International Standards of Financial Statements, the Ministry of Finance of the Republic of Tajikistan shall adopt IFRS through a step-by-step approach. Starting from 2011, juridical legal entities should apply IFRS; however, National Accounting Standards may still be applicable by companies, except for public companies.

Accounting policies and practices are being revised in light of the legal requirement that companies adopt IFRS and International Accounting Standards. Such revised accounting policies should be adopted by companies' boards of directors and disseminated to all the accounting units with clear instructions on how to introduce and follow the new policies and procedures.

Tanzania

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Significant developments

Some of the significant changes brought in by the Finance Act 2017 are:

- Reduced corporate income tax (CIT) rate for assemblers of vehicles, tractors, and fishing boats from 30% to 10% for the first five years of operations to encourage manufacturers.
- Introduction of 5% final withholding tax (WHT) on small-scale miners, to be applied on payments for minerals (on the market value of minerals for specified minerals) that a 'licensed dealer' (as defined in the Mining Act 2010) is authorised to deal with (being gold, metallic minerals, coloured gemstones, diamonds, coal, and industrial minerals).
- Disallowance of WHT paid by a withholder as a deductible expense for CIT. This change targets the net of tax contracts. A new category of disallowable expenditure has been introduced by amending the definition of 'excluded expenditure' to include 'withholding tax paid by withholder'.
- New provisions to ring fence 'speculative transactions', including hedging and other similar financial transactions. Speculative transactions are defined to include hedging and other similar financial arrangements. Specifically, 'speculative transaction' is defined to mean: "(i) a transaction that is a contract for sale or purchase of a commodity, including stocks and shares settled otherwise than actual delivery or transfer of the commodity or scrip, or (ii) any agreement for repurchase or resale, forward sale or purchase, futures contracts option, or swap contracts".

These changes are effective since 1 July 2017.

Taxes on corporate income

A Tanzanian resident is taxed on worldwide income, irrespective of source. Non-residents are taxable on income with a source in Tanzania.

Income tax is charged at a rate of 30% on income of a resident corporation and of a permanent establishment (PE) of a non-resident corporation or 5% of turnover for technical and management service providers to mining, oil, and gas entities (deducted by way of WHT). Certain payments to non-residents are subject to tax at the relevant non-resident WHT rates (*see the Withholding taxes section for the relevant rates*).

Small-scale miners are subject to 5% final WHT on the market value of minerals.

Gain from the disposal of investments in Tanzania is subject to income tax where such investments fall within the source rules, and, in such a case, the gain will be taxed at a rate of 30%.

Reduced rate for newly listed companies

A reduced CIT rate of 25% applies for three consecutive years for companies newly listed on the Dar es Salaam Stock Exchange (DSE). To qualify, at least 30% of the company's shares must be issued to the public.

Reduced rate for specific persons

A reduced CIT rate of 10% applies to new assemblers of vehicles, tractors, and fishing boats for the first five years from commencement of operations.

Alternative minimum tax

Alternative minimum tax applies at a rate of 0.3% to the turnover of companies with perpetual unrelieved tax losses for the current and preceding two income years. Exemption applies to (i) agricultural companies and (ii) companies engaged in provision of health or education.

Local income taxes

There are no local income taxes levied by local authorities. *Please see Local taxes in the Other taxes section for a description of the local service levy based on turnover*.

Corporate residence

A company is tax resident if it is incorporated or formed under the laws of Tanzania or if the management and control of its affairs is exercised in Tanzania.

Permanent establishment (PE)

A non-resident entity has a PE in Tanzania if it carries on business in Tanzania. This includes a place where a person (i) is carrying on business through a dependent agent; (ii) has used or installed, or is using or installing, substantial equipment or machinery; and (iii) is engaged in a construction, assembly, or installation project for six months or more, including a place where a person is conducting supervisory activities in relation to such a project.

Other taxes

Value-added tax (VAT)

VAT is chargeable on all taxable goods and services supplied in, or imported into, mainland Tanzania. The standard rate of VAT is 18%, but the export of goods and certain services is eligible for zero rating. Businesses with an annual taxable turnover of more than 100 million Tanzanian shillings (TZS) must register for VAT.

There is also mandatory registration for professional services providers (e.g. lawyers and accountants) and government entities/institutions carrying on economic activity. A non-resident who carries on economic activity in mainland Tanzania without a fixed place and makes taxable supplies in excess of the VAT registration threshold is required to appoint a VAT representative.

For imported goods, VAT is payable at the time of importation together with any customs and excise duties. VAT payable with respect to capital goods (as defined), which are imported or purchased in Tanzania, may be deferred, subject to certain procedures being followed. The Commissioner for VAT has the discretion to register (as intending traders) investors whose projects have not commenced production but who wish to be VAT-registered in order to reclaim the tax they incur on start-up costs.

For imported services, VAT is accounted for by registered businesses through a 'reverse-charge' mechanism, such accounting is only relevant where a taxpayer has exempt supplies of 10% or more of total supplies.

Depending on the industry, there are a number of exempt supplies. These include (this list is not exhaustive):

- Agricultural implements, agricultural inputs, livestock, basic agricultural products and foods for human consumption; implements for fisheries and bee-keeping; dairy equipment, maize flour, and wheat flour.
- Food, clothing, and shoes donated to non-profit organisations for free distribution to orphanages or schools for children with special needs in mainland Tanzania.
- Goods imported by non-profit organisations for the provision of emergency and disaster relief (conditional).
- Goods imported by religious organisations for the provision of health, education, water, and religious services (conditional).
- Educational services provided by a relevant approved educational institution; education materials.
- Laboratory equipment and reagents imported by a registered educational institution and to be used solely for educational purposes.
- Goods eligible for relief under the East African Customs Management Act (where imported by a registered and licensed explorer or prospector for exclusive use in oil, gas, or mineral exploration or prospecting activities).
- Various goods imported by a natural gas distributor (including compressed natural gas [CNG] plants equipment, natural gas pipes, transportation and distribution pipes, CNG storage cascades, CNG special transportation vehicles, natural gas metering equipment, CNG refuelling of filling, gas receiving units, flare gas system, condensate tanks and leading facility, system piping and pipe rack, and condensate stabiliser).
- Healthcare, medicine, or pharmaceuticals products, not including food supplements or vitamins; articles designed for people with special needs; funeral services.
- Firefighting vehicles imported by the government and firefighting equipment.
- Sale of vacant land.
- Lease, license, hire, or other form of supply, to the extent that it is a supply of the right to occupy and reside in residential premises.
- Water (except bottled or canned water or similarly presented water).
- Solar equipment (in particular, solar panels, modules, solar charger controllers, solar inverters, solar lights, vacuum tube solar collectors, and solar batteries). Wind generators and liquid elevators are no longer included in the list of exemptions (unlike the 1997 Act).
- All unprocessed vegetables and unprocessed edible animal products, including live fish, fruits and nuts, cereals, and seeds, as well as raw soya beans.
- Vitamins and food supplements (micronutrient compound) that have been approved by the Minister for Health, Community Development, Gender, Elderly, and Children.
- Water treatment chemicals, as approved by the Minister responsible for health.

- Aviation insurance.
- Bitumen.
- Dam liner.
- Insurance for workers compensation.
- Pasteurised goat and cow milk, excluding milk with additives and long-life milk.

A business that only makes exempt supplies is unable to register for VAT and, consequently, unable to recover the VAT incurred on inputs.

Export of goods and certain services is zero-rated (i.e. taxable at a rate of 0%).

Registered businesses must submit VAT returns, and pay any tax due, on a monthly basis.

The new VAT Act has broadened restrictions on claiming input tax. For example, one cannot claim VAT paid on entertainment, sporting, social, or recreational clubs or associations, nor on spare parts and repair or maintenance costs in respect of passenger vehicles.

The input tax claim time limit is six months. However, this time limit starts to run not only by reference to the date of the tax invoice/fiscal receipt but also by reference to the date of the time of supply.

Input tax incurred in the six months prior to VAT registration can be claimed no later than in the third VAT return submitted following registration.

A company with taxable supplies of more than 90% of total supplies is entitled to full input tax credit.

A company with taxable supplies less than 10% of total supplies is not entitled to claim any input tax incurred.

A company with taxable supplies between 10% and 90% of total supplies is entitled to partial input tax recovery. Only one apportionment method, namely the average method, can be used. Imported services are not taken into account as supplies when determining the allowance of input tax for partial exemption purposes.

Businesses entitled to VAT refunds can claim any remaining credit six months after a refund first became due, subject to all intervening returns being rendered. Any claim for a VAT refund must be supported by an auditor's certificate. Businesses in a consistent refund position (e.g. exporters) can apply for approval to lodge their refund claims on a monthly basis.

Zanzibar has its own VAT Act, but it is similar to the Mainland Tanzania Act.

Customs duties

Tanzania is a member of the East African Community, which became a Customs Union on 1 January 2005 on the implementation of the East African Customs Union Protocol. This protocol provides for a common external tariff (CET), elimination of internal tariffs, rules of origin, anti-dumping measures, a common customs law, and common export promotion schemes.

The import duty rates applicable under the CET are as follows:

Category	Rate (%)
Raw materials, capital goods, agricultural inputs, pure-bred animals, medicines	0
Semi-finished goods	10
Finished final consumer goods	25
Machinery and spare parts imported by licensed mining companies and used in mining activities	0
Machinery, spares, and inputs imported by licensed company for direct use in oil, gas, and geothermal exploration	0

Tanzania is also a member of the Southern African Development Community (SADC). Where goods are subject to a lower rate of duty from another trade bloc, such as the SADC, the lower duty rate applies until such a time as the trading arrangements between the trading blocs are harmonised.

Excise duties

Excise duty rates apply as follows:

Item	Rate for FY 2017/18 (TZS)
Sugared mineral water, sugared carbonated drinks, and sugared aerated water (locally manufactured/imported)	58 per litre/61 per litre
Other not containing sugar, including club soda (locally manufactured/ imported)	58 per litre/61 per litre
Malt beer	765 per litre
Clear beer (with 100% local unmalted barley)	450 per litre
Wine with more than 25% imported grapes	2,349 per litre
Wine with domestic grapes content exceeding 75%	200 per litre
Spirits, vodka, and whiskies	3,481 per litre
Cigarettes without filter containing more than 75% domestic tobacco	12,447 per mil
Cigarettes with filter containing more than 75% domestic tobacco	29,425 per mil
Other cigarettes not mentioned above	53,235 per mil
Cut rag/filler	25,608 per kg
Motor spirit (gasoline) premium	379 per litre
Motor spirit (gasoline) regular	379 per litre
Gas oil (diesel)	255 per litre
Jet fuel	0 per litre
Illuminated kerosene	425 per litre
Other medium oil and preparation	9.32 per litre
Industrial diesel oil	392 per litre
Heavy furnace oil	0 per litre
Lubrication oil	669 per m^3
Lubrication greases	0.79 per kg
Music and film products	50 per unit

Item	Rate for FY 2017/18 (%)
Satellite and cable television broadcasting	5
Electronic communication services	17
Charges or fees by a telecommunication service provider for money transfer service	10
Charges or fees by a financial institution for services provided by such institution	10
Disposable plastic bags	50

Item	Rate for FY 2017/18 (%)
Liquefied petroleum gas (LPG)	0
Motor car with cylinder capacity exceeding 1,500cc but not exceeding 2,000cc	5
Motor vehicle with engine size greater than 2,000cc but not exceeding 3,000cc	5
Old passenger motor vehicles (more than five years)	10
Old motor vehicles (eight years but not more than ten years)	15
Old motor vehicles (more than ten years)	30
Imported used spare parts (for vehicles, motorcycles, domestic and electrical appliances)	25
Imported furniture (per unit)	20
Aircraft (including helicopters, aeroplanes) but excluding commercial aircraft, yachts, and other vessels for pleasure or sport	20

Fuel levy

Fuel levy is charged on petroleum and diesel at a rate of TZS 313 per litre.

Petroleum levy

Petroleum levy is charged on petroleum and diesel at TZS 100 per litre and on kerosene at TZS 150 per litre.

Stamp duty

Examples of instruments giving rise to stamp duty obligations include conveyances, leases, share transfers, and issue and transfer of debentures. For most of these instruments, the applicable stamp duty rate is 1% of the consideration.

Infrastructure levy

The 'infrastructure levy' applies at the rate of 1.5% of the value of imported goods (cost, insurance, and freight [CIF]). The levy is not applicable to imported goods that have relief or exemption under the East African Community Customs Management Act 2004 (EACCMA 2004) and goods in transit.

Payroll taxes and social security contribution

Apart from individual income tax (deducted at source by the employer), payroll taxes include:

- Skills and development levy at 4.5% of payroll cash costs.
- 20% social security contribution, which is normally split equally between employer and employee (i.e. 10% each).
- Workers compensation fund tariff charged at 1% or 0.5% of cash sums paid to employees. The tariff is payable on a monthly basis (1% for private sector and 0.5% for public sector).

Gaming tax

Under the gaming tax, gaming prize winners are taxed at 18% of the prize offered.

Local taxes

Property taxes

The Tanzania Revenue Authority (TRA) levies a property tax based on the value of a premises. The rates vary depending on the value and location of the property. For unvalued properties, TZS 10,000 is payable for a normal building and TZS 50,000 per storey for a storey building.

Service levy

The local government is entitled to charge a 0.3% service levy based on turnover generated in the relevant district.

Cess levy

For agricultural produce and livestock, there is a cess levy, currently capped at 3% of the producer price. However, there is an exemption from cess levy on the transportation of crops of less than one ton from one local government authority to another.

Branch income

The income tax liability of a person with a PE in Tanzania is calculated as if the person and the PE are independent but as if the PE is resident in Tanzania. The income of the PE is taxed at the normal income tax rate for entities, namely 30% on net income or 5% of turnover for technical and management service providers to mining, oil, and gas entities.

The PE is also subject to a tax on 'repatriated income', which applies at a rate of 10% (the same rate as a company would withhold on dividends).

In certain circumstances, business activities of the head office may be attributed to the branch. Arrangements between a PE and head office generally are not recognised, other than the transfer of an asset or liability between the two. Amounts derived (or payments received) and expenditures incurred (or payments made) that relate to assets held by, or liabilities owed by, the business of the PE are attributed to the PE.

Income determination

Subject to any provision to the contrary in the Income Tax Act, income is to be calculated in accordance with generally accepted accounting principles (GAAP). Local GAAP is in accordance with International Financial Reporting Standards (IFRS). Corporations must apply an accrual basis of accounting.

Inventory valuation

Trading stock is valued at the end of the year at the lower of cost and market value. No explicit method is stated for determining inventory cost, and, so far, for tax purposes, such cost will match the cost determined in accordance with GAAP. Special rules apply for the valuation of long-term work in progress.

Capital gains

There is no separate capital gains tax in Tanzania. Instead, income tax is charged on the taxable profit arising on a gain arising from the realisation of an 'investment asset' (a term that [subject to certain exceptions] includes shares, interests in land and buildings, and a beneficial interest in a non-resident trust). The gain is determined as the difference between costs incurred and sale proceeds.

Dividend income

Dividend payments are taxed by way of WHT, and this is a final tax. The normal rate of WHT on dividends is 10%.

Where a dividend is paid by a resident corporation to another resident corporation holding 25% or more of shares and voting rights in the corporation paying the dividend, the WHT rate is 5%.

Dividends paid by a company listed on the DSE are subject to 5% WHT (regardless of whether they are paid to a resident or non-resident).

Interest income

Interest income is treated as income from investment. The term 'interest' is defined as payment for the use of money and includes payment made or accrued under a debt obligation that is not a repayment of capital, as well as any gain realised by way of a discount, premium, swap payment, or similar payment.

Interest income is taxed by way of WHT at 10%.

Royalty income

Royalty income is treated as income from investment and is taxed by way of WHT at 15% (regardless of whether it is paid to a resident or non-resident). WHT on royalty payments to a non-resident is a final tax.

The term 'royalty' means any payment made by the lessee under a lease of an intangible asset and includes payments for:

i. the use of, or the right to use, a copyright, patent, design, model, plan, secret formula or process, or trademark
ii. the supply of know-how, including information concerning industrial, commercial, or scientific equipment or experience
iii. the use of, or right to use, a cinematography film, videotape, sound recording, or any other like medium
iv. the use of, or right to use, industrial, commercial, or scientific equipment
v. the supply of assistance ancillary to a matter referred to in paragraphs (i) to (iv), or
vi. a total or partial forbearance with respect to a matter referred to in paragraphs (i) to (v), but excludes a natural resource payment.

Foreign income

A resident person's foreign-source income or loss (from employment, business, and investment) is calculated as that person's worldwide income or loss less any income sourced in Tanzania and plus any loss sourced in Tanzania.

A resident person may claim a foreign tax credit on any foreign tax paid by the person on foreign income. However, such credit should not exceed the Tanzanian tax rate applicable to that income. Any unrelieved amount of foreign tax credit may be carried forward (subject to 'change in control' provisions *as detailed in the Group taxation section*). An election may be made to relinquish foreign tax credit and claim a deduction for the amount of foreign income tax.

There are no provisions for the deferral of the taxation of foreign income.

Deductions

In calculating taxable profit, deductions are allowed for revenue expenditures incurred wholly and exclusively in the production of income, with some statutory exceptions. For capital expenditures, there are specific tax depreciation allowances.

There are special rules with regard to the valuation of trading stock and long-term contracts and in relation to the treatment of instalment sales and finance leases.

There is ring-fencing of mining or petroleum operations by reference to the relevant mining or petroleum licence area.

Depreciation

The categories of depreciable assets and their tax depreciation rates are set out in the table below.

Expenditures on plant and machinery are generally written off on a reducing-balance basis at rates of 37.5%, 25%, or 12.5%, depending on the category of the asset. Certain plant and machinery for manufacturing, fish farming, and tourist hotels benefit from a 50% allowance in the first year, with the normal rates applying to the remaining balance in subsequent years. There is an immediate write-off of expenditures on plant and machinery used in agriculture.

Expenditures on buildings qualify for a depreciation allowance of 5% per year on a straight-line basis. For intangible assets, the write-off is over the useful life of the asset.

Apart from the immediate write-off of plant and machinery, agricultural businesses also benefit from the immediate write-off of agricultural improvement expenditures (including the costs of clearing land, excavating irrigation channels, and planting perennial crops or tree bearing crops). Buildings, structures, dams, water reservoirs, fences, and similar works of a permanent nature used in agriculture, livestock, or fish farming are written off on a straight-line basis over five years.

A 100% capital deduction applies to capital expenditure (i) by mining companies on prospecting, exploration, and development and (ii) on petroleum prospecting and exploration.

Depreciation allowances rates

Class	Depreciable assets	Rate (%)
1	Computers and data handling equipment, together with peripheral devices; automobiles, buses, and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than seven tonnes; construction and earth-moving equipment.	37.5

Class	Depreciable assets	Rate (%)
2	Buses with a seating capacity of 30 or more passengers, heavy general purpose or specialised trucks, trailers, and trailer-mounted containers; railroad cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft, other self-propelling vehicles; plant and machinery (including windmills, electric generators, and distribution equipment) used in manufacturing or mining operations; specialised public utility plant and equipment; and machinery or other irrigation installations and equipment.	25
3	Office furniture, fixtures, and equipment; any asset not included in another class.	12.5
4	Natural resource exploration and production rights and assets in respect of natural resource prospecting, exploration, and development expenditure. (However, note that the Income Tax Act 2004 does provide for predecessor capital deduction provisions in the Income Tax Act 1973 to continue for the holders of mining rights.)	20
5	Buildings, structures, dams, water reservoirs, fences, and similar works of a permanent nature used in agriculture, livestock farming, or fishing farming.	20
6	Buildings, structures, and similar works of permanent nature other than those mentioned in Class 5.	5
7	Intangible assets other than those in Class 4.	1 divided by the useful life of the asset in the pool and rounded down to the nearest half year
8	Plant and machinery (including windmills, electric generators, and distribution equipment) used in agriculture; electronic field devices purchased by a non-VAT-registered trader; equipment for prospecting and exploration of minerals or petroleum.	100

Interest in land

Interest in land does not qualify for depreciation allowance as it is excluded from the definition of 'depreciable asset'.

Goodwill

Goodwill does not qualify for depreciation allowance as it is excluded from the definition of 'depreciable asset'.

Start-up expenses

Start-up expenses are deductible to the extent that they meet the general deduction criteria (i.e. they are revenue in nature and were incurred wholly and exclusively in the production of income). The definition of 'business' includes a prospective business.

Interest expenses

Interest expenses are deductible on an accrual basis, subject to thin capitalisation rules *as detailed in the Group taxation section*.

Bad debt

In order to claim relief for a bad debt, it is necessary to demonstrate that all reasonable steps have been taken to pursue payment and that there is a reasonable belief that the debt claim will not be satisfied.

Charitable contributions

The Income Tax Act allows deduction for contributions made:

i. to charitable institutions (approved by the Commissioner to operate as such) and social development projects
ii. under Section 12 of the Education Fund Act 2001, or
iii. to local government authorities under statutory obligations to support community developments projects.

The deduction available under item (i) above is restricted to 2% of the company's taxable income before such deduction.

Fines and penalties

Fines and similar penalties payable to a government or a political subdivision of any country for the breach of any law or subsidiary legislation are not deductible.

Taxes

Taxes payable under the Income Tax Act 2004 are not deductible.

WHT paid by withholder

WHT paid by withholder is not deductible.

Net operating losses

There is no limit on the carryforward period for tax losses. However, there is ring-fencing of tax losses as follows:

- Losses from agricultural business can only be offset against profits derived from agricultural business.
- Losses from one mining licence area can only be offset against profits from the same mining licence area.
- Losses from one petroleum licence area can only be offset against profits from the same petroleum licence area.
- Foreign-source losses can only be offset against foreign-source profits.
- Losses on investments can only be offset against investment income.
- Foreign-source losses on investments can only be offset against foreign-source investment income.
- Losses incurred on speculative transactions can only be offset against income derived from speculative transactions.

In addition, the deductibility of the losses carried forward is restricted (for holders of a petroleum exploration licence, mineral licence, and licence in respect of midstream and downstream activities) such that only 70% of the taxable profits of the company can be sheltered by losses brought forward (with any excess losses carried forward to future years).

In certain circumstances, tax losses may be forfeited on a change in the underlying control of an entity.

Tax losses can be carried back only in long-term contracts in a case where a contract is completed and a person has unrelieved losses for that period or a previous period that is attributable to the long-term contract. These losses can then be carried back to a previous year of income and treated as unrelieved loss for that year.

Payments to foreign affiliates

Payments to foreign affiliates are deductible to the extent they are wholly and exclusively incurred in the production of the company's income. The deduction is subject to transfer pricing provisions *as detailed in the Group taxation section*.

Group taxation

There are no provisions for tax consolidation or group relief in Tanzania.

Transfer pricing

With respect to transactions between related parties, there is an obligation to 'quantify, apportion, and allocate amounts' for income tax purposes on an arm's-length basis. The Transfer Pricing Regulations and Guidelines require a taxpayer with related-party transactions to have transfer pricing documentation in place at the time of filing the tax return and provide this within 30 days from the date of request by the TRA.

Thin capitalisation

There is a thin capitalisation restriction on the amount of deductible interest for what are termed 'exempt-controlled resident entities', where the debt-to-equity ratio exceeds 7:3. There are specific definitions of 'debt' and 'equity' for the purposes of thin capitalisation.

Controlled foreign trusts and corporations

There are provisions that relate to the treatment of unallocated income of controlled foreign trusts and corporations.

Change in control provisions

The change in control provisions are triggered at the moment the underlying ownership of an entity changes by more than 50% as compared to any time during the previous three years. Where there is such a change, the consequences are that:

- the accounting period of the entity is split at the point of such a change, so that the parts of the year of income before and after the change are treated as separate years of income, and
- there is deemed realisation of assets and liabilities at market values.

In certain cases, such a change can also result in the forfeiture of unutilised tax losses and tax credits.

The Commissioner has to be notified immediately before and after the change in control has occurred.

Other anti-avoidance provisions

Other anti-avoidance provisions exist to address the following:

- Income or dividend stripping arrangements.
- Income splitting.

Tax credits and incentives

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Agriculture, manufacturing, mining, and tourism incentives

Tax incentives by way of generous capital deduction provisions are given for specific sectors, namely agriculture, manufacturing, mining, petroleum, and tourism. *See the Deductions section for more information*.

Export processing zones (EPZs) and special economic zones (SEZs)

There are special benefits for EPZs and SEZs. Included in the benefits available to a person licensed to carry on business in an EPZ, as well as to SEZ investors selling in export markets, are a ten-year income tax holiday and WHT holiday, subject to a requirement to export at least 80% of production.

Assemblers of vehicles, tractors, and fishing boats

There is a tax incentive by way of a reduced CIT rate for new assemblers of vehicles, tractors, and fishing boats from 30% to 10% for the first five years from commencement of operations.

Newly listed companies

Companies that are newly listed on the DSE get an incentive of a reduced CIT rate for the first three years from 30% to 25%, provided at least 30% of shares are publicly listed.

Withholding taxes

WHT rates

	WHT (%)	
Payment	**Resident**	**Non-resident**
Dividend:		
To a company controlling 25% or more of the voting power and holding 25% or more of the shares	5	10
From a DSE-listed company	5	5
Otherwise	10	10
Interest	10	10
Rent:		
Land and buildings	10	10
Aircraft lease	10	10
Other assets	0	10
Royalty	15	15
Natural resource payment	15	15
Service fees	5	15
Director fees (other than full time service)	15	15
Insurance premium	0	5
Money transfer commission paid to money transfer agent	10	N/A
Payments for goods by government institutions	2	N/A

Tanzania

Double tax treaty (DTT) rates

	WHT (%)			
Recipient	Dividend	Interest	Royalties	Management / technical fees
Domestic rate (1)	10	10	15	15
Treaty:				
Canada	20/25 (2)	15	20	20
Denmark	15	12.5	20	20
Finland	20	15	20	20
India	5/10 (3)	10	10	0
Italy	10	15	15	15 (6)
Norway	20	15	20	20
South Africa	10/20 (2)	10	10	0
Sweden	15/25 (4)	15	20	20
Zambia	0 (5)	0 (5)	0 (5)	0

Notes

1. The domestic WHT rate applies unless the DTT rate is lower, in which case the lower DTT rate applies.
2. The lower rate applies if the beneficial owner is a company that controls, directly or indirectly, at least 15% of the voting power in the company paying the dividends; otherwise, the higher rate applies.
3. The lower rate applies if the recipient is a company that owns at least 25% of the shares of the company paying the dividends; otherwise, the higher rate applies.
4. The lower rate applies if the recipient is a company that owns at least 25% of the shares of the company paying the dividends during the six month period immediately preceding the date of payment of the dividends; otherwise, the higher rate applies.
5. The domestic rate applies if income is exempt from tax in Zambia.
6. The domestic rate applies in the absence of a rate specified in the DTT.

Tax administration

Taxable period

While the year of income for tax purposes is the calendar year, an entity may apply to use its own accounting period rather than the calendar year.

Tax returns

A statement of estimated tax payable, which contains an estimate of the chargeable income and the tax payable thereon, is due for submission within three months from the beginning of the accounting period. A final tax return must be furnished within six months from the end of the accounting period.

WHT returns must be submitted every half year. The due date for filing the WHT return is 30 days after each six-month calendar period (e.g. the January to June return is due by 30 July).

Payment of tax

Instalment tax is payable in four equal instalments not later than three months, six months, nine months, and 12 months from the beginning of the accounting period. Final tax is payable on the date on which the final return is due for submission, namely six months after the end of the accounting period.

WHT is due seven days after the month of deduction.

Penalties

A late filing penalty applies monthly at an amount equal to the higher of (i) TZS 225,000 or (ii) 2.5% applied to unpaid tax. If estimated tax is significantly underestimated, a penalty may also apply.

Interest on late payment is charged at the Bank of Tanzania discount rate.

Tax audit process

The normal practice is for the TRA to carry out a review every two or three years.

Statute of limitations

There is a five-year time limit for the TRA to adjust an income tax return filed by a taxpayer. The five years runs from the due date of filing the final tax return.

Topics of focus for tax authorities

Currently, the topics of particular focus for the TRA include transfer pricing, VAT compliance, WHT on payments to both residents and non-residents, and compliance on payroll taxes.

Functional currency

Taxable income and deductible expenditure is quantified in Tanzanian shillings. Upon request by the taxpayer, the Commissioner has the power, by notice in writing, to permit quantification in a foreign currency convertible to Tanzanian shillings.

Thailand

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Significant developments

The Eastern Economic Corridor (EEC) project, which is an area-based development aiming to promote high technology and innovation in targeted industries, is expected to become a major factor helping to accelerate the future growth of the country.

The Eastern Economic Corridor Act (2018) became effective on 15 May 2018. Projects wishing to take advantage of the benefits under the Act must be located in certain zones within the EEC, which consists of the three Eastern provinces of Rayong, Chonburi, and Chachoengsao.

Further details are noted in the Tax credits and incentives section.

Taxes on corporate income

Companies incorporated in Thailand are taxed on worldwide income. A company incorporated abroad is taxed on its profits arising from or in consequence of the business carried on in Thailand.

The corporate income tax (CIT) rate is 20%.

A foreign company not carrying on business in Thailand is subject to a final withholding tax (WHT) on certain types of assessable income (e.g. interest, dividends, royalties, rentals, and service fees) paid from or in Thailand. The rate of tax is generally 15%, except for dividends, which is 10%, while other rates may apply under the provisions of a double tax treaty (DTT).

Rates for companies with low paid-in capital and income

For accounting periods beginning on or after 1 January 2017, companies and juristic partnerships with paid-in capital not exceeding 5 million Thai baht (THB) at the end of any accounting period and income from the sale of goods and/or the provision of services not exceeding THB 30 million will be subject to tax at the following rates:

Net profit (THB)	Tax rate (%)
0 to 300,000	0
300,001 to 3 million	15
Over 3 million	20

Reduced rates for certain banking transactions

Banks are subject to tax at the rate of 10% on their profits derived from lending to non-Thai residents from foreign currency funds obtained from non-Thai sources (so-called 'out-out' business).

Petroleum income tax

International oil companies can engage in exploration and production activities in Thailand under a concession, a production sharing contract, or a service contract.

Taxation on income from petroleum operations is imposed on petroleum concessionaire companies and production sharing producers by the Petroleum Income Tax Acts (PITA). Petroleum companies under a service contract are not taxed under the PITA but under the Revenue Code.

Companies taxed under the PITA are exempt from taxes and duties on income imposed under the Revenue Code and under any other laws. The exemption applies provided that the company pays taxes and duties on income subject to the PITA or on dividends paid out of income subject to the PITA.

Petroleum companies under a concession are taxed at the rate of 50% of their annual net profit from petroleum operations, including profit from the transfer of their concession interests and other activities incidental to the petroleum operations. Deductions are allowed for 'ordinary and necessary' business expenses, as well as depreciation of capital expenditure, petroleum royalties, and other charges. Certain types of expenses are specifically disallowed for deduction, including interest.

A production sharing producer is taxed at the rate of 20% of its annual net profit derived from its petroleum business, including profits derived from the transfer of interests in the nature of rights, annuity, or any other recurring income as a consequence of such transfer.

Local income taxes

There are no local government taxes on income in Thailand.

Corporate residence

Corporate residence is determined by the place of incorporation. A company incorporated under the laws of Thailand is a resident company.

A company incorporated abroad is subject to CIT in Thailand if it is considered to be carrying on business in Thailand. The term 'carrying on business in Thailand' is broad and, subject to the provisions of a DTT, includes the presence of an employee, representative, or go-between that results in the foreign company deriving income or gains in Thailand.

Other taxes

Value-added tax (VAT)

The standard rate of VAT is 10%, but the rate is currently reduced to 7% until 30 September 2018 (unless further extended by the government). VAT is levied on the sale of goods and the provision of services. Exports are zero-rated, while a number of goods and services are exempt (e.g. basic groceries, education, healthcare, interest, leasing of immovable property, sale of real estate).

Customs duties

Basis of taxation

Customs duties are imposed under the Customs Act and the Customs Tariff Decree. Customs duties are collected on both imports and a limited number of exports. Classification of imports is based on the Harmonised Commodity Description and Coding System (the so-called 'Harmonised System'). Thailand has adopted the Association of Southeast Asian Nations (ASEAN) Harmonised Tariff Nomenclature (AHTN) 2017, which is based on the Harmonised System 2017, as its import tariff nomenclature.

Duties are levied on a specific or an *ad valorem* basis, whichever is higher, and the applied *ad valorem* duties range between 0% and 80%. Exemptions from import duties are available on particular items of goods as prescribed in the Customs Tariff Decree. Preferential duty rates are available on imported goods from countries that have a preferential free trade agreement (FTA) with Thailand.

Currently, Thailand has FTAs with the following countries:

- ASEAN member states (Singapore, Vietnam, Malaysia, Indonesia, Philippines, Cambodia, Laos, Myanmar, and Brunei)
- Australia
- Chile
- India
- Japan
- New Zealand
- Peru

Also, as a member of ASEAN, Thailand has preferential trade agreements with the following countries:

- Australia and New Zealand
- China
- India
- Japan
- Korea

The ASEAN - Hong Kong Free Trade Agreement (AHKFTA) was signed in November 2017. It is expected to be enforced on 1 January 2019.

Generally, the value of imports is based on their cost, insurance, and freight (CIF), whereas exported goods are based on their free on board (FOB) amount.

Thailand has implemented the World Trade Organisation (WTO) Valuation Agreement. The primary basis for the customs value is the transaction value, which is the price actually paid or payable for the goods when sold for export, subject to adjustments for certain elements that are considered to form a part of the value for customs purposes or that can be deducted from the value of the imported goods (e.g. the cost of transportation after the importation, duties, and taxes associated with the import).

Elements that may need to be added include royalties and licence fees that are related to the goods and paid as a condition of sale, proceeds from subsequent resale in the importing country, and the value of goods or services supplied by the buyer, such as design or development fees related to the imported goods. If the declared price is evidently low or is unlikely to be the true value of such goods, Thai Customs will likely dispute the declared price.

Customs controls and procedures

Customs procedures for goods arriving in Thailand in any manner are similar to those existing in most other countries. An importer is required to file an entry form together with other requisite documents, including a bill of lading, invoice, and packing list via the e-Customs system.

Customs duties are due upon the arrival of the vessel carrying the imported goods, and goods may be stored in a Customs bonded warehouse for up to 45 days with no submission of an import entry and 60 days in the case of submission of an import entry. Landing and storage charges must be paid before the goods are released.

Customs incentives schemes

Various customs incentives schemes, each with its own specific conditions and duty privileges, are available, including the following:

- Duty and tax compensation (tax coupons).
- Duty drawback for imported raw materials used in export production.
- Duty drawback for re-export in the same state.
- Free zones (Customs or Industrial Estate Authority of Thailand Free Zones).
- Manufacturing bonded warehouses.
- General bonded warehouses.
- Board of Investment (BOI) promotion.
- Preferential import duties under FTAs.

Offences and penalties

Although, technically, an offence against the customs law is a criminal offence, in practice, legal procedures are usually concerned with the recovery of tax arrears and fines. Offences include non-compliance with customs procedures, false declarations, and the most serious offence of smuggling and evasion of customs duties. Statutory penalties are as prescribed by the relevant provisions of the Customs Act. Where Customs and the offender agree to settle the case at the Customs level (i.e. waiver of prosecution), the penalties would be in accordance with the settlement criteria as prescribed by the Director-General of the Customs Department. Currently, we understand that a duty evasion offence would typically be settled with a fine of from 50% to 200% based on the duty shortfall per the import entry. The VAT penalty would also be applied proportionally based on the duty fine. Duty and VAT surcharges (capped at the amount of the shortfall) are applied in this respect as well.

For import licensing errors, the settlement criteria would be the surrendering of the goods or a fine in lieu thereof based on the value of the goods plus the duty and tax payable. For offences related to smuggling, the penalties are based on a multiple of the value of the goods.

Excise tax

Basis of taxation

Excise tax (ET) is a form of consumption tax that is imposed on the sale of a selected range of services and goods (whether manufactured locally or imported) that are considered 'luxuries'. The tax liability arises on locally manufactured goods when leaving the factory and at the time of importation for imported goods.

The excise tax calculation is based on both *ad valorem* rates (a percentage of the suggested retail price [SRP]) and/or specific rates (based on the quantity or weight of the goods). The excise tax formula varies depending on type of excise taxable products, for example:

- (SRP x ET rate) is applicable for motor vehicles, motor cycles, and cosmetic products.
- (Specific rate x quantity) is applicable for petroleum oil products.
- (SRP x ET rate) + (specific rate x quantity) is applicable for non-alcoholic beverages and tobacco products.
- (SRP x ET rate) + (specific rate x quantity x degree of pure alcohol) is applicable for alcoholic beverages.

Taxable goods and services

Goods/services	Ad valorem rate (%)	Specific rate
Petroleum and petroleum products	0	THB 0 to THB 6.5 per litre or kilogram
Certain non-alcoholic beverages	0 to 14	THB 0 to THB 44 per litre
Certain electrical appliances	0	-
Batteries	0 to 8	-
Crystal glassware	0	-
Motor vehicles	0 to 40	-
Motorcycles	0 to 17	-
Boats	0	-
Perfume products and cosmetics	0 to 8	-
Woollen carpets	0	-
Marble and granite	0	-
Ozone depleting substances/ CFCs	0 to 30	-
Alcoholic beverages	0 to 22	THB 0 to THB 1,500 per litre of pure alcohol
Cigarettes containing tobacco	0 to 40	THB 0.005 to THB 1.2 per piece or gram
Playing cards	0	THB 2 to THB 30 per 100 cards
Entertainment services	0 to 10	-
Race courses and lotto	0 to 20	-
Golf courses	0 to 10	-
Telecommunications business	0	-

In addition to the excise tax, an interior tax is also levied by the Excise Department at the rate of 10% of the excise tax payable. Other taxes, such as the health tax and Thai Public Broadcasting Service tax (TPBS tax or TV tax), may apply to certain specified products in the categories of cigarettes and alcoholic beverages.

The manufacturer of the products must file a return and remit the tax due prior to taking the goods from the factory or bonded warehouse. If a VAT liability arises before the goods are taken out of such locations, the manufacturer must file a return and remit the excise tax to the Excise Department within 15 days from the end of the month.

Stamp duty

Stamp duty is levied on 28 different types of documents and instruments, including contracts for hire of work, loans, share transfers, leases of land or buildings, and insurance policies. The rate of stamp duty varies depending on the type of document, but ranges from THB 1 per THB 1,000 of value on most contracts and agreements to a fixed amount per instrument on most commercial and other documents.

Stamp duty is generally paid by way of affixing stamps on the instrument and crossing them out. However, certain instruments now require the stamp duty to be paid in cash to the Revenue Department instead, such as agreements for the lease of land and buildings, other construction or floating rafts with a rental of THB 1 million or more, and hire of work agreements with a remuneration of THB 1 million or more.

Unstamped documents are not admissible as evidence in a civil lawsuit, and the surcharge can be as high as 600% of the duty for failure to pay the stamp duty on a timely basis.

Specific business tax

Specific business tax is collected at fixed rates on the gross revenue of certain businesses not subject to VAT, such as commercial banking, similar financial businesses, and the sale of immovable property, which are taxed at 3%, and life insurance, which is taxed at 2.5%.

The rate of specific business tax has been reduced to 0.01% for certain revenue derived by commercial banks and finance, securities, and credit foncier businesses, as well as businesses that have regular transactions similar to commercial banking.

An additional 10% of the tax is levied as municipality tax.

Capital taxes

There are no capital taxes in Thailand.

Payroll taxes

An employer is responsible for withholding personal income tax (PIT) from all salaries and benefits paid to or on behalf of an employee and remitting such tax to the Revenue Department within seven days from the end of the month in which the salaries and benefits were paid.

Social security contributions

Contributions are levied at the rate of 5% of the monthly salary of each employee, subject to a maximum levy per employee of THB 750 per month. These contributions are payable by both the employer and employee.

Local taxes

There are currently three major local taxes. However, the house and land tax and the local development tax below are planned to be revoked and replaced by a new land

and building tax. A draft of the new law is under the consideration of the National Legislative Assembly (NLA). The taxes currently in effect are as follows:

House and land tax

House and land tax is levied annually at the rate of 12.5% of the assessed economic rental income.

Local development tax

Local development tax is levied annually at rates ranging between 0.25% and 0.95% of the value of land assessed by local authorities. This tax does not apply if the property is subject to the house and land tax.

Signboard tax

Signboard tax is levied annually on certain commercial signs or billboards at varying rates according to size and language used. The rates per 500 square centimetres are THB 3 if all words are in Thai, THB 20 if both Thai and foreign words are used, and THB 40 if only foreign words are used or if the Thai words are below the foreign words.

Branch income

Branches of foreign corporations are subject to CIT on locally earned profits only. Branch profits remitted to the foreign head office are subject to an additional tax at the rate of 10%. However, this is a tax on the disposition of profits abroad and is not limited to remittances. For example, a credit of profit to the head office account in the books is held to be a disposition of profit abroad even though no remittance of funds takes place.

Income determination

Inventory valuation

Inventory is valued at the lower of cost or market price. Any recognised method of ascertaining the cost price may be used, but a change in the method may only be made with the prior approval of the Director-General of the Revenue Department.

Capital gains

There is no specific legislation governing capital gains. All capital gains earned by a Thai company are treated as ordinary revenue for tax purposes. Capital gains on the sale of investments derived from or in Thailand by a foreign company not carrying on business in Thailand are subject to a tax of 15%, withheld at source by the purchaser, unless otherwise exempt under a DTT.

The following income earned by a foreign company not carrying on business in Thailand is also subject to 15% WHT:

- Interest on bonds/debentures issued by state enterprises.
- Difference between the redemption price and the initial sale price of bonds issued by the government, state enterprises, and specified institutions.
- Gains on the transfer of bonds issued by the government, state enterprises, and specified institutions.

Dividend income

Dividends received from a Thai company by a company listed on the Stock Exchange of Thailand are exempt from tax. Dividends received by a non-listed company from other Thai companies are also exempt from tax, provided that the company receiving the dividends holds at least 25% of the total voting shares without any cross-shareholding in the company paying the dividend and that the shares have been held for at least three months before and three months after the dividends were received.

In other cases, where one Thai company receives dividends from another Thai company, one-half thereof is exempt from tax also on the condition that the shares have been held for at least three months before and three months after the dividends were received.

Dividends received from a company incorporated abroad are exempt from tax if the Thai company receiving the dividends holds at least 25% of the shares with voting rights of the company paying the dividends for a period of not less than six months before the date on which the dividends are received and the dividends are derived from the net profit in the foreign country taxed at a rate of not less than 15%. In the event that a 'special law' in a particular foreign country provides a reduced tax rate or exemption for the net profit, the limited company that receives the dividends is still eligible for the tax exemption.

The share of profits received by a Thai company or a foreign company carrying on business in Thailand from an unincorporated joint venture carrying on business in Thailand is exempt from tax.

Stock dividends

Stock dividends are taxable to the recipient as ordinary income.

Interest income

Interest is taxable as income on the accrual basis.

Royalty income

Royalties are taxable as income on the accrual basis.

Foreign income

Companies incorporated in Thailand are taxed on worldwide income. The foreign income received by a company incorporated in Thailand is taxable on the accrual basis. Double taxation is relieved by way of a credit against the tax chargeable in Thailand (*see Foreign tax credit in the Tax credits and incentives section*).

Deductions

Depreciation, amortisation, and depletion

Deductions for depreciation are allowed as a percentage of cost. If the rate of deduction adopted by a company under its own accounting method is lower than the maximum percentage of cost permitted, a deduction will be allowed only at the rate adopted by the company. The straight-line basis is the method most commonly used by companies, but any generally accepted basis, such as sum-of-the-years-digits or double-declining method, is permitted. The maximum permitted rates are shown below:

Asset	Maximum permitted rate (%)
Buildings:	
Durable buildings	5
Temporary buildings	100
Cost of acquisition of depletable natural resources	5
Cost of acquisition of lease rights:	
If there is no written lease agreement or if there is a written lease agreement containing a renewal clause whereby continual renewals are permitted	10
If there is a written lease agreement containing no renewal clause or containing a renewal clause but restricting renewable periods to a definitely limited duration	Percentage rate equals 100 divided by the sum of years of the original and renewable lease periods
Cost of acquisition of the right in a process, formula, goodwill, trademark, business licence, patent, copyright, or any other right:	
If the period of use is unlimited	10
If the period of use is limited	Percentage rate equals 100 divided by the number of years of use
Other assets not mentioned above, excluding land and inventory	20

Special depreciation methods for certain assets

- Machinery and equipment for research and development (R&D) may initially be depreciated at 40% of cost, with the remaining balance being depreciated at the above maximum rate of 20% *per annum*.
- Computer hardware and software may be depreciated within three accounting periods.

Special depreciation method for small companies

Companies and juristic partnerships with fixed assets, excluding land, with a value of no more than THB 200 million and with no more than 200 employees are entitled to use the following special depreciation methods:

- Machinery and equipment may initially be depreciated at 40% of cost, and the remaining balance will then be depreciated at the maximum rate of 20%.
- Computer hardware and software may initially be depreciated at 40% of cost, and the remaining balance can then be depreciated within three accounting periods.
- Factory buildings may initially be depreciated at 25% of cost, and the remaining balance will then be depreciated at the maximum rate of 5%.

Start-up expenses

Start-up expenses, such as incorporation expenses and registration fees, are deductible when incurred.

Interest expenses

Interest on money borrowed for the purpose of acquiring profit or for the purpose of the business is deductible. Interest incurred in respect of the construction or installation of fixed assets that require a period of time before they are ready for their intended use is considered to be capital expenditure and deductible in the form of depreciation.

Bad debts

Bad debts written off are deductible, provided that they are consistent with the rules, procedures, and conditions prescribed by the Ministerial Regulations.

Charitable contributions

Donations to specified charities or for public benefit are deductible in the amount actually paid but not exceeding 2% of net profit. Donations for education or sport are also deductible in the amount actually paid but not exceeding 2% of net profit.

Donations to support certain educational or recreational programmes are allowed a double deduction for tax. Donations made to educational institutions and to sports entities from 1 January 2016 to 31 December 2018 are also allowed a double deduction for tax.

Fines and penalties

Fines, penalties, and surcharges imposed under all tax laws are not deductible.

Taxes

In general, all taxes are deductible except CIT and VAT (in certain cases).

Other significant items

Non-deductible expenses include, but are not limited to, the following:

- Expenses in the nature of provisions.
- Contributions to any fund (except for registered provident funds).

Net operating losses

Losses may be carried forward to offset against the profits of the following five accounting periods. The carryback of losses is not permitted. A change in control of a loss-making company does not impact its loss carryforward status.

Payments to foreign affiliates

A Thailand-incorporated company may claim a deduction for royalties, management service fees, and interest charges, provided they are expended exclusively for the purpose of generating profit or for the purpose of the business in Thailand and are determined on an arm's-length basis.

Group taxation

Group taxation is not permitted in Thailand.

Transfer pricing

Thailand is in the process of introducing specific transfer pricing provisions into the income tax law. Among the expected provisions are the definition of the arm's-length principle and the mandatory transfer pricing disclosure in the form of a transfer pricing declaration at the time of tax filing as well as the full transfer pricing documentation upon request.

There will also be additional subordinate regulations, currently being written by the Revenue Department, to provide further details of the transfer pricing requirements. At the earliest, the provisions, and the subordinate regulations, are expected to be applicable for accounting periods beginning on or after 1 January 2018.

At present, related-party transactions are governed under the general provisions of the income tax law, which require companies to transact on an arm's-length basis, as well as the transfer pricing guidelines issued by the Revenue Department.

The transfer pricing guidelines are in the form of a Departmental Instruction (no. Paw 113/2545), which does not have the status of legislation. This instruction provides internal directives to Revenue officials to adhere to when conducting transfer pricing reviews. It also provides guidelines to taxpayers on setting arm's-length prices for their transactions with related parties.

The instruction authorises the use of both traditional transaction methods (i.e. comparable uncontrolled price, resale price, and cost plus methods), as well as transactional profit methods, in order to determine the market price of a transaction. Although taxpayers are technically expected to consider using traditional transaction methods before resorting to using a transactional profit method, no one method is preferred in practice.

The instruction also defines the term 'market price', describes the transfer pricing documentation requirements, and allows taxpayers to apply for advance pricing agreements (APAs) in respect of any related-party transaction.

To address the APA process, the Revenue Department has issued separate APA guidelines. At present, Thailand accepts only bilateral APAs and limits the period covered to three to five accounting periods. Only a company or partnership incorporated in Thailand, which enters into intra-group transactions with affiliates who are residents of Thailand's treaty partners, may apply for an APA.

The main concepts under the current transfer pricing guidelines and the APA guidelines are expected to remain, in one form or another, once the specific transfer pricing provisions are enacted.

Thin capitalisation

There are no thin capitalisation rules. However, for certain businesses or as part of the conditions for granting tax incentives, a certain debt-to-equity ratio may be required.

Controlled foreign companies (CFCs)

There are no tax provisions in respect of CFCs.

Tax credits and incentives

Board of Investment (BOI) tax incentives

The BOI, by virtue of the Investment Promotion Act of 1977 (including its amendment no. 4 (2017)) and the Competitive Enhancement Act (2017), provides tax incentives for certain activities within the following categories:

- Agriculture and agricultural products.

- Mining, ceramics, and basic metals.
- Light industry.
- Metal products, machinery, and transportation equipment.
- Electronic industry and electrical appliances.
- Chemicals, paper, and plastics.
- Services and public utilities.
- Technology development and innovation.

The tax incentives available include the following:

- Exemption from import duties on imported machinery.
- Exemption from import duties on raw and essential materials imported for manufacturing for export.
- Reduction of import duties on raw and essential materials by up to 90% for use in manufacturing for domestic sale.
- Exemption from import duties on items used for R&D.
- Exemption from CIT equal to or more than the amount of the investment, excluding the cost of land and working capital, for up to 15 years, depending on the promoted activity.
- 50% reduction in the CIT rate for five years from the date on which the tax holiday expires.
- Exclusion of dividends received from promoted enterprises from taxable income during the period of exemption from CIT and within six months from the date of expiry of any tax holiday period.
- THB 10 billion subsidy under the Competitiveness Enhancement Fund, provided that certain criteria are fulfilled, without any conditions.

Incentives by category

Under the 2018 BOI promotion scheme, the focus is placed on the activities and the importance of the activities. Tax incentives are under four categories (A1 to A4) and non-tax incentives under two categories (B1 and B2), as below:

Group	CIT exemption	Import duty exemption on machinery	Import duty exemption on raw materials for export	Non-tax incentives
A1	8 years (without cap) + merit*	Yes	Yes	Yes
A2	8 years + merit *	Yes	Yes	Yes
A3	5 years + merit	Yes	Yes	Yes
A4	3 years + merit	Yes	Yes	Yes
B1	Merit (3 years) **	Yes	Yes	Yes
B2	Merit (3 years) **	No	Yes	Yes

* Exemption from CIT will be up to 13 years in total.

** Only some activities are available.

The following tax incentives are granted for certain eligible activities categorised as B1 or B2:

- 50% CIT reduction for a maximum of ten years.
- Deduction from net profit for ten years of up to 70% of the investment amount in addition to the normal depreciation deductions.

In addition, tax incentives are granted to the following new categories of activities:

Targeted core technologies and enabling services

CIT exemption	Import duty exemption on machinery	Import duty exemption on raw materials for export	Non-tax incentives
10 years (without cap) + merit (but not exceeding 13 years in total)	Yes	Yes	Yes

Strategic based activities

CIT exemption	Import duty exemption on machinery	Import duty exemption on raw materials for export	Non-tax incentives
15 years	Yes	Yes	Yes

Additional incentives based on the value of a project (merit-based incentives) have been launched in order to motivate investors to invest or spend on activities that will benefit the country or the industry as a whole.

Merit on research and development (R&D)

R&D merit-based incentives will depend on the investment made or expenses incurred by investors in R&D for their business, the provision of advance training to employees, or the development of local suppliers. The investment or expenses permitted are as follows:

Investment in	Additional investment cap (% of investment or expenses incurred)
R&D, whether in-house, outsourced in the country, or in cooperation with educational or research institutions abroad	300
Donations to the Technology and Human Resources Development Fund as approved by the BOI	100
Licence fees paid for technology developed in the country	200
Training in advanced technology	200
Development of local suppliers with not less than 51% Thai shareholding in advance technology training or technical assistance	200
Product or packaging design, whether in-house or outsourced in the country as approved by the BOI	200

Additional years of tax exemption will be added to the standard tax incentives received as follows:

Investment/expenditure based on the sales revenue in the first 3 years	Additional period of tax exemption with cap based on amount of investment (in total, maximum period is 13 years)
1% or ≥ THB 200 million	1 year
2% or ≥ THB 400 million	2 years
3% or ≥ THB 600 million	3 years

Merit on decentralisation

As the previous zoning scheme has been abolished, investment promotion zones have been included as a decentralisation merit to businesses that have operations in any of the following 20 provinces with low average income:

Kalasin, Chaiyaphum, Nakhon Phanom, Nan, Bung Karn, Buriram, Phrae, Maha Sarakham, Mukdahan, Mae Hong Son, Yasothon, Roi Et, Sisaket, Sakhon Nakhon, Sa Kaew, Sukhothai, Surin, Nong Bua Lamphu, Ubon Ratchatani, and Amnatcharoen.

Additional incentives for enterprises located in these 20 provinces include the following:

- Three additional years of CIT exemption. However, a reduction of 50% of CIT for five years after the end of the tax holiday will be granted to projects with activities in Groups A1 and A2.
- Double deduction from taxable income of the cost of transportation, electricity, and water supply for ten years from the date on which revenue was first derived from the promoted activity.
- Deduction from net profit of 25% of the project's infrastructure installation or construction costs in addition to normal depreciation; such deduction can be made from the net profit of one or several years within ten years from the date on which revenue was first derived from the promoted activity.

Merit on industrial area development

One additional year of CIT exemption will be granted to Group A projects located within an industrial estate or promoted industrial zone. However, the total period of CIT exemption will not exceed eight years, except for the activities under targeted core technologies and enabling services.

Research and development (R&D) incentives

Tax incentives given to R&D contractors

R&D is a promoted activity under the Investment Promotion Act, which prescribes the criteria and conditions to be followed by an R&D contractor.

Tax incentives given are as follows:

- CIT exemption on income derived from the provision of R&D services as stated in the investment promotion certificate (qualified R&D services) for up to 13 years with no cap.
- Exemption from import duty on imported machinery and raw materials for manufacturing for export.
- Exclusion of dividends derived from promoted enterprises from taxable income during the period of CIT exemption and within six months from the date of expiry of any tax holiday period.

The R&D services must be of the following description:

- Basic research: Activities that are conducted to explore new knowledge from basic natural phenomena and factual observation.
- Applied research: The application of basic knowledge to solve or develop a concept for commercial purposes.

- Pilot development: Activities performed to magnify a production scale from basic research and applied research.
- Demonstration development: To verify a technology and production process and to demonstrate the level of integrity of such process and viability on a commercial scale production in both quality control and cost estimation.

Tax benefits under the Revenue Code

The Revenue Code provides for an additional 100% deduction for tax in respect of expenditure incurred in Thailand on R&D for technology and innovation (including product and process innovation) when hiring government agencies or the private sector, as approved by the Director-General of the Revenue Department.

In addition to the above, a further 100% tax deduction is granted for R&D expenses paid from 1 January 2015 to 31 December 2019 with threshold amounts depending on the revenue of the company.

Eastern Economic Corridor (EEC)

The Eastern Economic Corridor Act (2018) (EEC Act) has been announced in the Government Gazette and became effective on 15 May 2018. An EEC project must be located in certain zones within the EEC, which consists of the three Eastern provinces of Rayong, Chonburi, and Chachoengsao. An EEC project will be promoted only if it is engaged in a target industry.

An EEC promoted company will be granted CIT exemption and/or reduction privileges according to the criteria prescribed by the EEC committee. Currently, the CIT privileges under the EEC Act have not yet been announced.

Nevertheless, the BOI, under the Investment Promotion Act, has already issued criteria and incentives for promoted activities located in the EEC. The tax incentives are categorised under three zones, as follows:

- Special industry promotion zone:
  - Eastern Airport City (EEC-A).
  - Eastern Economic Corridor of Innovation (EECi).
  - Digital Park Thailand (EECd).
- Target industry promotion zone.
- Industrial estate or industrial area within the EEC.

The incentives will be granted only to eligible activities in certain zones, and a bilateral cooperation plan between the company and an academic or research institution or centre of excellence must be made.

Tax incentives provided by the BOI are as follows:

- Special industry promotion zone:
  - BOI standard incentives.
  - CIT exemption for an additional two years.
  - CIT reduction of 50% for five years after the end of the tax holiday.
- Target industry promotion zone:
  - BOI standard incentives.
  - CIT reduction of 50% for five years after the end of the tax holiday.
- Industrial estate or industrial area within the EEC:

- BOI standard incentives.
- CIT reduction of 50% for three years after the end of the tax holiday.

* EEC incentives cannot be utilised together with those under the merit of industrial area development (an additional one-year CIT exemption).

The EEC Act also grants a PIT reduction for employees with special knowledge/abilities who work or operate a business in certain zones within the EEC.

Since 11 July 2017, qualified expatriates and Thai employees have been granted a flat rate of 17% PIT on their income derived from working for companies carrying on target activities within the EEC.

Regional operating headquarters (ROH)

ROH means a company organised under the Thai law providing administrative, technical assistance, or supporting services to its domestic or overseas affiliated enterprises or branches in at least three countries other than Thailand.

Tax incentives available to ROH are under two packages. However, the privileges under the second package are no longer available to new applicants.

The criteria for ROH are:

- Company formed under Thai law with a minimum paid-up capital of THB 10 million.
- Provision of qualified services to qualified affiliates (companies with at least 25% common group ownership) in at least three countries other than Thailand.
- Income from services provided to, or royalties received from, overseas affiliates must be at least 50% of the total income of the ROH company (reduced to one-third for the first three years).

The following tax incentives are still available to existing and new applicants under the first package, provided all of the criteria are met:

- 10% CIT on net profit from ROH services provided to foreign and domestic affiliates.
- 10% CIT on net profit from qualified royalties and interest income from lending borrowed funds to domestic and foreign affiliates.
- Corporate and domestic WHT exemptions on dividends received from affiliates.
- Exemption from WHT on dividends paid to foreign corporate shareholders on net profit arising from ROH qualified income.
- Expatriates employed by the ROH can choose to be taxed at a flat rate of 15% for four consecutive years.

International headquarters (IHQ)

An IHQ is defined as a company incorporated under the law of Thailand for the purpose of providing managerial, technical, or supporting services or financial management to its associated enterprises or branches situated in Thailand or abroad. This includes carrying on a business as an international trade centre (*see International trade centre below*), which has been approved as an IHQ.

The criteria for an IHQ are:

- A company formed under Thai law with minimum paid-up capital of THB 10 million.

- Managerial, technical, or supporting services (and financial management in the case of treasury centres, *as stated below*) must be provided to foreign affiliates (companies with at least 25% common group ownership, directly or indirectly).
- Operating expenses related to IHQ activities of at least THB 15 million per year.

The tax concessions are:

- 10% CIT on the net profit from qualified services provided to domestic affiliates and royalties derived from domestic affiliates.
- Full CIT exemption on the net profit from qualified services provided to foreign affiliates, royalties and dividends derived from foreign affiliates, and capital gains from the transfer of shares in foreign affiliates (under conditions).
- WHT exemption on dividends paid to foreign corporate shareholders from the net profit derived from the income exempt from tax.
- Expatriates employed by the IHQ can choose to be taxed at a flat rate of 15% from the date on which the IHQ becomes qualified until the date on which the IHQ is no longer qualified or the employment is terminated.

Please note the following:

- A qualified IHQ will be granted tax privileges for 15 accounting periods.
- The total income subject to tax at the 10% rate must not exceed the total income from qualified services and royalties that are both exempt from tax.
- If an IHQ lacks any of the qualifications in any accounting period, the right to the tax privileges will be suspended only for that accounting period.

Treasury centre (TC)

An IHQ that has obtained a TC licence from the Bank of Thailand can request approval from the Revenue Department for the tax concessions available when carrying on the business of financial management for its associated enterprises or branches situated in Thailand or abroad.

Financial management includes:

1. Financial management of a TC permitted under the exchange control law.
2. Borrowing and lending of Thai currency ('baht') in the following cases:
   a. Funds borrowed from Thai financial institutions or affiliates in Thailand.
   b. Lending of funds obtained from operations under 1 or 2 (a) in Thai currency to affiliates in Thailand.

The tax concessions are:

- WHT exemption on interest paid to foreign companies not carrying on business in Thailand on loans borrowed for re-lending to affiliates.
- Exemption from specific business tax on all remuneration received from financial management services provided to affiliates.
- Other tax concessions available for the TC activities are the same as for IHQ noted above.

A qualified IHQ will be granted tax privileges for 15 accounting periods.

The criteria are the same as noted above for an IHQ.

If a TC lacks any of the qualifications in any accounting period, the right to the tax privileges will be suspended only for that accounting period.

International trade centre (ITC)

An ITC is defined as a company established under the law of Thailand and engaged in the business of buying and selling goods, raw materials, and parts, including providing services relating to international trade to foreign juristic entities. Services relating to international trade include procuring goods, maintaining goods awaiting delivery, packaging, transporting goods, providing insurance for goods, providing advice, including technical services and training relating to goods, and providing other services as prescribed by the Director-General of the Revenue Department.

An IHQ is entitled to obtain approval to carry on a business as an ITC and enjoy the same tax concessions.

The criteria for ITC are:

- Company formed under Thai law with a minimum paid-up capital of THB 10 million.
- Operating expenses related to ITC activities of at least THB 15 million per year.

The tax concessions are:

- Exemption from CIT on income from buying and selling goods abroad without importing such goods into Thailand (out-out), including income from services relating to international trade provided to foreign juristic entities and received in or from a foreign country.
- WHT exemption on dividends paid to foreign corporate shareholders from the net profit derived from the income exempt from tax.
- Expatriates employed by the ITC can choose to be taxed at a flat rate of 15% from the date on which the ITC becomes qualified until the date on which the ITC is no longer qualified or the employment is terminated.

A qualified ITC will be granted tax privileges for 15 accounting periods.

If an ITC lacks any of the qualifications in any accounting period, the right to the tax privileges will be suspended only for that accounting period.

Foreign tax credit

A Thai company can use foreign tax paid on business income or dividends as a credit against its CIT liability. However, the credit cannot exceed the amount of Thai tax on the income.

Withholding taxes

WHT rate schedule

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Resident corporations	0/10 (1)	0/1 (2)	3
Resident individuals	10	15	Progressive rates (3)
Non-resident corporations and individuals:			

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	10	15	15
Treaty:			
Armenia	10	10/15 (4)	15
Australia	10	10/15 (4)	15
Austria	10	10/15 (4)	15
Bahrain	10	10/15 (4)	15
Bangladesh	10	10/15 (4)	15
Belarus	10	10/15 (5)	15
Belgium	10	10/15 (4)	5/15 (6)
Bulgaria	10	10/15 (4)	5/15 (7)
Cambodia (39)	10	10/15 (4)	10
Canada	10	10/15 (4)	5/15 (8)
Chile	10	10/15 (4)	10/15 (9)
China	10	10/15 (4)	15
Cyprus	10	10/15 (10)	5/10/15 (11)
Czech Republic	10	10/15 (4)	5/10/15 (12)
Denmark	10	10/15 (4)	5/15 (6)
Estonia	10	10	8/10 (13)
Finland	10	10/15 (4)	15
France	10	3/10/15 (14)	0/5/15 (15)
Germany	10	0/10/15 (16)	5/15 (6)
Hong Kong	10	10/15 (17)	5/10/15 (18)
Hungary	10	10/15 (4)	15
India	10	10	10
Indonesia	10	10/15 (4)	15
Ireland	10	10/15 (17)	5/10/15 (19)
Israel	10	10/15 (4)	5/15 (20)
Italy	10	0/10/15 (21)	5/15 (6)
Japan	10	0/10/15 (22)	15
Korea, Republic of	10	10/15 (17)	5/10/15 (23)
Kuwait	10	10/15 (4)	15
Laos	10	10/15 (4)	15
Luxembourg	10	10/15 (4)	15
Malaysia	10	10/15 (4)	15
Mauritius	10	10/15 (4)	5/15 (7)
Myanmar	10	10	5/10/15 (24)
Nepal	10	10/15 (4)	15
Netherlands	10	10/15 (4)	5/15 (6)
New Zealand	10	10/15 (17)	10/15 (25)
Norway	10	10/15 (4)	5/10/15 (26)
Oman	10	10/15 (27)	15
Pakistan	10	10/15 (4)	0/10/15 (28)
Philippines	10	10/15 (29)	15
Philippines (new) (40)	10	10/15 (4)	15
Poland	10	10/15 (4)	0/5/15 (30)
Romania	10	10/15 (4)	15
Russia	10	10/15 (31)	15
Seychelles	10	10/15 (4)	15
Singapore	10	10/15 (17)	5/8/10 (32)

Thailand

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Slovenia	10	10/15 (4)	10/15 (33)
South Africa	10	10/15 (4)	15
Spain	10	10/15 (4)	5/8/15 (34)
Sri Lanka	10	10/15 (4)	15
Sweden	10	10/15 (4)	15
Switzerland	10	10/15 (4)	5/10/15 (35)
Taiwan	5/10 (36)	10/15 (4)	10
Tajikistan	10	10	5/10 (6)
Turkey	10	10/15 (4)	15
Ukraine	10	0/10/15 (37)	15
United Arab Emirates	10	10/15 (4)	15
United Kingdom	10	10/15 (4)	5/15 (6)
United States	10	10/15 (17)	5/8/15 (38)
Uzbekistan	10	10/15 (4)	15
Vietnam	10	10/15 (4)	15

Notes

1. The zero rate applies to a recipient company listed on the Stock Exchange of Thailand and any other limited company that holds at least 25% of the total shares with voting rights in the company paying the dividend without any cross shareholding.
2. The 1% rate applies to interest paid to all resident corporations other than banks or finance companies, except where interest arises from bonds or debentures.
3. The progressive rates refer to the PIT rates.
4. The 10% rate applies to interest paid to a recipient that is a bank or financial institution (including an insurance company).
5. The 10% rate applies to interest paid (i) to a recipient that is a bank or financial institution (including an insurance company) or (ii) with respect to indebtedness arising as a consequence of a sale on credit of any equipment, merchandise, or services.
6. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work.
7. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, excluding cinematograph films and films, tapes, or discs for radio or television broadcasting.
8. The 5% rate applies to copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work, excluding royalties with respect to motion picture films and works on film or videotape for use in connection with television.
9. The 10% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment.
10. The 10% rate applies to interest paid (i) to a recipient that is a bank or financial institution (including an insurance company); (ii) in connection with the sale on credit of any industrial, commercial, or scientific equipment; or (iii) in connection with the sale on credit of any merchandise by one enterprise to another enterprise.
11. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic, or scientific work, including software, cinematograph films or films, or tapes used for radio or television broadcasting; and the 10% rate applies to royalties paid for the use of or the right to use industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experience.
12. The 5% rate applies to royalties paid for the alienation or the use of or the right to use any copyright of literary, artistic, or scientific work, excluding cinematograph films or films or tapes used for radio or television broadcasting, and the 10% rate for the alienation of any patent, trademark, design, or model, plan, secret formula, or process.
13. The 8% rate applies to royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment. The 10% rate applies to royalties paid in all other cases.
14. The 3% rate applies to interest paid on loans or credits granted for four years or more with the participation of a financing public institution to a statutory body or to an enterprise in relation to the sale of any equipment or to the survey, the installation, or the supply of industrial, commercial, or scientific premises and of public works. The 10% rate applies to interest paid to any financial institution.

15. The zero rate applies to royalties paid to a contracting state or state-owned company with respect to films or tapes, and the 5% rate to royalties for the alienation or the use of or the right to use any copyright of literary, artistic, or scientific work.
16. The zero rate applies to interest paid to any financial institution wholly owned by the other contracting state, a 'land', a political subdivision, a local authority, or a local administration thereof, and in particular, in the case of the Federal Republic, by the Deutsche Bundesbank or the Kreditanstalt für Wiederaufbau, and in the case of Thailand, by the Bank of Thailand. The 10% rate applies to interest paid to a recipient that is a bank or financial institution (including an insurance company).
17. The 10% rate applies to (i) interest paid to any financial institution (including an insurance company) and (ii) interest paid with respect to indebtedness arising as a consequence of a sale on credit of any equipment, merchandise, or services, except where the sale was between persons not dealing with each other at arm's length.
18. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work and the 10% rate for the use of, or the right to use, any patent, trademark, design, or model, plan, secret formula, or process.
19. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including software, and motion pictures and works on film, tape, or other means of reproduction for use in connection with radio or television broadcasting, and the 10% rate for the use of, or the right to use, industrial, commercial, or scientific equipment or any patent.
20. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, excluding cinematograph films or films or tapes used for radio or television broadcasting.
21. The zero rate applies to interest paid to any financial institution wholly owned by the other contracting state, an administrative subdivision, or a local authority thereof. The 10% rate applies to interest paid to a recipient that is a bank or financial institution (including an insurance company).
22. The zero rate applies to interest paid to any financial institution wholly owned by the government. The 10% rate applies to interest paid to a recipient that is a bank or financial institution (including an insurance company).
23. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including software and motion pictures and works on film, tape, or other means of reproduction for use in connection with radio or television broadcasting, and the 10% rate for the use of or the right to use any patent, trademark, design, or model, plan, secret formula, or process.
24. The 5% rate applies to royalties paid for the use of, or the right to use, any copyrights of literary, artistic, or scientific work, while the 10% rate applies to royalties for the consideration for any services of a managerial or consultancy nature, or for information concerning industrial, commercial, or scientific experience.
25. The 10% rate applies to royalties paid for the use of, or the right to use, any copyright; or the use of, or the right to use, any industrial, scientific, or commercial equipment; or the use of, or the right to use, any motion picture film, or film or videotape or any other recording for use in connection with television, or tape or any other recording for use in connection with radio broadcasting; or the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by satellite or, cable, optic fibre, or similar technology; or the use in connection with television or radio broadcasting, or the right to use in connection with television or radio broadcasting, visual images or sounds, or both, transmitted by satellite or cable, optic fibre, or similar technology.
26. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, and the 10% rate applies to royalties paid for the use of or the right to use industrial, commercial, or scientific equipment.
27. The 10% rate applies to (i) interest paid to a bank or financial institution (including an insurance company) and (ii) interest from a loan or debt claim that is guaranteed by the government.
28. The zero rate applies to royalties paid to a contracting state or a state-owned company with respect to films or tapes, and the 10% rate applies to royalties paid for the alienation or the use of or the right to use any copyright of literary, artistic, or scientific work.
29. In case of interest arising in Thailand, the 10% rate applies to interest paid to a Philippines financial institution (including an insurance company). In the case of interest arising in the Philippines, the 10% rate applies in respect of public issues of bonds, debentures, or similar obligations.
30. The zero rate applies to royalties paid to a contracting state or a state owned company with respect to films or tapes. The 5% rate applies to royalties paid for the alienation or the use of or the right to use any copyright of literary, artistic, or scientific work, excluding cinematograph films or tapes used for television or broadcasting.
31. The 10% rate applies to interest paid to the following recipients (i) in the case of a resident of Russia, any institution having a licence to carry on banking operations; and (ii) in the case of a resident of Thailand, any financial institution (including an insurance company).
32. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting. The 8% rate applies to royalties paid for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment.
33. The 10% rate applies to royalties paid for the use of, or the right to use, any copyright of literary or artistic work, including motion pictures, live broadcasting, film, tape, or other means of the use or reproduction in connection with radio and television broadcasting, and for the use of, or the right to use industrial, commercial, or scientific equipment.

34. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic, or scientific work, excluding cinematograph films or films or tapes used for radio or television broadcasting. The 8% rate applies to royalties in consideration of financial leasing for the use of, or the right to use, industrial, commercial, or scientific equipment.
35. The 5% rate applies to royalties paid for the alienation or the use of, or the right to use, any copyright, artistic, or scientific work, excluding cinematograph films or films or tapes used for radio or television broadcasting, and the 10% rate for the alienation of any patent, trademark, design or model, plan, secret formula, or process.
36. The 5% rate applies if the recipient holds at least 25% of the capital of the company paying the dividend.
37. The zero rate applies to interest paid to any other financial institution established and owned by the government to promote trade and investment. The 10% rate applies to interest paid to a recipient that is a bank or financial institution (including an insurance company).
38. The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including software, motion pictures, and works on film, tape, or other means of reproduction for use in connection with radio or television broadcasting. The 8% rate applies to royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment.
39. The treaty entered into force on 26 December 2017 and is effective from the tax year commencing on 1 January 2018.
40. A new DTT between Thailand and the Philippines entered into force on 5 March 2018 and will be effective from the tax year commencing on 1 January 2019.

Tax administration

Taxable period

The tax year for a company is its accounting period, which must be of 12 months' duration. However, it may be less than 12 months in the case of the first accounting period after incorporation, the accounting period of dissolution, or after approval for a change in the accounting period has been received from the Revenue Department and the Business Development Department.

Tax returns

The tax system is one of self-assessment. A company prepares and files its tax returns by the due dates and at the same time pays the taxes calculated to be due. The annual CIT return is due 150 days from the closing date of the accounting period.

Payment of tax

CIT is paid twice in each year. A half-year return must be filed within two months after the end of the first six months of an accounting period. The tax to be paid is computed on one-half of the estimated profit for the full accounting period, except for listed companies, banks, certain other financial institutions, and other companies under prescribed conditions where the tax is based on the actual net profit for the first six months. The balance of the tax due is payable within 150 days from the closing date of the accounting period, together with the annual tax return. Credit is given for the amount of tax paid at the half-year.

Tax audit process

If, within a period of two years from the date of filing a tax return, the assessment officer has reason to believe that false or inadequate information has been declared in a return, the assessment officer has the power to issue a summons requesting the presence of the person responsible, or a witness, for examination, and to order either of them to produce accounts or other relevant evidence, provided that advance notice of seven days is given. The subsequent examination of the books and records is normally carried out at the company's offices if it is inconvenient to transfer all the documents to the tax office. After completion of the examination, the assessment officer has the power to adjust the amounts previously assessed or included in a return on the basis of the evidence, and issue a further assessment for tax together with penalties and surcharges, or adjust the amount of losses available for carryforward.

Tax audits may cover the previous five accounting periods from the date of filing a tax return with the approval of the Director-General if the assessment officer has evidence of an intention to evade tax or in the case of a claim for a refund of tax. However, under the Civil and Commercial Code, the Revenue Department can assess tax for up to ten years.

Statute of limitations

The statute of limitations for tax is ten years.

Topics of focus for tax authorities

Topics of focus for tax authorities currently include the following:

- Deductibility of management service fees or expenses allocated to Thailand by foreign affiliates.
- International inter-company transactions and transfer pricing.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

The intergovernmental agreement (IGA) between the United States and Thailand regarding the US FATCA was signed on 4 March 2016. The agreement will enter into force on the date of Thailand's written notification to the United States that Thailand has completed its necessary internal procedures for entry into force.

The US Treasury has previously treated the IGA to be 'in effect' since 30 June 2014 when the United States and Thailand reached an agreement in substance and Thailand consented to disclose this status. In accordance with this status, financial institutions in Thailand were allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect.

Timor-Leste

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Significant developments

On 6 March 2018, Timor-Leste and Australia signed a treaty (subject to ratification) permanently agreeing certain maritime boundaries in the Timor Sea ('the Boundary Treaty'). The Boundary Treaty succeeds the Timor Sea Treaty (TST) and the International Unitisation Agreement (IUA). The Boundary Treaty will result in the former Joint Petroleum Development Area (JPDA), as well as territory covering a number of non-JPDA fields (e.g. Buffalo, parts of Greater Sunrise), falling under exclusive Timor-Leste control. As a result Timor-Leste's taxing rights in relation to the effected upstream activities will be increased.

The Boundary Treaty, once ratified should:

- permanently deal with the maritime boundaries between Timor-Leste and Australia (although not necessarily third countries, such as Indonesia), and
- establish a Special Regime for the Greater Sunrise gas field. This includes revenue-sharing arrangements on the upstream revenue allocation, which will vary according to the development concept (essentially the location of the liquefaction facilities) ultimately chosen for the Greater Sunrise gas resource.

As of the writing of this summary, both the Timor-Leste and Australia governments have not yet ratified the Boundary Treaty.

Taxes on corporate income

Timor-Leste residents are subject to income tax on worldwide taxable income, where taxable income is essentially the difference between gross income and allowable deductions. Non-residents are generally subject to income tax on Timor-Leste-source income attributed to a permanent establishment (PE) (*see the Branch income section for more information*). Non-residents without a PE may be subject to a 10% withholding tax (WHT) (*see the Withholding taxes section for more information*).

The income of companies is generally subject to corporate income tax (CIT) at a flat rate of 10%.

Industry-specific CIT rates

The rate of CIT for oil and gas contractors is 30%, while sub-contractors are subject to CIT at the flat rate of (generally) 6%.

Supplemental Petroleum Tax (SPT) also applies for oil and gas contractors and is imposed on 'accumulated net receipts' using a specific formula. SPT is deductible for CIT calculation purposes.

Separate tax arrangements apply for petroleum activities in the Joint Petroleum Development Area (JPDA) (*see the Other issues section*).

Local income taxes

There are no municipal or local taxes on income in Timor-Leste.

Corporate residence

The definition of a corporate resident (resident legal person) covers a wide range of entities, such as companies, partnerships, trusts, governmental institutions, and unincorporated associations incorporated, formed, organised, or established in Timor-Leste.

Permanent establishment (PE)

A PE is defined as a fixed place of business through which the business of a person is wholly or partly carried on, including:

- A place of management.
- A branch.
- A representative office.
- An office.
- A factory.
- A workshop.
- A mine, an oil or gas well, a quarry, or any other place of extraction of natural resources, including any place of drilling for mineral exploration.
- A fishery, place where animal husbandry is conducted, farm, plantation, or forest.
- A construction, installation, or assembly project.
- The furnishing of a service through employees or other personnel if conducted for more than 60 days in any 12-month period.
- A natural or legal person acting as a dependent agent.
- An agent or employee of a non-resident insurance company if the agent or employee collects premiums or insures risks in Timor-Leste.

Other taxes

Sales tax

Sales tax is imposed on the sales tax value of:

- taxable goods imported into Timor-Leste and
- taxable goods sold or taxable services provided in Timor-Leste on or after the date specified by Parliament.

Taxpayers liable for sales tax include the following:

- A taxpayer who imports taxable goods into Timor-Leste.
- A taxpayer who sells taxable goods in Timor-Leste.
- A taxpayer who provides taxable services in Timor-Leste.

The rates of sales tax are 2.5% for taxable goods imported into Timor-Leste and 0% for the sale of taxable goods and provision of taxable services in Timor-Leste.

Services tax

Services tax is imposed at 5% on any gross consideration of more than 500 United States dollars (USD) received by a taxpayer for the provision of hotel, restaurant and bar, or telecommunication services.

Import duties

Import duty applies to imported goods (except for specifically exempted goods) at 2.5% of the 'customs value' of the goods. Customs value is the fair market value, including cost, insurance, and freight (CIF), as stated in the General Agreement on Tariffs and Trade (GATT) rules.

The following goods are exempted from import duty:

- Goods accompany a person arriving in Timor-Leste from another territory (limitations apply).
- Imports of the type exempted under specific international conventions.
- Goods re-imported in the same condition as when they were exported.
- Goods, other than alcohol or tobacco, imported by registered charitable organisations, registered under any law of Timor-Leste, provided the goods are to be used for charitable purposes of humanitarian assistance and relief, education, or health care.
- Other goods for temporary admission if the importer has provided security for the import duty in the prescribed manner.
- Goods for consumption by international staff of the United Nations Integrated Mission in East Timor or members of peace keeping forces from contingent countries, provided the goods are sold in conformity with prescribed rules of sale.
- Certain infant and female hygiene products.
- Other goods imported into Timor-Leste as personal goods accompanying a traveller and where the import duty that would be imposed on the import would be USD 10 or less.

Excise tax

Excise tax is imposed on excisable goods where removed from a warehouse by a registered manufacturer for consumption in Timor-Leste or imported into Timor-Leste.

Below is the list of excisable goods and the respective rates of excise tax:

Goods	Excise tax rate
Beer	USD 1.90/litre
Wine, vermouth, fermented beverages (such as cider)	USD 2.50/litre
Ethyl alcohol (other than denatured) and other alcoholic beverages	USD 8.90/litre
Gasoline, diesel fuel products, and other petroleum products	USD 0.06/litre
Tobacco and tobacco products	USD 19.00/kg
Cigarette lighters	12% of the excise value
Smoking pipes	12% of the excise value
Arms and ammunition	200% of the excise value
Motor cars and small passenger vehicles (with an excise value exceeding USD 70,000)	35% of the excise value
Private boats and aircraft	20% of the excise value

Note that the excise value of excisable goods imported into Timor-Leste is the total of the customs value and any import duty imposed. The excise value of excisable goods manufactured in Timor-Leste is their fair market value at the time of removal from the manufacturer's warehouse.

Goods on the above list are excisable goods, other than:

- goods imported into Timor-Leste that are exempt from import duty, or
- goods exported from Timor-Leste within 28 days after their production or import, as long as the taxpayer liable to excise tax submits to the Banking and Payments Authority documentary proof of the export of goods.

Property taxes
There are no taxes on property in Timor-Leste.

Transfer taxes
There are no transfer taxes in Timor-Leste.

Stamp duties
There is no stamp duty in Timor-Leste.

Payroll taxes
An employer paying taxable wages shall withhold Wage Income Tax (WIT) at a rate of 10% from those wages and remit the WIT on a monthly basis.

An annual WIT return is due by the last day of the March following the end of the relevant tax year. Information on WIT withheld must also be provided to each employee on an annual basis or on termination of employment.

Social security contributions
A Social Security scheme was introduced in November 2016, with both employers and employees required to make contributions. The scheme provides cover for loss of income/benefits due to work-related accidents, maternity, old age, and death. It would appear that Social Security contributions should be deductible to employers. Implementing regulations for this scheme are still outstanding.

Branch income

The taxable income of a non-resident carrying out business activities through a PE is calculated by reference to:

- the income attributable to the PE
- any sales of goods or merchandise of the same or similar kind as those sold through the PE, and
- any other business activities carried on in Timor-Leste of the same or similar kind as those effected through the PE.

Other principles for determining the taxable income of a PE in Timor-Leste include the following:

- Profit is calculated as if the PE was a Timor-Leste entity engaged in the same or similar activities under the same or similar conditions and dealt with wholly independently from the non-resident person of which it is a PE.
- Subject to this, deductions may be claimed for expenses incurred for the purposes of the business activities of the PE, including head office expenditures, whether incurred in Timor-Leste or elsewhere.
- No deductions may be claimed for amounts paid or payable by the PE to its head office or to another PE of the non-resident person, other than towards the reimbursement of actual expenses incurred by the non-resident person to third parties, by way of:
  - royalties, fees, or other similar payments
  - compensation for any services (including management services) provided to the PE, and
  - interest on money lent to the PE (except for banking businesses).

Income determination

Taxable business profits are determined on the basis of net profit for financial accounting purposes in accordance with International Financial Reporting Standards (IFRS), subject to certain modifications in the Tax and Duties Act (TDA). In general, income is assessable when 'receivable', while expenses are deductible when 'payable'. A taxpayer with turnover of less than USD 100,000 may, however, elect to pay tax on a cash basis.

Gross income is defined widely to mean "any realised increase in economic capacity in whatever name or form which can be used for consumption or to increase the wealth of the taxpayer other than wages that are subject to Wages Income Tax (WIT)".

The gross income for a tax year is the total amount earned by the taxpayer, including, but not limited to, business income, property income, lottery prizes or awards, and refunds of tax payments previously deducted as an expense.

Inventory valuation

There are no specific provisions dealing with inventory valuation in Timor-Leste. This is because a deduction is allowed for the cost of inventory incurred during the tax year even if the inventory is on hand at the end of the year.

Capital gains

Gains and losses arising from the alienation of assets are generally assessable and deductible as ordinary income and subject to tax at the standard CIT rate.

Dividend income

Dividends are tax exempt in the hands of Timor-Leste residents.

Interest income

Interest income is generally assessable as ordinary income and subject to tax at the standard CIT rate.

Royalty income

Royalty income is subject to a 10% WHT.

If the royalty payment is to a resident non-individual, the WHT is creditable for income tax purposes.

If the royalty payment is to an individual, the 10% WHT constitutes a final income tax.

Exempted income

The following income is tax exempt:

- Any aid or donations, provided that the donor and recipient do not have any business or control relationship.
- Gifts received by a religious, educational, or charitable organisation, provided that the donor and recipient do not have any business or control relationship.
- Assets (including cash) received by a resident in exchange for shares or a capital contribution.
- Any amount paid by an insurance company to a resident in connection with accident or life.

Foreign income

Under the worldwide income principle, a resident taxpayer is required to calculate income that is not only Timor-Leste sourced but also foreign sourced. In the case that the foreign-sourced income is taxed at source, Timor-Leste allows a foreign tax credit for the particular tax year (*see Foreign tax credit in the Tax credits and incentives section*).

With regard to profits retained in controlled foreign companies (CFCs), Timor-Leste does not currently have any arrangements to otherwise deem the repatriation of the profit.

Deductions

The taxable income of residents and non-residents who have a PE in Timor-Leste shall be determined on the basis of gross income reduced by:

- expenditure and losses incurred from the alienation of assets or the discharge of debt in the conduct of a taxable business activity
- expenditure incurred in deriving any other amounts included in gross income
- any loss on disposal of an asset other than assets held on personal account
- contributions to an approved pension fund, and
- bad and doubtful debts (subject to various tests - *see Bad debts below*).

Depreciation and amortisation

'Depreciable assets' include any tangible movable property with a useful life exceeding one year that is wholly or partly used for taxable business activities. 'Intangible assets' include property, other than tangible movable property or immovable property, with a useful life exceeding one year that is used for taxable business activities.

There are provisions for election of either straight-line or double-declining methods, the pooling of assets, and *de minimis* exceptions. However, the rate of tax depreciation/amortisation (for non-petroleum operations) is set at 100%, meaning that taxpayers are, in effect, entitled to a full and up-front deduction. In circumstances where the asset is only partly used for the conduct of taxable business activities, the deduction is reduced by the proportion of its non-taxable business use.

Goodwill

There are no specific provisions dealing with the treatment of goodwill. We expect that the treatment should follow that under IFRS.

Start-up expenses

There are no specific provisions dealing with the treatment of start-up expenses. However, assuming that the start-up expense is incurred to derive income, we expect that start-up expense should be deductible.

Interest expenses

Interest expenditure is not deductible unless incurred by a financial institution.

Bad debts

Bad debts are not deductible without passing all of the following tests:

- The debt was previously included in taxable income.
- The debt was written off in the accounts during the relevant tax year.
- There are reasonable grounds for believing that the debt will not be recovered.

The above tests do not apply to banks, which are entitled to deduct provisions for doubtful debt where determined in accordance with the prudential requirements prescribed by instruction of the Banking and Payments Authority.

Charitable contributions

Donations are not deductible if the donations are exempt from income tax in the hands of the recipient.

Fines and penalties

Penalties for violation of law and regulation are not deductible.

Taxes

Timor-Leste or foreign income tax is not deductible.

Deductions not allowed or conditional deductions

The following expenses are also not deductible to a resident or non-resident with a PE in Timor-Leste:

- The distribution of profits in whatever name or form.
- Expenses incurred for the personal benefit of a taxpayer, a taxpayer's dependents, shareholders, partners, or members.
- Reserves, other than as provided for under the TDA.
- Excessive compensation paid by a legal person to a member of the legal person, or paid between associates.
- Salaries paid to a partner in a partnership.
- A bribe, or any similar payment.
- Expenditure or losses incurred to the extent recoverable under an insurance policy or a contract of indemnities.

Net operating losses

Losses from previous years may be carried forward indefinitely. However, the carried forward loss from the disposal of assets may only be utilised against gains arising from the disposal of assets. Foreign-sourced losses may only be offset against foreign-sourced income of that particular country.

The carryback of losses is not allowed.

Payments to foreign affiliates

Excessive payments or compensation to 'members of a legal person' or payments between associates for work performed should not be deductible. The TDA, however, does not elaborate on the meaning of 'excessive'.

Group taxation

Companies, etc. are taxable on a stand-alone basis (i.e. there is no grouping or ability to transfer tax losses).

Transfer pricing

Excessive payments or compensation to 'members of a legal person' or payments between associates for work performed should not be deductible. The TDA, however, does not provide specific guidance on how to determine arm's-length pricing on related-party transactions or any other general transfer pricing principles.

Thin capitalisation

Currently, there are no 'thin capitalisation' or similar rules in Timor-Leste (noting that interest is not deductible, except for financial institutions).

Controlled foreign companies (CFCs)

Timor-Leste does not have any CFC regulations.

Tax credits and incentives

Foreign tax credits

A resident taxpayer is entitled to a credit for any foreign income tax paid in respect of foreign-source income. The foreign tax credit is calculated separately for each foreign country from which income is derived by a taxpayer. The value of such tax credits is limited to the value of the Timor-Leste income tax payable on that income. There is no deduction or carryforward of any excess foreign tax credit.

Withholding taxes

WHT is imposed on the following payments by residents to a resident:

Type of payment	WHT rate (%)	Final/non-final tax
Dividends	0	Final
Interest	0	Not final
Royalties	10	Not final, except where paid to an individual
Rent (land and building)	10	Not final, except where paid to an individual
Prize and winnings	10	Final
Construction/building activities	2	Final *

Type of payment	WHT rate (%)	Final/non-final tax
Construction consulting services	4	Final *
Air and sea transportation	2.64	Final *
Mining and mining support services	4.5	Final *

* The default position is that such amounts will be a final tax. The income recipient can elect to have these payments for services not subjected to final tax by submitting a notification letter to the Timor-Leste Revenue Service.

Payments of Timor-Leste-source income made by a resident to a non-resident are subject to WHT at 10%. Timor-Leste has entered into a double taxation treaty (DTT) with Portugal (although elements of DTT relief are also embedded in the Timor Sea Treaty [TST], *see Taxation of petroleum operations in the Other issues section*).

Where WHT is applied as a final tax, the taxed income is not included in the recipients' taxable income for income tax purposes. Accordingly, expenses incurred in deriving income that is subject to final tax are not deductible for income tax purposes.

Tax administration

Taxable period

The standard tax year is the calendar year, although different accounting year-ends can be granted upon application.

Tax returns

CIT returns are to be filed annually by the 15th day of the third month following the year end.

Service tax, excise tax, sales tax, and WHT are to be filed monthly by the 15th day of the following month.

Payment of tax

CIT due shall be settled to the Banking and Payments Authority or another entity nominated by the Timor-Leste Revenue Service by the date of filing (*see above*).

Service tax, excise tax, sales tax, and WHT should be settled to the Banking and Payments Authority or another entity nominated by the Timor-Leste Revenue Service by the 15th day after the end of the following month.

Penalties

If a taxpayer fails to deliver the tax form on time, it shall be liable to an additional tax of USD 100. If a taxpayer fails to deliver all or part of any tax due by the due date, that taxpayer shall be liable to an additional tax of 5% of the amount due plus an additional 1% of the tax due on the 15th day of each month following the due date and:

- if the failure was due to gross carelessness on the part of the person, further additional tax of 25% of the tax that remains unpaid, or
- if the failure was due to a deliberate attempt to avoid payment of tax, further additional tax of 100% of the tax that remains unpaid.

If a taxpayer has understated the tax due in the tax form, that taxpayer shall be liable to an additional tax of 15% and:

- if the understatement was due to gross carelessness on the part of the taxpayer, further additional tax of 25% of the tax understated, or
- if the understatement was due to a deliberate attempt to avoid payment of tax, further additional tax of 100% of the tax understated.

Tax audit process

Assessments may occur upon the following:

- The delivery of a tax return form and payment.
- After receipt of a return where the Commissioner believes a return is incorrect.
- Where a taxpayer fails to file a return.

Assessments may be amended according to the following events:

- By the taxpayer upon delivery to the Commissioner of an amended assessment.
- Via a taxpayer request to the Commissioner.
- Via specific amendment by the Commissioner.

Statute of limitations

The Timor-Leste Revenue Service may issue an assessment notice or amend an assessment notice only within five years from the date of filing of the return. In the event of a deliberate tax evasion or fraud, there is no time limit for the issuance of an assessment notice.

Topics of focus for tax authorities

Based on our experience, the Timor-Leste tax authorities are focussing on the timely remittance of the tax obligations. From an industry perspective, the oil and gas sector continues to be a focus. Finally, there have been numerous challenges of tax concessions granted on a contractual basis, including by government agencies.

Other issues

Taxation of petroleum operations

The taxation of petroleum operations in Timor-Leste is partly covered by the TDA. However, the TDA operates only to modify the taxation of petroleum activities pursuant to a number of legacy tax regimes. These modifications apply to contractors, sub-contractors, and any other parties receiving income from the supply of goods or services to a contractor or sub-contractor.

A contractor is defined as a person with whom the responsible Ministry or Designated Authority, as the case may be, has made a petroleum agreement. A sub-contractor includes any person supplying goods or services directly or indirectly to a contractor in respect of petroleum operations.

Specific provisions for the taxation of petroleum operations include:

- A CIT rate for contractors of 30% on taxable income, while sub-contractors will generally be taxed on a final WHT basis at a rate of 6% (*although see JPDA below*).

- No tax on branch profit remittances (*although see JPDA below*).
- Where 'net receipts' exceed specified levels, an SPT can apply.
- The 'ring fencing' of income and expenditure within the contract area.
- Modified deductibility rules, including around the deductibility of interest for contractors and a modified depreciation regime.
- A specific WHT regime.
- A specific transfer pricing and associated anti-avoidance provision.

Special tax regime for Production Sharing Contracts (PSCs) within the Boundary Treaty

On 6 March 2018, Timor-Leste and Australia signed the Boundary Treaty (though not yet ratified) effectively replacing the agreements that resulted in the Joint Petroleum Development Area (JPDA). This has resulted in Timor-Leste holding full taxing rights to revenues arising from the (former) JPDA, which was of 90:10 (in favour of Timor-Leste), and a number of other fields not within the JPDA. The fiscal arrangements for the undeveloped Greater Sunrise field are to be split 70:30 or 80:20 (in favour of Timor-Leste) according to where the gas processing occurs.

The income tax rates should now be 30% for all upstream participants. A 20% WHT should apply to most payments for services or passive income paid to non-residents (according to the PSC).

The tax regime *as outlined under 'Taxation of petroleum operations' above* also applies in the JPDA (except for former 'Annex F' PSCs). This is, however, with a number of important modifications, including the exclusion of the service tax, excise tax, sales tax, import duty, and WIT.

Trinidad and Tobago

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Significant developments

Finance Act No. 15 of 2017 was assented to on 19 December 2017, and the following amendments were made:

- The Corporation Tax Act has been amended to increase the rate of corporation tax to a flat rate 30% for all companies (except banks). For commercial banks, the corporation tax rate increased to 35%.
- Removal of the following taxes on new and used (not older than four years) motor vehicles:
  - Motor vehicle tax and value-added tax (VAT) on motor vehicles manufactured to use compressed natural gas (CNG) and imported for private use or commercial use. The exemptions apply to motor vehicles with an engine size not exceeding 1599 cubic centimetres (cc). Commercial use vehicles with an engine size exceeding 1599cc will be allowed the exemptions up to 31 December 2020.
  - Motor vehicle tax, VAT, and customs duty on electric motor vehicles that are imported for private use or commercial use. The exemptions apply to motor vehicles with an engine size not exceeding 179 kilowatts (kw). Commercial use vehicles with an engine size exceeding 159kw but not exceeding 179kw will be allowed the exemptions up to 31 December 2020.
  - Motor vehicle tax, VAT, and customs duty on hybrid motor vehicles that are imported for private use or commercial use. The exemptions apply to motor vehicles with an engine size not exceeding 1599cc. Commercial use vehicles with an engine size exceeding 1599cc but not exceeding 1999cc will be allowed the exemptions up to 31 December 2020.
- The Income Tax Act has been amended to remove the restriction on the land acreage (over 100 acres) that may be approved as an agricultural holding and qualify for tax incentives.
- The Miscellaneous Taxes Act has been amended to introduce the following taxes:
  - Lottery winning tax of 10% on all prize money paid in excess of 1,000 Trinidad and Tobago dollars (TTD).
  - Environmental tyre tax of TTD 20 on every tyre imported into Trinidad and Tobago.

Taxes on corporate income

A Trinidad and Tobago resident corporation is taxed on worldwide income. A non-resident company engaged in business in Trinidad and Tobago is taxed only on income directly or indirectly accruing in or derived from Trinidad and Tobago.

The standard corporation tax rate is 30%, but this varies in the case of certain classes of companies. The current corporation tax rates are as follows:

Trinidad and Tobago

Type of company	Corporation tax rate (%)
Ordinary companies (excluding banks)	30
Petrochemical companies and commercial banks	35
Life insurance companies	15
Petroleum production companies (petroleum profits tax)	50
Petroleum production companies (deep sea)	35

Business levy

Corporations are subject to a business levy at the rate of 0.6% of gross revenue or receipts where the levy exceeds the corporation tax liability. Exemption is available for certain companies, including petroleum companies and companies whose annual turnover is less than TTD 360,000. The levy is a non-deductible expense for corporation tax purposes.

Green fund levy

A green fund levy of 0.3% on gross income is applicable to companies and partnerships doing business in Trinidad and Tobago. This levy is payable quarterly and is neither a deduction in computing chargeable income nor a credit against corporation tax due.

Unemployment levy

Only petroleum companies remain liable to the unemployment levy, at the rate of 5% of taxable profits. No set-off for prior-year losses is permitted in computing the liability.

Supplementary petroleum tax (SPT)

SPT is chargeable on the gross income (derived from the sale of crude oil) less royalties and overriding royalties paid on the crude oil sold. The tax is computed separately in respect of land and marine operations and is a quarterly tax based on the actual gross income for each quarter.

The SPT is deductible in arriving at profits subject to petroleum profits tax.

Corporate residence

Corporate residence is determined by reference to the location of the central management and control of the business of a company.

Permanent establishment (PE)

A non-resident company is subject to corporation tax on its income derived from trading within Trinidad and Tobago. A company is deemed to be engaged in or carrying on trade or business in Trinidad and Tobago if it has an office or place of business or has a branch or agency within Trinidad and Tobago. The local legislation does not make any reference to the term 'permanent establishment'; however, this term is used generally in the treaty context. Subject to the terms of specific double taxation treaties (DTTs), a non-resident company will have a PE in Trinidad and Tobago where:

- it has a fixed place of business in Trinidad and Tobago through which the business of the company is wholly or partly carried on, or
- it has an agent acting on behalf of the company and that agent has the authority to bind the company.

The term 'fixed place of business' has been generally defined to include a place of management, a branch, office, factory, a workshop, an installation or structure for the exploration of natural resources, or a building, construction, or installation project.

Most treaties outline circumstances under which a company will not be deemed to have a PE, and these include where the activities of the company are merely of a preparatory or auxiliary nature.

Other taxes

Value-added tax (VAT)

VAT is applicable to a wide range of goods and services. The standard rate applicable to commercial supplies is 12.5%.

Basic food items and agricultural supplies are zero-rated, as are crude oil, natural gas, and exported goods and services. Hotel accommodation and yachting services to non-residents are zero-rated.

A number of services, including financial services, real estate brokerage, residential rentals, and educational services, are exempt. However, certain financial services are subject to a transaction tax at a rate of 15%. Imported inputs of highly capital-intensive manufacturers are exempt from VAT.

The VAT registration threshold for companies making commercial supplies is TTD 500,000 for a 12-month period.

Customs duties

Customs duties are imposed at varying rates on imports and manufactured goods according to classification in Schedules to the Customs Act. The basis is the cost, insurance, and freight (CIF) value of the goods at the time of import. However, there is a provision for exemptions in relation to specific goods.

Excise taxes

Excise taxes are imposed at varying rates on certain manufactured goods, including tobacco, alcohol, and petroleum products.

Property taxes

The moratorium on the payment of the property tax ended on 31 December 2015, and the tax became fully operational on 1 January 2016. However, incomplete land and property valuation assessment rolls and legal challenges have led to non-collection of the tax since its reinstatement.

All 'land' in Trinidad and Tobago is subject to property tax. Land under the Property Taxes Act (PTA) is broadly defined to include land covered with water and all buildings, structures, machinery, plant, pipelines, cables, and fixtures erected or placed upon, in, over, under, or affixed to land. The PTA stipulates the process for arriving at the quantum of tax payable as follows:

- The Commissioner of Valuations is to assess the annual rental value (ARV) of the property.

For the purposes of computing the ARV where a rental value is not readily available, the capital cost of the property is used and converted by applying the following factors:

- Residential: 3.5%.
- Commercial: 5%.
- Industrial: 5%.
- Plant and machinery not housed in a building: 3%.

- The Board of Inland Revenue (BIR) will determine the annual taxable value (ATV) using the ARV less such deductions as it sees fit for voids or loss of rent of 10% of the ARV.
- The applicable tax rate is then applied to the ATV, as follows:
  - Agricultural property: 1%.
  - Residential property: 3%.
  - Commercial property: 5%.
  - Industrial plant and machinery housed in a building: 6%.
  - Plant and machinery not housed in a building: 3%.

Stamp duty

Stamp duty is levied on instruments of all types (e.g. deeds of conveyance, mortgages, debentures, trust deeds, leases, insurance policies, annuity policies, agreements, share transfers). The rate of stamp duty varies from TTD 25 on a trust deed to up to 10% of market value on property conveyances.

Payroll taxes

Under the pay-as-you-earn (PAYE) system, an employer is required to deduct income tax from emoluments paid to employees. 'Emoluments' is widely defined to include all salary, wages, overtime, bonus, remuneration, perquisites, lodging, stipend, commission or other amounts for services, directors' fees, retiring allowance, and pensions.

Social security contributions

There is a social security tax, referred to as National Insurance, that is deducted at source at varying rates. The maximum rate is TTD 414.30 per week for monthly income over TTD 13,600, which is payable TTD 276.20 by the employer and TTD 138.10 by the employee.

There is also a health surcharge that is deducted at source. The maximum liability is TTD 8.25 for every week worked.

Hotel accommodation tax

Hotels are subject to a hotel accommodation tax at a rate of 10% of the value of the accommodation.

Insurance premium tax

A tax at the rate of 6% has been imposed on insurance premiums in respect of general insurance contracts. Life insurance and reinsurance premiums are exempt.

Branch income

A branch is subject to Trinidad and Tobago taxation on all income directly or indirectly accruing in or derived from Trinidad and Tobago. The tax rates applicable on branch profits are the same as on corporate profits. In addition, branch profits, after deduction of corporation tax and reinvestments, are subject to withholding tax (WHT) at the rate of 5%. This may be varied by the provisions of any applicable DTTs.

Income determination

Inventory valuation

Inventories are generally stated at the lower of cost or market value. Cost may be determined by the first in first out (FIFO) or the average cost method. The last in first out (LIFO) and base stock methods are not generally accepted for tax purposes.

Capital gains

Gains on the disposal of chargeable assets within 12 months of acquisition are subject to tax at standard corporation tax rates. Capital gains are not otherwise taxable, except for the application of the balancing allowance on depreciable assets. *See Depreciation in the Deductions section for capital gains information on the sale of tax-depreciable assets*.

Dividend income

Dividends received by a Trinidad and Tobago company from both domestic subsidiaries and other domestic corporations are exempt from corporation tax and business levy but are subject to green fund levy.

Stock dividends

A Trinidad and Tobago corporation can distribute a dividend of common stock (bonus issue) proportionately to all resident common stockholders on a tax-free basis.

Interest income

Interest income received by a Trinidad and Tobago company is generally taxable.

Royalty income

Royalty income received by a Trinidad and Tobago company is generally taxable.

Foreign income

A company resident in Trinidad and Tobago is subject to tax on its worldwide income. There is no deferral regime in Trinidad and Tobago.

Deductions

Depreciation

Tax depreciation rates (wear-and-tear allowances) have been standardised by statute. Fixed assets are to be classified into one of four classes:

Asset class	Depreciation rate (%)
Class A: Buildings and improvements	10
Class B: Motor vehicles, furniture and fittings, plant and machinery	25

Asset class	Depreciation rate (%)
Class C: Heavy equipment, motor lorries, trucks, and computer equipment	33.3
Class D: Extra heavy equipment, airplanes	40

The allowance is calculated at the rate applying to aggregate expenditure incurred on assets within the class on a declining-balance basis.

Accelerated tax depreciation is allowed to manufacturers in the form of an initial allowance at the rate of 90% on capital expenditure on plant and machinery. The allowance is to be claimed in the year that the asset is first brought into use. For those companies engaged in the production of sugar, petroleum, or petrochemicals, or enjoying concessions under the Fiscal Incentives Act, the rate is 20%.

Gains on the sale of tax-depreciable assets are taxable as ordinary income (i.e. a balancing charge) but only when the written-down value of the assets of a class goes into credit. Prior to this, the proceeds of sale are credited to the particular class, thereby reducing the written down value of the class. Tax depreciation is not required to conform to book depreciation.

Petroleum operations

A company engaged in the petroleum production business is entitled to capital allowances on tangible costs and intangible drilling and development costs as follows:

- Tangible and intangible capital exploration expenditure incurred during 1 January 2014 to 31 December 2017 may be deducted in full (100%) in the year incurred.
- Tangible and intangible exploration and development expenditure is granted an initial allowance at 50%, a year-two allowance at 30%, and a year-three allowance at 20% computed on the expenditure incurred.
- A company engaged in exploration activities in a deepwater block is granted an uplift of 140% of capital expenditure incurred on drilling of exploration wells, on which capital allowances can be computed.

There is no timing in respect of claiming of allowances (e.g. on achievement of commercial production). A claim for capital allowances cannot be deferred.

Goodwill

Goodwill expense is generally not allowable in arriving at chargeable income.

Start-up expenses

No specific rules exist in respect of start-up expenses, but, generally, these expenses are not deductible.

Interest expenses

Interest expenses incurred by a company in the production of its income are generally allowed as deductions. However, in the case of interest payable or paid by the company, there are certain restrictions that exist in the taxing Acts, as well as in practice by the tax authority, that could restrict a company's ability to deduct interest paid or payable in its computation of tax for a particular year of income. The criteria laid down by the legislation for the deductibility of interest are:

- The sums borrowed are wholly and exclusively incurred in the production of income.
- The interest is revenue in nature.
- The interest income earned is either chargeable to tax or exempt under the Trinidad and Tobago legislation.
- Where the interest payment is being made to a non-resident, the payer has accounted for and paid over WHT to the BIR.

Bad debt

A specific provision for bad debt will be deductible for tax purposes where:

- it is in respect of a revenue expenditure
- it is made in accordance with acceptable accounting principles
- it is specific, and
- it becomes bad in the year in which the claim is made.

Charitable contributions

Charitable contributions under deeds of covenant to approved charities are deductible, up to a maximum of 15% of total income.

Fines and penalties

Fines and penalties are not generally deductible.

Taxes

Other than SPT, taxes or levies are not generally deductible in arriving at taxable profit.

Other significant items

Contributions by local insurance companies to ‘catastrophe reserve funds’ are deductible for tax purposes, up to the value of 20% of net premium income from property insurance business.

Net operating losses

A trading loss may be carried forward indefinitely to be set-off against future profits. Loss carrybacks are not permitted.

A limited form of group loss relief exists, whereby current year losses may be surrendered to a claimant company within a group, except that the claimant’s tax liability cannot be reduced by more than 25%. Such companies must be resident in Trinidad and Tobago.

Payments to foreign affiliates

A corporation engaged in business in Trinidad and Tobago may claim a deduction for royalties, interest, and service charges paid to foreign affiliates, provided the appropriate WHT is deducted and properly accounted for. For interest to be deductible for tax purposes, the funds borrowed must have been utilised in the production of income and the recipient must be subject to tax in Trinidad and Tobago or otherwise specifically exempt from local tax.

Deduction for management charges (as this term is defined) paid to a non-resident is restricted to the lower of the management charges or 2% of deductible outgoings and expenses, exclusive of the charges. Tax depreciation allowances may not be treated as an expense for this purpose. WHT may also be applicable to management charges paid to non-resident persons.

Group taxation

There is no provision for group taxation in Trinidad and Tobago; however, a limited form of group loss relief is available (*see Net operating losses in the Deductions section*).

Transfer pricing

There are no specific transfer pricing rules in Trinidad and Tobago. However, the legislation empowers the tax authority to disregard any transactions that it views as artificial or fictitious. This general power has been utilised by the tax authority in dealing with related parties and large multinational companies to evaluate whether transactions are at arm's length.

Thin capitalisation

There are no thin capitalisation rules in Trinidad and Tobago.

Controlled foreign companies (CFCs)

There are no CFC rules in Trinidad and Tobago.

Tax credits and incentives

Foreign tax credit

Double taxation is avoided or mitigated by means of foreign tax credits.

Tax holidays

Fiscal Incentives Act, 1979

An approved enterprise, which must be a locally incorporated resident corporation, may be granted an exemption from corporation tax for a period of up to ten years, depending on the category under which it is approved. Exemption may be total or partial. Subject to approval, profits may be distributed tax free to shareholders, except in the case of certain non-resident shareholders, where the relief is restricted to the amount of tax that exceeds their liability in their country of residence. Net losses during the tax holiday period (i.e. the excess of total losses over total profits) may be carried forward for set-off without limitation for five years from the end of the tax holiday period, after which the normal set-off provisions for losses apply. As of 1 January 2007, the tax holiday in respect of corporation tax is no longer granted.

Approved tourism projects

Under the Tourism Development Act 2000, approved tourism development projects, including hotels, are granted a tax holiday for periods of up to seven years. In addition, a carryover from a tax exemption period is permitted of any loss arising out of the operation or renting of an approved tourism project to be written off against profits in accordance with normal income tax loss provisions, subsequent to the tax holiday period. An approved tourism project means a project declared to be so by the government.

Approved mortgage and other companies

The profits of an approved company are exempt from corporation tax. The exempt profits, when distributed to shareholders, are exempt from corporation tax and income tax. Expenses incurred in the course of the approved mortgage business remain fully deductible.

Free Zone

The profits of an approved company operating in a designated Free Zone are free from corporation tax. In addition, payments to non-residents are free of WHT. Approved activities include manufacturing.

Other allowances/incentives

Promotional expenses

Promotional expenses incurred by local firms to promote the expansion of existing markets and/or the creation of new ones for the export of specified services or locally produced goods are tax deductible as an expense at 150% of the actual outlay. Tax-deductible promotional expenses are defined as those expenses incurred in respect of specified services or goods produced in Trinidad and Tobago. This includes such items as advertising in foreign markets and participation in trade fairs and missions.

Scholarship allowance

Companies can deduct the actual expenses incurred in granting scholarships to nationals who are not employees, directors, or associates of directors of the company for tertiary education.

Production company allowance

An allowance equal to 150% of actual expenses incurred in respect of the company's own audio, visual, or video productions for educational or local entertainment, or local culture, is available.

Allowances are granted in respect of each of the following activities, based on the actual expenditure incurred but not exceeding TTD 2 million in aggregate:

- Art and culture allowance.
- Sportsman/sporting activity allowance.
- Audio, visual, or video production allowance.
- Promoting the fashion industry.

Child care/Home work facility

A deduction is allowed for the actual cost incurred in setting up a facility for dependents of employees who are minors, up to a maximum of TTD 500,000 for each facility, subject to an aggregate sum of TTD 3 million in any year.

Wear and tear allowances

A 130% wear and tear allowance is available for expenditure incurred in compressed natural gas (CNG)-related initiatives.

A 150% wear and tear allowance is available on the expense incurred in relation to solar heaters, wind turbines, and photovoltaic systems.

Training allowance

A company is allowed to claim as a deduction 150% of expenses incurred in the training and retraining of the employees of the company.

Allowance for engagement of energy service companies

Where a company incurs expenditure in engaging another company certified as an energy service company for the purpose of carrying out an energy audit for the design of energy saving systems and the installation of the energy saving systems, the company shall be entitled to an allowance equal to 150% of the expenditure actually incurred.

Where the certified energy service company has acquired plant and machinery for the purpose of conducting energy audits, they shall be allowed an allowance of 75% of the cost incurred in the year of acquisition.

Withholding taxes

WHT is imposed at varying rates up to 15%, depending on the nature of the payment, the status of the payee, and the applicability of DTTs. The tax treaty rate in some instances is now higher than the statutory rate. In such cases, the lower statutory rate applies. The rates below have been adjusted to reflect these reductions:

		Dividends (%)		
Recipient		**Portfolio**	**Substantial holdings**	**Interest (%)**
Resident corporations and individuals		0	0	0
Non-resident corporations and individuals:				
Non-treaty	(1)	10	10	15
	(2)	5/10	5/10	15
Treaty:				
Brazil	(1)	10	10	15
	(2)	5/10	5/10	15
Canada (3)	(1)	10	10	10
	(2)	10	5	15
Caribbean Community (CARICOM) countries	(1)	0	0	15
	(2)	0	0	15
China	(1)	10	10	10
	(2)	10	5	10
Denmark	(1)	10	10	15
	(2)	10	5	15
France	(1)	10	10	10
	(2)	10	5	0/10 (4)
Germany	(1)	10	10	0/10/15 (5)
	(2)	10	5	0/10/15 (5)
India	(1)	10	10	10
	(2)	10	5	10
Italy	(1)	10	10	10
	(2)	10	5	10

Recipient		Dividends (%) Portfolio	Substantial holdings	Interest (%)
Luxembourg	(1)	10	10	10
	(2)	10	5	7.5/10
Norway	(1)	10	10	15
	(2)	10	5	15
Spain	(1)	10	10	8
	(2)	10	0/5/10	8
Sweden	(1)	10	10	15
	(2)	10	5	0/10/15 (6)
Switzerland	(1)	10	10	10
	(2)	10	10	10
United Kingdom	(1)	10	10	10
	(2)	10	5	10
United States	(1)	10	10	15
	(2)	10	5	0/15/20 (7)
Venezuela	(1)	10	10	15
	(2)	10	5	15

Recipient	Royalties (%) (8)	(9)	(10)
Resident corporations, individuals	0	0	0
Non-resident corporations, individuals:			
Non-treaty	15	15	15
Treaty:			
Brazil	15	15	15
Canada	10	0	15
CARICOM countries	15	15	15
China	10	10	15
Denmark	15	0	15
France	10	0	15
Germany	10	0	15
India	10	10	15
Italy	5	0	15
Luxembourg	10	10	15
Norway	15	0	15
Spain	5	5	15
Sweden	15	0	15
Switzerland	10	0	15
United Kingdom	10	0	15
United States	15	0	15
Venezuela	10	10	15

Notes

1. Individuals.
2. Corporations. The lesser rate applies to parent companies.
3. The lesser rate applies to companies, other than investment companies, that control at least 10% of the voting power.
4. The rate is 10% of the gross amount if interest is paid to a resident of France; it is 0% if the interest is paid to the French government or to any agency or instrumentality of the French government.

5. The rate is 10% of the gross amount if the interest is paid to a bank that is a resident of Germany, 0% where interest is paid to certain stated governmental institutions, and 15% of the gross amount in all other cases.
6. The rate is 10% of the gross amount if the interest is paid to a bank that is a resident of Sweden, 0% where interest is paid to certain specified governmental institutions, and 15% of the gross amount in all other cases.
7. The rate is 15% of the gross amount if the interest is paid to a bank or financial institution in the United States (US) that does not have a PE in Trinidad and Tobago, 0% where the interest is paid to the US government or to any agency or instrumentality wholly owned by the US government, and 20% of the gross amount in all other cases.
8. The rate applies to patent royalties.
9. The rate applies to copyright royalties and similar payments.
10. The rate applies to royalties paid in respect of the operations of mines or quarries or of the extraction or removal of natural resources.

Tax administration

Taxable period

The tax year is the calendar year. Companies are assessed by reference to their accounting period, which for tax purposes cannot exceed 12 months other than in the year of cessation of the business.

Tax returns

The taxpayer is required to file a tax return with the BIR by 30 April following the end of the fiscal period. An automatic six-month grace period is allowed, following which a penalty is imposed of TTD 1,000 for every six months or part thereof that the return remains unfiled.

Payment of tax

Corporation tax, business levy, and green fund levy are payable quarterly in advance on 31 March, 30 June, 30 September, and 31 December. Any balance of tax due is payable on or before 30 April of the following year. Instalments of corporation tax are based on an estimate of the current year's liability or on the actual chargeable profits for the previous year, whichever is greater. If the current year's estimate is lower, the company may apply to the BIR to reduce its quarterly instalment. The levy liabilities are based on the actual receipts for the quarter.

Tax audit process

Tax audits are conducted by the BIR. There is no specific timeframe to conduct an audit, but, generally, companies are selected for varying reasons, including where large refunds are claimed. The BIR usually notifies the company of the intended audit and requests that the books and records be made available for inspection. An assessment is generally raised after the audit.

Statute of limitations

A company carrying on business in Trinidad and Tobago is required to keep proper accounts and records and is required to retain these accounts for a period of at least six years after the completion of the transactions, acts, or operations to which they relate or three years after the filing of its return (whichever is later).

Topics of focus for tax authorities

The following issues are currently the focus of the tax authorities:

- Transfer pricing.

- CARICOM tax planning structures.
- Management and other fees paid to non-resident persons.

Other issues

US Foreign Account Tax Compliance Act (FATCA)

The Tax Information Exchange Agreements (United States of America) Act makes the provision for the implementation of agreements between Trinidad and Tobago and the United States of America by providing for the exchange of information for the purposes of taxation, the validation of the sharing of personal information held by the BIR or financial institutions, and for related purposes.

Tunisia

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Significant developments

Major changes implemented by the Finance Law 2018:

- Exemption from corporate tax for newly created companies: Newly created companies incorporated in 2018 and 2019 benefit from a total exemption from corporate tax during four years starting from the activity start date (that should not exceed two years). This measure does not involve companies operating in the financial sector, energy sector (except renewable energy), real estate development, on-site consumption, trade, and telecommunication operators sectors.
- Lower corporate tax rate for small and medium-sized entities (SMEs): Reduction of SMEs corporate tax rate from 25% to 20%. SMEs are defined as trade and processing companies with total revenues (excluding taxes) not exceeding 1 million Tunisian dinars (TND), and companies operating in services and non-commercial activities with total revenues (excluding taxes) not exceeding TND 500,000.
- Increase to the 35% corporate tax rate for profits realised from 1 January 2019 to:
  - Hypermarkets (constructed area exceeding 3,000 m² or sales area exceeding 1,500 m²).
  - Car dealers.
  - Franchisees of a foreign brand or trademark, except for enterprises with a rate of integration equal to or greater than 30%.
- Institution of a social solidarity contribution (CSS) due by individuals subject to personal income tax (PIT), companies subject to corporate tax, and companies exempted from corporate tax and that benefit from the deduction of their profits. The CSS is due at the rate of 1% of revenues/profits realised as of 1 January 2018.
- Institution of an exceptional contribution for banks (including Islamic banks), financial institutions (leasing companies, factoring companies, investment banks), and insurance and reinsurance companies: The contribution is due at the rate of 5% for profits realised in 2017 (to be declared in 2018) and 4% for profits realised in 2018 (to be declared in 2019) with a minimum of TND 5,000. Such contribution is calculated based on the taxable income (same as corporate tax taxable base).
- Value-added tax (VAT) rates increase: VAT rates are increased by 1 point starting from 1 January 2018. Thus, the VAT applicable rates of 18%, 12%, and 6% increased, respectively, to 19%, 13%, and 7%.
- Increase in the withholding tax (WHT) due on distributed profits as well as branch tax from 5% to 10% starting from 1 January 2018.
- Increase in the WHT due on interests paid to banks non-established in Tunisia from 5% to 10% starting from 1 January 2018.

Taxes on corporate income

Tunisian-resident companies are subject to corporate tax in Tunisia on the basis of profits generated from permanent establishments (PEs) located in Tunisia and those attributable to Tunisia by virtue of a double tax treaty (DTT). Non-Tunisian-resident companies are subject to corporate tax on the basis of their Tunisian-sourced income.

PEs of non-Tunisian-resident companies are subject to corporate tax in the same way and under the same conditions as Tunisian-resident companies. However, certain particularities, related mainly to deductions, exist (*see the Branch income section*).

Corporate tax is also due by non-resident, non-PE companies on Tunisian-sourced income through WHTs.

Corporate tax is broadly levied on the total net income resulting from the statutory financial statements of the company, duly adjusted according to the specific tax rules.

Positive/negative items of income are taxed/deducted based on the accrual basis. Income items accruing in a tax period where the above principle is not met are not allowed for tax deduction nor taxed in that tax period. Tax deduction/taxation is correspondingly deferred to the future tax periods where the principle will be met.

Income items have to be certain in their occurrence and objectively determined or determinable in their amount.

Corporate tax rates

The general corporate tax rate is 25%. However, specific rates are foreseen for specific sectors of activity. Indeed, corporate tax is due at the rate of:

- 10% for:
  - companies carrying out craft activities, agricultural and fishing activities, and fitting out fishing boats
  - trading groups of retail businesses organised as service cooperatives, governed by the general cooperation legislation
  - service cooperatives formed between producers for the wholesale of their production
  - consumer cooperatives governed by the general cooperation legislation
  - profits made in the context of industrial or commercial projects benefiting from the youth employment programme or the national fund of the promotion of crafts and small businesses
  - benefits derived from exports (except wholly exporting companies where the ten-year tax holiday period has not expired)
  - support and pollution control activities, and
  - companies operating in the regional development zones after the expiry of the total deduction period.
- 20% for:
  - Small and medium-sized entities (SMEs): SMEs are defined as trade and processing companies with total revenues (excluding taxes) not exceeding TND 1 million, and companies operating in services and non-commercial activities with total revenues (excluding taxes) not exceeding TND 500,000.
- 35% for:
  - banks (including Islamic banks) and financial institutions (leasing companies, factoring companies, investment banks)

- offshore financial institutions governed by the code related to financial services destined to non-residents, and this only for the benefits derived from services provided to non-resident persons
- investment companies (SICAF and SICAR)
- insurance, mutual insurance, and reinsurance companies
- debt collection companies
- telecommunication operators
- companies rendering services to companies operating in the oil and gas field
- companies operating in the production and the transport of hydrocarbons and governed by particular conventions, as well as companies operating in the transfer of hydrocarbons via pipeline
- companies operating in the oil refining sector and the wholesale of hydrocarbon products
- hypermarkets (constructed area exceeding 3,000 m^2 or sales area exceeding 1,500 m^2)
- car dealers, and
- franchisees of a foreign brand or trademark, except for enterprises with a rate of integration equal to or greater than 30%.

Minimum corporate tax

A minimum corporate tax is due at the rate of 0.2% of the local turnover, including VAT, in case:

- the company realises losses or
- the corporate tax due at the rate of 25%, 20%, or 35% is less than the minimum corporate tax of 0.2% of the local turnover, including VAT.

However, the minimum corporate tax is reduced to 0.1% of the turnover for companies subject to corporate tax at the rate of 10% (e.g. exporting companies after expiry of the ten-year tax holiday period) and companies selling products subject to the government homologation of prices with a gross margin not exceeding 6%.

The minimum corporate tax is not due by companies benefiting from the whole exemption of profits deriving from operations (e.g. companies established in the regional development zones, companies operating in the agricultural sector) during the period of tax holidays. These latter are fixed by decree.

Local income taxes

For a description of local taxes, see Vocational training tax, Local authority tax (LAT), and Hotels tax in the Other taxes section.

Corporate residence

A company is tax resident in Tunisia if it is registered or has its effective place of management therein.

Permanent establishment (PE)

No definition of PE is given by the Tunisian domestic law. In practice, the Tunisian tax authorities refer to the definitions given by DTTs.

Other taxes

Value-added tax (VAT)

VAT scope and rates

VAT is levied under the Tunisian VAT Code and is due on all transactions taking place in Tunisia.

The sale of goods is considered as taking place in Tunisia, and subject to VAT, if the goods sold are delivered in Tunisia. The sale of services is considered as taking place in Tunisia, and subject to VAT, if the services sold are exploited or used in Tunisia.

The standard rate of VAT is 19%. Lower rates of 13% and 7% apply to specifically designated operations. Note that these rates are effective as of 1 January 2018 (previously 18%, 12%, and 6%, respectively), except for amounts paid till 31 December 2018 and related to contracts concluded before 1 January 2018 with the state, local authorities, and state-owned companies. For these amounts, the VAT rates applicable in 2017 still apply.

Some operations, products, or services are out of the scope of VAT in Tunisia, and some others are expressly exempt from VAT.

Some goods and services may be acquired VAT free, based on a certificate delivered for the purpose by the relevant tax authorities. This exemption is granted mainly to wholly exporting companies, oil and gas companies, their contracts, and their subcontractors.

Registration for VAT purposes may be either obligatory or optional.

Voluntary registration is allowed where persons:

- carry out activities that are outside the scope of the Tunisian VAT, in which case the option has to be a full option, which means that all the activities carried out by these persons will be subject to VAT, or
- carry out operations that are exempt from VAT and that are destined for export, or supply products and services that are exempt from VAT to persons liable to VAT, in which case the option may be a partial or a full option.

Output VAT

Output VAT is calculated on the basis of the amount of the invoice excluding VAT.

Input VAT

Individuals and companies that are subject to VAT may deduct the input VAT incurred on the purchase of goods and services necessary to carry out activities subject to VAT.

VAT declaration

VAT is declared and paid on a monthly basis.

Refunds

If the input VAT exceeds the output VAT, the VAT credit resulting from the difference between the input VAT and the output VAT may be reimbursed on the basis of a written request made to the tax authorities.

The VAT credit is refundable if it arises from:

- exportation operations of goods and services, sales made to clients allowed to acquire goods and services VAT-free, and WHT made on the remunerations paid to companies that are neither resident nor established in Tunisia (such VAT credit is refundable if it is shown on one monthly tax return)
- investments destined for the carrying out of new projects under the conditions set out by the Investment Law (such VAT credit is refundable if it is shown on at least three successive monthly tax returns), or
- other operations (such VAT credit is refundable if it is shown on at least six successive monthly tax returns).

In order to benefit from the refund of VAT credits, the taxpayer has to file supporting documents, such as declarations relating to exportation of goods, documents proving that the service rendered by the Tunisian taxpayer was used or consumed outside Tunisia, authorisations to sell VAT-free, and WHT certificates.

To benefit from the refund of VAT credits, the taxpayer must already have submitted all tax returns and paid all taxes due at the time of submission of the request for the refund.

The VAT credit (other than the one derived from exports, VAT-free sales, and WHT of VAT and from some investments as provided for by article 15 of the VAT Code) subject to six successive monthly tax returns showing a credit, is reimbursable through an advance payment of 15% on request without preceding tax audit. This rate is increased to 50% for companies which financial statements are subject to statutory audit, subject to the certification with no modification affecting the tax basis of the last financial statements due at the date of the refund request. The remaining balance will be reimbursed subject to a tax audit.

The VAT credit derived from exports, VAT-free sales, and WHT of VAT and from some investments as provided for by article 15 of the VAT Code is reimbursable through an advance payment of 100% on request without preceding tax audit. The refund would be considered as final subject to a tax audit.

Time limits

The taxpayer may claim the VAT credit within three years starting from the date from which the VAT credit becomes refundable.

Customs duties/Import tariffs

Import VAT

Importation of goods and services are subject to import VAT unless:

- the imported good is expressly exempt, such as for:
  - fresh milk, uncondensed and unsweetened, whether skimmed or full-fat
  - milk flour
  - devices intended for use by physically disabled persons
  - pure-bred breeding animals
  - equipment with nothing similar manufactured locally, expressly designated, or
  - boats destined to maritime navigation and fishing, and other pleasure boats, or
- the importer benefits from the acquisition of goods necessary to its activity VAT-free (e.g. oil and gas companies).

Tunisia

Customs duties

Customs duties are due on importations other than those made from the European Union (EU).

Some equipment expressly designated by the Tunisian domestic law is exempt from customs duties, whether imported from EU countries or not.

Customs duties are not due in cases where the importer is expressly exempt, even if the goods are imported from outside the European Union.

For temporary importation of equipment, the customs duties due are to be calculated in proportion to the period spent in Tunisia. 1/60 of the total customs duties are due per month spent in Tunisia.

As per article 39 of the Finance Law 2018, subject to fixed customs rates, common customs duties for products and equipment with NGP codes included in chapters 25 to 97 are increased as of 1 January 2018 from 20% to 30% and from 0% to 15% for listed products (listed in appendix 2 to the Finance Law 2018).

In addition, the Finance Law 2018 provided for an increase in the customs duties rates applicable to a list of products originated from Turkey for a period of two years as of 1 January 2018. These provisions will be eliminated progressively over a period of three years using equal average annual rates, after the expiry of a period of two years.

Excise taxes

There are no provisions for excise taxes in Tunisia.

Property taxes

A real estate tax (RET) is calculated by the relevant municipalities and is notified annually to the taxpayers at the beginning of the civil year.

For companies subject to the payment of the local authority tax (LAT) (*see below*) and in case the LAT paid over the year is less than the RET notified by the municipalities, then the differential is due and is payable as complementary LAT. In other words, the RET constitutes a minimum of due LAT per year.

Transfer taxes

The registration of some operations is compulsory. In these cases, the registration fees are expressly determined by the Registration and Stamp Fees Code.

Registration remains optional for certain operations. In case of optional registration, the registration fees due to be paid are equal to TND 25 per page and per copy.

In case of compulsory registration, the fees due depend on the nature of the transaction and the goods involved.

Some transactions are subject to proportional registration fees, for example:

- 5% on the transfer of immovable properties. However, this rate is reduced to 3% for the acquisition of social housing from real estate developers for the portion exceeding TND 200,000. An additional registration fee is due at the rate of 2% for the transfer of immovable properties (other than immovable properties used

for business purposes and subject to a favourable tax regime) which value ranges between TND 500,000 TND and TND 1 million and 4% for immovable properties which value exceeds TND 1 million.
- 2.5% for the transfer of goodwill (*fonds de commerce*).

Transactions that are not subject to proportional registration fees, as well as transactions for which registration is optional, are subject to insignificant fixed registration fees (TND 25 per page).

Contracts and agreements (including concessions agreements, marketing, franchise, etc.) should be registered at the rate of 0.5% (based on the gross amount including taxes). In case of agreements with an indefinite duration or for a duration exceeding three years, registration fee is due based on the gross amount related to the first three years.

Stamp duties

Stamp duties are due, in general, on certain contracts expressly designated, as well as invoices, unless the customer is expressly exempt.

In general, stamp duties are TND 0.6 for invoices, subject to exemptions provided for by the law, including invoices related to export operations.

Certain documents are expressly exempt from stamp duties, mainly judgments, checks, etc.

Social solidarity contribution (CSS)

The CSS is due at a rate of 1% on taxable profit with a minimum due as follow:

Companies corporate tax rate	Minimum CSS due (TND)
35%	300 DT
25%; 20% or 15%	200 DT
10%	100 DT
0% (companies exempted from corporate tax or that benefit from the full deduction of its profits)	200 DT

Payroll taxes

There are no payroll taxes applicable in Tunisia other than those mentioned *below*.

Social security contributions

The Tunisian social security system is financed by contributions from both employers (16.57%, reduced to 0.5% for wholly exporting companies) and employees (9.18%) based on salaries. Employers collect and pay the social security contributions from each wage-earner.

Contributions for Accident and Professional Insurance are collected in the same manner.

Social logging tax

Employers established in Tunisia, regardless of being liable or not to income tax, are subject to a social logging tax, calculated at 1% of the gross amount of salaries paid to its employees, including benefits in kind.

The social logging tax is filed on the monthly tax return through which VAT and other direct taxes, except corporate tax, are filed.

This tax is payable monthly before the 28th day of the following month.

Vocational training tax

Entities subject to corporate tax are subject to vocational training tax, calculated at 2% of the gross amount of salaries paid to its employees, including benefits in kind. The rate of this tax is 1% for manufacturing industrial companies.

This tax is payable monthly before the 28th day of the following month.

Local authority tax (LAT)

LAT is payable by entities subject to corporate tax, except entities operating in the tourism sector. The tourism sector is defined as accommodation, entertainment, tourist transportation, thermals, congressional tourism, companies managing hotels and entertainment centres, and travel agencies.

If a company is engaged in several activities, some of which are subject to LAT and the remaining are not subject to LAT, the taxable base to be considered is constituted only by the turnover of the activities that are subject to LAT.

The LAT is paid to the local authority at the rate of:

- 0.2% of the total turnover of the entity, with a minimum calculated on the basis of the number of square metres of construction used by the entity.
- 0.1% of the turnover deriving from exportation as defined by the legislation in force.

LAT is payable monthly before the 28th day of each month.

Hotels tax

The hotels tax is due by entities that work with tourists; provide accommodation, food, and beverages; or organise leisure activities for clients. The tax is calculated at 2% of the gross turnover generated from the tourism and relating activities.

This tax is payable monthly before the 28th day of the following month.

Tourism Sector Development Fund (FDCST) tax

The FDCST tax is a tax that is paid by entities operating in the tourism sector. The tax is calculated at 1% of the turnover, excluding VAT, generated from tourism and relating activities.

Hotel residency tax

A hotel residency tax was implemented by the Finance Law 2018. The tax is due by the hotels residents (aged more than 12 years) of the hotels of 2 to 5 stars category as follows:

- TND 1 for each night spent in a 2-star hotel.
- TND 2 for each night spent in a 3-star hotel.
- TND 3 for each night spent in a 4 or 5-star hotel.

This tax is capped at seven nights.

The said tax does not apply to contracts and agreements concluded with travel agencies that have acquired a certain date before 1 January 2018, and it is paid on the basis of a monthly declaration.

Branch income

The income attributable to a PE corresponds to:

- the revenues generated directly by the PE further to the exercise of its activity
- the revenues corresponding to works carried out by it, even if invoiced by the head office, and
- the revenues that would have been realised by an independent company carrying out the same business, in case the activity of the PE is provided for free.

The following charges are deductible for the purpose of the determination of the taxable results of a PE:

- All the charges incurred directly by this PE and necessary for its proper functioning. These charges have to be supported by proper documentation.
- Direct charges incurred by the head office exclusively for the PE and supported by proper documentation.
- A proportion of the indirect charges (real central administration costs) incurred by the head office. The proportion admitted for deduction is most often calculated on the basis of the turnover of the Tunisian branch against the global turnover of the head office. The deduction is limited to 10% of the Tunisian turnover in case the head office is resident of a state that did not conclude a DTT with Tunisia.

Income determination

Inventory valuation

Inventory is valued at cost.

Capital gains

According to the provisions of article 11 of the Income and Corporate Tax Code, "the net income of a company is determined as the result of all the operations undertaken by the company, including mainly the transfer of assets…" Consequently, capital gains, if any, arising from the transfer of assets will be considered as taxable income and will be subject to corporate tax.

Capital gains are calculated as the difference between the sale price, which is supposed to be equal to the fair market value, and the net book value.

In the particular case of goodwill (*fonds de commerce*) generated internally, capital gains will be equal to the total sale price, as goodwill, other than derived from acquisitions, has no value on the books of the company.

All tangible and intangible transaction assets have to be valued at their fair market value.

The goodwill (*fonds de commerce*) generated internally, even if not booked as an asset of the company, also has to be valued at fair market value.

Particular case of capital gains resulting from mergers

Capital gains arising from the transfer of assets, other than inventories, on the occasion of a merger operation are deductible from the taxable income of the merged company and are to be added back to the taxable income of the absorbing company at up to 50% of their amount, spread out over five years.

Dividend income

Dividends distributed by Tunisian-resident companies to non-resident, non-establishment companies, to non-resident individuals, and to resident individuals are subject to corporate tax paid through a discharging WHT at the rate of 10% of its total amount.

Dividends distributed by non-resident companies are subject to tax in Tunisia, unless otherwise provided for by the DTTs concluded by Tunisia.

Interest income

Interest income arising from Tunisia or outside is part of the taxable results of the company, unless expressly exempt by the law (e.g. interests on deposits in foreign currencies).

Royalty income

Royalty income is part of the taxable results of the company.

Foreign income

Foreign income derived from services that are realised outside Tunisia are part of the taxable income (*see the Tax credits and incentives section*).

Deductions

Depreciation

Depreciation expenses of fixed assets that are owned by the company and within the limit of the depreciation expense calculated according to the straight-line method are deductible for the purpose of determination of taxable income at a maximum depreciation rate fixed by decree.

Buildings may be depreciated according to the accounting legislation. However, the tax deductible depreciation expense must not exceed the depreciation expense calculated at a maximum depreciation rate of 5%, according to the straight-line method. Extra depreciation expenses are to be added back to the taxable base subject to corporate tax.

Equipment and machinery may be depreciated according to the accounting legislation. However, the tax deductible depreciation expense must not exceed the depreciation expense calculated at a maximum depreciation rate of 15%, according to the straight-line method. Extra depreciation expenses are to be added back to the taxable base subject to corporate tax.

The equipment and machinery depreciation rate may be increased by 50% if the equipment is used at least 16 hours a day, or doubled if used 24 hours a day, but the tax deductible depreciation expense must not exceed the depreciation expense calculated at a maximum depreciation rate of 15%, according to the straight-line method, multiplied by 1.5 or by 2, depending on whether the equipment will be used 16 or 24 hours a day.

Depreciation expenses of assets exploited under leasing contracts are also deductible for the purpose of determination of taxable income. In fact, even if assets exploited under leasing contracts are not owned by the company, they are booked as assets in the balance sheet and depreciated accordingly over a minimum period fixed by decree, as follows:

Asset exploited under leasing contracts	Minimum period (years)
Constructions	7
Machinery and equipment	4
Transportation equipment	3

Goodwill

Goodwill (*fonds de commerce*) amortisation expenses are not tax deductible for the purpose of the determination of taxable income.

Start-up expenses

The maximum amortisation expense allowed for deduction is equal to 100% of the start-up expenses.

Interest expenses

Interest expenses (commissions, bank charges, interest loans, etc.) relating to loans contracted by the company and necessary for its proper functioning are tax deductible.

Interest expenses on shareholders current account are tax deductible within the limit of the maximum rate of 8%, provided that the capital is fully paid and the amount to be remunerated shall not exceed 50% of the capital; the rate of 8% is not applied to banks.

Bad debt

Provisions for bad debts are tax deductible within the limit of 50% of the taxable result (after deduction of non-taxable revenues and add-back of non-deductible charges).

The deduction of bad debts is subject to the presentation of a detailed statement of the concerned creditors while filing the annual corporate tax return, as well as court cases against the creditors in order to claim payment.

Provisions for bad debts that are initially constituted tax-free and become groundless during an exercise (e.g. by the covering of the debt totally or partially) are taxable.

Charitable contributions

Charitable contributions are either deductible:

- totally, in cases where they are granted notably to the state, local authorities, and state-owned companies, and to organisation dedicated to disability promotion
- totally, with regard to the acquiring or constructing cost granted to spouses, ascendants, and descendants of martyrs of the army, internal security forces, and customs authorities, or
- within 0.2% of the revenue, in other cases.

The deduction of charitable contributions is subject to the presentation of a detailed statement of the beneficiaries while filing the annual corporate tax return of the year during which these charitable contributions were granted.

Fines and penalties

Transactions, fines, and any other penalties for violating legal provisions are not tax deductible. However, contractual penalties (e.g. for late payment) remain tax deductible.

Taxes

All taxes due by the company are considered as tax-deductible charges, except corporate tax.

Note that when the tax due by non-resident, non-PEs on royalties is borne by a Tunisian-established company (the debtor), then the correspondent charge is not tax deductible.

Net operating losses

Under the Tunisian tax legislation, tax losses are divided into two categories: operating losses and deferred depreciation.

Operating losses are to be carried forward for five years, starting from the year following the one during which they were booked.

Deferred depreciation is to be carried forward indefinitely, starting from the year following the one during which they were booked.

With regard to the Tunisian tax legislation, operating losses cannot be carried back.

Payments to foreign affiliates

See Transfer pricing in the Group taxation section.

Group taxation

There are no specific tax rules for groups of companies in Tunisia.

Transfer pricing

According to the Tunisian tax legislation, where there is evidence for the tax authorities of the existence of commercial or financial business transactions between a company and other dependent companies, which, for the determination of their value, are based on rules that differ from those governing relations between independent companies and which result in the reduction of taxable benefits, the tax department is allowed to add back to the taxable result of the invoicing company the differential between the benefits that would have been realised if the practiced prices were in line with the arm's-length principle and those actually accounted for by the company.

The burden of proof is on the tax department.

Thin capitalisation

Projects may be financed by shareholders' equity, shareholders' loans, or external debts.

Interest due on shareholders' loans is tax deductible within the limit of an interest rate of 8%, provided that the following conditions are met:

- The capital is fully paid-up.
- The amount of the sums put at the disposal of the company must not exceed 50% of the capital.

In case shareholders' loans exceed 50% of the share capital, then interests due in the part exceeding 50% are not tax deductible.

Controlled foreign companies (CFCs)

There is no provision in Tunisia for CFCs.

Tax credits and incentives

Two laws have been promulgated in order to promote investment in Tunisia, the Investment Law and the Tax Incentives Law.

Investment Law n° 2016-71 of 30 September 2016

Objectives of the Investment Law

The purpose of the Investment Law is to promote investment and to encourage the creation of enterprises, notably through:

- Increasing the added value, competitiveness, and export capacity of the national economy, and technological development at the regional and international levels.
- Job creation and promotion of human resources competence.
- Achieving an integrated and balanced regional development.
- Achieving sustainable development.

Main features of the Investment Law

The Investment Law defines the legal regime for investment promoted by persons, resident or non-resident, in all sectors of economic activities, fixed by decree.

Under the Investment Law, investors benefit from the following incentives:

- Right to acquire, lease, or operate non-agricultural immovable property.
- Possibility of recruiting executives of foreign nationality for up to 30% of the total number of managers; this rate is reduced to 10% as of the fourth year. In all cases, the company can recruit four executives of foreign nationality (even if the limit of 30% or 10% is less than four).
- Free transfer of the profit, dividends, and capital abroad in foreign currency, in accordance with the applicable foreign exchange legislation. Indeed, the Investment Law specifies that the investor is free to transfer one's capital and profits abroad in foreign currency (in compliance with the applicable foreign exchange legislation). In case the transfer requires authorisation from the Tunisian Central Bank, any refusal must be in writing. The failure to reply within the time limit to be set by decree is considered as an acceptance (except for activities excepted to be defined by decree).
- Investment subsidies for direct investment operations, as follows:
  - Subsidies for the increase in value added and competitiveness.
  - Subsidies for the development of employability capacity.
  - Subsidies for regional development.

- Subsidies for sustainable development.

  Conditions and modalities to benefit from subsidies are defined by decree.

- Possibility to benefit from arbitration in case of dispute with the Tunisian State. The Investment Law provides rules for settlement of disputes between the Tunisian State and foreign investors. These shall be settled by conciliation; otherwise, the dispute may be submitted to arbitration under a specific agreement between the two parties. In case the dispute is not settled through conciliation and in the absence of an arbitration agreement, the dispute falls within the jurisdiction of Tunisian courts.

Also, as per the Investment Law, foreign investors have the same rights and obligations provided for by the Investment Law as Tunisian investors in comparable situations.

The Investment Law provided for the need to comply with response deadlines for each authorisation requested by the investor and the obligation to justify each refusal in writing. Failure to reply within the time limit constitutes acceptance under article 4 of the Law (except for activities excepted to be defined by decree).

Investors' properties and intellectual property (IP) rights are protected in accordance with the legislation in force. Investor's property may not be expropriated except for public interest reasons, without discrimination between Tunisian and foreign investors, subject to fair and equitable compensation.

Tax Incentives Law n° 2017-8 of 14 February 2017

The major tax incentives provided for by the Tax Incentives Law are mainly relating to:

- Export operations.
- Investments in regional development zones.
- Agricultural development.
- Support and depollution activities.
- Newly created companies.

Wholly exporting activities

The following are considered as wholly exporting companies:

- Companies with products manufactured in Tunisia, totally destined to be sold outside Tunisia.
- Companies providing services totally used/exploited outside Tunisia.
- Companies operating in agriculture and fisheries, manufacturing, and craft industries that sell all their products to wholly exporting companies, as well as companies established in business parks, provided that such products and goods constitute components of the final product to be exported, and to international trade wholly exporting enterprises.
- Companies that carry out all their services for the benefit of wholly exporting companies, companies established in the economic activity parks, and international trade totally exporting companies, in the subcontracting operations, within the same sector or within the framework of services directly linked to production (set by decree).

Note that wholly exporting companies may commercialise locally, during a given year, up to 30% of the turnover of the previous year without losing the status of a wholly exporting company.

Tax incentives at the exploitation phase

Profits derived from the exportation activity are subject to corporate tax at the rate of 10%, and all other revenues will be subject to corporate tax at the rate of 25%.

The rate of 10% is also applicable to the below auxiliary and exceptional profits related to operations:

- Investment allowances granted under the legislation of investment incentives, allowances of upgrading granted under an approved upgrade program, and allowances granted to enterprises in the framework of the National Employment Fund.
- Capital gains derived from the sale outside Tunisia or to other wholly exporting companies of tangible assets used to carry out the exportation activity, excluding constructions, lands, and goodwill *(fonds de commerce)*.
- Realised exchange profits in connection with the exportation activity.
- Remission of debt for the benefit of the wholly exporting companies.

The wholly exporting company whose total deduction period (ten years) has not expired on 31 March 2017 will continue to benefit from the said deduction until the expiry of that period.

Tax incentives at the creation and capital increase phases

Profits/revenues invested in the subscription to initial capital or to capital increases of totally exporting companies are deductible from taxable profits/revenues at up to 100% of the taxable result, subject to the minimum tax of 15% of the taxable result before the said deduction for companies subject to corporate tax at the rate of 25% (20% for companies subject to corporate tax at the rate of 35%) and 45% for individuals. However, the deduction is subject to the conditions listed below:

- The deposit of an investment declaration to the concerned authorities.
- The annual tax return must be accompanied by a certificate issued by the competent authorities certifying the effective start of activity.
- The status of the company must be compliant with regard to the National Social Security Funds.
- The implementation of an investment financing scheme investment with a minimum rate of equity capital.

Other incentives

Wholly exporting companies also benefit from:

- VAT exemption on the import operations and local acquisitions of goods, products, equipment, and services necessary for its operations.
- Exemption from other indirect taxes, including customs duties.
- Exemption from professional training tax, registration fees and stamp duties, and social logging tax.

Also, foreign employees recruited by totally exporting companies may benefit from the payment of PIT at the reduced rate of 20% of gross revenues.

Regional development zones activities

The Tax Incentives Law provides that investments in certain activities (except for some sectors listed by decree) carried out by entities established in regional development zones (fixed by decree) benefit from a number of tax incentives, detailed as follows:

Tax incentives at the exploitation phase

Corporate tax

Profits derived from direct investments in regional development zones are totally deductible from the taxable income until the expiry of the period of five years (Group 1 zones listed by decree) or ten years (Group 2 zones listed by decree).

After the expiry of the exemption period, benefits derived from direct investment in development zones will be subject to corporate tax at the rate of 10%.

Taxation of exceptional or auxiliary revenues/profits

Enterprises that invested in development zones may also benefit from the deduction and taxation at the reduced rate (after the expiry of total deduction period) for other profits in connection, with the same limits and conditions. The profits in question are detailed as follows:

- Investment allowances granted under the legislation of investment incentives, allowances of upgrading granted under an approved upgrade program, and the allowances granted to enterprises in the framework of the National Employment Fund.
- The capital gain derived from the sale of fixed assets allocated to the main activity of enterprises, with the exception of buildings, unbuilt buildings, and goodwill.
- Realised exchange profits in connection with the principal activity.
- Remission of debt for the benefit of the companies.

Tax incentives at the creation and capital increase phases

Profits/revenues invested in the subscription to initial capital or to capital increases of companies located in development areas are deductible from taxable profits/revenues at up to 100% of the taxable result. However, the deduction is subject to the conditions listed below:

- The deposit of an investment declaration to the concerned authorities.
- The annual tax return must be accompanied by a certificate issued by the competent authorities certifying the effective start of activity.
- The status of the company must be compliant with regard to the National Social Security Funds.
- The implementation of an investment financing scheme investment with a minimum rate of equity capital.

Other incentives

Enterprises that invested in development zones may also benefit from the exemption from social logging tax and vocational training tax.

Agricultural activities

The Tax Incentives Law provides that investments in the agricultural sector benefit from a number of tax incentives, detailed as follows:

Tax incentives at the exploitation phase

Corporate tax

Profits derived from direct investments in the agricultural sector are totally deductible from the taxable income during a period of ten years.

After the expiry of the ten-year exemption period, benefits derived from direct investment in the agricultural sector will be subject to corporate tax at the rate of 10%.

Taxation of exceptional or auxiliary revenues/profits

Enterprises that invest in the agricultural industry may also benefit from the deduction and taxation at the reduced rate (after the expiry of total deduction period) for other profits in connection, with the same limits and conditions. The profits in question are detailed as follows:

- Investment allowances granted under the legislation of investment incentives, allowances of upgrading granted under an approved upgrade program, and the allowances granted to enterprises in the framework of the National Employment Fund.
- The capital gain derived from the sale of fixed assets allocated to the main activity of enterprises, with the exception of buildings, unbuilt buildings, and goodwill.
- Realised exchange profits in connection with the principal activity.
- Remission of debt for the benefit of the companies.

Conditions for the benefit of the tax incentives:

- The deposit of an investment declaration to the concerned authorities.
- The annual tax return must be accompanied by a certificate issued by the competent authorities certifying the effective start of activity.
- The status of the company must be compliant with regard to the National Social Security Funds.
- The implementation of an investment financing scheme investment with a minimum rate of equity capital.

Tax incentives at the creation and capital increase phases

Profits/revenues invested in the subscription to initial capital or to capital increases of agricultural companies are deductible from taxable profits/revenues at up to 100% of the taxable result. However, the deduction is subject to the conditions for the benefit of the tax incentives listed above.

Other incentives

The direct investments in Agricultural activities give entitlement to the following tax incentives (conditions and equipment listed by decree):

- Exemption from customs duties and taxes with a similar effect for imported equipment necessary for the investment.
- Suspension of VAT and consumption duty for imported equipment and equipment acquired locally that are necessary for the investment.

Also, registration duties paid on the transfer of agricultural land used for direct investment in the agricultural industry could be refunded on request (to be submitted within a three-year period).

Support and depollution activities

The supporting investments activities are defined as being the following:

- Child and elder care institutions.
- Education, teaching, scientific research, and professional training institutions.
- Cultural production and cultural industry establishments.
- Youth entertainment and leisure facilities.
- Health and hospital facilities.
- Private accommodation projects for students.

The list of activities is set by decree.

The depollution activities are defined as being the collection, transformation, recovery, recycling, or treatment of waste and residues.

Tax incentives at the exploitation phase

Corporate tax

Profits derived from direct investments in support and depollution activities are subject to corporate tax at the rate of 10% (subject to the below conditions).

Conditions for the benefit of the tax incentives:

- The deposit of an investment declaration to the concerned authorities.
- The annual tax return must be accompanied by a certificate issued by the competent authorities certifying the effective start of activity.
- The status of the company must be compliant with regard to the National Social Security Funds.
- The implementation of an investment financing scheme investment with a minimum rate of equity capital.

Other incentives

The direct investments in support and depollution activities give entitlement to the following tax incentives (conditions and equipment listed by decree):

- Exemption from customs duties and taxes with a similar effect for imported equipment necessary for the investment.
- Suspension of VAT and consumption duty for imported equipment and equipment acquired locally that are necessary for the investment.

Newly created companies

Tax incentives at the exploitation phase

Companies/enterprises newly created (except for those incorporated in the on-site consumption, trade, financial, energy other than renewable energy, and mining industries, telecommunication operators, and real estate developers) may benefit from the deduction of a portion of their taxable profits/revenues up the fourth year of activity as follows (subject to the below conditions):

- 100% for the first year.
- 75% for the 2nd year.
- 50% for the 3rd year.
- 25% for the 4th year.

Conditions for the benefit of the tax incentives:

- The deposit of an investment declaration to the concerned authorities.
- The annual tax return must be accompanied by a certificate issued by the competent authorities certifying the effective start of activity.
- The status of the company must be compliant with regard to the National Social Security Funds.
- The implementation of an investment financing scheme investment with a minimum rate of equity capital.

Newly created companies incorporated in 2018 and 2019 benefit from a total exemption from corporate tax during four years starting from the activity start date (that should not exceed two years). This measure does not involve companies operating in the financial sector, energy sector (except renewable energy), real estate development, on-site consumption, trade, and telecommunication operators sectors.

Tax incentives at the extension

Companies/enterprises newly created (except for those incorporated in the on-site consumption, trade, financial, energy other than renewable energy, and mining industries, telecommunication operators, and real estate developers) may benefit from the deduction from their taxable income of 30% as depreciation of machinery and equipment (excluding cars other than those constituting the main object of the company) acquired or manufactured in the context of extension operations for the first year from the acquisition, manufacturing, or use starting date.

Foreign tax credit

In the absence of DTTs, corporate tax (or any WHT in connection with) paid outside Tunisia is not deductible from the tax due in Tunisia.

However, in the presence of DTTs, in cases where profits derived from outside Tunisia were subject to corporate tax in Tunisia, the foreign tax, if any, is deductible, but only up to the corresponding Tunisian tax on these profits.

Withholding taxes

The payments of certain remunerations are subject to corporate WHT in Tunisia.

The WHT is an advance payment of corporate tax and is thus deductible from the corporate tax due by the invoicing entity. To this end, the paying entity shall withhold the tax at the appropriate rate. It shall then issue a WHT certificate to the invoicing company to enable the latter to use the certificate as proof of the payment at the moment of filing its corporate tax return. The paying entity subsequently pays the withheld amount to the tax authorities.

The withheld tax is to be declared and repaid by the paying entity each month before the 28th day of the following month.

The rates of the WHT differ according to the nature of the goods/services and the rates applicable within the framework of the DTTs.

Applicable WHT rates in Tunisia are as follows:

- 15% of the gross amount of the invoices related to fees, commissions, brokerage fees, rentals, payment of non-commercial activities.

  This rate is reduced to 5% for fees (including those paid for non-commercial activities) and hotel rentals when these amounts are paid to entities subject to corporate tax and individuals who keep proper accounts in accordance with the Tunisian accounting principles.

  This rate is reduced to 2.5% for fees, commissions, rentals, and non-commercial remunerations deriving from exportation, in accordance with the legislation in force.
- 15% on performance bonus paid to distributors of goods.
- 20% on interest and director's attendance allowance. This does not include interest on deposits and bonds in foreign currency or convertible dinars.
- 10% on bank loans granted by non-Tunisian resident banks.
- 2.5% on the sales price indicated in a real estate sale, in case the seller is an individual.
- 1.5% on payments exceeding TND 1,000 (including VAT) made for the acquisition of goods and services necessary to the activity and that are not subject to a specific WHT rate.

  This rate is reduced to 0.5% in case the remunerations are derived from exportation, in accordance with the legislation in force, or payment is made to companies subject to corporate tax at the rate of 10%.
- 15% on other payments made to non-Tunisian tax resident persons.
- Dividends distributed by Tunisian-resident companies to non-resident, non-establishment companies, to non-resident individuals, and to resident individuals are subject to corporate tax paid through a discharging WHT at the rate of 10% of its total amount.
- 25% on payments made to persons resident in tax havens.
- 25% on lottery and gambling gain.

DTT rates

Note that the following interest WHT rates are applicable to interest payable to non-resident, non-PE companies and financial institutions according to DTTs concluded by Tunisia.

The DTT rate is applicable in case it is lower than the domestic law, provided that the beneficiary of the payment provides the corresponding tax residency certificate. In case of failure, the domestic law will be applied.

	WHT (%)			
		Interest		
Recipient	**Dividends (62, 67)**	**Banks (45)**	**Other companies**	**Royalties**
Non-treaty	10	10	20	15/25 (68)
Treaty:				
Austria	10/20 (63)	10	10	10/15 (1)
Belgium	5/15 (64)	5/10 (46)	10	11 (2)
Cameroon	12	15	15	15 (3)
Canada	15	15	15	15 (4)
China	8	0/10 (47)	10	5/10 (5)
Czech Republic	10/15 (63)	12	12	5/15 (6)

	WHT (%)			
		Interest		
Recipient	Dividends (62, 67)	Banks (45)	Other companies	Royalties
Denmark	15	12	12	15 (7)
Egypt	10	10	10	15 (8)
Ethiopia	5	0/11 (48)	11	5 (9)
France	5	12	12	5/15 (10)
Germany	10/15 (63)	0/10 (49)	10	10/15 (11)
Greece	10	15	15	10 (12)
Hungary	10/12 (63)	12	12	12 (13)
Indonesia	12	12	12	15 (14)
Iran	10	0/10 (50)	10	8 (15)
Italy	15	0/12 (51)	12	5/12 (16)
Jordan	5	5	20	(17)
Kuwait	10	0/2.5 (52)	10	5 (18)
Lebanon	5	0/5 (53)	0/5 (54)	5 (19)
Luxemburg	10	7.5/10 (55)	10	12 (20)
Mali	0/5 (63)	5	5	(21)
Malta	10	12	12	12 (22)
Mauritius Islands	0	2.5	2.5	2.5 (23)
Netherlands	0/20 (64)	7.5/10 (56)	7.5/10 (56)	7.5/11 (24)
Norway	20	12	12	5/15 (25)
Pakistan	10	13	13	10 (26)
Poland	5/10 (63)	12	12	12 (27)
Portugal	15	15	15	10 (28)
Qatar	0	5	20	5 (29)
Romania	12	10	10	12 (22)
Saudi Arabia	5	2.5	5	5 (61)
Senegal	5	5	20	(30)
South Africa	10	5	12	10/12 (31)
South Korea	15	0/12 (57)	12	15 (32)
Spain	5/15 (65)	5/10 (58)	5/10 (58)	10 (33)
Sudan	0/5 (63)	10	10	5 (34)
Sultanate of Oman	0	10	10	5 (35)
Sweden	15/20 (63)	12	12	5/15 (36)
Switzerland	10	10	10	10 (37)
Syria	0	10	10	15 (38)
Turkey	12/15 (63)	10	10	10 (39)
United Arab Emirates	0	5 (59)	10	7.5 (40)
United Kingdom	12/20 (63)	10	12	15 (41)
United Maghreb Arab	5	5	20	(42)
United States of America	14/20 (66)	0/15 (60)	15	10/15 (43)
Yemen	0	10	10	7.5 (44)

Notes

1. 10% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work. 15% of the gross amount of the royalties for cinematographic films and TV films, patents, trademarks, designs or models, plans, secret formulae, or processes; technical and economical studies; information concerning industrial, agricultural, commercial, or scientific experience; and the use of or the right to use industrial, commercial, or scientific equipment.
2. 11% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films and films for TV broadcasting, patents,

trademarks, designs or models, plans, secret formulae, or processes; information concerning industrial, commercial, or scientific experience; the use of, or the right to use, industrial, commercial, scientific equipment, or port facilities; and economical and technical studies, and technical assistance realised in the state of source.

3. 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, patents, trademarks, designs or models, plans, secret formulae, or processes; information concerning industrial, commercial, or scientific experience; the use of, or the right to use, industrial, commercial, or scientific equipment; and technical assistance and studies in all fields.
4. 20% of the gross amount of the royalties for the use of, or the right to use, licences, trademarks, cinematographic films, and films and discs for radio or television broadcasting and the use of, or the right to use, industrial, commercial, scientific equipment, or port facilities; however, since the 20% treaty rate is higher than the 15% common law rate, the latter will be applied. 15% of the gross amount of the royalties for all the other cases, mainly technical and economical studies; the use of, or the right to use copyrights, patents, trademarks, designs or models, plans, secret formulae, or processes; and information concerning industrial, commercial, or scientific experience. However, royalties paid for the use of, or the right to use, copyrights of literary, dramatic, musical, or artistic work, except royalties in respect of cinematographic films and films and discs for TV broadcasting, are taxable in the state of residency and thus cannot be subject to tax nor to any WHT in connection with the state in which they arise.
5. 10% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes, and information in respect of industrial, commercial, or scientific experience. 5% of the gross amount of the royalties for technical and economical studies and technical assistance.
6. 5% of the amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic and films for TV and radio broadcasting. 15% of the amount of the royalties for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of or the right to use industrial, commercial, or scientific equipment; and technical and economical studies and technical assistance rendered in the state in which they arise.
7. 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of or the right to use industrial, commercial, or scientific equipment; and technical and economical studies.
8. 15% of the gross amount of royalties for the right to publish any literary, artistic or scientific work, patents, trademarks, designs or models, plans, secret formulae or processes; information in respect of industrial, commercial or scientific experience; the use of or the right to use industrial, commercial or scientific equipment; and cartoons, films, and videos for TV broadcasting.
9. 5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment.
10. 5% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work. 15% of the gross amount of the royalties for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and economical and technical studies. 20% of the gross amount of the royalties for the use of, or the right to use, agricultural, industrial, commercial, scientific equipment, or port facilities and licences, trademarks, cinematographic films, and films for TV broadcasting. However, payments made to public entities for the use of cinematographic films or the broadcasting on radio and TV are exempt from WHT; however, since the 20% treaty rate is higher than the 15% common law rate, the latter will be applied.
11. 10% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work; information concerning agricultural, industrial, commercial, or scientific experience; and technical and economical studies. 15% of the gross amount of the royalties for patents, trademarks, designs or models, plans, secret formulae, or processes, and cinematographic films or films for television.
12. 10% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information concerning industrial, commercial, or scientific experience; the use of, or the right to use, industrial, agricultural, commercial, scientific equipment, or port facilities, except remunerations for chartering of vessels and aircraft; and technical and economical studies.
13. Royalties may be subject to tax in the contracting state in which they arise in cases where the legislation of that state allows such taxation, at a maximum rate of 12%.
14. 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of, or the right to

use, industrial, commercial, or scientific equipment; and technical services, such as technical and economical studies and technical assistance.
15. 8% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, agricultural, industrial, commercial, scientific equipment, or port facilities, except remunerations for the chartering of vessels and aircraft used for international transport.
16. 5% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work. 12% of the gross amount of the royalties for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and economical and technical studies. 16% of the gross amount of the royalties for the use of, or the right to use industrial, commercial, or scientific equipment, and licences, trademarks, cinematographic films, and films for TV broadcasting; however, since the 16% treaty rate is higher than the 15% common law rate, the latter will be applied.
17. Royalties may be subject to tax in the contracting state in which they arise in case the legislation of that state allows such taxation and according to the legislation of that state for the use of, or the right to use, any copyright of literary, artistic, or scientific work, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment.
18. 5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes, and information in respect of industrial, commercial, or scientific experience.
19. 5% of the gross amount of royalties for the use of, or the right to publish, any literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, a transmission by satellite or optical fibre transmission or similar means of transmission, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment.
20. 12% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience, except remuneration for vessels and aircraft chartering in respect of international transport; the use of, or the right to use, industrial, agricultural, commercial, or scientific equipment; and technical services, such as technical and economical studies and technical assistance, carried out in the state of source.
21. Royalties may be subject to tax in the contracting state in which they arise in cases where the legislation of that state allows such taxation and according to its legislation for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films recording for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment.
22. 12% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of, or the right to use, industrial, agricultural, commercial, or scientific equipment; and technical and economical studies and technical assistance.
23. 2.5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, agricultural, commercial, or scientific equipment, except remunerations for the chartering of vessels and aircraft used for international transport.
24. Royalties may be subject to tax in the contracting state in which they arise in case the legislation of that state allows such taxation; but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 11% of their amount. However, this rate is reduced to 7.5% in case royalties received by a resident of Tunisia are not subject to WHT in the Netherlands and as long as the Netherlands does not proceed to the modification of its tax legislation. Remunerations paid for the following are considered royalties: the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of, or the right to use, industrial, commercial, or scientific equipment, except remunerations paid for the exploitation of vessels and aircraft in respect of international transport; and technical and economical studies and technical assistance rendered in the state from which royalties are paid.
25. 5% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, except cinematographic films and films for TV broadcasting. 15% of the gross amount of the royalties for the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and economical and technical studies. 20% of the gross amount of the royalties

for the use of, or the right to use, agricultural, industrial, commercial, scientific equipment, or port facilities, and the use of, or the right to use, trademarks and cinematographic films and films for TV broadcasting; however, since the 20% treaty rate is higher than the 15% common law rate, the latter will be applied.

26. 10% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, patents, trademarks, designs or models, plans, secret formulae, or processes; the use of, or the right to use, industrial, agricultural, commercial, scientific equipment, or port facilities, except remuneration for vessels and aircraft chartering in respect of international transport; and technical and economical studies and technical assistance.
27. 12% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of, or the right to use, industrial, agricultural, commercial, scientific equipment, or port facilities; and technical and economical studies and technical assistance.
28. 10% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of, or the right to use, industrial, commercial, or scientific equipment; and technical and economical studies and technical assistance in respect of the use of, or the right to use, the equipments, rights, and information mentioned above.
29. 5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of or the right to use industrial, commercial, or scientific equipment.
30. Royalties are subject to tax in the state of residency of the beneficiary. However, the non-exclusive taxation right attributable to the state of residency does not prohibit the taxation of such royalties in the state in which they arise in cases where the legislation of that state allows such taxation and according to its legislation. Remunerations paid for the following are considered royalties and thus are subject to tax in the state in which they arise: the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment that is not considered as an asset in the meaning of Article 6 of the present treaty.
31. 10% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes, and information in respect of industrial, commercial, or scientific experience. 12% of the gross amount of the royalties for technical services, such as technical and economical studies and technical assistance.
32. 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; the use of, or the right to use, industrial, agricultural, commercial, or scientific equipment; and economical and technical studies and technical assistance.
33. 10% of the gross amount of royalties for copyrights, patents, trademarks, designs or models, plans, secret formulae, or processes; studies and information in respect of industrial, commercial, or scientific experience; the use of, or the right to use, industrial, commercial, or scientific equipment; and cinematographic films and video tapes for TV broadcasting.
34. 5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of or the right to use industrial, agricultural, commercial, or scientific equipment, except chartering of ships and aircraft used for the international transport.
35. 5% of the gross amount of royalties for remunerations paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, software, designs or models, plans, secret formulae, or processes.
36. 5% of the amount of the royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, excluding cinematographic and films for TV and radio broadcasting. 15% of the amount of the royalties for the use of, or the right to use, cinematographic films, films for TV and radio broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment, and technical and economical studies.
37. 10% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience, and technical and economical studies and technical assistance related to these information; and the use of, or the right to use, industrial, commercial, or scientific equipment.

38. 18% of the gross amount of royalties for the use of, or the right to use patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment; however, since the 18% treaty rate is higher than the 15% common law rate, the latter will be applied.
39. 10% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use of, or the right to use, industrial, commercial, or scientific equipment.
40. 7.5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and the use, of or the right to use, industrial, commercial, or scientific equipment.
41. 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of, or the right to use, industrial, agricultural, commercial, or scientific equipment; and technical and economical studies.
42. Royalties are only taxable in the contracting state in which they arise in cases where the legislation of that state allows such taxation and according to its legislation for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films for TV broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; the use of, or the right to use, industrial, commercial, scientific equipment or port facilities; and economical and technical studies and economical assistance.
43. 15% of the gross amount of the royalties for copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes; information in respect of industrial, commercial, or scientific experience; and profits from any ownership, depending from the productivity, the use, or the alienation of that ownership. 10% of the gross amount of the royalties for the use of, or the right to use, industrial, commercial, or scientific equipment other than vessels and aircraft used for international transport, and technical studies paid from public funds or political subdivisions or local authorities or technical assistance for the use of the ownership of the rights above mentioned, in case the technical assistance is realised in the state of source.
44. 7.5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films and films, tapes, or discs for radio or television broadcasting, patents, trademarks, designs or models, plans, secret formulae, or processes, and the use of, or the right to use, industrial, commercial, or scientific equipment and port facilities, except remunerations paid for vessels and aircraft used in international transport.
45. These rates are applicable, in certain cases, to the loans extended by the Central Bank.
46. 5% for loans extended by banks and not represented by bonds or other debt securities.
47. 0% for loans granted by financial institutions, the capital of which is held up to 100% by the Chinese state.
48. 0% for loans granted by financial institutions, the capital of which is held at least up to 50% by the Ethiopian state, its political subdivisions, or local authorities.
49. 0% for loans granted by the Deutsche Bundesbank, Kreditanstalt für Wiederaufbau, and the Deutsche Gesellschaft für wirtschaftliche zusammenarbeite Gmbh. (*Entwicklumgsgesells*).
50. 0% for loans granted by financial institutions, the capital of which is held up to 100% by the state of Iran.
51. 0% for loans granted by financial institutions, the capital of which is totally held by the Italian state or its local authorities.
52. 0% for loans granted by financial institutions, the capital of which is held up to 100% by the state of Kuwait.
53. 0% for loans granted by financial institutions, the capital of which is totally held by the state of Lebanon, its political subdivisions, or local authorities.
54. 0% for loans granted by companies, the capital of which is totally held by the state of Lebanon, its political subdivisions, or local authorities.
55. 7.5% for loans guaranteed or granted by financial institutions and the reimbursement period of which exceeds five years.
56. 7.5% as long as the tax legislation of the Netherlands provides that interest paid by a company resident in the Netherlands to a company resident in Tunisia is exempt from any WHT.
57. 0% for loans, the reimbursement period of which exceeds seven years.
58. 5% for loans, the reimbursement period of which exceeds seven years, and 10% in the other cases.
59. 5% for bank loans since the Tunisian domestic tax legislation provides that interest on bank loans extended by non-established banks is subject to a 5% WHT rate.
60. 0% for loans granted by financial institutions, provided that the reimbursement period exceeds seven years.
61. 5% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematography and films for TV and radio broadcasting; the use of, or the right to use, patents, trademarks, designs or models, plans, secret formulae, or processes; information

in respect of industrial, commercial, or scientific experience; and the use of, or the right to use industrial, commercial, or scientific equipment.
62. According to the DTTs concluded by Tunisia, dividends are subject to the listed WHT tax rates, knowing that the rate provide by the domestic law is fixed at 5%.
63. The lower rate applies in cases where the beneficiary has equity participation of 25%.
64. The lower rate applies in cases where the beneficiary has equity participation of 10%.
65. The lower rate applies in cases where the beneficiary has equity participation of 50%.
66. The lower rate applies in cases where the beneficiary has equity participation of 25%, except for investment companies and real estate investment companies.
67. Certain DTTs foresee that in case companies resident of a contracting state have a PE in the other contracting state (state of source), the latter may levy WHT on profits made by the PE as a taxation on dividend.
68. 25% on payments made to persons resident in tax havens as defined by the decree 2014-3833.

Tax administration

Taxable period

Under Tunisian law, both the accounting year and tax year follow the calendar year. However, derogation is possible if prior authorisation is obtained from the Ministry of Finance.

Tax returns

Tunisian-established companies have the obligation to file monthly tax returns, an annual corporate tax return, and an annual Employer's Declaration.

Monthly tax returns include WHTs, VAT, LAT, social logging tax, and professional training tax, and must be filed each month before the 28th day of the following month. Filing and payment take place simultaneously.

The annual tax return is the corporate tax return, which must be filed before 25 March of the following year. The deadline for filing the corporate tax return is moved to 25 June for public liability companies and private liability companies subject to statutory audit. Filing and payment take place simultaneously.

The Employer's Declaration has to be filed each year before 30 April of the following year. This declaration must list all fees and salaries paid or incurred, even if not yet paid, to service suppliers and employees during the concerned year. No payment is due in connection with this filing, but fees not listed on this declaration are not recognised as deductible costs.

Payment of tax

Corporate tax is paid through:

- WHTs applied on certain payments and operated by the debtor on behalf of the taxpaying entity.
- Beginning from the second year of activity, three provisional instalments, each calculated at 30% of the total corporate tax due for the previous year. The instalments fall due on 28 June, 28 September, and 28 December.
- An annual tax return.

Both WHTs and provisional payments of income tax are creditable against the annual/final tax due.

Filing and payment take place simultaneously.

The most common process is the filing in person at the tax office. In this case, payment is made in cash or by check.

However, companies with turnover exceeding TND 1 million are constrained to file their tax returns electronically. Electronic filing remains optional for other companies. In this case, payment is made through bank transfer.

Tax audit process

Tax controllers may proceed either with a preliminary tax audit or an in-depth tax audit.

Preliminary tax audit

In case of a preliminary tax audit, the taxpayer under control is not notified prior to starting the audit. However, the tax authority has the obligation to send an information request concerning the tax findings. The taxpayer has to reply within 20 days.

The tax audit is conducted in the offices of the tax administration and deals with the documents made available to them (tax returns, registered contracts, etc.). However, preliminary tax audits can never deal with the taxpayer's accounts.

The results of the tax control are notified in writing to the taxpayer within a tax audit report, whereby the outcome of the audit activity must be detailed and the findings, if any, must be illustrated and motivated. The tax report is to be notified to the taxpayer within 90 days from the expiry date to reply to the information request (*see above*).

Indeed, the taxpayer has the possibility to answer to the tax audit report within 45 days starting from the day following the date of receipt of the report. Failing that, the taxpayer will receive a tax assessment notice that brings forth requests for payment of taxes and penalties to the taxpayer. In cases where the taxpayer answers to the notification of the results of the tax audit and brings additional explanations, clarifications, and documents to the tax auditors, they will be constrained to examine the evidence provided by the taxpayer and answer to the taxpayer's opposition within six months from the day following the notification date.

Once the taxpayer receives the answer of the tax authorities to the taxpayer's opposition, the taxpayer will have the possibility to file a second opposition within 15 days from the day after the notification day in cases where the taxpayer still disagrees with some or all the points raised by the tax controllers.

Also, the taxpayer can request for the submission of the tax audit file before the conciliation commission within the same deadline of 15 days. That commission shall express its opinion on the file before the tax assessment notice.

Once the second answer is filed by the taxpayer, there will be no other written correspondences with the tax auditors.

In cases where the tax administration agrees to the clarifications, explanations, arguments, and documents provided by the taxpayer, then the tax audit will be closed. However, in cases where the tax administration still disagrees with some or all the evidence provided by the taxpayer, then the taxpayer will receive a tax assessment notice and will have to pay the notified taxes. The tax assessment notice has to take into consideration the taxpayer's observations enclosed in the first and the second opposition filed by the taxpayer.

Further to the receipt of the tax assessment notice, the taxpayer may make an appeal to the relevant court.

A preliminary tax audit does not prevent an in-depth tax audit of the same period and the same taxes.

In-depth tax audit

In case of an in-depth tax audit, the taxpayer under control is notified 15 days prior to starting the audit. This period may be extended to a maximum period of 60 days.

In-depth tax audits deal with the accounts of the taxpayer under control (in cases where the taxpayer has the obligation to maintain accounts according to the accounting legislation into force) as well as any other evidence (presumptions, registered contracts, etc.).

In-depth tax audits take place, as a general rule, on the business premises of the taxpayer. However, and upon the request of the taxpayer or the tax controllers, the tax audit can be conducted in the tax authorities' office. In this case, books, records, and any other documentation deemed necessary to the tax auditors to complete the audit have to be moved to the tax auditors' office.

In-depth tax audits last for:

- six months, in case the taxpayer under control is constrained by the law to maintain accounts, and
- one year, in the other cases.

At the end of this period, the tax audit must come to an end and the tax auditors must draw up a tax audit report to be sent to the taxpayer, whereby the outcome of the audit activity must be detailed and the findings, if any, must be illustrated and motivated.

Once the tax audit report is sent to the taxpayer, the procedure of response and deadlines are the same as for preliminary tax audits.

Statute of limitations

The period open for tax audit, unless it was subject to a previous in-depth tax audit, is:

- Four years in case of partial omission; an omission is considered as partial in cases where the tax return is filed but the taxable base is not determined properly or in cases where the WHT rates applied to payments made to third parties are lower than the rates provided by the law.
- Ten years in case of total omission; an omission is considered as total in cases where the tax return is not filed at the date when the company becomes under tax control.

The four-year period and the ten-year period begin to run from 1 January (in cases where the fiscal year coincides with the calendar year) of the year following the completion of sales, earnings, receipt, or disbursement of any sum to be taxed.

Topics of focus for tax authorities

The tax authorities primarily focus on extraordinary transactions (e.g. mergers, restructuring, suspension of business). After introducing a transfer pricing provision as a part of the 2009 law, the tax authorities are increasing their attention towards transactions concluded between affiliated companies.

Turkey

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Significant developments

New Law on the Amendment of Tax Laws

The Law on the Amendment of Tax Laws, Laws, and Secondary Laws, which includes several changes on tax regulations, was accepted by the Parliament's General Assembly and will be submitted for the approval of the president.

The Law proposes amendments on several tax laws. Very brief information of the amendments are as follows.

Changes to Corporate Income Tax (CIT) Law

The Omnibus Bill that was passed early on 5 December 2017 includes important amendments to the CIT Law.

On 23 December 2017, the tax authority updated its Corporate Income Tax Communiqué numbered 1, parallel with the amendments adopted.

CIT rate

The Omnibus Bill numbered 7061 increased the CIT rate from 20% to 22% for 2018, 2019, and 2020. The increase also applies to the advance tax filings to be made in respect of the concerned years.

For companies with a special accounting period, the increased rate will apply in the tax years starting in 2018, 2019, and 2020.

Please note that the Finance Minister has recently announced that the rate may be reduced soon within 2018 as one of the steps of fiscal tightening policy.

According to the Law, the regulation shall enter into force and be applied on earnings that should be stated in CIT returns to be submitted after 1 January 2018.

Exemption of earnings from immovable and participation share sales

The Omnibus Bill reduced the CIT exemption on sale of qualifying immovable property from 75% to 50% of the capital gains after 5 December 2017.

The two-year holding period requirement for qualification remained unchanged.

The recent Communiqué clarifies that qualifying sales transactions that took place before 5 December 2017 can benefit from the exemption rate of 75% provided under the old legislation.

2018 rates for investments with incentive certificates

For investments within the scope of the investment incentive certificates (IICs), the additional investment contribution rate and reduced CIT practice applied in 2017 is extended to 2018 by the Law.

Consideration of special reserves as deductible expense in finance companies

It is ensured that all special reserves allocated by leasing companies, factoring companies, and financing companies are considered as tax deductible expense in the fiscal year when reserves are allocated.

Regulations on reserves are based on the 'Regulation on Accounting Practices and Financial Statements of Finance Leasing, Factoring, and Financing Companies'.

The new regulation shall enter into force starting from 1 January 2019.

Changes to Income Tax Law

Lump-sum expense rate in the taxation of rental income

With the Law, the lump-sum expense rate taken into consideration in the event that the lump-sum method is selected in the taxation of rental income is reduced from 25% to 15%.

The regulation entered into force on the publication date and is effective since 1 January 2017.

Changes to Value-added Tax (VAT) Law

VAT responsibility

The Law proposes that the VAT registration requirement applies to non-residents who provide online services in electronic media to real persons in Turkey.

The regulation shall enter into force in the beginning of the month after the publication date.

Roaming services

With the Law, the roaming services from abroad within the framework of international roaming agreements and charge of such services to customers in Turkey will be exempt from VAT.

Regarding the mobile phone subscribers' usage abroad, the fee for the roaming services provided by the operator abroad to the domestic operator, and the charge of usage fee to the consumer, are exempt from VAT with the amendment.

The regulation shall enter into force in the beginning of the month after the publication date.

Transfer of immovable properties to leasing and financing companies

With the Law, leasing and financing companies debtors' and their guarantors' transferring immovable properties and participation shares in return for such debts are exempt from VAT. The existing exemptions available for the transfers to the banks will be applicable for the leasing and financing companies with the Law.

The regulation shall enter into force on 1 January 2018.

VAT exemption for machinery and equipment purchases

New machine and equipment deliveries to those:

- in the manufacturing industry exclusively for taxpayers who possess an Industrial Registry Certificate, and
- located in technology development zones, specialised technology development zones, research and development (R&D) and design centres, and research laboratories with the activities in R&D, innovation, and design, to be used exclusively for these activities,

have been exempted from VAT until 31 December 2019.

This exemption is a full exemption. Taxes burdened due to deliveries within the scope of exemption will be refunded if it cannot be deducted.

In case the machinery and equipment acquired within the scope of the exemption is used for activities besides R&D, innovation, and design activities or is disposed of within three years from the beginning of the calendar year following the date of delivery of the machinery and equipment, VAT that wasn't calculated during the delivery shall be collected with late tax loss penalty and late interest.

The regulation entered into force on 1 May 2018.

VAT exemption in health services provided to foreigners

Healthcare and rehabilitation services provided by those who are permitted by the Ministry of Health to real persons who are non-resident foreign nationals in only the health institutions and health care centres in Turkey are exempted from VAT.

The following services are covered by the exemption: preventive medicine, diagnosis, treatment, and rehabilitation services. Other deliveries and services provided with these services do not fall within the scope of exemption.

The exemption is a full exemption.

The amendment shall enter into force on the second month following the publication of the Act.

Tax amnesty

Law No. 7143 published in the Official Gazette dated 18 May 2018 and numbered 30425, which brings into effect a tax amnesty, has entered into force. Under the program taxpayers can:

- restructure their unpaid tax debts and other payables to the state for all types of taxes and penalties that were accrued by 31 March 2018
- settle their pending tax litigation
- protect their past accounts against potential tax audits by making voluntary tax base increases (income tax, CIT, VAT, income withholding/corporate withholding tax [WHT] [limited to specific payments]) for the years between 2013 and 2017 (inclusive)
- correct their business records to reflect the reality of their situations, and

- declare previously undeclared foreign and domestic assets without being subjected to taxation.

Recent developments regarding foreign exchange borrowing restrictions

The Council of Ministers published a decree amending the Decree No. 32 on the Protection of the Value of the Turkish Currency (Decree No. 32) in the Official Gazette No. 30312 on 25 January 2018. The amendments providing restrictions on foreign exchange loans entered into force on 2 May 2018.

Prior to the amendments, real person Turkish residents were not entitled to utilise foreign-currency denominated loans from abroad. With the amendments, Turkish residents that do not have foreign exchange income will no longer be able to utilise foreign-currency denominated loans from abroad, save for certain exceptions.

Taxes on corporate income

Corporations are liable for CIT at a rate of 22% for the years 2018, 2019, and 2020 on net profits generated, as adjusted for exemptions and deductions and including prior-year losses carried forward, to a limited extent.

According to Turkish tax legislation, income taxation differs significantly based on the taxpayer's place of residence. Resident entities are subject to tax on their worldwide income, whereas non-resident entities are taxed solely on the income derived from activities in Turkey.

Local income taxes

There are no provincial or municipal taxes on corporate income in Turkey.

Corporate residence

If both the legal and the business headquarters of a company are located outside Turkey, the company is regarded as a non-resident entity for Turkish tax purposes. If one of these headquarters is located within Turkey, the company is regarded as a resident entity for Turkish tax purposes.

Note that there is no distinction between CIT and VAT registration in Turkey. Therefore, corporations or permanent establishments (PEs) are liable for all taxes (e.g. CIT, VAT, WHT, stamp tax) once they are registered for tax purposes in Turkey.

Permanent establishment (PE)

Unlike the provisions of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital, there is no minimum period of presence in Turkey before a presence is regarded under the Turkish tax legislation as a PE. In this regard, we believe that the PE evaluation should be made for each case depending on the merits of the case, both from a local legislation perspective and from a treaty (if applicable) perspective.

Other taxes

Value-added tax (VAT)

Deliveries of goods and services are subject to VAT at rates varying from 1% to 18%. The general rate is 18%.

VAT payable on local purchases and on imports is regarded as 'input VAT', and VAT calculated and collected on sales is considered 'output VAT'. Input VAT is offset against output VAT in the VAT return filed at the related tax office. If output VAT is in excess of input VAT, the excess amount is paid to the related tax office. Conversely, if input VAT exceeds output VAT, the balance is carried forward to the following months to be offset against future output VAT. With the exception of a few situations, such as exportation and sales to an investment incentive holder, there is no cash refund to recover excess input VAT.

Turkish VAT principles contain a 'reverse-charge VAT mechanism', which requires the calculation of VAT by resident entities on payments to persons in foreign countries. Under this mechanism, VAT is calculated and paid to the related tax office by the resident entity. The resident entity treats this VAT as input VAT and offsets it in the same month. This VAT does not create a tax burden for the resident or non-resident entity, except for its cash flow effect on the former if there is insufficient output VAT to offset the input VAT.

VAT is also collected at the point of import. The VAT rate is the same rate as the one that is applied for transactions in the country of origin. The base for VAT is the value of the goods for customs tax purposes plus any kind of tax payable at the point of import and all the expenses incurred until the single administrative document is registered.

Reduced rates

For the deliveries and services mentioned in List No. I (e.g. agricultural products such as raw cotton, dried hazelnuts, supply and leasing of goods within the scope of the Finance Leasing Law), the reduced rate is 1%.

For the deliveries and services mentioned in List No. II (e.g. basic food stuffs, textiles, books and similar publications), the reduced rate is 8%.

Foreign trade: imports and exports

Importation of goods and services is a taxable transaction, whether or not the importation is made for business purposes. Export transactions are exempt from VAT, and credit and refund is available for input VAT for the export goods.

Importation of goods and services

For VAT purposes, any importation of goods or services into Turkey is a taxable transaction, regardless of the status of the importer or the nature of the transaction. To equalise the tax burden on importation and domestic supply of goods and services, VAT is levied only on the importation of goods and services that are liable to tax within Turkey. Accordingly, any transaction exempt in Turkey may also be exempt on import. The VAT on importation is imposed at the same rates applicable to the domestic supply of goods and services. In the case of importation, the taxable event occurs at the time of actual importation. Importation of machinery and equipment under an investment incentive certificate (IIC) is exempt from VAT.

Banking and insurance transactions tax (BITT)

The transactions being performed by licensed banks and insurance companies are generally exempt from VAT but are subject to BITT at a rate of 5% in general (although some transactions are subject to 1% or 0% BITT), which is due on the gains of such corporations from their transactions.

The purchase of goods and services by banks and insurance companies are subject to VAT, but this is considered an expense or cost item. Therefore, it is not recoverable (i.e. for VAT purposes by offsetting against the output VAT) in the hands of these corporations.

Special consumption tax

There are four main product groups that are subject to special consumption tax at different tax rates, depending on the GTIP numbers (tariff numbers):

- Petroleum products, natural gas, lubricating oil, solvents, and derivatives of solvents.
- Automobiles and other vehicles, motorcycles, planes, helicopters, yachts.
- Tobacco and tobacco products, alcoholic beverages.
- Luxury products.

Unlike VAT, which is applied on each delivery, special consumption tax is charged only once (except for some activities, such as production).

Customs and foreign trade

Following the changes in Turkish economic policy in the 1980s, there has been rapid growth in the foreign trade volume of Turkey.

Turkey is a member of the World Trade Organization (WTO) and World Customs Organization (WCO). Turkey signed a 'Customs Union Agreement' with the European Union (EU) on 1 January 1996 and has amended its customs code and legislation in line with those of the EU customs code.

According to the Customs Union Agreement, with the exception of certain goods (e.g. agricultural products), no customs tax is incurred on trade between Turkey and the European Union as long as the goods are imported to Turkey with an A.TR Movement Certificate proving that the goods are in free circulation in the European Union.

In order to harmonise its foreign trade, Turkey has also signed several Free Trade Agreements (FTAs) with the trade partners of the European Union.

The Turkish Customs Code is very similar to that of the EU, and its aim is to harmonise the customs practices of Turkey with EU customs practices.

The Turkish Customs Code defines the 'Turkish Customs Territory' as the territory of the Republic of Turkey including the territorial waters, the inland maritime zone, and the airspace of Turkey.

The Turkish Customs Code has also brought into force the customs regimes with economic impact that have been in use in the EU countries for a long time. The import taxes, VAT, other taxes, and funds are collected at the time of importation. The main tax collected at customs is the import tax. The import tax differs according to the classification of the commodity and to the country of origin.

VAT is also collected at the point of import. The VAT rate is the same rate as the one that is applied for the transactions in the country of origin. The base for VAT is the value of the goods for customs tax purposes plus any kind of tax payable at the point of import and all the expenses incurred until the single administrative document is registered.

The VAT rates are 1%, 8%, and 18%, varying according to the type of goods imported.

In addition, if the import transaction is not conducted in cash, there is a special Resource Utilisation Support Fund (RUSF), which should also be paid during importation. RUSF is a special kind of fund applied to importations on a credit basis. According to the RUSF legislation, any importation conducted on credit (if the payment related to the importation is not paid before the actual importation) is subject to a special payment of 6% of the value of the goods to be imported. The important criteria are payment term and whether it is a cash payment or payment on credit.

Dumping and anti-dumping duties are collected at the point of import.

In certain cases, such as temporary importation or inward processing, the customs administration shall require a kind of guarantee letter to secure the taxes. The amount of this guarantee shall cover all the taxes payable in the case of an importation.

There is no customs tax on trade between the EU and Turkey except for certain products (e.g. agricultural products). However, it is crucial that the imported goods are imported together with an A.TR Movement Certificate proving that the goods are in free circulation.

In the case of FTAs, the goods must be imported with a EUR.1 certificate, giving proof of their country of origin in order to benefit from the FTA.

Turkey applies the Common Customs Tariff of the EU to third countries, except for agricultural products.

Property taxes

Buildings and land owned in Turkey are subject to an annual real estate tax at different rates.

Stamp tax

Stamp tax applies to a wide range of documents, including, but not limited to, agreements, financial statements, and payrolls. Stamp tax is levied as a percentage of the value stated on the agreements at rates varying between 0.189% and 0.948%.

Salary payments are subject to stamp tax at a rate of 0.759% over the gross amounts, whereas a lump-sum stamp tax is calculated for certain types of documents, such as the printed copies of the financial statements.

Resource Utilisation Support Fund (RUSF)

According to the current legislation, regressive RUSF rates apply to foreign exchange and gold borrowings provided to Turkish residents (banks and financing institutions are exempt) from abroad depending on the maturity.

The RUSF rates on foreign currency denominated loans are as follows:

- 3% if the maturity is under one year.
- 1% if the maturity is between one and two years (including one year).
- 0.5% if the maturity is between two and three years (including two years).
- 0% if the maturity is three or more than three years (including three years).

The RUSF rates on Turkish lira (TRY) denominated loans are as follows:

- 1% if the maturity is under one year.
- 0% if the maturity is one or more than one year (including one year).

Moreover, RUSF bases differ based on the type and the currency of the loan. RUSF is calculated:

- Over the principal amount in case the loan is foreign exchange denominated.
- Over the interest payments in case the loan is Turkish lira denominated.
- Over the interest payments plus the exchange difference of the principal between the drawdown date and the re-payment date in case the loan is indexed to a foreign exchange.

Payroll taxes

In accordance with the Turkish tax regulations, all employees working under a resident employer are included into the local payroll. The employer withholds taxes and other duties on income at source, and the employees receive the net amount after the deductions. The income tax and the stamp tax should be declared by the employers filing the withholding tax return. *The tax tables applicable to individuals are provided in the Taxes on personal income section of Turkey's Individual tax summary at www.pwc.com/taxsummaries*.

The social security premiums and the unemployment premiums should be declared by the employers filing the social security premium declaration on a monthly basis.

Income tax, stamp tax, social security premiums, and unemployment premiums are the legal deductions from the salary.

Social security premiums

Social security premiums for both the employer and the employee total 34.5% of an employee's salary; 14% for the employee and 20.5% for the employer. In addition to social security payments, unemployment contribution is 3% of the salary, 1% for the employee and 2% for the employer.

The social security ceiling is determined as TRY 15,221.40 for the period 1 January 2018 through 31 December 2018.

Branch income

Branches are taxed solely on the income derived from activities in Turkey since they are regarded as non-resident entities for Turkish tax purposes. Branch profits are subject to Turkish CIT at the rate of 22%.

The branch profit transferred to headquarters (i.e. upstream income repatriation) is subject to dividend WHT at a rate of 15%, which might be reduced if there is a bilateral tax treaty between Turkey and the country of which the principal is a resident for income tax purposes. *See the Withholding taxes section for a list of countries with which Turkey has an applicable tax treaty*.

Income determination

Inventory valuation

The weighted average and first in first out (FIFO) methods are allowed for calculating the value of year-end stock or goods sold. Last in first out (LIFO) is not permitted. Stock-count deficits are recorded as disallowable expenses, whereas stock-count surpluses are treated as income at year-end for CIT purposes. Necessary VAT adjustments should also be made accordingly.

Capital gains

No separate rules exist with respect to capital gains taxation in Turkey. Capital gains and losses are included in the determination of taxable corporate income.

See Capital gains exemption in the Tax credits and incentives section for information about an incentive that can reduce the effective CIT rate on capital gains in certain instances.

Dividend income

In dividend distribution's between Turkish resident companies, the dividend payer is exempt from WHT and the recipient is exempt from CIT.

Interest income

In principle, all interest income is subject to tax. Interest income on bank deposits denominated in both Turkish lira and foreign currency is subject to WHT. Interest income is recorded at gross, and any WHT incurred on this income is offset against CIT calculated.

Royalty income

In principle, royalty income (e.g. on patents, copyrights, licence) derived by non-resident individuals or corporations not constituting a PE in Turkey is subject to WHT at the rate of 20%. However, the bilateral tax treaty between Turkey and the country of residence of the foreign company may reduce the local tax rate.

Foreign income

In principle, foreign-sourced income is taxable in Turkey. However, foreign-sourced dividend income may also be subject to a participation exemption if certain conditions are fulfilled. A participation exemption for capital gains generated from a foreign subsidiary may also be available in Turkey, under certain conditions.

Other foreign-sourced income, such as royalties and interest, is fully taxable in Turkey. Partial relief from taxation is granted insofar as the foreign tax paid does not exceed the rate of tax payable for the same income in Turkey.

Although undistributed income of foreign subsidiaries should not be taxable in Turkey, controlled foreign company (CFC) rules should also be taken into consideration in this respect. *See Controlled foreign companies (CFCs) in the Group taxation section for more information*.

Deductions

Turkish CIT legislation allows a deduction for all the 'ordinary and necessary expenses paid or incurred for the generation and sustenance of income during the taxable year in carrying on any trade or business'.

The general principle for tax deductibility is that the payment should be a necessary business expense and it should be properly documented in accordance with the relevant provisions of the Turkish transfer pricing regulations and those in the local tax procedural law.

Depreciation and amortisation

Fixed assets are subject to depreciation at rates determined by the Turkish Ministry of Finance (MoF), based on their useful life.

Intangible assets (i.e. licence, franchise, copyright, etc.) and goodwill are depreciated over 15 years and five years, respectively. Additionally, leasehold improvement is depreciated based on lease period.

Depreciation can be calculated by applying either the straight-line or declining-balance method (limited to 50%), at the taxpayer's discretion. The taxpayer may also change the option from declining-balance to straight-line (but not vice versa) at any time during the life of the asset. The applicable rate for the declining-balance method is twice the rate of the straight-line method, subject to certain limitations. Furthermore, in special cases, the tax authorities may determine higher depreciation rates.

Intangible assets are amortised by the straight-line method over their estimated useful lives, if objectively determinable.

Profits or losses on disposal of fixed assets (i.e. the difference between the proceeds and the written-down values) are included in taxable income in the year of disposal. If the renewal of disposed-of assets is considered necessary by the owners of the business concern, the profit accrued may be retained for a certain amount of time. After the purchase of new fixed assets, the profits may be offset against the depreciation of the new assets.

Start-up expenses

Start-up expenses are considered as deductible expenses as incurred. Also, the taxpayer has the option to capitalise such expenses and to depreciate them over five years at equal amounts.

Interest expenses

Deemed-interest deduction on cash injection as capital

The Law No: 6637, which has been published in the Official Gazette dated 7 April 2015, introduced a concept of tax incentives where Turkish resident companies are allowed a deemed-interest deduction on cash injection as capital from the corporate tax base of the relevant year.

Turkish resident companies, except for those that operate in banking, finance, and insurance sectors, will be able to benefit from such incentive.

According to the incentive, the deductible interest amount is calculated as follows:

- The latest 'annual weighted average interest rate applied to loans provided by banks' that is announced by the Central Bank of Turkey (13.57% for 2016) will be applied to the capital increases paid in cash and cash part of initial capital for newly established entities.
- Only 50% of the calculated amount can be deducted from the CIT base.

In order to benefit from this deduction, the company should have taxable profit (i.e. the companies that have carryforward tax losses or current year tax losses are not able to benefit from this deduction).

The following capital increase alternatives are not included on the calculation or determination of the deduction amount:

- Capital increase made from capital in kind items (e.g. via real estate).
- Capital increase made during mergers, acquisitions, or spin-offs.
- Capital increase made from internal sources (e.g. legal reserves) that are booked under shareholders' equity.
- Capital increase made via borrowing from shareholders.

By the Decree of Council of Ministers (no: 2015/7910), the Council of Ministers has re-determined the deemed interest deduction rate for the following cases:

a. Publicly traded companies (listed in Borsa Istanbul [BIST]): For the companies that are publicly traded in BIST at the last day of the year in which the 50% interest deduction is benefited, the rate would be increased by:
    - 25 points if the publicly traded rate of nominal/value or the amount of registered shares of the company is 50% or less (totally 75%).
    - 50 points if more than 50% of the nominal/registered shares of the company is traded in BIST (totally 100%).
b. Capital increase for investments with investment incentives: In case the capital increase made in cash has been used for investments on manufacturing or industrial plants, purchase of machines or equipment required for such plants, or lands or states for building of such plants, the 50% rate has been increased by 25 points.
c. Other companies: Any company that is not subject to 0% or falls under category (a) and (b) will benefit from a 50 points deduction.

The Decree reduced the rate to 0% for the capital increases made for the following cases:

- The income of the company consists at least 25% of passive income (e.g. interest, dividends, rental income, license fees, capital gains obtained from sales of marketable securities).
- At least 50% of the total assets of the company consists of affiliate marketable securities, shares, and subsidiary companies.
- Invest capital or provide a loan to another company, which are limited only with the corresponding capital increase made in cash amount.
- Investment in real estate companies (limited only with the corresponding investment amount).

Bad debt

Bad and doubtful accounts receivable are deductible under certain conditions. Amounts of the receivables collected afterwards are added to the profits of the year in which they are collected.

Charitable contributions

Donations to listed charities and for construction of schools, hospitals, and scientific research organisations are deductible at up to 5% of the company's gross profit.

Pensions and employee termination benefits

Payments for pensions and employee termination benefits are deductible for CIT purposes under certain conditions.

Fines and penalties

In principle, fines and penalties incurred due to the wrong-doings of the taxpayer or its employees are not tax deductible.

Taxes

Essentially, the CIT itself and VAT are, subject to certain exceptions, not deductible for CIT purposes.

Fees and duties paid in relation to assets of the company are, in principle, deductible in determining taxable corporate income.

Net operating losses

Corporate losses may be carried forward for five years. Losses cannot be carried back.

Payments to foreign affiliates

Charges for royalties and interest by foreign affiliates may be deductible for CIT purposes, provided that transfer pricing and thin capitalisation rules are followed (*see the Group taxation section for more information*).

Group taxation

Consolidation of the accounts of group companies for tax purposes is not allowed in Turkey since each company is regarded as a separate taxpayer.

Transfer pricing

The Corporate Tax Law (CTL) includes transfer pricing regulations, using the OECD's guidelines as a basis. If a taxpayer enters into transactions regarding the sale or purchase of goods and services with related parties in which prices are not set in accordance with the arm's-length principle, the related profits are considered to have been distributed in a disguised manner through transfer pricing. Such disguised profit distribution through transfer pricing is not accepted as deductible for CIT purposes. The methods prescribed in the law are the traditional transaction methods described in the OECD's transfer pricing guidelines.

Thin capitalisation

According to local thin capitalisation regulation, if the ratio of the borrowings from shareholders or from persons related to the shareholders exceeds triple the shareholders' equity of the borrower company at any time within the relevant year, the exceeding portion of the borrowing will be considered thin capital and the corresponding interest will not be deductible. Accordingly, the ratio of loans received from related parties to shareholders' equity must be no more than 3:1 in order to eliminate Turkish thin capitalisation issues.

Controlled foreign companies (CFCs)

A CFC is a company established abroad with at least 50% of the organisation controlled directly or indirectly by tax-resident companies and real persons by means of separate or joint participation in the capital, dividends, or voting rights. A CFC also must meet certain conditions (e.g. 25% or more of its gross revenue must be comprised of passive income, it must be subject to an effective income tax rate lower than 10% for its commercial profit in its home country, gross revenue of the subsidiary established abroad must be more than the foreign currency equivalent of TRY 100,000 for the related fiscal year).

The CFC's profit is included in the CIT base of the controlling resident corporation at the rate of the shares controlled, irrespective of whether it is distributed.

Tax credits and incentives

Foreign tax credit

A partial relief from income taxation is granted for the foreign tax paid that does not exceed the rate of tax payable for the same income in Turkey.

Participation exemption for dividends

There is an unconditional CIT and dividend WHT exemption for dividend income between Turkish companies. If a Turkish company has a shareholding in a foreign company, this dividend income is exempt from CIT, under certain conditions.

Exemption for income from foreign construction and repair activities

The profit from construction and repair activities carried out by Turkish corporations in foreign countries may be exempt from CIT in Turkey under the Turkish CTL. It should be noted that if loss occurs from these activities, it is not possible to deduct this loss amount from the income generated through domestic activities since deduction of a loss relating to foreign activities that are exempt from CIT in Turkey is not allowed for deduction.

Capital gains exemption

For capital gains generated from the sale of shares in a company, a 75% CIT exemption is applicable under certain conditions. This partial exemption may also be applicable for the capital gains derived from the alienation of real estate investments, under certain conditions.

In the event a foreign subsidiary is sold by a Turkish company, a CIT exemption at the rate of 100% is applicable under certain conditions.

Investment incentives

The investment incentive system comprises the following elements.

Priority Investment Projects

Based on the investment incentive system, certain investment projects (e.g. testing centres; R&D projects; pharmaceutical, tourism, cultural, education, and railway investments) are deemed as 'Priority Investment Projects'.

General incentive practices

Excluding the subjects of investments that do not meet the requirements, all investments above the minimum fixed investment amount will benefit from incentive elements, regardless of regional location.

Regional incentive practices

The industries categorised by region in the relevant Decree will benefit from incentive elements under the conditions determined for each relevant region.

Large-scale investments

Incentives are granted to all large-scale investments, although incentive size will vary depending on the investment's regional location.

Strategic investments

The related legislation defines strategic investments as well as different incentive ratios and periods for strategic investments. A new committee to be established will decide which investments are strategic within the scope of the defined criteria.

Based on the related legislation, investments in production of products that are highly dependent on imports and meet all the following criteria will be regarded as strategic investments:

- Minimum fixed investment amount should be more than TRY 50 million.
- Total domestic production capacity for a given product that is the matter of investment should be below the import amount.
- Added value to be generated with the investment should be at least 40%.
- The total import amount realised related to the invested product within the prior year should be more than 50 million United States dollars (USD).

There are six main components of the investment regulation:

- Reduced CIT rate.
- VAT exemption.
- Exemption for social security premiums (employer's portion).

- Customs duty exemption.
- Interest support.
- Allocation of land for investments.

A new investment incentive model supports investments on a project basis. The supportable investments and incentive items will be decided by the Council of Ministers.

Minimum investment amount should be USD 100 million.

The incentive items are as follows:

- Reduction of CIT rate up to 100%.
- Investment contribution rates up to 200%.
- Employee income tax withholding incentive.
- Customs tax exemption.
- Social security premium employer share support for ten years.
- Provision of free treasury land for 49 years.
- During the operating period, 50% of the energy consumption expenditure for the investment should be met up to ten years.
- Up to ten years interest support for investment loans.
- For qualified personnel of special importance, minimum wage support up to 20 times wage support for five years.
- Capital support up to 49%.
- Guarantee of purchase for the goods produced through the investment supported.

Free trade zones

Free trade zones are special sites that lie geographically within the country but are deemed to be outside the customs territory. In these regions, the normal regulations related to foreign trade and other financial and economic areas are either inapplicable, partly applicable, or superseded by new regulations.

In general, activities such as manufacturing, storage, packing, general trading, banking, insurance, and trade may be performed in Turkish free trade zones. Goods moving between Turkey and the zones are treated, for all purposes, as exports or imports. However, operations within the zones are subject to the supervision of the zone management (and customs authorities), to whom regular activity reports must be submitted. Consequently, there is a requirement for zone users to maintain full accounting records (in Turkish) with respect to their activities. These accounting requirements extend to inventory records. Customs duty is levied on any unexplained inventory losses as though the goods had been imported into the country.

The right to operate in a free trade zone is conferred by an operating licence obtained from the Ministry of Economy, which reviews the application for conformity with the objectives and types of activity specified by the Economic Affairs Coordination Council.

Portfolio investment income

Under the WHT regime introduced on 1 January 2006, certain portfolio investment income (e.g. capital gains derived from listed equities acquired after 1 January 2006 or capital gains or interest from Turkish local government bonds issued after 1 January 2006) derived by eligible entities are subject to 0% WHT. However, the WHT rate is 10% for other resident and non-resident entities. In the case of repo income, 15% WHT should be applied for all non-resident investors (the provisions of double tax treaties [DTTs] are reserved).

Furthermore, 0% WHT is applicable for all type of investors with respect to capital gains derived from listed equities on the Istanbul Stock Exchange (ISE) purchased after 1 January 2006 (excluding securities investment trust shares), income derived from transactions on equity index futures carried out under Turkdex, warrants with underlying of equities traded on ISE, and participation shares of investment funds that intensively invest in listed shares (equity intensive funds).

Under the *Communiqué* No: 277 of Income Tax Law, the following qualify for the eligibility criteria for 0% WHT:

- Turkish resident capital corporations (limited liability companies, joint stock companies, and commandite companies whose capital is divided into shares).
- Non-resident corporations that have the same characteristics as Turkish capital corporations.
- Turkish investment funds (regulated in accordance with the Capital Markets Board).
- Non-resident investment funds similar to Turkish investment funds.
- Those non-residents similar to Turkish investment funds and trusts that engage in investment in securities and other capital markets instruments as their only business in Turkey to derive income and capital gains from these instruments and to exert the rights attached to these instruments.

Under the aforementioned *Communiqué*, the investor should be an institutional portfolio investor. However, what is meant by 'institutional' is not crystal clear. It seems to us that the intention of the MoF is to treat all non-resident portfolio investors (other than the individuals) as institutional portfolio investors. The *Communiqué* does not have a principle based approach; rather, it enlists a number of 'institutional investor' examples, such as limited liability partnerships (LLPs), sovereign funds, investment funds, investment institutions, and investment companies.

In terms of interest income from deposits, the WHT rates on interest income from bank deposits (excluding interbank deposits and money market operations of intermediaries) differ depending on the currency (Turkish lira or the foreign exchange) and maturity, which are as follows:

- Interest income derived from foreign exchange deposit:
  - In current call accounts and deposit accounts with maturity of less than six months (including six months): 18%.
  - In deposit accounts with maturity of less than one year (including one year): 15%.
  - In accounts with maturity of more than one year: 13%.
- Interest income derived from a Turkish lira deposit:
  - In current call accounts and deposit accounts with maturity of less than six months (including six months): 15%.
  - In deposit accounts with maturity of less than one year (including one year): 12%.
  - In accounts with maturity of more than one year: 10%.

The withholding will be applied by local intermediary banks, brokerage houses, or local custodian banks, instead of the conventional self-declaration mechanism, and this withholding will be the final taxation in Turkey for both non-residents and Turkish individuals.

On the other hand, certain portfolio investment income (e.g. capital gains from unlisted shares) is taxed under permanent tax rules. In some cases, a non-resident fund may need to file a tax return within 15 days following the sale of securities and subject to a 32% effective tax rate. However, DTTs may provide relief except in special cases. Certain income, such as interest and dividends, are usually taxed via the WHT regime, so no filing is required for a non-resident investor.

Moreover, Turkish corporate bonds that are issued after 1 January 2006 and sold outside of Turkey are not taxed under the WHT regime, and rather taxed as per permanent tax rules. The WHT rates on interest income from such corporate bonds issued by all type of resident corporations (including Turkish banks and corporations) vary depending on the maturities of the bonds and are regressive. The WHT rates are as follows (please note that DTT provisions are reserved):

- 10% if the maturity is under one year.
- 7% if the maturity is between one and three years (including one year).
- 3% if the maturity is between three and five years (including three years).
- 0% if the maturity is five or more than five years (including five years).

The interest income derived from bonds that are issued by the Turkish Treasury outside of Turkey (i.e. Eurobonds) is subject to a 0% WHT. Capital gains derived by non-residents from Turkish Eurobonds issued by the Treasury are exempt from capital gains taxation.

The responsibility to apply this WHT belongs only to the issuer of the corporate bond, regardless of the fact that a payment agent exists or not, and the WHT liability of the issuer is not disregarded even if the payment agents make any withholding.

Research and development (R&D) activities

In the last decade, the Turkish Parliament has enacted several regulations to provide incentives for R&D activities in Turkey. Tax incentives and support mechanisms that are provided to companies carrying out R&D and innovation activities in Turkey are as follows:

- R&D legislation:
  - Law No. 5746 on Support of R&D Activities.
  - Law No. 4691 on Technology Development Zones.
- Institutions providing cash supports on project basis:
  - Scientific and Technological Research Council of Turkey (TÜBİTAK).
  - Turkish Technology Development Foundation (TTGV).
  - Ministry of Science, Industry, and Technology.
  - Small and Medium Industry Development Organization (KOSGEB).
  - Development Agency.
  - European Commission.

Law No. 5746 on Support of R&D and Design Activities

R&D deduction (100%)

All eligible innovation and R&D or design expenditures made in technology centres, R&D centres (which must employ at least 15* full-time equivalent R&D personnel), design centres (which must employ at least 10 full-time equivalent design personnel), R&D and innovation or design projects supported by governmental institutions, foundations established by law, or international funds can be deducted from the CIT base at a rate of 100%.

In addition, in the event of providing an increase of at least 20% in any of the following indicators in R&D or design centres compared to the previous year, then 50% of the increase in the amount of R&D, innovation, or design expenses compared to the previous year will also be taken into consideration as an extra deduction in the calculation of the CIT base:

- R&D or design expenditures share in total turnover.
- The registered number of national or international patents.
- The number of internationally funded projects.
- The ratio of researchers holding graduate degrees to total R&D personnel.
- The ratio of the number of total researchers to total R&D personnel.
- The ratio of new products (output of successful R&D projects) turnover to total turnover.

* With the Council of Ministers' decision, the minimum number of full-time equivalent R&D personnel that should be employed in R&D centres is reduced to 15 according to Law No. 5746 on Supporting Research, Development and Design Activities. However, the aforementioned number will continue to be considered as 30 for sectors (29.10.01, 29.10.02, 29.10.03, 29.10.04, and 29.10.07 classes and 30.30, 30.40, and 30.99 classes under the C - Manufacturing section) according to the Statistical Classification on Economic Activities for European Community (NACE Rev. 2).

Income tax exemption (95%, 90%, or 80%)

The salaries of R&D, design, and support personnel, at a rate of 95% for the personnel with a PhD degree or master's degree on basic sciences, 90% for the personnel with a master's degree or undergraduate degree on basic sciences, and 80% for others, is exempt from income tax.

Social security premium support (50%)

Half of the employer portion of social security premiums for R&D, design, and support personnel (maximum of 10% of the number of full-time R&D and design personnel) will be funded by the MoF for each R&D and support personnel.

Stamp tax exemption

The documents prepared for the R&D and design activities, including the payrolls of R&D, design, and support personnel, are exempt from stamp tax.

Customs duty exemption

Goods imported for the usage of studies in R&D, innovation, and design projects are exempt from customs duties. Additionally, any funds, held papers, and applied transactions are exempt from stamp tax and fees.

Additional support for personnel graduated from basic sciences

The minimum gross wage portion of monthly salaries of each R&D personnel that have at least a bachelor's degree in basic sciences (mathematics, physics, chemistry, or biology) employed in R&D centres will be financed from the budget of the Ministry of Science, Industry, and Technology for two years, under the specific circumstances stated in the R&D legislation.

Law No. 4691 on Technology Development Zones

CIT exemption

The profits derived from the software activities or products developed as a result of the R&D activities in technoparks are exempt from CIT.

Income tax exemption (100%)

The salaries of R&D and support personnel carrying out R&D and software development activities in technoparks are exempt from income tax until 31 December 2023. The salary for the activities other than software development and R&D activities cannot benefit from income tax exemption.

Social security premium support (50%)

Half of the employer portion of social security premiums for R&D and support personnel (maximum of 10% of the number of full-time R&D personnel) will be funded by the MoF for each R&D and support personnel.

Stamp tax exemption (only on payrolls)

The payrolls prepared for the R&D activities are exempt from stamp duty.

VAT exemption

Deliveries of software and services (system management, data management, business applications, Internet, mobile and sector applications, military command control applications) arising from software development activities by the companies operating in the technoparks are exempt from VAT until 12 December 2023.

Customs duty exemption

Goods imported for the usage of studies in R&D, innovation, and design projects are exempt from customs duties. Additionally, any funds, held papers, and applied transactions are exempt from stamp tax and fees.

Withholding taxes

There is no WHT on payments to resident corporations by other resident corporations, except for a 3% WHT on progress payments to contractors, both domestic and foreign, within the scope of construction work spanning more than one calendar year.

The local WHT rates are as follows:

Income derived by non-resident individuals or corporations not constituting a PE in Turkey	WHT (%)
Rental from immovable assets	20
Leasing of machinery and equipment within the scope of the investment incentive certificates document to taxpayers holding an IIC (within the scope of the conditions regulated under Turkish Financial Leasing Law No. 3226)	1
Royalties (e.g. on patents, copyrights, licence)	20
Professional services	20
Petroleum services	5

Turkey

Income derived by non-resident individuals or corporations not constituting a PE in Turkey	WHT (%)
Wages & salaries (progressive rates are applied for employees' income taxes)	15 to 35
Interest on loan arrangements:	
Interest payments made to foreign banks and corporations that are authorised in their own jurisdictions and customarily lend not only to related parties but also to third parties	0
Interest payments made in relation to securitisation loans and subordinated loans	1
Other loans	10
Interest on time deposits ***	10 to 18
Reverse-repo income derived from bonds	15
Income derived by resident eligible entities *	**WHT (%)**
Capital gains on Treasury bills and domestic government bonds issued after 1 January 2006	0
Interest income on Treasury bills and domestic government bonds issued after 1 January 2006	0
Capital gains from listed equities purchased after 1 January 2006	0
Income derived by other entities and individuals	**WHT (%)**
Capital gains on Treasury bills and domestic government bonds issued after 1 January 2006	10
Interest income on Treasury bills and domestic government bonds issued after 1 January 2006	10
Income derived by non-resident individuals or corporations not constituting a PE in Turkey	**WHT (%)**
Capital gains from listed equities purchased after 1 January 2006 (excluding capital gains from securities investment trust shares)	0
Capital gains from equities of securities investment trusts purchased after 1 January 2006	10
Participation shares of Turkish investment funds	**WHT (%)**
Eligible entities * (both residents and non-residents)	0
Other entities and individuals ** (both residents and non-residents)	10

* *See Portfolio investment income in the Tax credits and incentives section.*

** Income derived from the redemption of participation certificates that continuously invest at least 51% of their assets in equities that are registered on the ISE are not subject to WHT if they are held for at least one year.

Income derived from participation shares of investment funds that intensively invest in listed shares (equity intensive funds) are subject to 0% WHT.

*** WHT on interest income derived from time deposits depends on the currency (i.e. Turkish lira or foreign currency deposits) and the maturity (*see Portfolio investment income in the Tax credits and incentives section*).

Please refer to the following tables for local WHT on dividends, interest, and royalties, respectively.

Turkish WHT on dividends

Dividend distributions to individuals and to non-resident persons who are shareholders are subject to WHT at a local rate of 15%. This rate might be reduced for non-resident shareholders in the presence of a tax treaty. Please note that dividend distributions to resident entities and branches of non-resident entities are not subject to WHT.

Recipient	Shareholding interest	WHT rate (%)
Non-treaty		15
Treaty:		
Albania	If greater than or equal to 25%	5
	In all other cases	15
Algeria		12
Austria	If greater than or equal to 25%	5 (2)
	In all other cases	15 (2)
Australia	(11)	5/10 (11)
	In all other cases	15
Azerbaijan		12
Bahrain	If greater than or equal to 25%	10
	In all other cases	15
Bangladesh		10
Belarus	If greater than or equal to 25%	10
	In all other cases	15
Belgium	If greater than or equal to 10%	15 (2)
	In all other cases	20 (1, 2)
Bosnia Herzegovina	If greater than or equal to 25%	5
	In all other cases	15
Brazil	If greater than or equal to 25%	10
	In all other cases	15
Bulgaria	If greater than or equal to 25%	10
	In all other cases	15
Canada	If greater than or equal to 10%	15
	In all other cases	20 (1)
China (People's Republic of)		10
Croatia		10
Czech Republic		10
Denmark	If greater than or equal to 25%	15
	In all other cases	20 (1)
Egypt	If greater than or equal to 25%	5
	In all other cases	15
Estonia		10
Ethiopia		10
Finland	If greater than or equal to 25%	5
	In all other cases	15 (1)
France	If greater than or equal to 10%	15
	In all other cases	20 (1)
Georgia		10
Germany	If greater than or equal to 25%	5
	In all other cases	15
Greece		15
Hungary	If greater than or equal to 25%	10
	In all other cases	15
India		15
Indonesia	If greater than or equal to 25%	10
	In all other cases	15
Iran	If greater than or equal to 25%	15
	In all other cases	20 (1)

Turkey

Recipient	Shareholding interest	WHT rate (%)
Ireland	If greater than or equal to 25%	5/10 (2, 7)
	In all other cases	15 (2)
Israel		10
Italy		15
Japan	If greater than or equal to 25%	10 (4)
	In all other cases	15
Jordan	If greater than or equal to 25%	10
	In all other cases	15
Kazakhstan		10
Korea, Republic of	If greater than or equal to 25%	15
	In all other cases	20 (1)
Kosovo	If greater than or equal to 25%	5
	In all other cases	15
Kuwait		10
Kyrgyzstan		10
Latvia		10
Lebanon	If greater than or equal to 15%	10
	In all other cases	15
Lithuania		10
Luxembourg	If greater than or equal to 25%	10
	In all other cases	20 (1)
Macedonia	If greater than or equal to 25%	5
	In all other cases	10
Malaysia	If greater than or equal to 25%	10
	In all other cases	15
Malta	If greater than or equal to 25%	10
	In all other cases	15
Mexico	If greater than or equal to 25%	5
	In all other cases	15
Moldova	If greater than or equal to 25%	10
	In all other cases	15
Mongolia		10
Morocco	If greater than or equal to 25%	7
	In all other cases	10
Netherlands, The	If greater than or equal to 25%	15 (2)
	In all other cases	20 (1, 2)
New Zealand	If greater than or equal to 25%	5 (9)
	In all other cases	15
Northern Cyprus, Turkish Republic of	If greater than or equal to 25%	15
	In all other cases	20 (1)
Norway	If greater than or equal to 20%	5
	In all other cases	15 (8)
Oman	If greater than or equal to 15%	10
	In all other cases	15
Pakistan	If greater than or equal to 25%	10
	In all other cases	15
Philippines	If greater than or equal to 25%	10
	In all other cases	15
Poland	If greater than or equal to 25%	10
	In all other cases	15

Recipient	Shareholding interest	WHT rate (%)
Portugal	If greater than or equal to 25%	5
	In all other cases	15
Qatar	If greater than or equal to 25%	10
	In all other cases	15
Romania		15
Russia		10
Saudi Arabia	If greater than or equal to 20%	5 (6)
	In all other cases	10
Serbia-Montenegro	If greater than or equal to 25%	5
	In all other cases	15
Singapore	If greater than or equal to 25%	10
	In all other cases	15
Slovakia	If greater than or equal to 25%	5
	In all other cases	10
Slovenia		10
South Africa	If greater than or equal to 25%	10
	In all other cases	15
Spain	If greater than or equal to 25%	5 (5)
	In all other cases	15
Sudan		10
Sweden	If greater than or equal to 25%	15
	In all other cases	20 (1)
Switzerland	If greater than or equal to 20%	5
	In all other cases	15 (11)
Syria		10
Tajikistan		10
Thailand	If greater than or equal to 25%	10
	In all other cases	15
Tunisia	If greater than or equal to 25%	12
	In all other cases	15
Turkmenistan		10
Ukraine	If greater than or equal to 25%	10
	In all other cases	15
United Arab Emirates	If greater than or equal to 25%	10 (3)
	In all other cases	12
United Kingdom	If greater than or equal to 25%	15
	In all other cases	20 (1)
United States	If greater than or equal to 10%	15
	In all other cases	20 (1)
Uzbekistan		10
Vietnam	If greater than or equal to 50% (12)	5
	If between 25% and 50%	10
	In all other cases	15
Yemen		10

Notes

1. The local rate is 15% for dividends. Unless a lower rate is stated in the Agreement, the local rate is applied.
2. As per the provisions of the protocol amending the agreement, the rate may be (partially or wholly) reduced;

- For the Netherlands: to 10%, as long as, under the provisions of the Netherlands Company Tax Act and to the future amendments thereto, a company that is a resident of the Netherlands is not charged tax with respect to dividends the company receives from a company that is a resident of Turkey.
- For Belgium: to 10%, as long as, under the provisions of the Belgian laws and of the future amendments thereto, a company that is a resident of Belgium is not charged tax with respect to dividends the company receives from a company that is a resident of Turkey.
- For Austria: to 5%, if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends, provided that such dividends are exempt from tax in Austria.
- For Ireland: to 5%, where the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the voting power of the company paying the dividends. 15% in all other cases.

3. Subject to 5% of the gross amount of the dividends if the recipient is the government, or a public institution that is wholly owned by the government or its political subdivisions, or local authorities of the United Arab Emirates.
4. The tax rate shall be 15% where the amount of the Turkish tax imposed on the income of the company paying dividends is less than 40% of such income derived in the accounting period ending immediately before the date when such dividends become payable.
5. The income should be subject to full corporate taxation in the hands of the Turkish tax-resident subsidiary.
6. If the beneficial owner of the dividends is a resident of Saudi Arabia, the tax so charged shall not exceed 5% of the gross amount of the dividends provided: (i) the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the Turkish company paying the dividends or (ii) the beneficial owner is a central bank or an entity that is wholly owned by the government.
7. In case of Turkey, the tax rate shall not exceed 5%, to the extent that they are paid out of profits that have been subject to full rate of CIT in Turkey (i.e. without benefiting from tax exemption).
8. The rate of the income tax shall not exceed 5% if it is derived by the Government Pension Fund (*Statens Pensjonsfond*) or by the Government Social Security Fund (*Sosyal Guvenlik Fonu*), provided that such dividends are exempt from tax in the contracting state where the beneficial owner is a resident.
9. The treaty-reduced rate of 5% shall apply if such dividends are exempt from tax in the contracting state of which the beneficial owner is a resident.
10. As per the provisions of the agreement, the rate may be reduced to 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends, provided that a relief from Swiss tax is granted for such dividends by way of an abatement of the profits tax in proportion corresponding to the ratio between the earnings from participations and the total profits or by way of an equivalent relief.
11. As per the provisions of the agreement, 5% of the gross amount of dividends that are subject to Turkish Corporate Income Tax at the full rate if the Australian company (other than a partnership) holds at least 25% of the capital of the Turkish company. Regardless of these, if the dividends are taxed in Australia, Turkey could tax the dividends at a rate not exceeding 15%.
12. The WHT shall be lowered to 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 50% of the capital of the company paying the dividends or has invested more than USD 10 million, or the equivalent in Turkish or Vietnamese currency, in the capital of the company paying the dividends.

Turkish WHT on interest and royalties

	WHT (%)	
Recipient	**Interest**	**Royalties**
Non-treaty	10 to 18	20
Treaty:		
Albania	10	10
Algeria	10	10
Austria	5/10/15 (1, 14)	10
Australia	10	10
Azerbaijan	10	10
Bahrain	10	10
Bangladesh	10	10
Belarus	10	10
Belgium	15 (1)	10
Bosnia Herzegovina	10	10
Brazil	15 (1)	10/15 (22)

Recipient	WHT (%) Interest	Royalties
Bulgaria	10	10
Canada	15 (1, 18)	10
China (People's Republic of)	10	10
Croatia	10	10
Czech Republic	10	10
Denmark	15 (1)	10
Egypt	10	10
Estonia	10	5/10 (12)
Ethiopia	10	10
Finland	5/10/15 (23)	10
France	15 (1)	10
Georgia	10	10
Germany	10 (1)	10
Greece	12 (1)	10
Hungary	10	10
India	10/15 (1, 6)	15
Indonesia	10	10
Iran	10	10
Ireland	10/15 (1, 16)	10
Israel	10	10
Italy	15 (1)	10
Japan	10/15 (1, 5)	10
Jordan	10	12
Kazakhstan	10	10
Korea, Republic of	10/15 (1, 3)	10
Kosovo	10 (25)	10
Kuwait	10	10
Kyrgyzstan	10	10
Latvia	10	5/10 (12)
Lebanon	10	10
Lithuania	10	5/10 (12)
Luxembourg	10/15 (1, 4)	10
Macedonia	10	10
Malaysia	15 (1)	10
Malta	10	10
Mexico	15 (24)	10
Moldova	10	10
Mongolia	10	10
Morocco	10	10
Netherlands, The	10/15 (1, 4)	10
New Zealand	10/15 (1, 20)	10
Northern Cyprus, Turkish Republic of	10	10
Norway	5/10/15 (1, 19)	10
Oman	10 (17)	10
Pakistan	10	10
Philippines	10	10/15 (26)
Poland	10	10
Portugal	10/15 (1, 4)	10
Qatar	10	10

Turkey

Recipient	WHT (%) Interest	Royalties
Romania	10	10
Russia	10	10
Saudi Arabia	10 (15)	10
Serbia-Montenegro	10	10
Singapore	7.5/10 (8)	10
Slovakia	10	10
Slovenia	10	10
South Africa	10	10
Spain	10/15 (1, 9)	10
Sudan	10	10
Sweden	15 (1)	10
Switzerland	5/10 (21)	10
Syria	10	10/15 (13)
Tajikistan	10	10
Thailand	10/15 (1, 10)	15
Tunisia	10	10
Turkmenistan	10	10
Ukraine	10	10
United Arab Emirates	10	10
United Kingdom	15 (1)	10
United States	10/15 (1, 7)	5/10 (11)
Uzbekistan	10	10
Vietnam	10 (2)	10
Yemen	10 (17)	10

Notes

1. The local rate of 10% will be applied in the event a higher rate is stipulated in the agreement.
2. For the interest income derived by the government of Turkey or to the Central Bank of Turkey, no WHT will be applied.
3. A rate of 10% if the loan or other debt claim is for a period exceeding two years; 15% in all other cases.
4. A rate of 10% if the loan is taken for a period exceeding two years; 15% in all other cases.
5. A rate of 10% if the loan/credit is taken from a financial institution; 15% in all other cases.
6. A rate of 10% if the loan is taken from a bank or a financial institution; 15% in all other cases.
7. A rate of 10% if the credit/loan is taken from a bank, financial or savings institution, insurance company; 15% in all other cases.
8. A rate of 7.5% if the loan is taken from a financial institution; 10% in all other cases.
9. A rate of 10% if the interest is the result of a loan provided/given by a bank or if the interest is paid in return for an article of merchandise, or equipment given to the contracting state on credit; 15% in all other cases.
10. A rate of 10% if the loan is taken from a financial institution, including insurance companies; 15% in all other cases.
11. A rate of 10% for the use of, the right to use, or the sale (contingent on the productivity, use, or disposition) of any copyright of literary, artistic, or scientific work, including royalties in respect of motion pictures and works on film, tape, or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula, or process, or for information concerning, industrial, commercial, or scientific experience; 5% for the use of or the right to use industrial, commercial, or scientific equipment.
12. A rate of 5% for the use of industrial, commercial, or scientific equipment; 10% in all other cases.
13. A rate of 15% for patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience; 10% for the use of or the right to use any copyright of literary, artistic, or scientific work including cinematographic films and recordings for radio and television.
14. A rate of 5% in respect of a loan or credit made, guaranteed, or insured for the purposes of promoting export by the *Oesterreichische Kontrollbank AG* or a similar Turkish public entity the objective of which is to promote the export; 10% if the interest is derived by a bank; 15% in all other cases.

15. If the beneficial owner of the 'income from debt claims' is a resident of Saudi Arabia, the tax so charged shall not exceed 10% of the gross amount of income.
16. A rate of 10% in respect of a loan or other debt claim for a period exceeding two years or if the interest is received by a financial institution; 15% in all other cases.
17. Interest arising in one of the contracting states and paid to the government of Turkey or the Central Bank of Turkey shall be exempt from income taxes in the contracting state. Similarly, interest arising in the Republic of Turkey and paid to the government or the Central Bank of the other contracting state shall be exempt from income taxes in Turkey.
18. Interest arising in Turkey and paid to the government of Canada or to the Bank of Canada shall be exempt from Turkish tax. Similarly, interest arising in Canada and paid to the government of Turkey or to the Central Bank of Turkey (*Türkiye Cumhuriyet Merkez Bankasi*) shall be exempt from Canadian Tax.
19. The rate of the income tax shall not exceed (i) 10% if the interest is paid to a bank (also note that in the case of Turkey, a lower rate of 0% may apply for eligible financial institutions' and banks' loans under the domestic regulation) or (ii) 5% if the interest is paid to the Norwegian Government Pension Fund (*Statens Pensjonsfond*), the Norwegian Guarantee Institute for Export Credits (*Garantiinstituttet for Eksportkreditt*), the Turkish Social Security Fund (*Sosyal Guvenlik Fonu*) and the Eximbank of Turkey (*Turkiye Ihracat Kredi Bankasi*); 15% in all other cases.
20. The rate of the income tax shall not exceed 10% if the interest is paid to a bank (also note that in the case of Turkey, under the domestic regulation, a lower rate of 0% may apply for the loans provided by eligible financial institutions and banks); 15% in all other cases. The interest shall be exempt from income taxes in the contracting state where it arises, if the payment is made to the government of Turkey, to the Central Bank of Turkey (*Turkiye Cumhuriyeti Merkez Bankasi*), to the government of New Zealand, or to the Reserve Bank of New Zealand.
21. A rate of 5% of the gross amount of the interest paid in respect of a loan or credit made, guaranteed, or insured for the purposes of promoting export by an Eximbank or similar institution, the objective of which is to promote the export; 10% if the interest is derived by a bank; 10% in all other cases.
22. A rate of 15% from the use of, or the right to use, trademarks; 10% in all other cases.
23. A rate of 5% in respect of loans or credits that are guaranteed, insured, and provided for the purposes of promoting export by the Finnish Export Credit or FINNVERA and the Turkish public institutions the objective of which is to promote exports; 10% if the interest is derived by a bank; 15% in all other cases.
24. A rate of 10% if the payment is made to a bank; no taxation arises if the payment is made to the Central Bank of Mexico; no taxation arises if the payment is made to Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C., or Banco Nacional de Obras y Servicios Publicos S.N.C where the maturity of loan is more than three years; 15% in all other cases.
25. For the interest income derived by governments or central banks of the contracting states, no WHT applies.
26. The 15% rate applies to royalties paid for the use of, or the right to use, cinematographic films and films or tapes for radio or television broadcasting.

Anti-tax haven provisions

According to the law, all sorts of payments made to corporations (including branches of resident corporations) that are established or operational in countries that are regarded by the Turkish Council of Ministers to undermine fair tax competition (through taxation or other practices) may be subject to taxation in Turkey through withholding at a rate of 30%.

In the meantime, the Turkish Council of Ministers has not yet determined which countries receiving payments are considered 'tax havens'.

Tax administration

All Turkish taxes are imposed under laws drafted by or with the involvement of the Turkish MoF and are promulgated by the Turkish Parliament. The central government, acting through the MoF, imposes most of them, although local authorities have certain rights over some minor transaction charges. Tax procedures are governed by the Turkish tax procedural law.

Taxable period

The taxable period is the calendar year. Note that a different fiscal year is also allowed.

Turkey

Tax returns

A self-assessment system is used in Turkey.

In principle, residents and non-resident entities having a PE in Turkey are obligated to be registered for all taxes in Turkey (e.g. CIT, VAT, WHT, stamp tax) and file annual CIT returns.

The last date of submission of the CIT return is the 25th day of the fourth month following the fiscal year-end. This date will be 25 April if CIT returns are filed on a calendar-year basis.

Payment of tax

Taxable income is declared on a quarterly-basis as advance tax on the 14th day of the second month following each quarter, and corresponding tax is payable on the 17th day of the same period. Advance CIT paid is offset against the final (i.e. fiscal year-end) CIT calculated in the annual CIT return.

The last date of payment of CIT is the 30th day of the fourth month following the fiscal year-end.

Tax audit process

The tax authorities in Turkey do not have a regular audit cycle for every taxpayer. Tax audits are usually performed based on selection through risk assessment software, where they can conduct either sector-specific or issue-specific audits.

Statute of limitations

The Turkish tax system is based on self-assessment, and there is no procedure to agree the filed tax returns with the tax authorities that can prevent further inspections. Tax returns filed by companies remain open to tax inspection until the end of the five-year statute of limitations according to the provisions of Turkish Tax Procedural Law.

Topics of focus for tax authority

The tax authority has recently inspected companies for the following topics:

- Transfer pricing.
- Capital decrease.
- Loss compensation fund.
- Partial spin-off.
- Thin capitalisation.

Corporate income tax certification

In Turkey, a special kind of tax control mechanism is established called 'corporate income tax certification'. Under this mechanism, the tax authority accepts accounts and tax returns of taxpayers whose accounts are audited and certified by Sworn Fiscal Advisors (SFAs) to be true and correct unless proved to be incorrect. On the other hand, the MoF has announced that those companies that do not have their tax returns certified as such will be on the priority list for tax inspection. The Ministry sets standards of work to be done for any taxpayer wanting to use an SFA. At the end of each year, SFAs have to prepare a comprehensive report to be submitted to the MoF and to certify the accuracy of the CIT return.

The work is carried out over the statutory financials that are subject to tax calculations. Note that this service is not of a 'statutory audit' nature, technically it is 'non-audit assurance' work.

The tax certification process helps to identify and take corrective measures against erroneous applications that may otherwise be detected only upon a tax investigation by the Turkish MoF.

Other issues

Intergovernmental agreements (IGAs)

Following the negotiations between Turkey and the United States, Turkey has been included on the list of jurisdictions that have reached agreement in substance as of 3 June 2014, and Turkey was regarded among the countries that will sign the Model 1 IGA. On and after 3 June 2014, Turkey and the United States had further negotiations and infrastructure tests, which were finalised by the beginning of July 2015, and the agreement was signed on 29 June 2015.

The IGA entered into force by the Council of Ministers Decision No. 9229 dated 19 September 2016, which is published in the Official Gazette dated 5 October 2016, and numbered 29848.

Tax authorities are currently working on finalising the Draft Secondary Legislation. Turkish financial institutions are waiting for the secondary legislation to be finalised and come into force and eligible to be fully Foreign Account Tax Compliance Act (FATCA) compliant. As of November 2017, Draft Secondary Legislation is still not published.

Turkey, as a member of G-20 and OECD, has officially stated that it will be in compliance with the OECD's Common Reporting Standards (CRS). As of 20 May 2017, the agreement has been published in the Official Gazette and has entered into force. Simultaneously, the tax authorities shared a draft version of the CRS Secondary Legislation with Turkish banks to request their comments, which has been published as of 30 June 2017, and became effective. Accordingly, the first reporting would be made by 30 September 2018.

For up-to-date information

For up-to-date information on the most recent and significant developments in Turkish tax regulations, please refer to the tax bulletins added to our tax portal, *Vergi Portali,* which can be accessed at *Vergiportali.com*.

Turkmenistan

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Significant developments

On 9 October 2017, Turkmenistan introduced a new Law on Free Economic Zones (FEZs). The Law provides simplified administrative procedures for establishing new ventures and provides significant tax, customs, licensing, and other regulatory benefits. Members of FEZs are provided with the following benefits:

- Exemption from land lease fees for the first three years of operation of land and 50% fee exemptions for the next seven years.
- Exemption from the business licence for the duration of FEZ membership.
- Value-added tax (VAT) exemption for the duration of FEZ membership.
- Property tax exemption for the first ten years of operation at an FEZ.
- Corporate income tax (CIT) exemption for the first ten years of operation at an FEZ.
- Customs duty exemptions for both imported and exported goods.

Members of an FEZ are also allowed to attract foreign workforce without maintaining a foreign-to-national employee ratio.

Starting from 4 November 2017, the newly merged Ministry of Finance and Economy of Turkmenistan became the main tax regulating authority in Turkmenistan. The former Main State Tax Services of Turkmenistan was restructured and became the Tax Department at the Ministry of Finance and Economy of Turkmenistan. Consequently, regional and district tax services were also restructured from tax services to become tax departments.

Legal entities (qualified as small and medium enterprises [SMEs]) operating under the simplified tax regime are required to pay 2% CIT from revenue in the form of advance payments from the date when they receive revenues to their bank accounts. Banking institutions act as a tax agents and perform the withholding of 2% CIT from the taxpayer's funds and make the respective tax payments to the State Budget of Turkmenistan.

Taxes on corporate income

Residents of Turkmenistan are subject to CIT on worldwide income; non-residents are subject to CIT only in respect of their Turkmenistan-sourced income. The CIT base is determined as gross income less allowable deductions.

Branches of foreign legal entities are subject to a 20% CIT, whereas Turkmen legal entities are subject to an 8% CIT (or 2% CIT in cases where the company qualifies as a small or medium enterprise).

Companies involved in oil and gas operations are subject to a 20% CIT, irrespective of the legal status/ownership structure.

Entities where the government holds more than 50% of shares are subject to CIT at the rate of 20%.

Special purpose duty for improvement of urban and rural territories

A special duty aimed at improving urban and rural territories is imposed on registered entities (e.g. legal entities and branches). The duty applies at 1% of the taxable base for CIT purposes. Generally, contractors and subcontractors operating under the umbrella of the petroleum law may be exempt from this duty.

Contributions to Agriculture Development and Ashgabat City Development Funds

The contributions to the Agriculture Development Fund and Ashgabat City Development Fund are outside of the general tax legislation (Tax Code) and are provided for by specific decrees. Permanent establishments (PEs)/branches of foreign legal entities are subject to these contributions on the same terms as local legal entities.

Contribution to the Ashgabat City Development Fund only applies to entities located in Ashgabat City.

The base for the contributions is comprised of the accounting income. The contribution rate for the Agriculture Development Fund is 3%, and the contribution rate for the Ashgabat City Development Fund is 0.5%.

Generally, contractors and subcontractors operating under the umbrella of the petroleum law may be exempt from these contributions.

Corporate residence

Legal entities are treated as residents for CIT purposes if they are established in accordance with Turkmenistan law or their place of effective management is located in Turkmenistan.

Permanent establishment (PE)

The general definition of a PE under domestic legislation is similar to the one per the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention. A PE is a permanent place of the foreign legal entity in Turkmenistan through which it, fully or partially, conducts entrepreneurial (commercial) activity, including that through an authorised person.

Other taxes

Value-added tax (VAT)

VAT is generally payable at the rate of 15%. A zero-rate applies to exports of goods (except for oil and gas) and international transport services. Generally, contractors operating under the umbrella of the petroleum law may be exempt from this tax.

The tax base is sales turnover including excise tax. If a sale is made by state-fixed prices, then the tax base is the respective sales turnover including VAT and excise tax. The amount of input VAT incurred may be offset against the amount of output VAT. The amount of input VAT related to capital expenditures should be capitalised.

Customs duties

The import of goods into Turkmenistan is generally subject to 2% customs duty. The taxable base is determined as the customs value of imported goods. There is a list of certain items that are subject to specific customs duty (i.e. around 50 items), and the rates of specific customs duties may vary from 5% (e.g. products from cement) to 100% (e.g. carbonic acid) depending on the type of imported goods. In most cases, the customs duty is set on an *ad valorem* basis. There is also a customs clearance fee of 0.2% from the customs value of imported goods.

Excise taxes

Excise tax is paid on goods or products that are considered in the list of excised goods or products. Normally, excised goods consist of alcoholic beverages, tobacco products, and automobiles. Excise rates vary based on the type of goods as well as by domestic production or import.

Property tax

Property tax in Turkmenistan generally applies at the rate of 1% on the average annual net book value of fixed assets and average annual value of tangible assets used for business purposes and located in Turkmenistan. Generally, contractors and subcontractors operating under the umbrella of the petroleum law may be exempt from this tax.

Transfer taxes

There are no transfer taxes in Turkmenistan.

Stamp taxes

Although state duties of various amounts set forth by the government may apply to certain actions (e.g. branch registration), there is no unified stamp tax/duty mechanism as normally practiced in other countries.

Payroll taxes

Employers are obligated to withhold 10% personal income tax (PIT) as well as 2 manats (TMT) special purpose duty for improvement of urban and rural territories from employees' salaries and compensations and pay it to the State Budget on monthly basis.

Pension insurance payments

Pension insurance is payable by employers at 20% of the total remuneration provided to local employees. Additional 3.5% obligatory professional pension insurance is levied on employers with respect to employees who work under hazardous conditions. Employees may participate in a voluntary pension insurance, the minimum rate for which is established at 2% of total remuneration. Income paid to expatriate employees should not be subject to the pension insurance payments.

Subsurface-use tax

Subsurface-use taxpayers are legal entities and individual entrepreneurs extracting natural resources and using land or subsoil waters for the extraction of chemical products. This tax does not normally apply to contractors and subcontractors operating under the umbrella of the petroleum law.

Taxable operations include the sale of natural resources extracted by taxpayers and utilisation of natural resources for consumption. Tax rates vary depending on the goods being extracted. Natural or associated gas extraction is taxed at 22%, and crude oil extraction is taxed at 10%. Tax rates for other mineral resources vary depending on profitability (internal rate of return) from 0% to 50%.

Advertising levy

An advertising levy is imposed on the amount of expenses on commercial advertising and is to be paid quarterly at the rate of 3% to 5%, depending on the location of the payer within Turkmenistan. Generally, contractors operating under the umbrella of the petroleum law may be exempt from this levy.

Branch income

Branches pay CIT at the rate of 20%.

Branches are taxed on profits received from activities in Turkmenistan. The gross income is reduced for expenses incurred (both inside and outside of Turkmenistan) in relation to the activities in Turkmenistan. The procedure for determining the taxable base for branches is generally similar to the one for Turkmen legal entities.

Branches subject to the standard tax regime also pay and file returns with respect to the other taxes described in this summary.

Income determination

Inventory valuation

Inventory is valued at cost, including costs relating to its acquisition. The law permits the use of the weighted average or first in first out (FIFO) methods for tax purposes.

Capital gains

Capital gains are taxable as normal business income in Turkmenistan.

Dividend income

Generally, dividend income received by residents and non-residents from Turkmen taxpayers is subject to taxation at the source of payment at the rate of 15%.

Dividend income received by residents from non-Turkmen taxpayers is subject to CIT.

Inter-company dividends

The Tax Code provides for relief from economic double taxation of inter-company dividends.

The withholding tax (WHT) rate on dividends payable by Turkmen legal entities to their foreign shareholders may be reduced under applicable double tax treaties (DTTs).

Technically, Turkmen branches of foreign legal entities may also be subject to 15% WHT on repatriation of income to their head offices. However, if the head office collects the income from its clients directly to its bank account abroad, the mechanism of collecting the dividend tax is unclear.

Interest income

Turkmenistan-sourced interest income received by non-residents that do not have PEs in Turkmenistan is subject to WHT of 15%. The above rate may be reduced under the applicable DTTs.

Interest income received by residents is subject to CIT.

Royalty income

Turkmenistan-sourced royalty income received by non-residents that do not have PEs in Turkmenistan is subject to WHT of 15%. The above rate may be reduced under the applicable DTTs.

Royalty income received by residents is included in the taxable income and is generally subject to 10% CIT rate.

Foreign income

A resident company is subject to tax on its worldwide income (including capital gains). There are no provisions for tax deferrals in Turkmenistan tax legislation.

Deductions

In general, taxpayers may deduct expenses paid or accrued during the year in connection with their business and aimed at income generation. All expenses must be substantiated by documentary proof.

The deduction of certain expenses is subject to specific ceilings. Such expenses include representation expenses, which are deductible at up to 1% of gross income. Furthermore, deductible norms for business travel expenses are established periodically by the government.

Depreciation

Tax depreciation is based on accounting depreciation. Depreciation is accrued based on the straight-line method. Accelerated depreciation is also allowed based on specific consent of the Ministry of Finance. A Presidential Decree establishes the maximum depreciation rates, ranging from 5% to 25%, for five different groups of assets.

Generally, for the purposes of CIT, depreciation accrued is deductible. Fixed assets acquired free of charge, as well as assets of non-commercial legal entities, budget organisations, and public associations, should be excluded from depreciable assets for CIT purposes, even if they are used for generating income.

Fixed assets provided under operational lease shall be depreciated by the lessor. Fixed assets provided under financial lease shall be depreciated by the lessee.

Goodwill

There are no provisions for goodwill in Turkmenistan tax legislation.

Start-up expenses

Pre-incorporation costs are generally non-deductible.

Interest expenses

Interest expense occurring from debt instruments of any kind should be deductible for CIT purposes, provided that the purpose of the underlying debt relates to the entrepreneurial activity of the taxpayer.

Interest expense incurred by a foreign legal entity abroad and recharged to its branch in Turkmenistan is generally not deductible unless specifically addressed by applicable DTTs.

Bad debts

The Tax Code permits a taxpayer to include provisions for uncollectable debts as well as losses incurred as a result of expiration of the collection period for accounts receivable.

Charitable contributions

There are no specific restrictions on deductibility of charitable contributions. However, they may be disallowed under the general restriction of non-business-related deductions.

Repair and maintenance expenses

Deductible expenditures for the repair of fixed assets shall be comprised of the cost of spare parts and consumable materials used for repair, remuneration of employees carrying out the repairs, and other expenditures associated with such repairs, including payments to third parties for the purpose of such repairs.

Research and development (R&D) expenses

R&D costs (including those that produced no positive result) shall be subject to deduction from gross revenue, except for costs associated with the purchase of fixed assets, their installation, and other costs of a capital nature.

Fines and penalties

Fines, penalties, and other financial sanctions (except for tax-related ones) are deductible for CIT purposes.

Taxes

For CIT purposes, the following taxes are deductible: property tax; subsurface-use tax; levies established by the Tax Code (except the special-purpose duty for the improvement of urban and rural territories); accrued amounts of VAT in selling goods, performing work, and rendering of services; and amounts of excise tax included in the price of sold excisable goods by manufacturers of such goods.

Net operating losses

Loss is defined as excess of allowable deductions over gross revenue. Losses shall be carried forward and deducted in subsequent tax (reporting) periods, but not for more than three years. Losses cannot be carried back.

Payments to foreign affiliates

Administrative and management expenses incurred by the head office of a branch in Turkmenistan are not deductible at the branch level.

Group taxation

There is no group taxation in Turkmenistan.

Transfer pricing

The Turkmenistan Tax Code contains provisions concerning state supervision of transfer pricing. According to these rules, the tax authorities monitor and control transfer pricing of certain types of transactions, including transactions between related parties, foreign trade operations, and transactions where the tax authorities during tax audits perceive considerable deviation from the market price (i.e. more than 20%).

Thin capitalisation

There are no provisions for thin capitalisation in Turkmenistan tax legislation.

Controlled foreign companies (CFCs)

Turkmenistan tax legislation does not have provisions covering CFC rules.

Tax credits and incentives

Tax and investment incentives may be negotiated on a case-by-case basis. The President has often issued special decrees granting taxation exemptions and other privileges to specific investors. However, since adopting a new edition of the Tax Code in 2004, such practice has been significantly reduced.

Foreign tax credit

Foreign tax credits are available to tax residents of Turkmenistan based on the provisions of the respective tax treaties. The tax credited shall not exceed the tax liability computed in accordance with Turkmenistan regulations.

Withholding taxes

Turkmenistan-source income generated by a foreign legal entity that has no PE in Turkmenistan generally is subject to WHT at the source of payment at 15% (6% for income from the lease of sea vessels and aircraft).

Relief may be available for WHT if a foreign entity is a resident of a country that has a valid DTT with Turkmenistan and if the foreign entity complies with certain administrative procedures.

Turkmenistan

Turkmenistan is a successor to a number of DTTs concluded by the USSR, while some treaties were concluded and ratified by the government of Turkmenistan. The countries listed below are considered to have valid tax treaties with Turkmenistan:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	15	15	15
Treaty:			
Armenia	5/15 (1)	10	10
Austria	15	10	10
Bahrain	10	0/10 (6)	10
Belarus	15	10	15
Belgium *	15	0/15 (2)	0
China	5/10 (3)	0/10 (4)	10
Croatia	10	0/10 (6)	10
Estonia	10	10	10
Finland	5/15 (3)	10	10
France *	15	0/10 (5)	0
Georgia	10	0/10 (6)	10
Germany	5/15 (3)	10	10
Hungary	5/15 (3)	10	10
India	10	0/10 (6, 7)	10
Iran	10	0/10 (8)	5
Japan *	10	0/15 (8)	10
Kazakhstan	10	0/10 (6)	10
Latvia	5/10 (3)	10	10
Lithuania	5/10 (3)	10	10
Malaysia	10	0/10 (6)	10
Moldova	10	10	10
Pakistan	10	10	10
Romania	10	10	15
Russia	10	5	5
Slovakia	10	0/10 (6)	10
South Korea	10	10	10
Switzerland	5/15 (3)	10	10
Tajikistan	10	0/10 (6)	10
Turkey	10	0/10 (6)	10
Ukraine	10	0/10 (6)	10
United Arab Emirates	0	0	10
United Kingdom	5/15 (3)	10	10
United States *	0	15	0
Uzbekistan	10	0/10 (9)	10

* USSR treaties honoured by Turkmenistan.

Notes

1. 5% where the beneficial owner holds at least 25% of the authorised capital of the company paying the dividends.
2. 0% where one of the following conditions is met: (i) interest paid to the government of the other contracting state or interest paid in respect of a loan guaranteed by that other state or by an institution authorised by that state; (ii) interest from commercial debt-claims relating to instalment payments for supplying merchandise, goods, or services; (iii) interest on loans, not represented by bearer

instruments, from banks; or (iv) interest on cash deposits, not represented by bearer instruments, with banks, including public credit institutions.
3. 5% where the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
4. Interest arising in a contracting state and paid to, or on loans guaranteed or insured by, the government or a local authority thereof, the Central Bank, or any financial institution wholly owned by the government of the other contracting state, shall be exempt from tax in the first-mentioned state.
5. Interest on bank credits and loans and interest on commercial credits arising from sources located in one of the states and received by a resident of the other state shall not be taxable in the first state.
6. 0% where interest is paid by the government, Central Bank, or National Bank of the contracting states.
7. 0% where interest is paid by the government, a political sub-division, or a local authority of the other contracting state.
8. Interest paid by the government, ministries, other governmental institutions, municipalities, Central Bank, and other banks wholly owned by the government of the other contracting state shall be exempt from tax.
9. 0% where the recipients of the interest are governments of contracting states or any governmental body, as well as the Central Banks ('the bank of banks' of a contracting state), a state export or import credit underwriting organisation, or another similar organisation to which, in accordance with the law of a contracting state, the relevant rights were delegated.

Tax administration

Taxable period

The taxable period comprises a calendar year (i.e. 1 January to 31 December).

Tax returns

Reports are generally filed quarterly within the month following the reporting quarter. Annual income tax declaration and financial statements of branches of foreign legal entities are due by 20 March of the year following the reporting one.

Tax agents must file WHT reports not later than the 20th day of the month following the one when the respective tax liability occurred.

Payment of tax

Advance CIT payments under the standard tax regime are made before the 13th and 28th days of each month (unless agreed otherwise with tax authorities). Final payments upon results of the first quarter, first half-year, nine months, and tax year are made within five days from the reporting deadlines.

Under the petroleum law tax regime, CIT is reported and paid once annually based on dates indicated in the respective Product Share Agreement (PSA).

Tax audit process

Tax audits may be of two types: 'cameral' (preliminary) and 'documentary'.

Cameral tax audits are performed at the location of tax authorities within 30 days after submission of tax returns and financial statements with the aim of monitoring their accuracy and completeness. The tax authorities may request the taxpayer to amend the tax return(s) if they have revealed mistakes or inconsistencies therein.

Documentary tax audits are conducted based on a tax authorities' order aimed at verification of the tax returns submitted by the taxpayer. During such audits, the tax authorities review the accounting records, copies of tax returns, and source documents as required. The tax authorities are to notify the taxpayer about the upcoming tax audits at least five days prior to the start of the audit. However, in cases when there is sufficient evidence of tax evasion, the tax authorities may initiate the tax audit without prior notice.

Scheduled documentary tax audits are usually carried out once in three years. There can also be un-scheduled tax audits (e.g. in case of liquidation of the enterprise) and counter tax audits (to review transactions with the enterprise's supplier/customer, which is under the scheduled tax audit).

In cases when tax violations are revealed during tax audits, taxpayers should make necessary corrections to address those and pay respective taxes/obligatory payments and late payment interest within five days after the tax authorities' decision is released. If accomplished within the deadline, the tax authorities' decision on applying penalty may be cancelled. If not accomplished, the unpaid taxes/obligatory payments and late payment interest are to be withdrawn from the (i) taxpayer's bank accounts (by issuing a tax liability claim without acceptance), (ii) taxpayer's debtors (by issuing a tax liability claim on the debts payable to taxpayer), or (iii) taxpayer's property (by issuing a tax liability claim upon decision of the court).

Statute of limitations

The statute of limitations for tax purposes is five years.

Topics of focus for tax authorities

The tax administration environment in Turkmenistan is form-driven; consequently, the quality of documentation supporting the deductions should be of particular importance.

Cross-border transactions are normally scrutinised by tax authorities during statutory tax audits in view of WHT and reverse-charge VAT implications.

Another area of focus for tax authorities is the deductions taken by Turkmenistan branches of foreign legal entities in respect of expenses incurred by their head offices abroad.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 28 July 2017, the government of Turkmenistan signed a Model 1 Intergovernmental agreement (IGA) with the United States to improve international tax compliance and implement the provisions of the FATCA.

Uganda

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Significant developments

Amendments for the Financial Year 2017/18

Effective 1 July 2017, the following changes were made to the tax laws:

Income tax

The Income Tax Act (Amendment) Act 2017 introduced the following changes:

- A body established by law for the purpose of regulating the conduct of professionals was included on the list of exempt organisations, and, as such, their income is exempted from income tax. This includes bodies like Uganda Law Society, Institute of Certified Public Accountants, etc.
- Gave powers to the Minister of Finance to prescribe estimates of rent based on the rating of the rental property in a specific location. The amendment applies to persons who fail to file a return of rental income or whose return is misleading on the face of it and has been contested by the Commissioner. Further, the Act requires all rental agreements to be executed and effected in Ugandan shillings (UGX).
- Exempted the income of Bujagali Hydro Power Project from tax up to 30 June 2022, and the income of a savings and credit co-operative society up to 30 June 2027.
- Re-introduced the initial allowance deduction at 50% of the cost base of plant and machinery wholly used in the production of income included in gross income. The initial allowance deduction is applicable to plant and property placed into service for the first time during a year of income outside a radius of 50 kilometres from Kampala.
- Re-introduced initial allowance on industrial buildings at 20% of the cost base of a new industrial building or extension of an industrial building on which construction was commenced on or after 1 July 2000 and placed into service for the first time during the year of income. Previously, the initial allowance provisions were repealed in July 2014.
- Gave power to the tax authority to make adjustments to transactions between persons who are in an employment relationship although the Transfer Pricing Regulations do not apply to transactions between employers and employees.
- Waiver of interest on unpaid tax that is in excess of the aggregate of the principal tax and penal tax.

Value-added tax (VAT)

The VAT (Amendment) Act 2017 introduced the following changes:

- Extended the special VAT treatment for aid-funded projects to include taxable supplies made to a government ministry, department, or agency by a contractor executing an aid-funded project where the supply is for use solely or exclusively for the aid-funded project. Previously, the special treatment only applied to supplies made to contractors.
- Capped the interest payable on unpaid tax to a maximum of the aggregate of the principal tax and penal tax.
- Reinstatement of the VAT at 18% on the supply of wheat grain.
- Provided for VAT exemption of certain goods and services, including the supply of animal feeds and premixes, the supply of crop extension services, the supply of irrigation works, sprinklers, and ready to use drip lines, the supply of deep cycle batteries and composite lanterns, as well as raw materials for their manufacture, the supply of menstrual cups, and the supply of agriculture insurance premium or policy.

Excise duty

The Excise Duty (Amendment) Act 2017 introduced the following changes:

- Increase in excise duty on certain cigarettes and a distinction between locally manufactured and imported cigarettes. Locally manufactured soft cup and hinge lid cigarettes are now subject to duty of UGX 55,000 to UGX 80,000 per 1,000 sticks respectively. On the other hand, imported soft cup and hinge lid cigarettes are now subject to duty of UGX 75,000 to UGX 100,000 per 1,000 sticks respectively.
- Increase in duty on furniture imported or assembled in Uganda from foreign materials (excluding specialised hospital furniture) from 10% to 20%.
- Introduction of a new specific rate regime for certain beverages where excise duty will be calculated as the higher of a specific rate (i.e. based on volume) and an *ad valorem* rate (based on value). These items are currently subject to an *ad valorem* rate. The new changes are as follows:
  - A specific rate of excise duty of UGX 1,860 per litre on malt beer as an alternative to the *ad valorem* rate of 60%, whichever is higher.
  - A specific rate of excise duty of UGX 650 per litre on beer whose local raw material content, excluding water, is at least 75% by weight of its constituent as an alternative to the *ad valorem* rate of 30%, whichever is higher.
  - A specific rate of excise duty of UGX 950 per litre on beer produced from barley grown and malted in Uganda as an alternative to the *ad valorem* rate of 30%, whichever is higher.
  - A specific rate of excise duty on non-alcoholic beverages (excluding fruit or vegetable juices) of UGX 240 per litre as an alternative to the *ad valorem* rate of 13%, whichever is higher.
- Introduced excise duty on fruit juice and vegetable juice, except juice made from at least 30% of pulp from fruit and vegetables grown in Uganda at 13% or UGX 300 per litre, whichever is higher.
- Revised the excise duty rate on un-denatured spirits from UGX 1,000 per litre or 100%, whichever is higher, to UGX 2,500 per litre or 100%, whichever is higher.

Tax administration

The Tax Procedure Code (Amendment) Act 2017 introduced the following changes:

- Clarification that the due date for filing of provisional returns is the date of payment of tax.

- Introduced a requirement for persons dealing in locally manufactured and imported goods to affix on the goods a tax stamp to be prescribed by the Minister of Finance with a penalty for failure to affix a tax stamp.
- Clarification on the hierarchy of payment of taxes where a taxpayer is liable for penal tax and interest in relation to a tax liability and the taxpayer makes a payment less than the total amount of tax, penal tax, and interest. The amount paid will be used to first offset the principal tax, then the penal tax, and the balance is applied to the interest due.
- Introduced a penal tax of UGX 50 million for failure to provide records requested by the Commissioner in respect of transfer pricing and UGX 20 million in respect of other information (other than transfer pricing) within 30 days after the request.

Taxes on corporate income

A resident company is taxed on its income from all geographical sources. A non-resident company is only subject to Uganda income tax on income derived from sources in Uganda.

The income tax rate applicable to the chargeable income of companies is 30%, with the exception of resident companies whose turnover does not exceed UGX 150 million, to whom presumptive tax applies (*see below*).

Chargeable income is gross income for the year less the total deductions allowed under the Income Tax Act (ITA).

Resident companies with turnover of less than UGX 150 million

A rate of 1.5% of turnover is used to determine income tax payable by a resident taxpayer whose turnover is between UGX 50 million and UGX 150 million, subject to certain thresholds. For taxpayers whose gross turnover is above UGX 10 million but not in excess of UGX 50 million, fixed amounts of tax apply, subject to the location of the business. The amount of tax payable ranges between UGX 100,000 to 550,000 *per annum*.

However, on application to the Commissioner, a resident taxpayer with a turnover of less than UGX 150 million may be taxed at 30% on chargeable income.

This category excludes professionals, public entertainment services, public utility services, or construction services.

Local income taxes

There are no district, municipal, or local corporate income taxes in Uganda.

Corporate residence

A company is resident in Uganda for a year of income if it meets one of the following criteria:

- Is incorporated or formed under the laws of Uganda.
- Has its management and control exercised in Uganda at any time during the year of income.
- Undertakes the majority of its operations in Uganda during a year of income.

Permanent establishment (PE)

A PE (branch) means a place where a person carries on business, and includes:

- A place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such.
- A place where a person has, is using, or is installing substantial equipment or substantial machinery.
- A place where a person is engaged in a construction, assembly, or installation project for 90 days or more, including a place where a person is conducting supervisory activities in relation to such a project.
- The furnishing of services, including consultancy services, by an enterprise of a contracting state through employees or other personnel engaged in the other contracting state, provided that such activities continue for the same or a connected project for a period or periods aggregating more than four months within any 12-month period.

Other taxes

Value-added tax (VAT)

VAT is governed by the VAT Act and administered by the Uganda Revenue Authority (URA). VAT is charged at the rate of 18% on the supply of most goods and services in the course of business in Uganda. Specified goods and services, as well as exports outside of Uganda, attract a zero rate of tax.

Some supplies are exempt from VAT, the main categories being government subsidies, some unprocessed foodstuffs, financial services, health and life insurance, agriculture insurance policies, re-insurance services, unimproved land, leases and sale of certain residential properties, betting and gaming, education, medical and health services, social welfare services, pesticides, and petroleum products subject to excise duty.

Zero rating is preferable to exemption because the VAT on costs incurred in making a zero-rated supply can be recovered while those incurred in making an exempt supply cannot be recovered.

The zero-rated supplies include the supply of goods and services exported from Uganda; the supply of drugs and medicines; the supply of seeds, fertilisers, pesticides, and hoes; and the supply of leased aircraft, aircraft engines, spare engines, spare parts for aircraft, and aircraft maintenance equipment.

Besides the exempted and zero-rated supplies, there is a deemed VAT regime that applies to the upstream and midstream operations in the oil and gas sector, mining operations, as well as aid-funded projects. The tax payable on a taxable supply made by a supplier to a contractor executing an aid-funded project and by a contractor to a licensee to undertake mining or petroleum operations is deemed to have been paid by the supplier (in the case of the aid-funded projected) or the contractor (in the case of mining and petroleum operations) provided the supply is for use by the contractor solely and exclusively for the aid-funded project or the petroleum/mining operations.

The annual threshold for VAT registration is UGX 150 million. Persons who make supplies that are VATable and whose turnover exceeds UGX 150 million are required to register for VAT with the URA. VAT-registered persons are required to:

- Charge VAT whenever they make supplies that are VATable.
- File monthly returns before the 15th day of the month following the reporting month.

Credit for input tax

A person making exempt, zero-rated, and standard supplies can recover all the input VAT if the exempt supplies are less than 5% of the total supplies. However, if the exempt supplies are more than 5% but less than 95%, the person is required to recover only a portion of the VAT input tax corresponding to the percentage of the taxable supplies. If the exempt supplies exceed 95%, the person cannot recover any input VAT.

Imported services

The VAT Act defines a supply of service to mean any supply that is not a supply of goods or money, including the performance of services for another person.

There is no definition of imported services in the local legislation. However, the tax authorities generally consider an imported service to be one provided by a person normally resident outside Uganda who is not required to register for VAT in Uganda. According to Regulation 14 of the VAT Regulations 1996, any person who imports a service into the country must account for VAT on such a service. The Regulations require the person importing the service to account for the VAT at the time when performance of the service is completed, when payment for the service is made, or when the invoice is received from the foreign supplier, whichever is earliest.

The tax on such imported services is computed at the rate of 18% of the cost of the service. VAT-registered companies are no longer required to prepare self-billed tax invoices, thus they are unable to claim the VAT paid as input tax; however, a contractor or licensee in the petroleum and mining industry is able to claim an input tax credit for the reverse-charge VAT paid on imported services. Also, persons providing business process outsourcing (BPO) services are allowed to claim credit for input tax for VAT paid on imported services. Further, if the importer of the services is not registered for VAT, the importer is required to calculate and pay the VAT to the URA.

Failure to pay VAT on non-exempt imported services is tantamount to lack of compliance with the law, and a penalty of 2% per month, compounded, may apply.

Interest payable on late payment of VAT is capped to a maximum of the aggregate of the principal tax and penal tax.

VAT representative for non-resident persons

The Tax Procedure Code Act now provides for a role of tax representative for a non-resident person being the individual controlling the person's affairs in Uganda, including a manager of a business of that person or any representative appointed in Uganda.

The VAT Act previously provided for the appointment of a VAT representative by a non-resident person who may have been required by the Commissioner to register for VAT in Uganda but had no fixed place of business. It also provided that if the non-resident person did not appoint the VAT representative within 30 days after being required to register for VAT, the Commissioner could appoint the representative for the non-resident person.

A tax representative under the Tax Procedure Code Act is responsible for performing any duty obligation imposed by a tax law on the taxpayer, including submission of tax returns and payment of tax.

Customs duties

Many goods imported into Uganda are subject to customs duties. However, exemptions are available to various classes of plant and machinery imported into Uganda. The rates of duty are provided by the East African Community common external tariff code. Certain products imported from the East African Community and the Common Market for Eastern and Southern Africa (COMESA) region enjoy special custom duty rates. Imported items are classified according to the nomenclature established under the international convention on the harmonised commodity description and coding system. Duties range from 0% to 60%, depending on the item imported.

Excise duties

Excise duties are imposed on goods considered luxuriant. Examples include locally manufactured soft drinks, cigarettes, alcoholic drinks, and spirits. A schedule of some of the rates is provided below:

Goods	Excise duty
Soft cap cigarettes:	
Locally manufactured	UGX 55,000 per 1,000 sticks
Imported	UGX 75,000 per 1,000 sticks
Hinge lid cigarettes:	
Locally manufactured	UGX 80,000 per 1,000 sticks
Imported	UGX 100,000 per 1,000 sticks
Cigars, cheroots, and cigarillos containing tobacco	200%
Smoking tobacco whether or not containing tobacco substitutes in any proportion	200%
Homogenised or reconstituted tobacco or other tobacco	200%
Beer made from malt	60% or UGX 1,860 per litre, whichever is higher
Beer made from local raw material	30% or UGX 650 per litre, whichever is higher
Beer produced from barley grown and malted in Uganda	30% or UGX 950 per litre, whichever is higher
Spirits produced from local raw materials	60%
Un-denatured spirits	100% or UGX 2,500 per litre, whichever is higher
Other spirits	80%
Non-alcoholic beverages (excluding fruit or vegetable juices)	13% or UGX 240 per litre, whichever is higher
Fruit and vegetable juice (except juice made from at least 30% of pulp from fruit and vegetables grown in Uganda)	13% or UGX 300 per litre, whichever is higher
Wine produced from local raw materials	20%
Other wine	80%
Air time applicable to mobile cellular devices	12%
Air time applicable to landlines and public pay phones	5%

Goods	Excise duty
Fuel and oils	Between UGX 200 and UGX 1,000 per litre, depending on the type of fuel/oil. Nil for gas oil and thermal power generation to the national grid.
Motor spirit (gasoline)	UGX 1,100 per litre
Gas oil (automotive, light, amber for high speed engine)	UGX 780 per litre
Motor vehicle lubricants	10%
Chewing gum, sweets, and chocolates	20%
Other furniture	20%
Specialised hospital furniture	0%

Other goods and services	Excise duty
Banking fees	10% of the fees charged
Money transfers (other than transfers by banks)	10% of the fees charged
Cosmetics and perfumes (except creams used by persons with albinism in the treatment of their skin, which attract no excise duty)	10%
Incoming international calls (other than calls from the Republic of Kenya, the Republic of Rwanda, and the Republic of South Sudan)	USD* 0.09 per minute
Cement	UGX 500 per 50 kg
Cane or beet sugar and chemically pure sucrose in solid form	UGX 100 per kg

* United States dollars

Property taxes

Property taxes are administered by the local authorities annually. They are based on the value of the property as assessed by the local authorities.

Stamp duties

Stamp duty is charged on a number of transactions at varying rates. Stamp duty is charged at 1% of the total value for a number of instruments, including hire purchase agreements, composition deeds, leases, conveyance, transfers, share warrants, gifts, and agreements relating to deposit of title deeds.

Stamp duty of 0.5% is incurred on formation of a company, capital-raising activities (e.g. increase of share capital), debentures, equitable mortgages, and mortgage deeds.

Stamp duty of 1.5% applies on all transfers, including transfer of shares and property.

Stamp duty of 2% applies on exchange of property.

No stamp duty is charged on the increase of share capital where it is in fulfilment of a condition precedent for acquiring loan funds for a development project or where it is made on becoming public through the stock exchange.

Stamp duty of UGX 10,000 is also charged in a number of various other instruments.

Environmental levies

Environmental levies are charged on every person who imports motor vehicles that are eight years old or older. Levies are also imposed on the importation of used household appliances. The levy on motor vehicles is 20% of the value of the vehicle as determined for customs duty purposes. Levies on electrical appliances range from UGX 20,000 to UGX 50,000 per item, depending on the nature of the item.

Payroll taxes

The employer is required to withhold tax on employment income from their employees and pay it to the tax authorities. The tax is normally borne by the employee. Where the employer fails to withhold tax as required, the employer becomes liable for the taxes but may recover the same from the employees.

Local service tax ranging between UGX 5,000 and UGX 100,000 *per annum*, subject to an individual's employment income bracket, is payable to the local municipal councils of the individual's area of residence. The tax is withheld and paid by the employer.

Social security contributions

An employer is obligated to make contributions to the national social security fund for each employee, amounting to 10% of their gross pay.

Branch income

Tax is imposed on the income of a non-resident company derived from running a branch in Uganda. The chargeable income of a branch in Uganda is taxed at the corporation tax rate of 30% after deduction of allowable expenses.

In addition to corporation tax, branches are subject to extra tax at a rate of 15% on any repatriated income for a year of income. The repatriated income is calculated using the A + (B - C) - D approach. Where A is the net assets at the beginning of the year, B is the net profit for the year, C is the tax charge for the year, and D is the net assets at the end of the year.

Income determination

In arriving at chargeable income (taxable income), one has to go through the process of adjusting profits by taking into account deductions allowed and deductions not allowed.

Inventory valuation

A taxpayer is allowed a deduction for the cost of trading stock disposed of during the year, which is determined by adding to the opening value of the trading stock the cost of trading stock acquired during the year and subtracting the closing value of stock. The opening value of the stock is the closing value for the previous year or, where the taxpayer commenced business during the year, the market value at the time of commencement of the business of the trading stock acquired prior to commencement. The closing stock valuation method is the lower of cost or market value. Trading stock is allowed to be valued using either the absorption costing or prime cost method. The stock valuation method chosen may not be changed, except with written permission of the Commissioner.

Capital gains

Capital gains are included in and taxed together with the business income at a rate of 30%. There is no separate capital gains tax. Capital gains arise on disposal of non-depreciable business assets as well as sale of shares.

Dividend income

The general rule is that dividend income is taxable as part of business income at a rate of 30%. Dividend income is also subject to withholding tax (WHT) at the rate of 15%. The WHT paid in respect of the dividend income is creditable where the income is subject to the corporation tax rate of 30%. The WHT rate for dividend payments to resident persons is 15%. For dividends paid out by companies listed on the stock exchange to individuals, the rate is 10%.

Dividend income is exempt from tax if the recipient company directly or indirectly controls the paying company through ownership of 25% or more of the voting power of the paying company.

Interest income

The general rule is that interest income is taxable as part of business income at a rate of 30%. Interest income is also subject to WHT at the rate of 15%. The WHT paid in respect of the interest income is creditable where the income is subject to the corporation tax rate of 30%. Also, interest income earned with respect to government securities is subject to tax at 20% as a final tax.

Royalty income

The general rule is that royalty income is taxable as part of business income at a rate of 30%. Royalty income is also subject to WHT at the rate of 15%. The WHT paid in respect of the royalty income is creditable where the income is subject to the corporation tax rate of 30%.

Rental income

Companies are required to disclose their rental income separately from other business income. Taxable rental income is the net income after allowing for any expenditures and losses in respect of the rental income derived. The rate of tax applicable is 30%.

The Minister of Finance has powers to prescribe estimates of rent based on the rating of the rental property in a specific location in respect of persons who fail to file a return of rental income or whose return is misleading on the face of it and has been contested by the Commissioner. Further, all rental agreements are required to be executed and effected in Ugandan shillings.

Foreign income

Foreign income is taxable on resident recipients, and tax suffered in the country where it is sourced (if any) is creditable, subject to the provisions of any double taxation agreements (DTAs). This credit is limited to the amount of Ugandan tax payable on that income.

There are no provisions for deferring tax on income earned abroad by tax residents.

Deductions

The ITA sets out the following conditions for deductibility of an expense:

- There must be an expenditure or loss.
- The expenditure or loss must be incurred by a person during the year of income.
- The expenditure must be incurred in the production of income included in gross income.

A taxpayer who is accounting for tax purposes on an accrual basis derives income when it is receivable by the taxpayer and incurs expenditure when it is payable by the taxpayer.

An amount is treated as payable by the taxpayer when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs. Economic performance occurs:

- with respect to the acquisition of services or property, at the time the services or property are provided
- with respect to the use of property, at the time the property is used, or
- in any other case, at the time the taxpayer makes payment in full satisfaction of the liability.

Contingent liabilities are not tax-deductible in Uganda.

Depreciation

A deduction is allowed for the depreciation of the person's depreciable assets, other than minor assets, in accordance with the appropriate applicable rates. The ITA allows a taxpayer a deduction for the depreciation of their depreciable assets on a reducing-balance basis. Depreciable assets are classified in four classes as follows:

Class	Assets included	Rate of tax depreciation (%)
1	Computers and data handling equipment.	40
2	Automobiles, buses, and mini-buses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; construction and earth moving equipment (cost of motor vehicle sealed at approximately UGX 60 million for non-commercial vehicles).	35
3	Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of 7 tonnes or more; specialised trucks, tractors; trailer-mounted containers; plant and machinery used in farming, manufacturing, or mining operations.	30
4	Rail cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; and any depreciable asset not included in another class.	20

Industrial building allowance

A company is eligible for an industrial building allowance on its industrial and commercial buildings at a tax rate of 5% *per annum* on a straight-line basis. The industrial building allowance will be granted on the actual cost incurred in constructing the buildings.

An industrial building is defined to mean any building that is wholly or partly used, or held ready for use, by a person in manufacturing operations, research and development into improved or new methods of manufacture, mining operations, an approved hotel business, an approved hospital, or approved commercial buildings.

Initial allowance

A person is allowed an initial allowance deduction at 50% of the cost base of plant and machinery wholly used in the production of income included in gross income. The initial allowance deduction is applicable to plant and property placed into service for the first time during a year of income outside a radius of 50 kilometres from Kampala.

Also, initial allowance is allowed on industrial buildings at 20% of the cost base of a new industrial building or extension of an industrial building on which construction was commenced on or after 1 July 2000 and placed into service for the first time during the year of income.

Initial allowances are granted in addition to the tax depreciation and industrial building allowance explained above.

Goodwill

An intangible asset is amortisable over its useful life. To the extent that the useful life of the underlying asset that gives rise to goodwill can be determined, then the goodwill may be deductible over the useful life of the asset.

Start-up expenses

A company setting up business for the first time or engaged in the initial public offer at the stock market will be entitled to a tax deduction for all its start-up costs that are of capital nature that would otherwise not be tax-deductible under the ordinary tax rules. The start-up costs will be allowed as tax-deductible costs over a period of four years on a straight-line basis at the rate of 25% *per annum*.

Interest expenses

Interest is deductible if the interest is incurred in respect of a debt obligation by the company in the production of income included in the company's gross income. Interest arising from non-trade-related debt obligation is not deductible. Deferred interest is deductible when paid.

Interest charged before capital investment is put to use has to be capitalised. Interest incurred after capital investment is put to use is allowed as a deduction.

If the company is foreign controlled, then the interest arising from the loan in excess of one and a half times the company's equity will not be allowed (*see Thin capitalisation in the Group taxation section for more information*).

Bad debt

A deduction is allowed for bad debt only if:

- the amount was included in the person's income in the year of income
- it is in respect of money that was lent in the ordinary course of business by a financial institution in the production of income, or

- the amount of the debt claim was in respect of a loan granted to any person by a financial institution for the purpose of farming, forestry, fish farming, beekeeping, animal and poultry husbandry, or similar operations.

For the bad debt to be deductible, the taxpayer must demonstrate to the URA that reasonable steps to collect the debt were taken and that the taxpayer failed to recover the debt. In relation to a financial institution, it should be a debt in respect of which a loss reserve held against presently identified losses or potential losses, and which is therefore not available to meet losses that subsequently materialise, has been made.

Charitable contributions

Charitable donations are deductible if made to amateur sporting associations; religious, charitable, or educational institutions of public character; trade unions; and other similar associations that have been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organisation. The donations should not exceed 5% of the person's chargeable income.

Meals, refreshments, and entertainment

Expenses for meals, refreshments, and entertainment are deductible only where the value is included in the employment income of the employees or is excluded from employment income owing to the fact that it is provided on equal terms to all workers.

Pension expenses

Employers are allowed a deduction for the contributions made to pension schemes on behalf of their employees. Employees, on the other hand, do not get a deduction for the contributions they make to pension funds.

Payment for directors

Directors are treated as employees, so expenses incurred in respect of directors are deductible expenses.

Bribes, kickbacks, illegal payments

Non-business expenses are not tax-deductible, including those of a private nature.

Fines and penalties

No deduction is allowed for any fine or similar penalty paid to a government or its sub-division for breach of any law.

Taxes

No deduction is allowed for income tax payable in Uganda or in a foreign country.

Other significant items

No deduction is allowed for the following other expenditures:

- Any expenditure or loss of a domestic or private nature.
- Any expenditure or loss of a capital nature.
- Any expenditure or loss recoverable under insurance contract or indemnity.
- Any contribution or similar payment made to a retirement fund by the employee or for the benefit of any other person (e.g. National Social Security Fund [NSSF] contributions).

- Any premium or similar payment made in respect of a life insurance policy for the life of the person paying the premium or on the life of some other person.
- Any income appropriated to a reserve fund or capitalised in any way.
- The amount of pension paid to any person.

Net operating losses

A deduction is allowed for any assessed tax losses carried forward from previous years of income. Such tax losses are carried forward and deducted against future taxable profit of the business in the subsequent years of income. The losses can be carried forward indefinitely. There is no ring-fencing of losses except in the following circumstances:

- Where, during a year of income, there has been a change of 50% or more in the underlying ownership of a company, as compared with its ownership one year previously, the company is not permitted to deduct an assessed loss in the year of income or in subsequent years, unless the company, for a period of two years after the change or until the assessed loss has been exhausted if that occurs within two years after the change,:
  - continues to carry on the same business after the change as it carried on before the change and
  - does not engage in any new business or investment after the change where the primary purpose of the company or the beneficial owners of the company is to utilise the assessed loss so as to reduce the tax payable on the income arising from the new business or investment.
- In cases where losses relate to farming, the assessed farming loss can only be deducted from farming income of the taxpayer in the following year and not from any other income.

There is no provision for carryback of losses in Uganda.

Payments to foreign affiliates

Payments to foreign affiliates are deductible as long as they are charged at an arm's length and incurred in the production of income.

Group taxation

There are no specific provisions in the law covering groups, so companies in a group do not get any special treatment for tax purposes in Uganda.

Transfer pricing

The transfer pricing regulations apply to controlled transactions if a person who is a party to the transactions is located in and is subject to tax in Uganda and the other person who is a party to the transaction is located in or outside Uganda.

The URA Practice Note issued on 14 May 2012 gives details on the transfer pricing documentation to be maintained by the taxpayer. These include company details and transaction details, including agreements and the pricing methodology used in determining the arm's-length price.

In addition, the anti-avoidance provisions contained in Sections 90 and 91 of the ITA require transactions between associates to be at an arm's-length. These are the provisions that are often applied by the URA in instances where they are of the view that a non-resident person may be transferring profits from Uganda.

The Commissioner may also make adjustments to transactions between persons who are in an employment relationship although the Transfer Pricing Regulations do not apply to transactions between employers and employees.

A penal tax of UGX 50 million is due on the taxpayer for failure to provide records requested by the Commissioner in respect of transfer pricing.

Thin capitalisation

Where a company intends to finance some of its Uganda operations by use of foreign debt, the ITA provides for thin capitalisation rules in Uganda, and the safe harbour debt-to-equity ratio is 1.5:1.

The thin capitalisation rules are provided for in Section 89(1) of the ITA. According to this Section, where a foreign-controlled resident company, other than a financial institution, has a debt-to-equity ratio in excess of 1.5:1 at any time during the year of income, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the 1.5:1 ratio for the period the ratio was exceeded.

These provisions do not apply if, at all times during the year, the amount of the debt does not exceed the arm's-length debt amount. Arm's-length debt amount is defined as the amount of debt that a financial institution that is not related to the company would be prepared to lend to the company having regard to all the circumstances of the company.

Controlled foreign companies (CFCs)

Uganda does not have a CFC regime.

Tax credits and incentives

Foreign tax credit

A resident taxpayer is entitled to a foreign tax credit for any foreign income tax paid by the taxpayer in respect of foreign-source income included in the gross income of the taxpayer. The foreign tax credit allowed is subject to the income tax rate (i.e. 30%) in Uganda.

Tax holidays for exporters

A tax holiday of ten years is available to exporters who export at least 80% of their produce of finished goods, subject to certain conditions.

Scientific research expenditure, training expenditure, and mineral exploration expenditure

A 100% allowance is available for scientific research expenditure, training expenditure, and mineral exploration expenditure in the year of expenditure.

Incentives for the importation of plant and machinery

Plant and machinery is exempt from customs duty on importation. Additionally, a VAT deferral facility is available where VAT is deferred on importation of plant and machinery and subsequently waived upon approval by the relevant authorities.

Employment incentives

A deduction of 2% of income tax payable is granted to any employer who can prove to the URA that at least 5% of their employees on a full-time basis are people with disabilities.

Other incentives

Certain income and bodies are exempt from tax. These include income derived from agro processing and from exportation of consumer and capital goods (subject to certain conditions), the income of Bujagali Hydro Power Project up to 30 June 2022, the income of a savings and credit co-operative society up to 30 June 2027, and bodies established by law for the purpose of regulating the conduct of professionals, such as Uganda Law Society and Institute of Certified Public Accountants.

Withholding taxes

Payments to non-resident persons

According to Section 83(1) of the ITA, a tax is imposed on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment, or management charge from sources in Uganda. WHT at a rate 15% therefore applies on gross dividend payments, interest, management fees, and royalty payments in respect of non-treaty countries.

Rent for this purpose means a payment for the use of land and buildings. This means that a tenant paying rent to a non-resident landlord in respect of land and buildings in Uganda is now required to deduct WHT on the gross payments at a rate of 15%.

However, Section 83(5) exempts interest paid by a resident company in respect of debentures that:

- were issued by the company outside Uganda for the purpose of raising a loan outside Uganda
- were widely issued for the purpose of raising funds for use by the company in a business carried on in Uganda or the interest is paid to a bank or a financial institution of a public character, and
- the interest is paid outside Uganda.

A 'debenture' is defined in the ITA as any form of debt, including debenture stock, mortgage stock, loan, loan stock, or any similar instrument acknowledging indebtedness, whether secured or unsecured. The term 'widely issued' is also specifically defined.

Also, the rate of WHT on interest derived by a non-resident person from government securities is 20%.

Payment of re-insurance premiums to non-resident persons is subject to WHT at a rate of 10%. The requirement to withhold tax does not apply to the African Reinsurance Corporation and PTA Reinsurance Company.

Non-resident air transport, shipping, and some telecommunications services

Non-resident ship operators, charterers, and air transport operators who derive income from carriage of passengers who embark, or cargo or mail that is embarked, in Uganda, as well as road transport operators who derive income from carriage of cargo or mail that is embarked in Uganda, are taxed at the rate of 2%.

A non-resident person who carries on the business of transmitting messages by cable, radio, optical fibre, or satellite communication and derives income through transmission of such messages by apparatus established in Uganda, whether or not such messages originated from Uganda, is taxed on one's gross income at a rate of 5%. Similarly, a non-resident person who derives income from providing direct-to-home pay television services to subscribers in Uganda is taxed on one's gross income at a rate of 5%.

Payments to resident persons

The rate of 15% also generally applies to payments of dividends and interest to resident persons, except in the following circumstances, where different rates apply:

- Dividends paid to a company controlling 25% or more of the voting powers: 0%.
- Dividends paid by companies listed on the Ugandan Securities Exchange to individuals: 10%.
- Interest on government securities: 20%.
- Interest paid by a natural person, paid to a financial institution (other than from government securities), paid by a company to an associated company, and interest that is exempt in the hands of the recipient: 0%.

There is no WHT on royalty payments to resident persons unless the payments are made by a government institution, local authority, company controlled by the government, or a 'designated payer'.

Double taxation agreements (DTAs)

A taxpayer may benefit from the provisions of a DTA that Uganda has with another country.

According to Section 88(2) of the ITA, the terms of the international agreement to which Uganda is a party prevails over the provisions of the ITA in case the terms of the international agreement are inconsistent with the provisions of the Act.

According to Section 88(5) of the ITA, where an international agreement provides that income derived from sources in Uganda is exempt from Ugandan tax or the application if the treaty results in a reduction in Uganda tax, the benefit of that exemption or reduction shall not be available to any person who:

- receives the income in a capacity that is other than that of a beneficial owner, within the meaning accorded to that term by the relevant international agreement, and who does not have full and unrestricted ability to enjoy that income and to determine its future uses, and

- does not possess economic substance in the country of residence.

Please find below a table showing the countries with which Uganda has DTAs and the applicable WHT rates on various categories of income.

	WHT (%)					
Recipient	Dividends	Interest	Royalties	Management fees	Taxation of branch profits	Repatriation of branch profits
Non-treaty	15	15	15	15	30	15
Treaty:						
Denmark	10/15 (1)	10	10	10	30	15
India	10	10	10	10	30	15
Italy	15	15	10	10	30	15
Mauritius	10	10	10	10	30	15
Netherlands	0/5/15 (2)	10	10	NA	30	15
Norway	10/15 (3)	10	10	10	30	15
South Africa	10/15 (4)	10	10	10	30	15
United Kingdom	15	15	15	15	30	15

Note

1. With respect to the Uganda/Denmark DTA, the rates applicable on dividends are:
   - 10% if the beneficiary holds at least 25% of the capital of the company paying the dividends.
   - 15% in all other cases.
2. With respect to the Uganda/Netherland DTA, the rate applicable on dividends is 15%, except where the investment is new or is an expansion of the current investment made after the DTA entered into force (10 September 2006).

   For new investments and expansions of current investment, the rates are:
   - 0% if the beneficiary holds at least 50% of the shares in the company paying the dividends.
   - 5% if the beneficiary holds less than 50% of the shares in the company making the payment.
3. With respect to the Uganda/Norway DTA, the rates applicable on dividends are:
   - 10% if the beneficiary is a company that directly holds at least 25% of the capital of the company paying the dividend.
   - 15% in all other cases.
4. With respect to the Uganda/South Africa DTA, the rates applicable on dividends are:
   - 10% if the beneficiary holds at least 25% of the capital of the company paying the dividends.
   - 15% in all other cases.

Tax administration

Taxable period

A normal period of 12 months is known as a year of income. This spans from 1 July to 30 June. On application, a taxpayer may be allowed to use a substituted year of income, which is a 12-month period other than the normal year of income.

Tax returns

The ITA provides for two provisional returns within a 12-month period (financial year). The first provisional return is due within the first six months of the accounting year while the second is due by the end of the 12th month of the accounting year.

The due date for filing of provisional returns is the date of payment of tax.

The self-assessment return is due by the end of the sixth month after the end of the accounting year.

Electronic filing has been introduced for all tax returns.

Payment of tax

For all companies, a system of provisional payments on account, based on estimated profits, is in place. The first payment of 50% is due by the end of the sixth month of the accounting period, and the second payment is due by the end of the 12th month. The balance is expected to be paid together with the final self-assessment return by the end of the sixth month after the accounting period.

A person who fails to pay tax due by the due date is subject to interest on late payment of tax at a rate of 2%. Interest is capped to the aggregate of the principal tax and penal tax.

Tax audit process

In most cases, audits are initiated by the URA, which notifies the taxpayer of the records they need to prepare before commencement of the audit. The URA then reviews the records. This is normally done at the premises of the taxpayer, where the URA can obtain the necessary clarifications from the bookkeepers.

The audit findings are then communicated to the taxpayer subsequent to whom an assessment is raised. If the taxpayer does not agree with the objection decision, they may appeal to the Tax Appeals Tribunal or to the high court.

Statute of limitations

The Tax Procedures Code Act provides for a five year check of records.

Topics of focus for tax authorities

The focus of the URA keeps shifting but is generally based on the risk analysis of the information availed to them. There is continued focus on transfer pricing and the application of reduced tax rates in respect to DTAs.

Ukraine

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Significant developments

New tax rules

In December 2017, the Parliament of Ukraine passed laws on improvement of tax legislation. As a result, a number of changes to the corporate income tax (CIT) and value-added tax (VAT) became effective on 1 January 2018. The most important developments are listed below.

Taxes on corporate income

- The limit on the deductibility of loan loss provisions (LLPs) for banks and other financial institutions is abolished. The LLP amounts that were not deducted as of 31 December 2017 due to the limitations in the Tax Code effective in the past periods (so-called 'overlimit') are fully deductible in 2018 and 2019 (in equal parts).

Transfer pricing

- Transactions performed between a non-resident and its permanent establishment (PE) (i.e. commercial representative office) in Ukraine are now considered controlled for transfer pricing purposes if their value exceeds 10 million Ukrainian hryvnias (UAH) (net of indirect taxes) for the corresponding tax (reporting) year.
- The value criteria for recognition of transactions as controlled have changed; they should be calculated at prices that are in line with the arm's-length principle.
- The tax office may not send a request for submission of transfer pricing documentation earlier than 1 October of the year following the calendar year in which the respective controlled transaction(s) took place.

VAT and excise tax

- Registration of VAT invoice can be suspended by the tax authorities under the procedure prescribed by the Cabinet of Ministers of Ukraine.
- Temporarily, until 31 December 2018, the imports and local supplies of vehicles with electric engines are exempt from VAT and excise tax.
- In 2018, the specific excise tax rate for all types of tobacco products, cigarettes, raw tobacco, and tobacco waste, as well as the minimal excise tax on cigarettes, went up by 29.7%. The rate will also grow annually by 20% through 2025.

Other changes

- The National Bank of Ukraine continues the policy of easing certain currency control restrictions.

Professional advice is recommended before deciding on the actual impact of any of the tax provisions.

Taxes on corporate income

CIT applies to taxable profits earned by resident entities in Ukraine and abroad and non-residents with a PE in Ukraine. Resident entities are taxed on their worldwide income. Non-resident entities are taxed on their Ukrainian-source income.

Ukraine's standard CIT rate is 18%.

Withholding tax (WHT), at a rate of 15%, applies to the majority of income payments for non-residents, unless an exemption is given under a double taxation treaty (DTT). Ukraine has 74 effective DTTs in place. *See the Withholding taxes section for more information*.

Special CIT rates for insurance and gambling activities

Insurance activities

In addition to general CIT at the 18% rate, insurance companies also pay special CIT of 0% and 3% on their income. Long-term life insurance premiums, insurance premiums under voluntary pension programmes, and voluntary medical insurance premiums are subject to the 0% rate; the 3% rate applies to all other insurance premiums (excluding reinsurance contributions, premiums, and payments) received by the company. Such amounts of CIT due at 0% or 3% paid from insurance premiums reduce taxable profit of an insurance company, which is subject to the standard 18% rate.

Gambling activities

Organisation of lotteries and operating of gambling machines are subject to a 10% rate; an 18% rate applies to bookmaker and other gambling activities (including casinos). Contrary to CIT for insurance companies, amounts of CIT of 10% or 18% paid from gambling income do not reduce taxable profit of a company engaged in gambling activities (standard 18% rate is applied to the full amount of the taxable profit).

Local income taxes

No CIT is levied at the regional or local level, except simplified (unified) tax (*see the Tax credits and incentives section for a description of simplified [unified] tax*).

Corporate residence

Corporate residence is determined by the place of incorporation.

Permanent establishment (PE)

The Ukrainian definition of a PE generally follows the PE definition from the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, but with stronger agency tests.

In particular, a non-resident's PE is defined as a fixed place of business through which the business activity of a non-resident entity is wholly or partly carried out in Ukraine. A PE includes, among other things, a place of management, affiliate, office, server, etc.

The Tax Code contains the concept of a service PE whereby the provision of services (apart from the provision of personnel), including consultancy services, by a non-resident through its employees or other personnel in Ukraine, shall constitute a

Ukrainian PE of this non-resident, provided such activities (within the framework of one project) last more than six months in any 12-month period.

A construction site in Ukraine may also give rise to a taxable presence of a non-resident in Ukraine in the form of a PE if the length of the construction activities exceeds six months.

The Tax Code also provides for the concept of a non-dependent agent, which means, specifically, a Ukrainian agent acting on behalf of more than one non-resident in the ordinary course of its business should not constitute a PE in Ukraine.

Still, there is a list of exclusions from the PE definition. In particular, according to the Tax Code, auxiliary and preparatory services of a non-resident should not result in the creation of a PE. However, in practise, the Ukrainian tax authorities usually interpret the term 'business activity' in a very broad sense, and, without the DTT protection, may consider any type of activity as giving rise to a taxable presence (i.e. a PE) of a foreign entity in Ukraine.

Starting from 1 January 2018, transactions performed between a non-resident and its PE in Ukraine are now considered controlled for transfer pricing purposes if their value exceeds UAH 10 million (net of indirect taxes) for the corresponding tax (reporting) year.

Other taxes

Value-added tax (VAT)

There are three VAT rates: 20%, 7%, and 0%.

The rate of 20% applies to almost all transactions subject to VAT except specific transactions subject to 7% and 0% VAT.

The reduced rate of 7% applies to supply and import of qualifying medicines and specific medical goods, as well as medicines, medical goods, and medical equipment allowed to be used in clinical trials.

The 0% VAT rate applies to the export of goods. The 0% rate also applies to the supply of international transport services (confirmed by a single international shipping document), toll manufacturing services (if the finished goods are then exported from Ukraine), and certain other services.

Provision of services to a non-resident is not considered to be zero-rated. Such services are subject to 20% VAT or considered to be outside the scope of VAT (effectively exempt with no input VAT recovery), depending on the place of supply as determined by the legislation.

Transactions that are subject to VAT include the following:

- The supply of goods and services when the place of supply is in Ukraine, including when the supply is made free of charge without consideration.
- Transfer of the object of a financial lease to the lessee.
- The importation of goods into Ukraine.
- Exportation of goods.

- International transportation services.

Transactions that are not subject to VAT include the following (among others):

- The issue, sale, and exchange of securities.
- Assignment of claims, transfer of debt.
- The transfer of property from a lessor to a lessee under an operating lease and the return of property upon expiration of the operating lease (other than in the course of import operations).
- Transfer of property right of finance leasing object from one lessor to another.
- Interest/commission element of lease payments under financial lease agreements.
- Provision of financial loans and bank guarantees.
- Insurance and reinsurance services supplied by licensed insurers and services of insurance/reinsurance agents and brokers.
- Payment of royalties.
- Reorganisation of a legal entity (merge, spin-off, accession, division, and change of legal form).
- Transit of cargo and passengers through the Ukrainian territory and services related to such transit.
- Supply and import of goods and services within international technical assistance projects or import of humanitarian aid.

VAT registration

Tax registration as a VAT payer is compulsory if the volume of an entity's taxable transactions exceeds the compulsory registration threshold. The current registration threshold is UAH 1 million for the past 12 consecutive months. An entity qualifying as a taxable entity should register with the tax authorities at the place of its location and obtain a VAT registration number.

Voluntary VAT registration is available prior to achievement of the mentioned threshold. The application for VAT registration may be submitted simultaneously with the application for the state registration of the business entity.

There is no mechanism for a non-resident to register for VAT purposes without a PE in Ukraine. Accordingly, any Ukrainian VAT incurred by a non-resident is non-recoverable.

Electronic VAT administration

A special electronic administration system, which includes VAT accounts for all VAT payers in the State Treasury, is used for settlement of VAT to the budget. Both VAT output and VAT input should be reflected in this system. For these purposes, VAT accounting documents (VAT invoices) are issued electronically and are subject to mandatory registration by tax authorities.

The aim of this system is to make VAT input of the customers (i.e. VAT payers) guaranteed by payment of VAT liabilities by the suppliers. VAT input on domestic purchases can be recognised by the taxpayer only if the supplier issued a duly registered VAT invoice. In order to register a VAT invoice, the supplier should have sufficient balance in the electronic VAT administration system (e.g. sufficient amount of input VAT). Otherwise, it may be required to transfer cash to the VAT account (i.e. to prepay its VAT liabilities).

Registration of a VAT invoice can be suspended by the tax authorities under the procedure prescribed by the Cabinet of Ministers of Ukraine.

VAT recovery and refunds

Generally, VAT incurred by a registered entity on the purchase and/or importation of goods and services used for the purpose of its own business (except for VAT incurred in relation to exempt supply) may be recovered by way of a credit against output VAT. If the VAT credit exceeds VAT output, a VAT refund is available in the form of a cash payment.

VAT refunds should be performed in a chronological order based on sequence of claims reflected in a registry maintained by the tax authorities and published on their official website. Such registry contains claims submitted starting from 1 February 2016.

Older claims (i.e. submitted before 1 February 2016) are included into a separate Temporary Registry of VAT refund claims.

A VAT refund should be provided within 36 calendar days following the deadline for submission of the VAT return unless a documental tax audit has been assigned. In this case, the term for provision of VAT refund is extended for at least 30 days.

VAT returns

VAT returns must be filed by the taxpayer on a monthly basis in electronic form. Monthly tax returns are due within 20 calendar days following the end of the reporting month. The amount of tax payable is assessed on the basis of tax returns and is due within ten calendar days following the deadline for filing the relevant tax returns.

VAT liabilities are paid to the budget through a special VAT account based on the registers submitted to the State Treasury by the tax authorities.

Customs duty

Customs duty is payable by the importer upon import of the goods into Ukraine. Customs duty rates are established by the Customs Tariff. Currently, there are two duty rates: relieved and full rates. Relieved rates of duty apply to goods originating from the World Trade Organisation (WTO) countries and countries that have granted Ukraine ‘most favoured nation’ trade status. Full rates of duty apply to the goods originating from all other countries or where the country of origin cannot be determined (is unknown).

Ukraine has concluded free-trade agreements (FTAs) with the countries/members of the European Union (EU), Commonwealth of Independent States (CIS), European Free Trade Association (EFTA) countries, and such countries as Georgia, Macedonia, and Montenegro. These agreements allow many goods to be imported into Ukraine duty-free (or with reduced rates of duty), subject to compliance with preferential rules of origin.

Due to political issues, Russia and Ukraine currently suspended the FTA between each other and introduced an embargo on import of selected goods (mostly on agrarian products and foods).

Russia also introduced some transit restrictions on goods coming from Ukraine.

Ukraine has no export duties except on natural gas, scrap metal, livestock, rawhide, barley, and certain oil seeds.

Excise taxes

Excise tax applies to certain goods imported to or produced in Ukraine. Excisable goods include ethyl alcohol, alcoholic beverages, beer, tobacco and tobacco products, cars, car bodies, motorbikes, electricity, liquefied gas, petrol, diesel fuel, other fuel material, and electric power.

The rates of excise tax can be *ad valorem* (a percentage of the value of the goods), specific (in monetary units per unit of goods), or combined. In 2018, the specific excise tax rate for all types of tobacco products, cigarettes, raw tobacco, and tobacco waste, as well as the minimal excise tax on cigarettes, went up by 29.7%. The rate will also grow annually by 20% through 2025. A special local 5% excise tax continues to apply to retail sales of alcoholic drinks, beer, and tobacco products.

Ukraine has a special electronic administration system for excise tax on fuel. This system is aimed to control income and outcome flows of fuel in the market. The system requires entities to issue and register within the system excise accounting documents (excise invoices) electronically on each operation of fuel sale, its usage for the company's needs, as well as for manufacturing purposes.

Tax on real estate other than land plots (real estate tax)

Owners of residential and non-residential property in Ukraine (both individuals and legal entities, including non-residents) are subject to local real estate tax (RET). The tax base is determined based on the size of the living space of a real estate asset.

Some types of property are exempt from RET, for example:

- Industrial buildings (i.e. production buildings, workshops, storehouses of industrial entities).
- Buildings and facilities of agricultural producers, which are intended for use in agricultural activity.
- Non-residential premises that are used by small and medium-sized businesses, conducting their activities at 'small architectural structures' (e.g. kiosks, stalls, pavilions) and markets.
- Property owned by government agencies and the non-profit organisations established by them, etc.

The RET rates are set by the local government but cannot exceed 1.5% of the minimal salary as of 1 January of the reporting year per square metre (for 2018, the maximum is UAH 55 per square metre).

RET paid by legal entities is not available as a credit against CIT liabilities starting with the 2017 reporting year.

Land tax

Land tax is a local tax and assessed annually for the following year, paid monthly in equal instalments by the owners or users of the land. The rate of land tax depends on the category, location, and the existence of a state valuation for each particular land plot.

Transport tax

A local transport tax is charged on owners of passenger cars with an average market value exceeding 375 minimal salaries as of 1 January of the reporting year (i.e. UAH 1.396 million) and no more than five-years old.

The Ministry of Economic Development and Trade of Ukraine is obligated to publish (on an annual basis, before 1 February of the reporting year) on its web-site a list of vehicles that are subject to the transportation tax (including brand, model, year of production, engine displacement, fuel type).

A tax of UAH 25,000 for each car per year should be paid by the car owner.

Stamp duty

Stamp duty is imposed on certain actions, including the notarisation of contracts and filing of documents with courts. In most cases, the amounts involved are nominal.

Operations carried out at commodity exchanges and real estate sales incur a stamp duty of 1%.

Payroll taxes

Employers and other business entities that pay income to individuals are defined as tax agents and are responsible for withholding personal income tax (PIT), military tax, and mandatory unified social contribution (USC) (*see below*) and remitting them to the state.

Unified social contributions (USCs)

Employers (including representative offices of foreign companies in Ukraine) are required to pay USC in respect of their employees. USC applies to all salaries paid through the payroll of a Ukrainian entity or a Ukrainian representative office of a foreign entity, as well as remuneration paid to individuals under civil agreements.

The general USC rate (payable by the employer) is 22% (except for special decreased rates for contributions regarding disabled people, etc.), which applies to gross remuneration. The USC accrued by the employer is deductible for CIT purposes.

The taxable base for contributions is capped. For 2018, the cap is set at 15 times the minimal salary; from 1 January 2018 through 31 December 2018, the cap is UAH 55,845 per month.

Employees are relieved from paying USC.

Special Pension Fund charges

The following special charges are payable to the State Pension Fund:

- 3%, 4%, or 5% charge on the value of a new car, which is first subject to registration with the government agency (state traffic inspectorate), depending on the value criteria prescribed by the legislation and the amount of the statutory subsistence minimum for able-bodied individuals (for the year 2018, the following value criteria range applies: up to UAH 290,730, 3%; above UAH 290,730, but not more than UAH 510,980, 4%; above UAH 510,980, 5%).
- 1% charge on the acquisition of real estate payable by individuals and legal entities that purchase real estate.

- 7.5% charge on mobile communication services.
- 10% charge based on the value of precious metal contained in jewellery during its marking on the public enterprises of assay control.

Charges on environmental pollution

Environmental pollution charges (ecological taxes) are imposed on any legal entity that discharges contaminants into the environment (air or water) or disposes of waste. The actual rate depends on the type and toxicity of each contaminant.

Charges on environmental pollution are deductible for CIT purposes.

All environmental tax rates (i.e. air and water emissions, waste discharge, generation of radioactive waste and its temporary storage) went up by 11.2% in 2018.

Charge for subsoil usage (rent)

Companies engaged in extracting mineral resources in Ukraine, regardless of the form of their ownership, are liable for a charge for use of subsoil.

Rent payment for subsoil use is calculated as follows:

= Value of extracted mineral resource * Cost of respective unit of extracted mineral resource * Tax rate (%) * Adjustment coefficient

The value of extracted mineral resources is determined as the greater of the following two calculation methods:

- The actual taxpayer's selling prices.
- The taxpayer's costs increased by the established profitability coefficient.

Specific rules apply in determining the selling prices for extraction of oil, condensate, natural gas, and iron ore.

Adjustment coefficients may apply to the rent payment for subsoil use rates depending on the type of minerals and conditions of extraction. For example, coefficient 0.25 will be applied to the tax rate for iron ore extracted by underground mining methods with a depth of over 300 metres for the enrichment of magnetite iron content of less than 35%.

Starting from 1 January 2019, the rent payment rates for condensate extraction will be reduced from 45% and 21% to 29% and 14%, depending on the depth of deposits.

New temporary rent rates for the use of land and its deposits for mining purposes specifically for extraction of gas from new gas wells (12% and 6%, depending on the depth of deposits) were introduced until 1 January 2023. The Tax Code stipulates that these rates will remain unchanged for the next five years.

Charges for the use of subsoil are deductible for CIT purposes.

Other local taxes

According to the Tax Code, there are other local taxes that may be levied at the discretion of the local authorities (i.e. vehicle parking place duties, tourism duty).

Branch income

Domestic branches or other separate units are not treated as separate taxpayers for CIT purposes.

In Ukraine, it is not currently possible to register a branch of a foreign legal entity. A foreign company may set up a representative office in Ukraine, which is similar to an unincorporated branch. A non-resident company conducting business activities via a representative office is deemed to carry out business in Ukraine through a PE and may be subject to CIT at the standard rate unless protected by a DTT.

When a foreign company conducts business in Ukraine through a PE, the taxable income should be determined on the same basis as for domestic entities.

The Tax Code provides for three methods for computing taxable profits for a representative office engaged in commercial activities (i.e. a PE of a non-resident in Ukraine): the direct method, the notional margin method, and the shared-balance method.

PEs using the direct method should calculate their taxable profits in the ordinary way as net profits before tax (NPBT) as per accounting records and adjusted for 'tax differences' (*see the Income determination section*).

The notional margin method for calculation of CIT liability of the PE involves applying a notional margin of 30% to *income* derived in respect of activities in Ukraine without taking into account any expenses the PE might incur in the course of its activities. This method is applied by the tax authorities if the PE has no separate accounts from its parent company.

The shared-balance method for the calculation of CIT liability of the PE is based on data provided by the parent company about the PE's share of worldwide expenses, number of employees, and fixed assets. It is applicable to non-resident entities that operate both in Ukraine and other countries, which do not determine profits from activities carried through a PE in Ukraine. The Tax Code requires for the shared-balance to be prepared by the non-resident and agreed with the Ukrainian tax authorities.

Distributions made by a PE (from after-tax income) to its head office should not trigger any further taxation in Ukraine, provided that the head office is in a jurisdiction that has an effective DTT with Ukraine.

Starting from 1 January 2018, PEs of non-residents are subject to transfer pricing rules.

Income determination

The Tax Code determines taxable profits as net profits before tax (NPBT) as per accounting records, either Ukrainian statutory or International Financial Reporting Standards (IFRS), and adjusted for 'tax differences'.

Taxpayers with prior year annual income equal to or less than UAH 20 million (net of indirect taxes) may opt out of making the adjustments. Note that they do remain eligible for loss carryforward allowances (*see the Deductions section*).

Inventory valuation

A taxpayer is entitled to adopt any of the methods of inventory valuation prescribed by financial accounting rules, namely: the first in first out (FIFO) method, weighted average methods, identified cost of unit of goods, normative cost, or sale price. The last in first out (LIFO) method does not apply in Ukraine.

Capital gains on the sale of property

Income from the sale of property (including buildings and land plots) should be recognised according to financial accounting rules.

Income from securities

Profit from trading in securities is taxable at the standard CIT rate. Incurred losses are non-deductible, but may be carried forward to offset future profits from trading in securities without any limitations.

Dividend income

Dividends received by a Ukrainian entity from another Ukrainian entity that is a CIT payer are exempt from CIT. Dividends received by Ukrainian companies from Ukrainian taxpayers under the simplified tax regime or foreign companies are not exempt from CIT.

Companies paying dividends are required to pay advance CIT on payment of dividends (ATD) at the standard CIT rate, unless the dividends are paid to individuals or out of received dividends (with some other exceptions). ATD applies only to the portion of dividends that exceeds profits of the respective dividend year for which CIT is already paid.

If the amount of the paid ATD exceeds the amount of the accrued CIT of the taxpayer-issuer of corporate rights, the excess amount will be applied to reduce the taxpayer's CIT obligations in the following periods. In case the taxpayer is in a loss-making position, the said amount will be applied to reduce the CIT obligations in the following periods until it is fully utilised. Collective investment vehicles and taxpayers under the simplified tax regime are released from ATD.

Interest income

Interest received by taxpayers is included in their taxable income on a general basis according to financial accounting rules.

Rent/royalties income

Income from rent/royalties received by taxpayers is included in their taxable income on a general basis according to financial accounting rules.

Foreign exchange gains/losses

Realised and non-realised foreign exchange gains/losses are generally treated as taxable income/deductible expenses, similar to financial accounting rules.

Other significant items

Ukrainian tax legislation does not provide special tax treatment for bribes, kickbacks, or illegal payments.

Income received as payment for goods (works, services) shipped (provided) while the taxpayer used the simplified tax system will increase the NPBT.

Foreign income

Foreign income is taxed under the general rules, and there are no special rules regarding anti-deferral or unremitted earnings.

Deductions

Depreciation and amortisation

Assets whose values are more than UAH 6,000 that have a useful life exceeding one year are required to be depreciated for tax purposes. Depreciation is determined on a monthly basis and computed using the following methods:

- Straight-line.
- Reducing balance.
- Method of accelerated reduction of a residual value.
- Cumulative.

The production-based method of amortisation is not allowed for tax purposes.

Fixed assets are divided into 16 groups according to their statutory minimal useful life. The useful life of fixed assets may be extended by a taxpayer.

The application of a reduced statutory minimum useful life to machines and equipment purchased during the period between 1 January 2017 and 31 December 2018 is allowed, on the condition that the taxpayer employs such assets in its business activity and applies the straight-line method of depreciation thereto.

There are no special rules prescribed for tax accounting of repair costs in respect of production fixed assets and intangible assets. Ukrainian accounting principles or IFRS rules should apply. Expenses on repairs and reconstruction of non-production fixed assets and intangible assets are not deductible.

The following intangible assets may be amortised using one of the above-mentioned methods over the period of an asset's lifetime as defined in the documents certifying the rights to the intangibles and considering the minimum period set by the law:

- Rights to use natural resources.
- Rights to use property.
- Rights on intangible assets.
- Technology, know how (not less than five years).
- Copyrights (not less than two years).
- Other intangible assets.

Taxpayers are entitled to set the amortisation period of the intangible assets on their own, but it must not be less than two years and not more than ten years of continuous operation (this only applies when the documents establishing the right to use do not specify a term for the use). NPBT is adjusted by the amount(s) of residual value of written-off non-production equipment and intangible assets as per accounting data.

Goodwill

Amortisation of goodwill is not permitted (i.e. not deductible) for tax purposes.

Organisational and start-up expenses

There is no limitation for deduction of organisational and start-up expenses incurred prior to the entity's registration (accounting rules should apply).

Research and development (R&D) expenses

R&D expenses are deductible according to financial accounting rules.

Interest expenses

Interest paid is generally deductible for CIT purposes, but the deduction of interest expense in favour of non-resident related parties is limited according to the thin capitalisation rules (*see Thin capitalisation in the Group taxation section*).

Bad debt

NPBT can be reduced by the amount of written-off debts that qualify as bad debts under the Tax Code (including the write-off, performed within the amount of bad debts provision). The Tax Code contains the detailed list of criteria for debts to be qualified as bad ones.

Loan loss provisions (LLPs) for banks and other financial institutions

Banks and other financial institutions create LLPs according to IFRS.

Starting from 1 January 2018, the limit on the deductibility of LLPs for banks and other financial institutions is abolished. The LLP amounts that were not deducted as of 31 December 2017 due to the limitations in the Tax Code effective in the past periods (so-called 'overlimit') are fully deductible in 2018 and 2019 (in equal parts).

Banks are allowed to recognise in the tax accounting a positive (negative) difference resulted from revaluation of the amount of LLPs that may occur at the beginning of 2018 due to the transition to IFRS 9, provided that such amount is reflected in the equity accounts of banks.

Other reserves (provisions)

Provisions for vacation and salary payments are allowed. Other provisions for future costs (i.e. warranty, contingent liabilities, etc.) are disallowed. Respective expenses covered by these provisions (except vacation and salary payments) are deductible when actually incurred.

Charitable contributions

Only 70% of payments for goods or services to non-profit organisations (except budgetary ones) is tax deductible.

The deductibility of the costs of goods or services supplied for free to non-profit organisations is limited by 4% of the previous year's taxable profit (by 8% of the previous year's taxable profit in respect of payments to non-profit organisations in the sphere of sport, physical culture, and physical culture education).

Pension expenses

The obligatory Ukrainian social security insurance contributions, including state pension contributions charged on payroll expenses, are deductible for employers.

There are no limitations prescribed for the deduction of the employer's payment to non-state pension organisations (financial accounting rules should apply).

Payment for directors

Payments (including bonuses) relating to business are normally deductible payments.

Fines and penalties

Fines, penalties, and forfeits, which were accrued in accordance with civil legislation for the benefit of entities that are not CIT payers (except for private individuals) or that are taxed at a 0% CIT rate, are not tax deductible.

Taxes

CIT, PIT, WHT/remittance taxes, and VAT incurred on purchases are not deductible. VAT is deductible if it cannot be recovered. Other taxes are generally deductible in full.

Other significant items

There is no requirement to prove the connection of costs to the company's 'business activities'. The exception is the need to differentiate between business and non-business fixed assets.

General requirements for the documentation of the transactions for accounting needs (i.e. contracts, acts of acceptance, etc.) will also apply for the substantiation of expenses for tax purposes.

Non-repayable financial aid (goods, services), which was provided free of charge for the benefit of its recipients (other than duly registered non-profit organisations) that are not CIT payers or that are taxed at a 0% CIT rate, are not be deductible.

Net operating losses

Losses can be carried forward without limitations. Ukrainian tax legislation does not provide for refunds for losses carried back.

Payments to foreign affiliates

The following rules need to be followed with regard to payments to foreign affiliates:

- Only 70% of payments for goods or services to residents of low-tax jurisdictions and non-resident entities established under certain legal forms are tax deductible. The lists of low-tax jurisdictions and legal forms (e.g. a partnership) are approved by the Cabinet of Ministers of Ukraine and are being amended from time to time.
- Deduction of royalties paid to a non-resident is limited to royalty income plus 4% of net income of the previous year.
- Royalties paid to (i) non-beneficial owners (unless a beneficial owner grants the right to receive the royalties to other parties), (ii) non-residents that are exempt from tax on royalties in the country of their residence, and (iii) non-residents for trademarks originated from Ukraine are not tax deductible.

The first and the second of the above limitations can be waived if a taxpayer confirms the arm's-length level of payments in accordance with the transfer pricing rules (even if the transactions are not controlled for transfer pricing purposes).

The latter one should apply at any case (even if the payments are at 'arm's-length' level).

Group taxation

In Ukraine, each legal entity is taxed individually.

Transfer pricing

The transfer pricing rules apply for CIT purposes only. The list of controlled transactions for transfer pricing purposes includes business transactions that have an impact on taxable profits and that are:

- Business transactions with related parties that are non-residents of Ukraine.
- Cross-border business transactions on sale and/or purchase of goods and/or services through non-resident commissionaires.
- Business transactions with non-residents that are registered in or are residents of jurisdictions determined by the Cabinet of Ministers of Ukraine that meet the following criteria:
  - States (territories) where the CIT rate is less than Ukraine's CIT rate by 5% or some tax benefits on CIT are available.
  - Countries with no DTT with Ukraine containing provisions on exchange of information.
  - States the competent authorities of which do not accomplish timely and full exchange of tax and financial information upon request of the Ukrainian tax authorities.
- Transactions with non-residents that do not pay CIT, including on revenues received outside of the state of registration of such non-residents, and/or that are not tax residents of the country where they are registered as legal entities. The list of organisational and legal forms of such non-residents in terms of states (territories) is established by the Cabinet of Ministers of Ukraine.
- If within a chain of business transactions between related parties (tax resident of Ukraine with non-residents), the ownership of the subject matter of the transaction (or its result) before being transferred from one of the counterparties to another was transferred to one or more intermediaries, these cross-border transactions between the taxpayer and such non-resident are considered to be controlled if the intermediary performs no significant functions, employs no significant assets, and/or bears no significant risks in respect of the transactions.

Transactions with the same counterparty are considered to be controlled if the total annual amount of the transactions with any counterparty (calculated according to accounting rules) exceeds UAH 10 million (net of indirect taxes), provided the total annual income (calculated according to the accounting rules) of the taxpayer received as a result of any type of activity exceeds UAH 150 million (net of indirect taxes).

Starting from 1 January 2018, transactions performed between a non-resident and its PE in Ukraine are considered controlled for transfer pricing purposes if their value, determined in accordance with the accounting rules, exceeds UAH 10 million (net of indirect taxes) for the corresponding tax (reporting) year.

For all cases listed above, the value criteria for recognition of transactions as controlled should be calculated at prices that are in line with the arm's-length principle.

Some transactions are considered to be at arm's length (i.e. transactions in which prices are subject to state regulation, transactions subject to mandatory valuation, transactions in which prices are determined by mandatory auction, transactions on forced sale of collateral) if the conditions of transactions meet the respective legislation requirements.

The Tax Code of Ukraine provides five methods for determining the arm's-length nature of the controlled transactions:

- Comparable uncontrolled price (CUP) method.
- Resale price method.
- Cost plus method.
- Net profit method.
- Profit split method.

According to the Tax Code, the selected transfer pricing method should be the one that the taxpayer reasonably considers as being most appropriate according to the facts and circumstances of the case.

The main criteria for the most appropriate transfer pricing method selection are:

- The nature of the controlled transaction, which is determined, in particular, based on the functional analysis of the controlled transaction (including the functions performed, assets employed, and risks assumed).
- The availability of complete and accurate information, which is necessary for the application of the selected transfer pricing method(s).
- The level of comparability between the controlled and non-controlled transactions, including the reliability of comparability adjustments, if any, that can be used to eliminate differences between such transactions.

The CUP method is the primary transfer pricing method to be used over all other methods. If this method is not feasible to apply, the taxpayer can use other methods, specified by the Tax Code. However, if there is an equal reliability of the resale price method or the cost plus method as well as the net profit method or profit split method, the first two methods are given priority. In addition, the Tax Code also provides the possibility for the use of several transfer pricing methods (combination thereof) to substantiate the arm's-length nature of controlled transactions. The application of other methods that are not prescribed by the Tax Code (*see above*) is prohibited.

The CUP method should be applied for cross-border transactions (with the residents of the jurisdictions included on the list established by the Cabinet of Ministers of Ukraine) with commodities quoted on the commodity exchange; otherwise, the profitability of all counterparties involved in the chain of business transactions should be disclosed.

For the purposes of application of the transfer pricing methods, the following information may be used:

- Information on comparable transactions of the taxpayer as well as its counterparty with non-related parties.

- Any publicly available sources of information that provide data on comparable transactions and parties.
- Other sources from which information was received by the taxpayer in compliance with the law, if such information was provided to the tax authorities.
- Information received by the tax authorities under the effective international agreements concluded by the Parliament of Ukraine.

All taxpayers performing controlled transaction should file a report on controlled transactions by 1 October of the year following the reporting year.

All taxpayers performing controlled transactions should prepare and maintain transfer pricing documentation for each reporting period. Transfer pricing documentation, substantiating the arm's-length nature of prices/profitability, should be submitted only upon request of the tax authorities within 30 calendar days upon its receipt. The request on the provision of transfer pricing documentation can be sent to the taxpayer not earlier than on 1 October of the year following the calendar year in which the controlled transaction was performed.

Transfer pricing documentation should be prepared in Ukrainian only in any format (either a single document or a set of documents); however, the precise rules regarding the content of the documentation should be followed.

The Tax Code of Ukraine contains a detailed list of information to be included in transfer pricing documentation.

If the prices/profitability of the controlled transaction do not correspond with the arm's-length principle, the taxpayer should perform the respective transfer pricing adjustment and pay additional tax. The other party to the controlled transaction is entitled to perform a proportional transfer pricing adjustment. The proportional adjustment is also allowed in case of transfer pricing assessments by the tax authorities. The proportional adjustment should be made in accordance with the provisions of the effective DTTs.

The Tax Code also provides for a specialised transfer pricing audit as the tax authorities are not allowed to examine pricing in controlled transactions during normal full-scope tax audits. The audit duration cannot exceed 18 months, although extension is possible for another 12 months.

The tax authorities cannot conduct more than one transfer pricing audit within one calendar year, although other (non-transfer pricing) tax audits can be conducted during this period. The statutory limitation period for transfer pricing assessments is seven years.

For the purpose of comparing conditions between controlled and uncontrolled transactions, the tax authorities have the right to use the information obtained in the course of an audit of compliance with the arm's-length principle by the taxpayer from the counterparties who were parties to the tested controlled transactions.

The Tax Code defines the following penalties for non-compliance with the transfer pricing rules for non-submission of the report on controlled transaction and/or transfer pricing documentation, or omission of certain controlled transactions in the report on controlled transaction:

- 3% of the controlled transaction value for failure to file transfer pricing documentation (limited to 200 times the statutory subsistence minimum for able-bodied individuals [UAH 352,400 as of 1 January 2018] for all controlled transactions).
- 1% of the controlled transaction value for failure to declare the controlled transaction in the report on controlled transactions (limited to 300 times the statutory subsistence minimum for able-bodied individuals [UAH 528,600 as of 1 January 2018] for all unreported controlled transactions).
- 300 times the statutory subsistence minimum for able-bodied individuals (UAH 528,600) for failure to file the report on controlled transactions.

In addition, there are the following penalties for late submission of the report on controlled transaction and/or transfer pricing documentation, according to the Tax Code:

- In case of non-submission of the report on controlled transaction (specifying report) and/or transfer pricing documentation within 30 calendar days following the last day of the fine (for non-submission of the report on controlled transaction/transfer pricing documentation), five times the statutory subsistence minimum for able-bodied individuals for each calendar day (UAH 8,810).
- Two times the subsistence minimum for able-bodied individuals (UAH 3,524) for each calendar day, but no more than 200 times the subsistence minimum for able-bodied individuals (UAH 352,400), in the case of late submission of transfer pricing documentation.
- One statutory subsistence minimum for able-bodied individuals (UAH 1,762) for each calendar day, but no more than 300 times the subsistence minimum for able-bodied individuals (UAH 528,600), in case of late submission of the report on controlled operations or late declaration of the controlled transaction in such report when submitting an adjusting report.

Payment of such penalties does not exempt the taxpayer from the obligation to file the report on controlled transaction and/or transfer pricing documentation.

Large taxpayers have the right to enter into Advance Pricing Agreements (APAs) with the State Fiscal Services of Ukraine in order to agree on certain terms of controlled transactions in advance. For a large taxpayer, it is also possible to pre-align pricing in controlled transactions that are or will be carried out by those large taxpayers.

Thin capitalisation

The following rules apply to legal entities whose debts to non-resident related parties exceed equity by 3.5 times (10 times for financial institutions/leasing companies):

- The deduction of interest expense under transactions with non-resident related parties for these taxpayers is limited by the amount of 50% of earnings before interest, taxes, depreciation, and amortisation (EBITDA).
- The non-deductible portion of interest can be carried forward indefinitely. However, each following year the residual amount of such interest should be reduced by 5%.
- For the purposes of thin capitalisation rules, debt includes any loan, deposit, repo transactions, financial leasing, and any other debenture, regardless of its legal form.

Controlled foreign companies (CFCs)

There are no specific CFC rules in Ukraine, but significant development of local legislation in this area is expected in the coming years in implementing some initiatives from the Base Erosion and Profit Shifting (BEPS) Action Plan.

Treatment of inter-company items

Ukrainian tax legislation provides the following treatment for inter-company items:

- Dividends received by a Ukrainian entity from another Ukrainian entity that is a CIT payer are exempt from CIT. At the same time, recipients of dividends from individuals or entities operating under the simplified tax regime cannot reduce the tax base to the amount of such dividends. Dividends received by Ukrainian companies from foreign companies are not exempt from CIT either.
- There is no limitation on the deduction of expenses in relation to the financing of management bodies, including holding companies.
- The deduction of cost-sharing and similar intra-group payments, other than remuneration for services actually rendered, is not specifically limited for CIT purposes (accounting rules should apply).
- Starting from 1 January 2018, fees for purchase of copies of software programs for further resale should not be treated as royalties for tax purposes.

In addition to the above:

- Certain limitations apply to deduction of royalties paid to non-residents (*see Payments to foreign affiliates in the Deductions section for more information*).
- Royalties paid to (i) non-beneficial owners, (ii) low-tax jurisdictions, (iii) non-residents that are exempt from tax on royalties in the country of their residence, and (iv) non-residents for trademarks originated from Ukraine are not tax deductible (even if the payments satisfy the 'arm's length' criteria). This limitation does not apply when a beneficial owner grants the right to receive the royalties to other parties.
- Transactions for the receipt (provision) of financial aid between a taxpayer and its branches and other separate units without legal entity status located in Ukraine shall not affect their taxable income or deductible expenses (except for non-repayable financial aid that was provided free of charge for the benefit of its recipients that are not CIT payers or that are taxed at a 0% CIT rate).
- Interest on loans is limited (*see Thin capitalisation above*).

Tax credits and incentives

Starting from 2017, 'tax holidays' until 2021 were introduced for taxpayers with annual income less than UAH 3 million, provided they meet the requirements on (i) payroll amount (not less than two times the statutory minimum wage monthly per each employee), (ii) defined average number of employees in the preceding periods (for the entities established before 1 January 2017), and (iii) are compliant with limitations on types of activities (according to the specific list).

Simplified (unified) tax regime

Entities and individuals (i.e. private entrepreneurs) are entitled to use a simplified (unified) tax regime (with exemption from CIT) if certain requirements are met.

Groups 1 and 2 of the simplified (unified) tax regime are available for private entrepreneurs only, and group 3 for both private entrepreneurs and legal entities (depending on the types of activities, the level of income [only up to UAH 5 million, except agricultural producers], and the number of employees' criteria).

These regimes foresee low effective tax rates (up to 10% of the amount of statutory subsistence minimum for able-bodied individuals as of 1 January of the reporting year for group 1 per month; up to 20% of the minimal salary set as of 1 January of the reporting year for group 2 per month, or up to 5% of turnover for a private entrepreneur/an entity of the third group) and easier reporting for small businesses. However, specific types of business activities are prohibited under this tax regime (*inter alia*, transactions with certain excisable products, exploration/production/sale of precious metals and stones, company management and communication services).

Taxpayers of group 1 may not use cash recorders in their activity. Taxpayers of group 2 and 3 are obligated to start using cash recorders from the quarter following the one when their turnover exceeds UAH 1 million.

The group 4 classification of the simplified (unified) tax regime is available for qualified agricultural producers.

Agricultural producers are entitled to use a very favourable tax regime (with exemption from CIT), provided certain requirements are met. The main criterion requires that income from the sale of their own agricultural products constitutes not less than 75% of their total gross revenue of the previous tax (reporting) year.

Under this regime, the amount of tax due depends on the size of the agricultural land plot owned or rented by the agricultural producers. The tax rates vary from 0.19% to 6.33%, apply to the normative monetary value of one hectare of agricultural land, and depend on the type of such land.

Foreign tax credit

Tax residents are allowed a credit for foreign taxes paid on income received abroad, provided there is a DTT between Ukraine and the relevant foreign state. The amount of foreign tax credit is limited to the amount of Ukrainian tax that would arise from the equivalent income in Ukraine. To claim a tax credit, the taxpayer requires an official confirmation of payment issued by the relevant foreign tax authority.

Withholding taxes

WHT must be remitted to the authorities no later than the date when the payment is made to the income recipient.

Passive income (dividends, interest, royalties) from Ukrainian sources that is paid to non-resident entities is generally subject to 15% WHT. Other payments, including payments for engineering services, lease payments, and agency and brokerage fees, are also subject to 15% WHT, but payments for most other services are not subject to withholding. WHT rates may be reduced under a relevant tax treaty.

The 15% WHT rate applies to income (rather than capital gain) on the sale of real estate and on profits from the sale of securities.

Capital gains from disposal of interest-free (discounted) bonds and treasury bills are taxed at an 18% rate.

Payments for freight services (including sea freight) are subject to 6% WHT.

A special 5% WHT rate on qualifying Eurobond yield applies (including payment of interest to residents of low-tax jurisdictions).

Interest payable under a syndicated loan through the organising bank can be subject to reduced WHT rates under the DTTs between Ukraine and the country of residence of each participating bank.

The non-resident recipient of income sourced in Ukraine must also be considered the beneficial owner of such income in order to benefit from the reduced tax rates under relevant tax treaties. According to the Tax Code, agents, nominee holders, and other intermediaries in respect of received income cannot be beneficial owners of income sourced in Ukraine, and, therefore, are not entitled to favourable treaty provisions.

Payments to non-resident persons for advertising services are not subject to withholding. However, the resident payer is required to pay, from its own funds, a 20% remittance tax based on the value of such services.

A resident payer is similarly required to pay, from its own funds, a 12% remittance tax if a payment is made to a foreign insurer or reinsurer whose rating of financial reliability does not meet the requirements set by the authorised state agency. Otherwise, 0% or 4% rates apply.

As taxes on advertising and insurance are levied on a resident party, they cannot be relieved using a tax treaty.

A taxpayer under the simplified tax regime that distributes passive income to a non-resident or its designated entity (except to the non-resident's PE in Ukraine) is obligated to withhold WHT at the moment of such payments.

	WHT (%)			
	Dividends			
Recipient	**Non-portfolio (1)**	**Portfolio**	**Interest (2)**	**Royalties (3)**
Domestic rates:				
Non-resident individuals	5/18 (4)	5/18 (4)	18	18
Non-resident corporations	15	15	15	15
Treaty rates:				
Algeria	5	15	10	10
Armenia	5	15	10	0
Austria	5	10	2/5 (5)	0/5
Azerbaijan	10	10	10	10
Belarus	15	15	10	15
Belgium	5	15	2/10 (5)	0/10
Brazil	10	15	15	15
Bulgaria	5	15	10	10
Canada	5	15	10	0/10
China, People's Republic of	5	10	10	10

	WHT (%)			
	Dividends			
Recipient	Non-portfolio (1)	Portfolio	Interest (2)	Royalties (3)
Croatia	5	10	10	10
Cyprus (19)	5	15	2	5/10
Czech Republic	5	15	5	10
Denmark	5	15	0/10 (7)	0/10
Egypt	12	12	12	12
Estonia	5 (21)	15	10	10
Finland	0/5 (8)	15	5/10 (7)	0/5/10
France	0/5 (9)	15	2/10 (5)	0/5/10
Georgia	5	10	10	10
Germany	5	10	2/5 (5)	0/5
Greece	5	10	10	10
Hungary	5	15	10	5
Iceland	5	15	10	10
India	10	15	10	10
Indonesia	10	15	10	10
Iran	10	10	10	10
Ireland	5	15	5/10 (20)	5/10
Israel	5/10	15	5/10 (10)	10
Italy	5	15	10	7
Japan (6)	15	15	10	0/10
Jordan	10	15	10	10
Kazakhstan	5	15	10	10
Korea, Republic of	5	15	5	5
Kuwait	5	5	0	10
Kyrgyzstan	5	15	10	10
Latvia	5	15	10	10
Lebanon	5	15	10	10
Libya	5	15	10	10
Lithuania	5	15	10	10
Luxembourg	5 (22)	15	5/10 (5)	5/10 (22)
Macedonia	5	15	10	10
Malaysia (6)	15	15	15	10/15
Malta	5 (23)	15	10	10
Mexico	5 (17)	15	10	10
Moldova	5	15	10	10
Mongolia	10	10	10	10
Montenegro	5	10	10	10
Morocco	10	10	10	10
Netherlands	0/5 (11)	15	2/10 (5)	0/10
Norway	5	15	10	5/10
Pakistan	10 (16)	15	10	10
Poland	5	15	10	10
Portugal	10/15 (12)	15	10	10
Romania	10	15	10	10/15
Russian Federation	5 (13)	15	10	10
Saudi Arabia	5 (18)	15	10	10
Serbia	5	10	10	10
Singapore	5	15	10	7.5

Ukraine

	WHT (%)			
	Dividends			
Recipient	Non-portfolio (1)	Portfolio	Interest (2)	Royalties (3)
Slovakia	10	10	10	10
Slovenia	5	15	5	5/10
South Africa	5	15	10	10
Spain (6)	15	15	0	0/5
Sweden	0/5 (14)	10	0/10 (5)	0/10
Switzerland	5	15	0/10 (5)	0/10
Syria	10	10	10	15
Tajikistan	10	10	10	10
Thailand	10	15	10/15 (10)	15
Turkey	10	15	10	10
Turkmenistan	10	10	10	10
United Arab Emirates	5	15	3	0/10
United Kingdom	5	10	0	0 (15)
United States	5	15	0	10
Uzbekistan	10	10	10	10
Vietnam	10	10	10	10

Notes

1. The ownership threshold for the non-portfolio rate is 10%, 20%, 25%, or 50%, depending on the specific provisions in the treaty.
2. Several treaties contain a rate of 0% on interest paid to or guaranteed by a government or one of its agencies.
3. If more than one rate is shown, this means that the rate will depend on the type of royalties paid.
4. The 18% rate applies to dividends from privileged shares or other fixed payments on shares, as well as to disguised employment income. Dividends received from a Ukrainian legal entity CIT payer (other than collective investment arrangement) are subject to the 5% rate.
5. The lower rate applies to interest paid on certain credit sales and on loans granted by a financial institution.
6. The treaties with Japan, Malaysia, and Spain were entered into by the USSR before it dissolved. Ukraine will continue to honour these treaties, unless they are superseded.
7. The lower rate applies to interest paid in connection with the sale on credit of any industrial, commercial, or scientific equipment, unless the debenture is between associated enterprises.
8. The 0% rate applies if the investor holds at least 50% of the capital of the company paying the dividends and the capital invested is at least 1 million United States dollars (USD); the payer of dividends should not operate in the field of gambling, show business or an intermediation business, or in auctions.
9. The 0% rate will apply if a French company or companies hold, directly or indirectly, at least 50% of the capital of the Ukrainian company, and the aggregate investments exceed 5 million French francs.
10. The lower rate applies to interest paid on any loan granted by a bank.
11. The 0% rate applies if the investor directly holds at least 50% of the capital of the company paying the dividends, and the capital invested is at least USD 300,000.
12. The 10% rate applies if the company receiving the dividend has, for an uninterrupted period of two years before the dividend is paid, owned at least 25% of the capital stock of the company paying the dividends.
13. The 5% rate applies if the capital invested is at least USD 50,000.
14. The 0% rate applies if the Swedish company directly holds at least 25% of the voting power of the company paying the dividends and at least 50% of the Swedish company is held by Swedish residents.
15. The 0% rate applies only if the royalties are taxable in the United Kingdom.
16. The 10% rate applies if the company receiving the dividend directly owns at least 25% of the capital stock of the company paying the dividends.
17. The 5% rate applies if the investor (other than partnership) being a beneficial owner holds at least 25% of the capital of the company paying the dividends.
18. The 5% rate applies if the investor, being a beneficial owner, holds at least 20% of the capital of the company paying the dividends.
19. The 5% rate on dividends applies if the investor holds at least 20% of the capital of the company paying the dividends or the capital invested is at least 100,000 euros (EUR). The 5% rate on royalties applies in relation to royalties on trademarks, patents, or know-how.

20. The 5% rate applies in the case of interest paid in connection with the sale on credit of industrial, commercial, or scientific equipment or on any loan granted by a bank.
21. The 5% rate applies if the investor (other than partnership) being a beneficial owner directly holds at least 25% of the capital of the company paying the dividends.
22. The 5% rate applies if the investor (other than partnership) being a beneficial owner directly holds at least 20% of the capital of the company paying the dividends. The 5% rate on royalties applies in relation to royalties on trademarks, patents, or know-how.
23. The 5% rate applies if the investor (other than partnership) being a beneficial owner directly holds at least 20% of the capital of the company paying the dividends.

Tax administration

Taxable period

The reporting year for companies generally follows the calendar year. The exception is for qualified agricultural manufacturers (other than on simplified [unified] tax), whose reporting period starts from 1 July of the current reporting year and ends on 30 June of the next reporting year.

Tax returns

Tax returns for CIT should generally be submitted on a quarterly basis, but some taxpayers will have to submit them annually (newly established, agricultural producers, and taxpayers with prior year annual income equal to or less than UAH 20 million [net of indirect taxes]).

Monthly returns (e.g. VAT) must be filed within 20 calendar days following the end of the respective reporting month.

Quarterly returns are due within 40 calendar days following the last day of the reporting quarter. However, the deadline for submitting a fourth quarter CIT return (on a quarterly reporting period basis) is 60 calendar days after the reporting year-end; this term also applies for other annual returns (including CIT returns on a yearly reporting period basis).

Taxpayers also have to submit financial statements to the tax authorities.

Resident companies and non-resident entities with a PE in Ukraine must keep records that comply with the tax rules.

Payment of tax

Taxes payable assessed on the basis of tax returns are due within ten calendar days following the deadline for filing the relevant tax returns.

Penalties

The tax authorities will charge significant penalties for late filing, late payment, or understating tax liabilities.

Late payment of tax may result in a penalty in the amount of 10% of the underpaid amount for delays of up to 30 calendar days (20% if the delay exceeds this).

If the tax liabilities are understated, the amount of penalty depends on the frequency of violations (i.e. understatement of CIT and VAT liabilities, overstatement of VAT refunds) during a period of 1,095 consecutive calendar days. In particular: 25% for the first violation, 50% for the second violation and each subsequent violation related to the same taxes.

In addition to these penalties, late payment interest (LPI) is calculated by the application of a rate of 120% *per annum* of the prime rate of the National Bank of Ukraine, effective from the actual date of underpayment on the amount of additionally assessed tax liabilities for the whole period of underpayment.

If a taxpayer fails to withhold tax when required, a penalty of up to 75% of the deficient tax is imposed.

Potential criminal responsibility could be claimed against the taxpayer's management if the total amount of additional tax liabilities assessed by the tax authorities during the tax audit exceeds 1,000 times the amount that is equal to 50% of the statutory subsistence minimum for able-bodied individuals (i.e. UAH 881,000 of additional tax liabilities for 2018). There are several options to close such criminal proceedings (the procedure should be properly managed from the legal perspective).

Tax audit process

The tax authorities may carry out scheduled audits once a year. Taxpayers must be notified of the audit in writing at least ten days in advance. The State Fiscal Services is required to release a schedule of planned audits for the following year on its official website by 25 December of the year preceding the year when such audits are to be conducted. In addition, the tax authorities may perform out-of-schedule audits in certain circumstances (e.g. if a taxpayer does not file tax returns on a timely basis, it is reorganised or liquidated, during the counter-check it fails to provide the tax office with all documents specified in the request).

A desk audit of a tax return or adjusted tax return may be conducted within 30 calendar days following the deadline for its submission; if such documents have been filed after such deadline, the 30-day term will be calculated starting from the date of submission.

The tax authorities have the right to audit a taxpayer's accounting, correctness, and completeness of the calculation of NPBT according to the Ukrainian statutory or IFRS rules.

Transfer pricing audits are conducted on a separate basis.

Statute of limitations

Under Ukrainian tax legislation, a three year statute of limitations applies (1,095 days) on any outstanding Ukrainian tax liability, starting from the date a tax return is due to be filed and/or the date the tax is due to be paid, if assessed by the tax authorities. There is no limit on the statute of limitations in which an assessment may be made if a taxpayer has deliberately evaded taxation (if proven in court) or when a taxpayer fails to file a return.

The statute of limitations for transfer pricing controlled operations is seven years (2,555 days).

Tax advice

The Ministry of Finance of Ukraine is authorised to issue summarising tax consultations in cases of inconsistency among various tax law provisions. Additionally, tax advice may be sought from the tax authorities, who are required to issue such clarifications.

Tax advice is not legally binding and may be challenged in court. A taxpayer may use the tax advice as guidance on the methodology to be applied by the taxpayer. In practise, the tax advice often does not provide solid protection against future assessment of tax, but does protect from penalties.

A unified database of individual tax consultations was established in 2017 and administered by the State Fiscal Service of Ukraine with free unobstructed access to its records. All individual tax consultations issued by the tax authorities from 1 April 2017 and further on are to be entered into the database.

Topics of focus for tax authorities

Currently tax authorities are focusing on the following areas:

- Proper calculation of taxable profits as per accounting records (including timely documenting of expenses and their proper allocation between the periods), and correct application of tax differences, prescribed by the Tax Code.
- Compliance with beneficial ownership requirements for the purposes of CIT and WHT.
- Compliance with transfer pricing rules and reporting requirements.
- Analysis of taxpayer's rights for recognition of input VAT.

Electronic taxpayer's cabinet

An electronic taxpayer's cabinet features the following functions:

- Access to the taxpayers' information, which was collected and accumulated by tax authorities.
- Ability to reconcile tax payments made to the state and local treasuries by obtaining the reconciliation statements.
- Ability to manage overpaid or mistakenly paid monetary obligations and penalties.
- Electronic submission of tax returns and other reporting, registration of VAT, and excise invoices.
- Access to the electronic system of VAT administration.
- Informs taxpayers on scheduled audits, ability to file administrative appeals against decisions taken by the tax authorities.
- Informs on status of counterparties using information supplied by publicly available information sources maintained by the Ministry of Finance of Ukraine, other registries and databases that are maintained according to the Tax Code of Ukraine, etc.

Other issues

Exchange controls

The key issues regarding Ukraine's current exchange control regulations are as follows:

- Trade-related settlements between residents and non-residents can be made in foreign currency and Ukrainian hryvnia. Offsets under foreign trade/service agreements are generally banned.
- Payments in foreign currencies in the territory of Ukraine are subject to a National Bank of Ukraine (NBU) licence, except for payments for goods, works, services, and payment of salaries in the temporarily occupied territory of Ukraine.

- Salaries to Ukrainian staff must be paid in Ukrainian currency (but expatriate employees can be paid in hard currency). Expatriates are unable to receive hard currency (local) salaries to Ukrainian bank accounts.
- Foreign loans must be registered with the NBU before funds are remitted to Ukraine.
- The maximum allowable interest rates for foreign fixed rate loans in hard currency (inclusive of any fees and charges due under the loan agreement) are 9.8% *per annum* for loans up to one year; 10% *per annum* for loans for one to three years; and 11% *per annum* for loans over three years. For loans with floating interest rates, the maximum allowable interest rate is three months of the USD London Interbank Offered Rate (LIBOR) plus 7.5%.
- Proceeds from exports must be credited to the exporter's Ukrainian bank account in general within 180 days from the date of customs clearance (for goods) or the date of signing the act of acceptance (for certain services). Starting from 3 January 2017, the mentioned rule does not apply to export of services (except for transport and insurance services) and intellectual property (IP) rights. Similarly, prepaid goods must be imported and cleared through customs in general within 180 days of payment. Failure to do so will result in a fine of 0.3% of the amount due or paid for each day of delay, but not more than the debt itself.
- Ukrainian companies are generally obligated to exchange at the local market 50% of their foreign currency proceeds received from abroad (this restriction does not apply to making foreign investments into Ukraine and certain other proceeds). In order to enforce this limitation, the NBU introduced a ban on offsetting receivables/payables in (i) hard currencies (e.g. US dollars, euros, Russian rubles [RUB]) regardless of the amount and (ii) other foreign currencies in the amount exceeding USD 500,000 under one agreement.

Ukrainian companies are required to obtain a licence from the NBU for a number of transactions, including the following:

- Cash investments abroad for the acquisition of fixed assets, intangible assets, corporate rights, securities, and derivatives under USD 2 million in one calendar year.
- Purchase of Ukrainian securities from non-residents (however, a licence is not required if the payments are made through a Ukrainian securities trader holding a general NBU licence [a bank, for example]).
- Transfer of funds to bank accounts opened abroad.
- Other transactions, which require an individual licence in case the amount of the planned transfer is under USD 50,000 per month.

Ukrainian individuals are required to obtain a licence for the following purposes:

- Investments.
- Depositing funds from Ukraine in personal accounts held in foreign banks.
- Fulfilment of obligations before non-residents under life insurance contracts.

Individuals may obtain electronic individual licences from the NBU under the simplified procedure in case of currency operations in the amount not exceeding USD 50,000 per year in total. Issuance of other individual licences is currently banned.

Some limitations continue to apply until adoption of a new resolution by the NBU. Still, the NBU introduced some liberalisation of exchange control:

- The NBU has allowed remittance of funds to foreign investors under the following transactions:
  - the sale of corporate rights, decrease of the charter capital, or withdrawal from legal entities, up to USD 5 million per month.
  - the sale of state bonds and other bonds via a stock exchange (without limits), and
  - the payment of dividends for the period until 2017 (inclusive), up to USD 7 million per month.
- The NBU prohibited remittance of foreign currency by resident guarantors (except based on the NBU individual licence).
- Starting from 3 March 2018, the NBU allowed early repayment of loans in foreign currency within certain limits. From now on, Ukrainian borrowers can make early repayments of any foreign loan within the monthly limit of USD 2 million (or its equivalent in other foreign currency) under the loan agreements that are served within one servicing bank. In certain cases, residents may perform early loan repayment in full (e.g. early redemption of loans in case of liquidation or in case of conversion of their principal amount into the [authorised] share capital of the debtor, if a loan was provided by a top-rated bank [rated not lower than 'A3/A-']).
- The purchase of cash foreign currency is allowed in an amount not exceeding the equivalent to UAH 150,000 per day in one bank (with certain exceptions).
- In March 2018, a draft law 'On Currency' was registered in the Ukrainian Parliament (defined as high priority by the President of Ukraine). The draft law is aimed at liberalisation of the currency regime in Ukraine and most limitations and requirements mentioned above will be cancelled/changed in case of its adoption.

Choice of business entity

Generally, a limited liability company is the most widely used corporate vehicle in Ukraine for both residents and non-residents. A limited liability company has a simple registration procedure, is inexpensive, and is easy to maintain. It also provides more flexibility in terms of repatriating dividends from Ukraine.

There is no statutory fee for the state registration of newly established legal entities and individual entrepreneurs.

It is worth mentioning that a new Law on 'limited and additional liability companies' will enter into force on 17 June 2018, introducing a new legal framework for operation of limited liability companies in Ukraine.

Business and tax treatment of intellectual property (IP)

Ukrainian laws concerning IP rights provide for a rather developed background for IP usage. Economic rights of authors and neighbouring rights owners may be assigned or licensed. Moral rights are not transferable. Tax treatment for IP transactions is subject to separate analysis on a case-by-case basis since the Ukrainian tax legislation provides different approaches depending on the nature of the concluded agreement. For instance, the transfer of IP may be treated as a sale of non-tangible assets, the provision of services, or a royalty agreement.

For tax purposes, the term 'royalty' does not include payments for the use of computer programs by the end user or for purchasing electronic copies of IP for final consumption.

Mergers and acquisitions (M&A) from a business and tax perspective

There are no specific laws regulating public takeovers or mergers in Ukraine.

The Ukrainian Tax Code provides some guidance on the tax regime for corporate mergers and acquisitions. CIT consequences of such transactions will depend on their accounting in accordance with the financial accounting rules.

Legal regime of the Occupied Territory

Starting from 12 August 2014, temporarily (for ten years), there is an established free customs zone on the territory of Crimea, which means that all goods delivered to/from Crimea will be subject to customs clearance by the Ukrainian customs authorities.

The general rules are as follows:

- Goods delivered from the mainland of Ukraine to Crimea are subject to customs clearance with payment of export duty (if any) and 0% VAT. For tax purposes, such supplies will be considered as an export.
- Goods delivered from Crimea to the mainland of Ukraine are subject to general import procedures with payment of import duty and VAT.
- Delivery of goods in both directions is subject to veterinary, phytosanitary, ecological, and other state control measures.

Legal regime of the anti-terrorism operation

Temporarily, for the period of the anti-terrorism operation, there are certain specific regulations in respect of legal entities and individuals residing and/or doing business in the territory of the anti-terrorism operation (certain areas of Donetsk and Luhansk regions). These rules include, in particular:

- Moratorium on penalties under loan obligations (for agreements concluded or amended before 1 January 2018).
- Moratorium on audits by the state authorities.
- Release from payments for state and/or municipal property.
- Release from penalties for non-obtainment of foreign currency under export transactions within 180 days (*see Exchange controls above*).

United States (US) Foreign Account Tax Compliance Act (FATCA) rules compliance

The United States and Ukraine have reached an agreement in substance with regard to implementing the US FATCA under a Model 1 Intergovernmental Agreement (IGA), and Ukraine has consented to disclose this status. Ukraine is included into the US Internal Revenue Services (IRS) list of the countries with the IGA being treated 'as effective' until it is officially signed by the parties. In accordance with this status, the text of such IGA has not been released, and financial institutions in Ukraine are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

These developments further follow the Resolution of the Cabinet of Ministers of Ukraine dated 9 November 2016 approving the text of the IGA and authorising the Ministry of Finance to sign it.

Under the IGA between Ukraine and the United States, Ukrainian financial institutions are obligated to annually report to the local competent authorities information about financial accounts held in Ukraine by US taxpayers or foreign entities in which US taxpayers hold a substantial ownership interest. This information will be further transferred to the US IRS.

In March 2018, the Cabinet of Ministers of Ukraine submitted respective draft laws on ratification of the IGA to the Parliament and another one, which aimed to define some aspects of collecting/transferring information under the IGA. However, as of May 2018, these drafts were not yet considered, and the IGA is not yet ratified and not enforced in Ukraine as such.

United Arab Emirates

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Significant developments

There is a growing trend of tax reforms in the Middle East region, and this may result in changes to the tax laws in the United Arab Emirates (UAE).

Based on public sources, the United Arab Emirates is in the early stages of studying a federal corporate tax framework for the country.

Excise taxes

On 1 October 2017, the United Arab Emirates implemented excise taxes on certain goods. *See Excise taxes in the Other taxes section for more information*.

Value-added tax (VAT)

VAT was implemented in the United Arab Emirates on 1 January 2018, with a standard rate of 5%. This follows the ratification by the United Arab Emirates of the Common VAT Agreement of the Gulf Cooperation Council (GCC) (for the introduction of VAT in the GCC region). *See Value-added tax in the Other taxes section for more information*.

Taxes on corporate income

The United Arab Emirates is a federation of seven Emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qaiwain, Ras Al-Khaimah, and Fujairah.

Currently, the United Arab Emirates does not have a federal corporate income tax (CIT) regime; however, most of the Emirates introduced income tax decrees in the late 1960s, and taxation is therefore determined on an Emirate-by-Emirate basis.

Under the Emirate-based tax decrees, CIT may be imposed on all companies (including branches and permanent establishments [PEs]) at rates of up to 55%. However, in practice, CIT is currently only enforced in respect of corporate entities engaged in the production of oil and gas or extraction of other natural resources in the United Arab Emirates.

In addition, some of the Emirates have their own specific banking tax decrees, which impose CIT on branches of foreign banks at the rate of 20%.

Free trade zones (FTZs) have their own rules and regulations and generally offer tax holidays to businesses (and their employees) set up in the FTZ for a period between 15 and 50 years (which are mostly renewable).

On the basis of the above, most entities registered in the United Arab Emirates are currently not required to file corporate tax returns in the United Arab Emirates, regardless of where the business is registered.

Corporate residence

Tax residence under the tax decrees of the various Emirates is based upon the French concept of territoriality. Basically, the French territoriality concept taxes profits based on territorial nexus and does not tax profits earned outside the country.

Permanent establishment (PE)

Non-resident companies carrying out a trade or business in an Emirate through a PE in that Emirate are prima facie taxable under the relevant Emirate tax decree. The definition of PE generally includes a branch, place of management or other fixed place of business, and an agent that has and habitually exercises authority to conclude contracts on behalf of the non-resident company.

Other taxes

Value-added tax (VAT)

VAT has been implemented in the United Arab Emirates as of 1 January 2018.

The standard VAT rate is set at 5% and applies to most goods and services, with some goods and services subject to a 0% rate or an exemption (subject to specific conditions being met).

The 0% VAT rate applies to goods and services exported outside the VAT-implementing GCC member states, international transportation, crude oil/natural gas, the first sale of residential buildings, and some specific areas, such as health and education.

VAT exemption applies to certain financial services, as well as to the residential real estate sector. Further, transactions in bare land and domestic passenger transport are also exempt.

Certain transactions in goods between companies established in FTZs have special treatment under the UAE VAT law and may not be subject to VAT. The supply of services within FTZs is subject to VAT in accordance with the UAE VAT legislation.

For UAE resident businesses, the mandatory VAT registration threshold is 375,000 dirham (AED) and the voluntary registration threshold is AED 187,500. No registration threshold applies to non-resident businesses performing taxable supplies and required to charge UAE VAT.

VAT grouping is allowed, provided some specific conditions are met.

There are specific documentary and record-keeping requirements, such as the issue of tax invoices and the submission of VAT returns (on a quarterly or monthly basis depending on whether the taxable person qualifies as a 'large taxpayer').

Excess input VAT can, in principle, be claimed back from the Federal Tax Authority (FTA), subject to a specific procedure. Alternatively, it may be carried forward and netted off against future output VAT.

Businesses that do not comply with their VAT obligations can be subject to fines and penalties. There are both fixed and tax-geared penalties.

Customs duties

Generally, a customs duty of 5% is imposed on the cost, insurance, and freight (CIF) value of imports. Other rates may apply to certain goods, such as alcohol and tobacco, and certain exemptions may also be available.

Excise taxes

On 1 October 2017, the United Arab Emirates implemented an excise tax on tobacco products, carbonated drinks, and energy drinks. The tax applies to both locally manufactured and imported goods. The applicable tax rates are 50% for carbonated drinks and 100% for tobacco products and energy drinks.

Municipal or property tax

Most Emirates impose a municipality tax on properties, mostly by reference to the annual rental value. It is generally the tenants' obligation to pay the tax. In some cases, separate fees are payable by both tenants and property owners. For example, in the Emirate of Dubai, the municipality tax on property is currently imposed at 5% of the annual rental value for tenants or at 5% of the specified rental index for property owners.

A registration fee may be levied on transfer of ownership of land or real property. For example, a land registration fee is levied in the Emirate of Dubai at a rate of 4% of the sale value of the property (a cost generally shared between the buyer and seller), payable to the Dubai Land Department. In Dubai, the registration fee may also apply on the direct or indirect transfer of shares in an entity that owns real property.

These levies are imposed and administered differently by each Emirate.

Stamp taxes

Currently, there are no separate stamp taxes levied in the United Arab Emirates.

Payroll taxes

Since there is currently no personal income tax (PIT) or payroll tax regime in the United Arab Emirates, there is no withholding obligation of PIT on the employers.

Social security contributions

There is a social security regime in the United Arab Emirates that applies to UAE and GCC national employees only. In most Emirates, and for a UAE national employee, social security contributions are calculated at a rate of 17.5% of the employee's gross remuneration as stated in the employment contract, regardless of FTZ tax holidays. Out of the 17.5%, 5% is payable by the employee and the remaining 12.5% is payable by the employer. For other GCC nationals working in the United Arab Emirates, employee contributions are determined in accordance with social security regulations of their home country.

The liability to withhold is on the employer.

These levies and rates may be administered differently by each Emirate, and the Emirate government may also make additional contributions.

Hotel tax and tourism levies

Most Emirates impose hotel levies, which apply on the value of hotel services and entertainment. These levies are imposed and administered differently by each Emirate.

A Tourism Dirham fee is levied in the Emirate of Dubai. This is a charge on hotel guests and tenants of hotel apartments ranging from AED 7 to AED 20 per room per night. In the Emirate of Abu Dhabi, the fee is equal to AED 15 per room per night.

In addition to the above charge, the Emirate of Abu Dhabi also imposes a municipality fee that is levied on hotel stays at a rate of 4% on the total value of the invoice. Recently, the Emirate of Dubai has also introduced such municipality fee, however, at a higher rate of 10%. In addition, a service charge of 10% is imposed on the total value of the invoice, which is levied by the Department of Economic Development.

Branch income

As each Emirate has a different CIT decree, the decree of each Emirate must be consulted to determine the taxation of branches of foreign corporations.

In certain Emirates, branches of foreign banks are governed by special banking tax decrees, where they are taxed at 20% of their adjusted taxable income.

Income determination

The tax decrees of the various Emirates levy taxation on financial accounting profits. The tax decrees may provide for certain book-tax adjustments in specific situations. Currently, these adjustments may not be too relevant given that CIT is not imposed for most companies (except for upstream oil and gas companies and branches of foreign banks having operations in the Emirate) in the United Arab Emirates.

Deductions

Deductions are determined based on accounting principles and the tax decrees of the various Emirates. Currently, these deductions may not be too relevant given that CIT is not imposed for most companies (except for upstream oil and gas companies and branches of foreign banks having operations in the Emirate) in the United Arab Emirates.

Group taxation

The United Arab Emirates does not currently permit group taxation for CIT purposes.

Tax credits and incentives

The United Arab Emirates has many free trade zones (FTZs) that offer numerous incentives in the form of tax holidays/exemptions from CIT, PIT, and customs duties.

Free trade zones (FTZs)

Currently, there are over 45 FTZs (and business parks) in the United Arab Emirates, each having its own regulations. Businesses (and their employees) established in FTZs are generally eligible for guaranteed tax holidays for 15 to 50-year (generally renewable) periods. Certain FTZs also offer exemption from customs duties. The laws and regulations granting these holidays and exemptions are not consistent across the various FTZs. Each FTZ therefore needs to be considered separately.

Withholding taxes

There are currently no withholding taxes (WHTs) applicable in the United Arab Emirates.

Tax treaty network

UAE national individuals and UAE resident corporate taxpayers have access to an extensive and growing tax treaty network. These treaties may not be immediately relevant for obtaining relief from UAE taxation (as the UAE does not levy WHT or other forms of non-resident taxation); however, they may continue to allow for relief from tax in foreign countries. For completeness, the treaties currently in force are listed below. A number of other treaties are at various stages of negotiation and ratification.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Albania	0/5/10	0	5
Algeria	0	0	10
Andorra	0	0	0
Armenia	0/3	0	5
Austria	0	0	0
Azerbaijan	5/10	0/7	5/10
Bangladesh	5/10	10	10
Barbados	0	0	0
Belarus	5/10	0/5	5/10
Belgium	0/5/10	0/5	0/5
Bosnia and Herzegovina	0/5/10	0	0/5
Brunei	0	0	5
Bulgaria	0/5	0/2	0/5
Canada	5/10/15	0/10	0/10
China	0/7	0/7	10
Comoro Islands	0	0	0
Cyprus	0	0	0
Czech Republic	0/5	0	10
Egypt	0	0/10	10
Estonia	0	0	0
Fiji	0	0	10
Finland	0	0	0

United Arab Emirates

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
France	0	0	0
Georgia	0	0	0
Germany	5/10/15	0	10
Greece	0/5	0/5	5
Guinea	0	0	0
Hong Kong	0/5	0/5	5
Hungary	0	0	0
India	10	0/5/12.5	10
Indonesia	10	0/5	5
Ireland	0	0	0
Italy	5/15	0	10
Japan	5/10	0/10	10
Jersey	0	0	0
Jordan	7	0/7	10
Kazakhstan	0/5	0/10	10
Kenya	5	10	10
Korea, Republic of	5/10	0/10	0
Kosovo	0/5	0/5	0
Kyrgyzstan	0	0	5
Latvia	0/5	0/2.5	5
Lebanon	0	0	5
Liechtenstein	0	0	0
Lithuania	0/5	0	5
Luxembourg	0/5/10	0	0
Macedonia	0/5	0/5	0/5
Malaysia	10	0/5	10
Malta	0	0	0
Mauritius	0	0	0
Mexico	0	0/4.9/10	10
Mongolia	0	0	10
Montenegro	0/5/10	0/10	0/5/10
Morocco	0/5/10	0/10	0/10
Mozambique	0	0	0/5
Netherlands	0/5/10	0	0
New Zealand	15	0/10	10
Pakistan	10/15	0/10	12
Panama	5	0/5	5
Philippines	0/10/15	0/10	10
Poland	0/5	0/5	5
Portugal	5/15	0/10	5
Romania	0/3	0/3	3
Russia (1)	0	0	N/A
Senegal	5	5	5
Serbia	0/5/10	0/10	10
Seychelles	0	0	5
Singapore	0	0	0/5
Slovakia	0	0/10	0/10
Slovenia	0/5	0/5	5
South Africa	5/10	10	10

	WHT (%)		
Recipient	Dividends	Interest	Royalties
Spain	0/5/15	0	0
Sri Lanka	0/10	0/10	10
Sudan	0	0	0/5
Switzerland	0/5/15	0	0
Syria	0	0/10	18
Tajikistan	0	0	10
Thailand	10	0/10/15	15
Tunisia	0	2.5/5/10	7.5
Turkey	5/10/12	0/10	10
Turkmenistan	0	0	10
Ukraine	0/5	0/3	0/10
United Kingdom	0/15	0/can be taxed	0
Uruguay	5/7	0/10	0/5/10
Uzbekistan	0/5/15	0/10	10
Venezuela	0/5/10	0/10	10
Vietnam	0/5/15	0/10	10
Yemen	0	0	10

Notes

1. Government institutions only.

Tax administration

The Federal Tax Authority (FTA) is responsible for the management, collection, and implementation of federal taxes and related penalties, the distribution of tax revenues, and the application of tax laws.

The Tax Procedure Law and the related Cabinet Decisions cover general tax compliance obligations, the procedure for tax audits, appeal of decisions, disclosure of errors, administrative penalties, as well as fees for services provided by the FTA.

Most companies operating in the United Arab Emirates (except upstream oil and gas companies and branches of foreign banks) are currently not required to file CIT returns in the United Arab Emirates.

Other issues

Base erosion and profit shifting (BEPS)

The United Arab Emirates joined the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework on BEPS on 16 May 2018. Through joining the Inclusive Framework, the United Arab Emirates has committed to implement, in the immediate to short term, the following four BEPS minimum standards Actions:

- Action 5: Countering harmful tax practices.
- Action 6: Countering tax treaty abuse.
- Action 13: Transfer pricing documentation and country-by-country (CbC) reporting.
- Action 14: Improving dispute resolution mechanisms.

The BEPS minimum standards Actions are focused on (i) putting in place a mechanism to facilitate an automatic exchange of information with relevant jurisdictions to combat harmful tax practices, (ii) implementing certain anti-double tax treaty abuse measures, (iii) implementing a three-tier standardised approach with regard to transfer pricing documentation on related-party transactions and CbC reporting, and (iv) committing to improve dispute resolution mechanisms.

The United Arab Emirates has also committed to implement the other (11) BEPS measures in the medium to long term.

To date, the United Arab Emirates has not signed the BEPS Multilateral Instrument.

United States (US) Foreign Account Tax Compliance Act (FATCA)

The United States and the United Arab Emirates reached a Model 1B Intergovernmental Agreement (IGA) in substance as of 10 June 2014.

On 17 June 2015, the United Arab Emirates formally signed the Model 1B IGA, which came into force on 19 February 2016, with the US Internal Revenue Services (IRS) regarding the exchange of information related to US individuals and certain type of US-owned entities.

On 6 July 2015, the UAE government released guidance notes on the requirements of the IGA on the implementation of FATCA. The final guidelines expand upon the UAE-US Model 1 IGA, including the definitions, implementation of the due diligence procedures, and reporting obligations.

The exchange of information is done on a yearly basis, occurring in September of each year, between the United Arab Emirates and the US IRS. Filing of nil reports is required under the IGA.

Common Reporting Standard (CRS)

On 22 February 2017, the UAE government signed the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information, and the Convention on Mutual Administrative Assistance in Tax Matters (CMAATM) was signed on 21 April 2017, enabling the United Arab Emirates to fulfil their commitment to the CRS.

United Kingdom

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Significant developments

Extensive and far reaching reforms to the United Kingdom's (UK's) corporation tax system have been made in recent years. The reforms have a stated aim of "creating a tax system that is easy to understand, simple to engage with, and hard to evade, [and] successfully supports investment in business, as well as those who work hard and save" (Financial Secretary to the Treasury, December 2015). The reforms are also intended to maintain the UK's competitive position. The main areas of reform have included:

- Reductions in the rate of corporation tax.
- Redefining the corporate tax base, including aspects of the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) project.
- Policy and practice concerning tax evasion and unacceptable tax avoidance.
- Administration and collection, including plans for increased use of digital systems.

Because the UK legislative process can lag behind the announcement of proposals, certain changes are already law, others are very likely, or practically certain, to become law, whilst others are issues announced for wider consultation and future enactment into law.

Up to 2017, most of the reforms to tax rules were typically announced in November/December and March each year before becoming law in the Finance Act, usually in the following July. This pattern is disrupted in years of a general election. So, a truncated Finance Act 2017 became law in April 2017 ahead of the June 2017 general election. A second, and more extensive, Finance Act became law in November 2017 with several of those reforms effective from 1 April 2017. From 2017, the timetable for reform to the tax rules has changed, with reforms expected to become law in February or March each year. Any reforms of significance, and proposals for important reforms, included in those processes, are discussed below.

In a referendum on 23 June 2016, voters in the United Kingdom chose to leave the European Union (EU) (so-called 'Brexit'). The United Kingdom invoked Article 50 of the Treaty on the Functioning of the European Union (TFEU) in March 2017, and this triggered a two-year exit procedure. The implications will depend to a substantial extent on the terms on which exit is agreed and, therefore, remain unclear at this stage. The information included in this tax summary assumes, for now, the continuance of the UK's membership in the European Union. Comments on the impact of leaving the European Union would be entirely speculative.

United Kingdom

Changes that have taken effect in the past year

Reforms that took effect in the past year include:

- For companies making claims under the large company research and development expenditure credit (RDEC) scheme, the 'above the line' tax credit is increased from 11% to 12% of qualifying expenditure from 1 January 2018.
- Introduction, with effect from 30 September 2017, of a corporate criminal offence of facilitating tax evasion.
- Introduction, from April 2018, of a levy on producers of soft drinks.

Changes enacted but not yet in force

Changes enacted but not yet in force include:

- The United Kingdom has ratified its agreement to the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the 'Multilateral Instrument' or 'MLI') and will deposit that instrument of ratification with the OECD in due course. The MLI will enter into force in the United Kingdom three clear months after the date of deposit. The MLI will have a fundamental impact on how taxpayers access double tax treaties (DTTs) to which it applies.
- A reduced rate of corporation tax for businesses based in Northern Ireland may be introduced. This is subject to joint approval by the Northern Ireland government and the UK Treasury. The commencement date has not yet been finally determined.

Consultations and proposals – ongoing

The most significant proposals, which include announced proposals and those in draft legislation, and those subject to consultations include:

Measures focused on domestic matters

- The rate of corporation tax is proposed to reduce to 17% from April 2020.
- A range of specific and narrow anti-avoidance rules.
- Further reforms regarding collection of taxes, application of penalties, and related issues focused on tax evasion.
- The government is consulting on changes to the taxation of intangible fixed assets, with any changes anticipated to have effect from April 2019.
- Plans to move all tax reporting, compliance, and payments onto a digital platform by 2020.

Measures focused on international matters

- In June 2016, the European Union adopted an anti-tax-avoidance Directive (ATAD), which sets out minimum standards for rules to address key international tax and BEPS-related issues: (i) deductibility of interest, (ii) exit taxation, (iii) a general anti-abuse rule (GAAR), (iv) controlled foreign company (CFC) rules, and (v) a framework to tackle hybrid mismatches. Member states have until 31 December 2018 to implement these provisions to come into effect from 1 January 2019 (with one additional year for exit charges and the potential for some countries to delay the interest deduction restrictions). The United Kingdom already has a GAAR, CFC rules, and rules to address hybrid mismatches and interest deductibility. It remains to be seen whether the United Kingdom will introduce legislation to implement the exit tax requirements of the ATAD.
- In October 2016, the European Commission (EC) published four draft directives as part of an EU corporate tax reform package. The proposals include: a common

corporate tax base (CCTB) to harmonise the corporate tax base across the European Union from 1 January 2019; a consolidation of the results of entities in a corporate group in the European Union under a single filing and apportionment of the aggregate profits to individual member states via a common consolidated corporate tax base (CCCTB) from 1 January 2021; measures to address hybrid mismatches in relation to non-EU countries from 1 January 2019; and extending existing double taxation dispute resolution mechanisms in the European Union by 31 December 2017. It remains to be seen whether these proposals will be adopted, and, if so, whether there will be amendments to the content or timetable, and how this will interact with the UK's negotiations for leaving the European Union.
- With effect from April 2019, withholding tax (WHT) obligations will be extended to royalty payments, and payments for certain other rights, made to some low or no tax jurisdictions in connection with sales to UK customers. The rules will apply regardless of where the payer is located.
- All gains on non-resident disposals of UK property will be brought within the scope of UK tax. This will apply to gains accrued on or after April 2019. Targeted exemptions will be introduced for institutional investors, such as pension funds.
- New rules will take effect in April 2019 to prevent companies and individuals from moving profits offshore (tax avoidance involving profit fragmentation).
- From April 2020, income that non-resident companies receive from UK property, and gains that arise on the disposal of UK property by non-resident companies, will be chargeable to corporation tax.

Taxes on corporate income

Resident companies are taxable in the United Kingdom on their worldwide profits (subject to an opt-out for non-UK permanent establishments [PEs]), while non-resident companies are subject to UK corporation tax only on the trading profits attributable to a UK PE, or the trading profits attributable to a trade of dealing in or developing UK land (irrespective of whether there is a UK PE), plus UK income tax on any other UK-source income. In practice, for many companies, the application of a wide range of tax treaties, together with the dividend exemption, makes the UK corporation tax system more like a territorial system.

General corporation tax rates

The normal rate of corporation tax is 19% for the year beginning 1 April 2018. It is proposed that this rate will fall to 17% for the year beginning 1 April 2020.

Where the taxable profits can be attributed to the exploitation of patents, a lower effective rate of tax applies. The rate is 10% from 1 April 2017. Profits can include a significant part of the trading profit from the sales of a product that includes a patent, not just income from patent royalties. This scheme was revised from June 2016 (*see Patent box in the Tax credits and incentives section for more information*).

Special corporation tax regimes

Apart from the four specific exceptions noted below, there are no special regimes for particular types or sizes of business activity; in general, all companies in all sectors are subject to the same corporation tax rates and rules. However, certain treatments and reliefs do vary according to size, including transfer pricing, research and development (R&D) credits, and some targeted anti-avoidance rules.

For large companies, there are some additional compliance and reporting requirements. Some elements of Her Majesty's Revenue and Customs' (HMRC's) organisational structure and approach to avoidance and compliance are arranged by size of business (e.g. Large Business Strategy).

Oil and gas company regime

Profits that arise from oil or gas extraction, or oil or gas rights, in the United Kingdom and the UK Continental Shelf ('ring-fence profits') are subject to tax in the United Kingdom in accordance with rates applicable in 2006, i.e. a full rate of 30% and a small profits rate of 19%. Such activities also attract 100% capital allowances on most capital expenditure. A supplementary tax charge of 10% applies to 'adjusted' ring fence profits in addition to normal corporation tax.

Petroleum revenue tax is now set at 0% but is retained for technical and historic reasons in relation to certain old oil fields.

Life insurance company regime

Life insurance businesses are also taxed under a special regime, which effectively includes different corporation tax rates as well as special rules for quantifying profits.

Tonnage Tax regime

Companies that are liable to corporation tax and operate qualifying ships that are strategically and commercially managed in the United Kingdom can choose to apply Tonnage Tax in the place of corporation tax. Tonnage Tax is an alternative method of calculating corporation tax profits by reference to the net tonnage of operated ships. The Tonnage Tax profit replaces the tax-adjusted profit/loss on a shipping business and certain related activities, as well as the chargeable gains/losses made on Tonnage Tax assets. Any other profits are taxable under the normal corporation tax regime.

Banking sector

A supplementary tax is applicable to companies in the banking sector at 8% on profits in excess of 25 million pound sterling (GBP). Also, loss utilisation is restricted; carried forward trading losses can be set against only 25% of profits in a period.

Income tax for non-resident companies

A non-resident company is subject to UK corporation tax only on the trading profits of a UK PE or the trading profits attributable to a trade of dealing in or developing UK land (irrespective of whether there is a UK PE). Any other UK-source income received by a non-resident company is subject to UK income tax at the basic rate, currently 20%, without any allowances (subject to any relief offered by a DTT, if applicable). This charge most commonly arises in relation to UK rental income earned by a non-resident landlord (NRL). The United Kingdom therefore operates an NRL scheme that requires the NRL's letting agent or tenants to withhold the appropriate tax at source unless they have been notified that the NRL has applied for and been given permission to receive gross rents.

It is proposed that, with effect from April 2019, non-resident companies will be liable to UK tax on the disposal of UK property; and, with effect from April 2020, income and gains that non-resident companies receive from UK property will be chargeable to corporation tax.

Diverted Profits Tax (DPT)

DPT is separate from other corporate taxes. It is levied at 25% (or 55% in the case of UK ring fence operations, i.e. broadly oil extraction operations) on diverted profits (as defined) and may apply in two circumstances:

- where groups create a tax benefit by using transactions or entities that lack economic substance (as defined), and/or
- where foreign companies have structured their UK activities to avoid a UK PE.

Companies are required to notify HMRC if they are potentially within the scope of DPT within three months of the end of the accounting period to which it relates (extended to six months for the first year). The legislation is complex and subjective in places, and has the potential to apply more widely than might be expected.

Local income taxes

There are no local or provincial taxes on income, although legislative powers are in place to introduce a reduced rate of corporation tax in Northern Ireland. It is not clear when the reduced rate will be introduced or at what rate.

Corporate residence

UK incorporated companies are generally treated as UK resident. However, companies resident in the United Kingdom under domestic law, but treated as solely resident in a different country under that country's DTT with the United Kingdom, are not treated as UK resident for the purposes of UK domestic tax law.

Additionally, subject to the above exception, companies incorporated overseas are also treated as UK resident if their central management and control is situated in the United Kingdom. This means if the place of the highest form of control and direction over a company's affairs, as opposed to decisions on the day-to-day running of the business, is in the United Kingdom.

Permanent establishment (PE)

For non-resident companies, the liability to corporation tax depends on the existence of any kind of PE through which a trade is carried on (except where the trading profits are attributable to a trade of dealing in or developing UK land, when a PE is not needed). The meaning of PE for UK tax purposes is set out in statute; it is largely based on the OECD Model Tax Convention definition, but is not identical in all respects. Subject to the terms of the relevant DTT, a non-resident company will have a PE in the United Kingdom if:

- it has a fixed place of business in the United Kingdom through which the business of the company is wholly or partly carried on, or
- an agent acting on behalf of the company has and habitually exercises authority to do business on behalf of the company in the United Kingdom.

A fixed place of business includes (but is not limited to) a place of management; a branch; an office; a factory; a workshop; an installation or structure for the exploration of natural resources; a mine, oil or gas well, quarry, or other place of extraction of natural resources; or a building, construction, or installation project. However, a company is not regarded as having a UK PE if the activities for which the fixed place of business is maintained or which the agent carries on are only of a preparatory or auxiliary nature (also defined in the statute).

The OECD, under Action 7 of its BEPS Action Plan, has recommended a widening of the scope of the PE definition in Article 5 of the OECD Model Tax Convention. It is intended that the amended definition will be incorporated into bilateral double taxation conventions via a multilateral instrument (MLI). The United Kingdom is only adopting limited elements of the PE articles in the MLI.

From April 2020, it is proposed that income that non-resident companies receive from UK property, and gains that arise on the disposal of UK property, will be chargeable to corporation tax.

Special rules exist to explain how the PE's profits should be evaluated for UK tax purposes (*see the Branch income section for more information*).

Other taxes

Value-added tax (VAT)

The standard VAT rate of 20% applies to most goods and services, apart from domestic fuel and power and certain other reduced-rate supplies, which are subject to VAT at 5%.

Certain small traders (supplies less than GBP 150,000 *per annum*) with a limited range of expenses may adopt a special flat-rate scheme, which computes VAT at a sector-specific flat rate.

Most exports, most food, most public transport, books and publications, and certain other essential goods and services are zero-rated. Some supplies are exempt, the main categories being the grant of certain interests in land, insurance, financial services, betting and gaming, education, certain sports services, cultural services, and health and welfare. Zero-rating is preferable to exemption because the VAT on costs incurred in making a zero-rated supply can be recovered while that incurred in making an exempt supply cannot.

VAT is chargeable on the supply of most goods and services made in the United Kingdom by 'taxable persons' in the course of business, when their taxable turnover exceeds the registration thresholds. Taxable persons include individuals, companies, partnerships, clubs, associations, or charities.

Taxable persons who are not normally resident in the United Kingdom, do not have a business establishment in the United Kingdom, and, in the case of companies, are not incorporated in the United Kingdom, but who make taxable supplies, sales to unregistered persons in the United Kingdom, or acquisitions of goods in the United Kingdom above the relevant limits, may be required to register and account for VAT in the United Kingdom.

If the value of taxable supplies is over a specified limit, registration for VAT is compulsory unless the taxable supplies made are wholly or mainly zero-rated, in which case it is possible to apply for exemption from registration. A zero VAT registration threshold applies for businesses not established in the United Kingdom.

The rules applying to VAT and territoriality are different to those applying to direct tax in that they derive from the principles of the place of supply in EU law, as enshrined in EC VAT Directives. Having determined that a supply of goods or services has taken place, the second condition to be determined, if the transaction is to fall within the scope of UK VAT, is whether the supply takes place within the United Kingdom. The place of supply rules are different for goods and for services. A person or business belonging outside the United Kingdom, with no place of business in the United Kingdom, may, nevertheless, be liable to UK VAT registration where the place of supply of those goods or services is in the United Kingdom.

For goods, the basic rule is that a supply of goods is taxable in the territory where those goods are physically located at the time of supply. Hence, if goods are supplied in the United Kingdom by a non-established taxable person, there will still be a liability for VAT purposes, and the person must register for VAT in the United Kingdom if the taxable supplies exceed the current UK VAT registration thresholds. A zero VAT registration threshold applies for businesses not established in the United Kingdom.

For services, the basic rule is that services are treated as made where the customer 'belongs' or is established for VAT purposes, and the customer is responsible for accounting for the VAT due via the reverse-charge procedure. However, this is subject to a number of special rules and exceptions. Determining where a business is established for VAT purposes is based on EU law criteria.

For business-to-consumer (B2C) supplies, the basic rule is that services are treated as made where the supplier 'belongs' or is established for VAT purposes. B2C supplies of telecommunications, broadcasting, and electronic services are taxed where the customer is located or is normally resident.

VAT returns and payments

VAT returns must be completed at pre-set intervals (usually every three months). Larger companies may be required to file monthly returns or make monthly payments on account. All businesses are required to file VAT returns online and make electronic payments. Smaller enterprises can apply for annual returns. VAT returns are usually required to be filed 30 days after the end of the period.

With effect from 1 April 2019, businesses with taxable turnover above the UK VAT registration threshold will be required to keep and preserve digital records and provide VAT returns using compatible software. This will be done via an 'application programming interface', which will enable taxpayers to communicate electronically with HMRC.

Annual accounting is available for taxable persons with annual turnover (taxable supplies, excluding VAT) not exceeding GBP 1,350,000.

Cash accounting is available for taxable persons with annual turnover (taxable supplies, excluding VAT) not exceeding GBP 1,350,000.

In addition, a flat rate scheme operates for small businesses and is intended to simplify VAT accounting procedures.

United Kingdom

Customs and excise duties

Many goods imported into the United Kingdom from outside the European Union are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff and vary widely.

Excise duties are chargeable on most hydrocarbon oil products, alcoholic drinks, and tobacco products imported into or produced in the United Kingdom. Examples include the following:

Products	Excise duty (GBP)
Road fuels	0.5795 per litre
Cigarettes	217.23 per thousand (plus 16.5% of the retail price) or 280.15 per thousand if greater
Tobacco (hand rolling)	221.18 per kg
Wines (5.5% to 15%)	2.89 per litre
Spirits	28.74 per litre of pure alcohol included

Soft drinks industry levy (SDIL)

The government has introduced legislation with effect from April 2018 to encourage the reformulation of drinks that are high in added sugar by levying a unit charge on UK producers and importers of such drinks. There is an exemption for smaller producers. For drinks that contain at least 5 grams (but less than 8 grams) of sugar per 100 millilitres of prepared drink, the SDIL will be charged at the rate of GBP 0.18 per litre of prepared drink; where the drink contains at least 8 grams of sugar per 100 millilitres, the SDIL will be charged at the rate of GBP 0.24 per litre of prepared drink.

Stamp taxes

Stamp duty is charged at 0.5% on instruments effecting sales of shares. Agreements to sell shares usually attract stamp duty reserve tax (SDRT) at 0.5%. The liability to SDRT may be cancelled by paying the stamp duty due on a stock transfer form (or other transfer instrument) executed in pursuance of the agreement. Stamp duty is not usually charged on an issue of shares. Issues or transfers of shares to clearance services or depositary receipt systems may attract SDRT at 1.5% (stamp duty at 1.5% may be payable on instruments effecting transfers of shares to such services or systems). Transfers of bearer shares also attract stamp duty at 1.5%.

Acquisitions of non-residential or mixed land and buildings in England, Wales, and Northern Ireland are charged stamp duty land tax (SDLT) at rates of up to 5%. Acquisitions of residential property by companies and similar non-natural persons and by individuals acquiring second homes are charged at rates of up to 15% (whereas acquisitions by individuals who do not own any other properties or who are replacing their main residence are capped at 12%). Grants of new commercial leases are charged SDLT at 1% of the net present value of the rents payable in excess of GBP 150,000 up to GBP 5 million and 2% of the net present value in excess of GBP 5 million. SDLT is also payable at up to 5% on any premium paid. Grants of residential leases are charged at 1% of the net present value of the rents payable in excess of GBP 125,000 plus up to 15% on any premium paid.

Land and buildings in Scotland are subject to Scottish land and building transactions tax (LBTT) in place of SDLT. Rates are graduated up to 12%, which applies to a transaction value for residential properties in excess of GBP 750,000 (or up to 15%

where the additional 3% for second homes or buy-to-lets applies), and up to 4.5% for non-residential properties.

Land and buildings in Wales are subject to Welsh Land Transactions Tax in place of SDLT. Rates are graduated up to 12%, which applies to a transaction value for residential properties in excess of GBP 1.5 million (or up to 15% where the additional 3% for second homes or buy-to-lets applies), and up to 6% for non-residential properties.

Annual tax on enveloped dwellings (ATED) and related capital gains tax charge

An annual tax on enveloped dwellings is charged on the acquisition and holding of high-value residential properties (property over GBP 500,000) through a company or other 'non-natural' person. Until April 2018, this was based on the 1 April 2012 value, in bands starting at GBP 500,000 and increasing to GBP 20 million. From April 2018, it is based on the 2017 value. The charge on a property worth GBP 20 million or more cannot exceed GBP 226,950 *per annum* from April 2018. The minimum charge is GBP 3,600 from April 2018 for a property valued at GBP 500,000.

In addition, a disposal of such a property or an interest in such a property by a company or other non-natural person will be subject to capital gains tax at 28% on any gains accruing after 5 April 2013 under the non-resident capital gains tax (NRCGT) regime. Relief will be available from ATED and the capital gains tax extension for most property used for commercial, charitable, or public use. It is likely that, from April 2019, the NRCGT regime will be brought within the broader regime proposed for all UK property gains realised by non-residents.

Payroll taxes

Other than employers' national insurance contributions (NICs) (*see below*), there are no other payroll taxes, the burden of which falls on the employer. Employers are, however, responsible for deducting the employees' income tax liability at source, through the pay-as-you-earn (PAYE) system. The employer may also be required to deduct other amounts from pay (e.g. court orders).

Employers' national insurance contributions (NICs)

Employers are obligated to pay NICs based on a percentage of each employee's earnings. For the year ending 5 April 2019, the rate is 13.8% on all earnings above GBP 162 per week. Businesses are exempt from the first GBP 3,000 *per annum* (maximum) of this liability.

Apprenticeship levy

From 1 April 2017, employers are required to pay 0.5% of their total payroll in excess of GBP 3 million to create a fund to support apprenticeships.

Pension protection fund levy

All defined benefit pension schemes pay a levy, based on pension fund liabilities and the financial risk of the employing company. This levy funds a compensation fund for pensioners and employees of failed schemes.

United Kingdom

Bank levy

A bank levy takes the form of an annual tax on certain liabilities of most UK-based banks and building societies. The tax is levied at the following annualised rates (for 2018):

- 0.16% of a bank's short-term relevant liabilities.
- 0.08% of long-term equity and liabilities.

Staged reductions down to 0.10% and 0.05% by 2021 are proposed.

The levy is not charged on the first GBP 20 billion of chargeable liabilities and is not deductible for corporation tax purposes.

Bank profits are also subject to an 8% supplementary corporation tax charge on profits above GBP 25 million.

Insurance premium tax (IPT)

IPT at the standard rate of 12% applies to premiums for most general insurance, such as for buildings and contents and motor insurance, where the insured risk is in the United Kingdom. Life assurance and other long-term insurance remain exempt, though there are anti-avoidance rules surrounding long-term medical care policies. As an anti-avoidance measure, a higher rate of 20% applies to insurance sold by suppliers of specified goods or services, e.g. mechanical breakdown insurance, travel insurance (irrespective of supplier), insurance sold with TV and car hire, and 'non-financial' guaranteed asset protection (GAP) insurance sold through suppliers of motor vehicles or persons connected with them. Further anti-avoidance rules affect administration or similar fees connected with contracts of insurance, charged under separate contracts by brokers and other intermediaries.

Airport passenger duty

Individuals leaving the United Kingdom by air are obligated to pay a duty, which, in practice, is invariably included in the cost of the air ticket. Typically, such taxes are borne by employers in respect of employee's business travel. Further, significantly higher rates apply for travel in certain 'executive jets'.

Environmental taxes

There are several environmental taxes, including the following.

Landfill tax

The landfill tax is a tax on waste disposal in landfill sites. The standard rate increased to GBP 86.10 per tonne from 1 April 2017. The reduced rate for inert waste is GBP 2.70 per tonne.

Climate change levy

The climate change levy is a tax on energy used in the United Kingdom, such as electricity, gas, coal, etc., and is charged at rates that depend on the nature of the fuel used. There are reduced rates and exclusions from the charge, e.g. supplies to domestic or charitable users, renewable source energy, and energy-intensive sectors committing to specific emissions/energy-saving measures.

Aggregates levy

The aggregates levy is a tax on the extraction or importation of sand, gravel, and crushed rock for commercial exploitation in the United Kingdom. The rate of tax is GBP 2.00 per tonne.

Carbon Reduction Commitment

The Carbon Reduction Commitment is a mandatory scheme for large businesses with financial, reputational, and behavioural drivers aimed at improving energy efficiency.

Local municipal taxes

Local taxes are not based on income, but rather are levied on the occupiers of business property by reference to a deemed annual rental (or ‘rateable’) value for the property concerned. These taxes (known as ‘business rates’) are administered by regional local government authorities rather than central government. The amounts paid are deductible for corporation tax purposes, provided they meet all the usual requirements for deductibility.

Branch income

Tax rates on the profits of UK PEs of non-resident corporations are the same as for domestic corporations.

There are specific rules setting out how the PE’s profits should be evaluated for UK tax purposes, which broadly seek to treat the business as if it were a standalone company. Financing arrangements between the PE and head office must be disregarded, and there are special rules for banks to stop under-performing loans being allocated to the UK PE in a way that is considered unacceptable and similar potential manipulations. However, a deduction is given for a proportion of head office costs.

Tax is not generally withheld on transfers of profits from a UK PE to the head office.

Taxable income determination

A UK resident company is taxed on its worldwide total profits.

Total profits are the aggregate of (i) the company’s net income from each source and (ii) the company’s net chargeable gains arising from the sale of capital assets.

The main sources of income are (i) profits of a trade, (ii) profits of a property business, (iii) non-trading profits (or losses) from loan relationships, mainly interest receivable or payable, (iv) non-trading gains (or losses) on most intangible fixed assets, and (v) non-exempt dividends or other company distributions. The amount of income for sources (i) to (iv) is measured based on the company’s accounts, with specific adjustments. Taxable income from non-exempt dividends and calculating chargeable gains or income from other sources is based on actual amounts.

The rules for measuring the gross income are different for each category, and there are subtle differences in the rules about tax deductions and how gains are calculated. Because of this continuing reliance on taxing companies on a ‘source-by-source’ basis, it is difficult to explain the rules about income determination and deductions as two wholly separate topics.

Basic rules for accounts-based sources

The main source of profits is often from trading. A company's trading profits are based on its worldwide profit before tax in its accounts. Adjustments are made for non-trading receipts (such as dividends from other companies and income from property) and non-deductible expenditure (such as capital expenditure). Depreciation for tax purposes (known as capital allowances) is calculated and substituted for the depreciation charged in the accounts. A number of other statutory adjustments are made; three important ones are that pension contributions, deferred pay, and benefits in kind are broadly deductible only when paid, that a deduction is available for the notional cost of certain share awards to employees, and that, where certain acquired intangibles (but, in particular, not goodwill and customer-related intangible assets acquired on or after 8 July 2015) are not depreciated in the accounts, a 4% flat-rate deduction can usually be claimed. There are many other adjustments.

Similar principles apply in relation to the calculation of profits of a property business.

Financial profits from a company's trading and non-trading loan relationships and related matters are usually based on the accounts, and the distinction between 'capital' and 'revenue' receipts and deductions is not relevant. Instead, all credits and debits in the accounts are aggregated in order to find the net profit or deficit. Certain statutory adjustments have to be made, which include an interest capping limitation.

For traders, any profit or loss on loan relationships, and/or on intangibles, is generally included within the trading profits. If the company doesn't have a trade, then loan relationships and intangibles are treated as a separate source of income or loss.

Income losses

Where a loss arises in respect of a particular source of income, there are detailed rules regarding the possible offset of the loss. Carryback and sideways reliefs are often allowed within limits; carryforward is generally allowed and carried forward losses do not time expire, although from April 2017 the maximum carried forward loss offset is broadly limited to GBP 5 million plus 50% of the current year profits in excess of that amount. Losses can also be utilised by other group companies (*see the Group taxation section*).

More specifically, dealing with the main sorts of income losses,

- trading losses may be set off against any other source of profit or gains in the same year, may be carried back one year (three years on the cessation of the trade) against any other source of profit or gain, or may be carried forward without time limit against profits of the same trade only (for trading losses accruing up to 1 April 2017) or against total profits (for trading losses accruing on or after 1 April 2017)
- property losses may also be set off against any other source of profit or gains in the same year, or may be carried forward without time limit against profits of any sort; they cannot, however, be carried back, and
- non-trading deficits (NTDs) (i.e. interest and financing losses) can again be set off against any other source of profit or gains in the same year, may be carried back one year against non-trading credits (i.e. interest and financing profits), or may be

carried forward without time limit against non-trading profits (for NTDs accruing up to 1 April 2017) or against total profits (for NTDs accruing on or after 1 April 2017).

Non-trading companies may deduct non-capital management expenses incurred in managing their investments from their total profits. Any excess management expenses can be carried forward without limit to set against profits in future years.

While income losses can generally be offset against capital gains of the same accounting period, capital losses are never available for offset against any type of income.

There are complex anti-avoidance rules that restrict the utilisation of all types of losses where there is a change in ownership of the company. Specific rules can also deny or limit loss relief or deductions arising from brought forward losses or potential losses where certain conditions are met.

Inventory valuation

In general, the book and tax methods of inventory valuation will conform. In practice, inventories are normally valued for tax purposes at the lower of cost or net realisable value. A first in first out (FIFO) basis of determining cost where items cannot be identified is acceptable, but not the base-stock or the last in first out (LIFO) method.

Capital gains

Gains on capital assets are taxed at the normal corporation tax rates. The chargeable gain (or allowable loss) arising on the disposal of a capital asset is calculated by deducting from gross proceeds the costs of acquisition and subsequent improvements, plus the incidental costs of sale and indexation allowance up to December 2017. Indexation allowance compensates for the increase in costs based on the percentage rise (if any) in the UK retail prices index to the earlier of date of disposal or December 2017. Indexation allowance is, however, limited; it cannot create or increase a capital loss, it can only reduce or eliminate a chargeable gain. Generally, these calculations must be done in sterling, so any foreign exchange gains and losses will be taxed (or relieved) on disposal.

Special rules apply to assets held at 31 March 1982.

Most acquisitions and disposals between UK group companies are treated as made on a no gain no loss basis (i.e. at base cost plus indexation). Otherwise, acquisitions from, or disposals to, affiliates are treated as made at fair market value, as are other acquisitions or disposals not at arm's length.

Capital losses are allowed only as an offset to capital gains. An excess of capital losses over capital gains in a company's accounting period may be carried forward without limitation but may not be carried back. Gains or losses arising on a particular asset can be allocated to another group member. So, the capital losses of one company can sometimes be set against the gains of a fellow group member in the same or subsequent period.

There is a good deal of anti-avoidance legislation concerning the computation of chargeable gains, notably to stop losses being created or gains avoided where assets are depreciated by intra-group transactions, or where losses are 'bought in' from third parties.

Gains realised on certain types of assets can be deferred where all or most of the proceeds are reinvested in other assets of those types within a specified period (generally three years). The 'rolled-over' gain then crystallises as and when the latter assets are sold. At present, the main asset categories qualifying for roll-over are land and buildings used for a trade.

Most disposals of shareholdings of 10% or more are exempt from tax. The main exceptions will be those of non-trading subsidiaries or subgroups, or of companies acquired within the previous year. Note that gains on goodwill and other intangibles acquired after March 2002 are taxed as income, not as capital gains.

Dividend income

Most foreign and UK dividends received by UK companies are exempt from corporation tax; however, one of several criteria has to be met, but these are widely drawn (one test, for example, is that the recipient controls the payer). For non-exempt, foreign-source dividends, double tax relief (DTR) will be available on a dividend-by-dividend basis. It is unusual for companies to be taxed on UK dividends because of the breadth of the exemption; however, where they are taxed, there is no concept of DTR for UK dividends.

Royalty income

Royalty income received by corporates will normally be taxed in the same way as other forms of income. To the extent it arises from a trade, it is taxed as trading profits. Royalties from intellectual property (IP) not comprising a trade will be taxed as income from intangible fixed assets.

Realised and unrealised exchange gains/losses

Unrealised exchange gains and losses tend to arise on debts and derivatives; they are then taxed or allowed, together with realised amounts, on an accounts basis in the same way as other debits and credits arising out of loan relationships. Where gains or losses arise on other payables or receivables, to a trader or property investor, they will again generally be taxed or allowed on an accounts basis. For a trader, the taxable or allowable amount will become simply part of the trading profit or loss; for other companies, it will become a separate source of taxable profit (a 'non-trading credit') or loss (a 'non-trading deficit').

Where unrealised differences arise on other capital assets, they will not generally be taxable or allowable at that stage; instead, the exchange difference becomes part of the computation and is effectively taxed or allowed when the asset is disposed of and any difference is realised.

Partnership income

In broad terms, if companies participate in UK partnerships (whether general partnerships, limited partnerships, or limited liability partnerships [LLPs]), they will be taxed on a flow through basis. This will, in very broad terms, mean that UK corporate partners will be taxed on trading, property, or financing income as it arises in the partnership accounts, and on non-exempt dividends on a receipts basis. There are specific anti-avoidance provisions in respect of LLPs with both corporate and individual partners.

When considering overseas entities, the UK authorities will not be bound by how the entity is classified in its country of origin. Case law has determined a number of matters that should be considered when establishing whether a non-UK entity should be taxed in the United Kingdom as if it were a company or a partnership. HMRC also maintains a public list of non-UK entities and the decisions it has previously made regarding their classification. However, if the parties have flexibility regarding the constitution of such entities, then their classification may be viewed differently, either by HMRC or the courts. This area is complex; consequently, specialist advice should be sought.

Foreign income

In principle, the United Kingdom taxes on a worldwide basis, although non-UK PE profits can be exempted from UK taxation by election. The election applies to all accounting periods starting after the election is made and to all the PEs of the company (so it cannot be made on a PE-by-PE basis). The election is irrevocable and has the effect of exempting all profits of the PE, including gains, subject to certain adjustments. Equally, relief for PE losses will be denied. Profits will be measured by reference to DTTs, or, in absence, OECD principles. The adjustments required include:

- Gains attributable to a foreign branch of a close company are not exempt.
- Profits attributable to a foreign branch of a small company are not exempt if the PE is in a territory other than a 'full treaty territory' (broadly, a territory that has a DTT with the United Kingdom that has an exchange of information article).
- If the branch concerned has previously been in a loss making position, loss transitional rules may prevent the exemption being available immediately.
- To the extent the branch profits are considered to have been artificially diverted from the United Kingdom, the anti-diversion rule will stop them qualifying for the exemption (akin to the CFC rules that apply to profits of subsidiaries).

Where no election is made, profits from non-UK PEs are computed and taxed in the normal way for UK tax resident companies. However, UK tax will generally be reduced by credit for local direct taxes paid, either under a treaty or via the UK's unilateral relief rules (*see Foreign tax credit in the Tax credits and incentives section for more information*).

General rules for deductions

As noted above, the UK tax system requires taxable profits to be calculated by aggregating (i) the company's net income from each source and (ii) the company's net chargeable gains arising from the sale of capital assets. This approach gives rise to a particularly complicated regime so far as deductions are concerned. Expenses are usually allocated to the source of income (or occasionally by reference to income generally) or to the particular gain to which they relate. The rules governing their deductibility differ according to whether the expense relates to a capital gain or to income, and, indeed, according to the particular source of income concerned. For example, there is a considerable difference in the manner in which tax relief is given for expenses incurred by companies trading in property as compared to those that invest in property. The regime also has a large number of specific rules dealing with particular types of deductions that take priority over the more general rules for each type of income.

We have therefore set out the general rule for trading expenses, being the most common category, and, following that analysis, considered some specific common exceptions.

General rules for trading expenses

A trading company is generally permitted to deduct expenses that are incurred wholly and exclusively for the purposes of the company's trade, provided those costs are not capital in nature and are charged to the profit and loss account. There is a significant amount of case law surrounding whether expenses have been incurred wholly and exclusively for the purposes of a company's trade and whether they are capital or not.

Relief is generally given in the period the expenses are accrued in the accounts, subject to some specific exceptions. In particular, contributions to a registered pension scheme are only allowed on a 'paid' basis, with some further provisions under which some contributions may be spread over a number of years; and if bonuses and other staff costs are paid out more than nine months after the end of the accounting period in which they are accrued, they are only allowed on a paid basis.

The general rule is made subject to a range of specific statutory provisions, some of which allow deductions and others of which limit them; some of the more important of these are discussed below, but there are many others. One example is that the costs of business entertainment cannot generally be deducted.

Depreciation and amortisation

Depreciation of fixed assets (other than certain assets within the intangible fixed asset regime, *see below*) is not allowable as a deduction from any source of income. However, traders, and most non-traders, are instead allowed specified rates of annual deduction in respect of specified classes of assets, together referred to as 'capital allowances', that are deducted in calculating trading income for traders and (broadly) against income derived from the use of the fixed assets for non-traders.

Capital allowances for machinery and equipment can be disclaimed in whole or in part, thereby deferring allowances.

In the period of expenditure, capital allowances are available, generally at 18% of the cost of machinery and equipment acquired for use in a trade or property rental business; thereafter, capital allowances are taken generally at 18% *per annum* on the reducing-balance basis. With some exceptions, the rate of capital allowances for machinery and equipment with an expected useful life when new of at least 25 years is 8%. This 8% rate also applies to certain integral features in buildings and thermal insulation.

All businesses, regardless of size, can claim an annual investment allowance of 100% on the first GBP 200,000 per year of most qualifying expenditure. This is restricted to a single allowance for groups of companies or associated businesses.

Capital allowances are given on cars at rates dependent on emission levels.

Enhanced allowances, typically at a rate of 100%, are available for expenditure on certain energy saving plant and other specific categories. The products and technologies supported by this regime are reviewed and updated regularly.

No capital allowance is normally allowed on buildings, apart from certain machinery and equipment embodied in the fabric of the buildings. In some buildings (e.g. hotels, retail, offices), such deductions may be significant.

Capital allowances may also be available in respect of the cost of the acquisition of mineral assets and extraction, generally at the rates of 10% and 25%.

Excess capital allowances are generally recaptured on disposal. The recapture is calculated on a 'pool' basis for most machinery and equipment, in which case there is no recapture unless the sale proceeds exceeds the total tax written down value of the pooled assets.

Where assets are leased, capital allowances are generally available to the lessor rather than the lessee. The rate of capital allowance of most plant or machinery leased to non-residents is generally restricted to 8%, but in some cases to nil.

Intangible fixed assets

A special regime applies to intangible assets, such as patent rights, know-how, and trademarks, and (prior to 8 July 2015) goodwill. Royalties are generally deductible on an accounts basis, and, except in relation to 'grandfathered' assets owned by the group on 31 March 2002, the accounts' amortisation of intangible assets is also deductible (with an option to take a flat 4% deduction even if not amortised in the accounts). Traders will take the deductions in computing trading income; non-traders will create a 'non-trading loss on intangible fixed assets' that can be relieved as a loss against any profits of the year or carried forward indefinitely.

With effect for acquisition of goodwill and customer-related intangibles on or after 8 July 2015, amortisation, impairment, and certain other charges will not be deductible for tax. Subsequent profits and losses on disposals of such goodwill remain taxable/ deductible.

Income costs relating to R&D are normally deductible in any event, but there is a special incentive connected with R&D that generally allows additional tax relief (*see the Tax credits and incentives section for more information*).

The government is consulting on changes to the taxation of intangible fixed assets, with any changes anticipated to have effect from April 2019.

Management expenses

Holding companies and companies with investment business can deduct expenses if they are expenses of managing the company's investment business and are not capital in nature. Such costs would typically include audit fees, directors' costs, rent, local rates, and office costs. These costs can be set against any sources of profit the company may have, including gains and financing income.

If the company has inadequate income, excess expenses can be surrendered as group relief or carried forward to set against future income, with no time limit.

Many of the specific rules on the deduction of trading expenses also apply to management expenses. Many rules giving traders specific deductions for certain costs also apply, but this is not always the case.

Employee share schemes

The actual and deemed costs of an employing company for the deemed cost of providing shares or options to employees is usually deductible, depending on the nature of the share plan and the accounting. This will generally allow a deduction to a subsidiary company whose employees receive shares or options in the parent company.

Funding costs

Funding costs (primarily fees and interest) are broadly deductible on an accounts basis, even if capital in nature, but subject to thin capitalisation constraints (with no explicit safe harbours) and subject to the new interest restriction rules from April 2017 (*see below*). This extends to foreign exchange deductions relating to debts owed and receivable.

Traders will generally take the deductions in computing trading income (which is also accounts based). Deductions relating to loans not used for trading purposes will give rise to 'non-trading deficits' that, if not group relieved, can be offset against profits of that year generally, carried back one year (against that year's funding profits), or carried forward indefinitely against non-trading profits (where the deficit arose before 1 April 2017) or against total profits (where the deficit arose on or after 1 April 2017).

There are complex and specific rules dealing with financial instruments, derivatives, cross-border transactions, etc.

From 1 April 2017, there is a fixed ratio limiting corporation tax deductions for net interest expense to the higher of 30% of UK earnings before interest, taxes, depreciation, and amortisation (UK EBITDA) and the group ratio (for highly geared groups). In addition, the net interest deduction of the UK group cannot exceed the net interest shown in the worldwide group's consolidated financial statements. These new rules replace the previous worldwide interest cap rules and will often operate to reduce the amount of tax deductions achieved by UK taxpayers.

Bad debts, provisions, and reserves

Provisions for future costs can be deducted for tax purposes if they:

- are in respect of allowable revenue expenditure
- are made in accordance with acceptable accounting practice
- do not conflict with any statutory rule governing the timing of relief (e.g. in relation to payment of staff costs), and
- are estimated with sufficient accuracy.

This rule extends to bad debts on trading account. Generally, however, bad debts are dealt with under the 'loan relationships' rules for financing costs and financing income. The rules there, however, are broadly the same; if the bad debt can be identified specifically enough to allow a bad debt provision that satisfies UK accounting standards, it should be deductible.

Charitable donations

Most donations to charities by companies are deductible.

Fines, penalties, and bribes

Any payments that constitute a criminal offence (e.g. a bribe) are not deductible for tax. Fines and penalties imposed for breaking the law are also not deductible, although a deduction is usually available for legal costs incurred in defending such an action. Usually, there is no deduction for civil penalties, interest, and similar surcharges (e.g.

relating to VAT). Fines for regulatory breaches are not allowed for tax, but the costs of compensating customers, etc. are usually deductible.

Damages that are compensatory rather than punitive (e.g. damages for defamation payable by a newspaper company) are often deductible, as are payments for breach of contract. Payments to employees for wrongful dismissal, etc. are usually deductible.

Taxes

Local municipal taxes (business rates) may be deducted from taxable income.

Net operating and capital losses

See Income losses above for a description of the treatment of income losses and capital losses.

Payments to foreign affiliates

There are no special rules for payments to foreign affiliates, so their tax treatment follows the basic rules for deductions set out above. The transfer pricing rules will impose an arm's-length price.

Group taxation

Each individual corporate group member is required to submit their own tax return on a stand-alone basis, with the exception of the election available with respect to VAT (*discussed below*). However, there are a variety of ways in which one's relationship with fellow group members is recognised in the UK tax system for the purposes of corporation tax, VAT, SDLT, and stamp duty.

Corporation tax

The corporation tax system includes a number of measures that advantage UK members of qualifying groups, all of which are subject to anti-avoidance measures.

Operating taxable profits and losses arising in the same period can usually be offset between UK resident 75% affiliates within a worldwide group. This extends to offsetting the UK profits attributed to a UK PE of a non-UK resident group member, subject to additional requirements. There are some restrictions, primarily where one of the two companies is not an economic 75% subsidiary of the group or is subject to arrangements under which it might leave the group.

Intra-group transfers of capital assets between UK companies, including UK PEs, are normally tax-free, though the definition of group for these purposes is slightly different than the definition of group relief for losses. This treatment is also extended to intra-group transfers of loan relationships, derivatives, and intangibles. There is generally a 'degrouping' charge if the transferee company leaves the group within six years.

There is no automatic offset of capital gains and losses where these arise in different group companies, but it is normally possible for offset to be arranged either by actual transfer of the asset prior to disposal or by election.

A UK resident group company is potentially able to claim group relief for income losses of a non-UK resident subsidiary that is resident in the European Economic Area (EEA) or has incurred the relevant losses in a PE within the EEA, provided that all possibilities of non-UK relief for the losses have been exhausted and future relief is unavailable.

In addition, the corporation tax system also has a number of measures that seek to prohibit groups unfairly manipulating the tax system by shifting profits between group members (either internationally or within the United Kingdom) in a way that is considered unacceptable.

The net interest deduction of a UK group cannot exceed the net interest shown in the worldwide group's consolidated financial statements. *This is discussed under Funding costs in the Taxable income determination section*.

VAT

Group companies can, subject to certain requirements, elect to account for VAT as if they were one taxable person; where this is done, no VAT is charged on intra-group supplies of goods or services. The registration is made in the name of the representative member, who is responsible for completing and rendering the single return on behalf of the group. All the companies are jointly and severally liable for any VAT debts. VAT grouping is subject to detailed anti-avoidance provisions.

Stamp duty and SDLT

Transfers of shares or real estate within worldwide 75% groups are generally exempt from stamp duty or SDLT, respectively. For SDLT, the relief can be retrospectively withdrawn in certain circumstances, primarily where the transferee leaves the group within three years of the transfer.

Transfer pricing and thin capitalisation

The United Kingdom has widely drafted transfer pricing rules that are intended to apply to almost any kind of transaction made or imposed between related parties that gives rise to:

- a provision that differs from one that would have been made between third parties and
- a UK tax advantage (potential or actual) to one or more of the parties.

These rules apply to UK-to-UK transactions as well as cross-border transactions.

The regime therefore applies not only to the provision of products and services but also to finance arrangements, including both the rate of return charged and the amount of loan principal (or equivalent) made available. It is therefore the mechanism by which the UK's revenue authorities address the issue of thin capitalisation. Currently, unlike many other territories, the United Kingdom does not operate any 'safe harbours' of any kind in relation to the amount of debt or interest (or equivalents) it considers demonstrates that a UK company or group is not thinly capitalised. However, a new UK interest deductibility rule has been introduced, effective from April 2017. *This is discussed under Funding costs in the Taxable income determination section*.

Parties are considered related for the purpose of transfer pricing rules where either one controls the other or both are under common control. Control here is not confined to situations in which one party is the majority shareholder in the other. Effectively, control exists where one party has the power to ensure that the affairs of another party are conducted in accordance with the first party's wishes. The concept is also subject to two important extensions:

- The rules apply to many joint venture companies where two parties each have an interest of at least 40%.
- There are attribution rules to trace control relationships through a number of levels in determining whether parties are controlled for the purposes of the transfer pricing rules.

In addition, the regime restricts interest deductions to an arm's-length basis where a financier and persons who collectively control a company or a partnership have 'acted together' in relation to the financing arrangements of that company or partnership. The financier (usually a bank) can then be taken as controlling the company or partnership, and the loan becomes subject to transfer pricing limitations.

There are a number of exemptions that essentially exclude small or medium-sized enterprises (SMEs) and dormant companies from the regime.

The effect of the rules is to require an arm's-length provision to be substituted for the actual one, thereby increasing the party's UK tax liability and cancelling out the UK tax advantage that would otherwise have arisen.

Where both parties to the transaction are UK taxpayers, the disadvantaged party will generally be entitled to claim a compensating adjustment (except where the transaction falls within the transfer pricing regime because of the 'acting together' provisions), but only after the UK adjustment has been made. The legislation also provides that parties may make balancing payments to each other in such circumstances, of any amount up to the transfer pricing adjustment, which will neither be taxable for the recipient nor tax deductible for the payer.

Where the disadvantaged party is outside the UK tax net, they can pursue a claim for relief under the relevant DTT if it provides a mechanism for such relief; where the adjustment in the United Kingdom is to reduce a deduction for an amount paid under deduction of UK tax, the compensating adjustment rules should allow the overseas party to reclaim any WHT paid on the disallowed amount, subject to time limits and other criteria.

UK taxpayers are required to self-assess their compliance with this arm's-length principle. Companies and partnerships must therefore identify and make transfer pricing adjustments when submitting their tax returns. This is the case even where the disadvantaged party would be entitled to claim a compensating adjustment equal to the transfer pricing adjustment. An important implication of this approach is the potential for interest and penalties if the adjustment made is subsequently held to be wrong.

Country-by-country (CbC) reporting

CbC reporting is required for all multinational enterprises (MNEs) with annual consolidated group revenue over 750 million euros (EUR) (or equivalent). It requires the preparation of a summary report setting out the jurisdictions in which the group has operations and, for each jurisdiction, the aggregate revenue, profit, income tax, plus additional data, such as number of employees, accumulated earnings, assets, etc. This report has to be filed with HMRC where the MNE's ultimate parent is in the United Kingdom, or, in some circumstances, where the MNE operates in the United Kingdom, alongside the tax return for the period in question. HMRC then makes the report available to other jurisdictions on request.

Controlled foreign companies (CFCs)

Under the CFC regime, a UK resident company may be taxed on a proportion of the profits of certain UK-controlled, non-resident companies in which the resident company has an interest. The overall intention is to tax profits that have been artificially diverted from the United Kingdom.

Broadly, profits of a non-UK resident CFC will be taxed, using normal corporation tax rates and rules, on the persons controlling the CFC if (i) the profits pass through the CFC 'gateway' and (ii) are not exempt.

The 'gateways' are a series of tests that identify profits that are, broadly, artificially diverted from the United Kingdom. For example, where profits are attributable to UK significant people functions, those profits will be taxed in the United Kingdom unless one of four conditions are satisfied (the first of which is that obtaining a tax advantage is not the main purpose or one of the main purposes of the arrangement). A range of other tests may capture other profits.

Various exemptions exist for certain types of companies, those coming into the regime for the first time, CFCs with low profits or low margins, CFCs in excluded territories, or others with corporation tax rates similar or above UK rates.

There is a special exemption for intra-group financing profits that can result in an exemption of between 75% and 100% of the financing profits on qualifying loans. This exemption is the subject of an in-depth investigation by the European Commission into whether it constitutes fiscal state aid.

Tax credits and incentives

Foreign tax credit

The United Kingdom has an extensive network of DTTs. Unilateral relief is generally available, in any event, to credit overseas tax paid on non-UK source profits against the UK tax on the same profits; while the relevant treaty might sometimes extend that relief, their main function for UK companies is to limit overseas WHTs that would otherwise be payable on passive income.

The United Kingdom has a complex regime allowing 'underlying' tax relief in respect of foreign dividends, so that tax suffered at lower levels can be relieved (at least in part) where dividends flow to the United Kingdom via a chain of companies. This exemption is of limited application because most foreign dividends are exempt from tax.

Enhanced capital allowances

A variety of tax incentives are given in the form of enhanced tax depreciation allowances (known as capital allowances, *see Depreciation and amortisation in the Taxable income determination section*). Some of these incentives are given by reference to the expenditure concerned and others by reference to the size of the company incurring that expenditure.

For example, a full write-off can be claimed in the year of expenditure on a range of 'green' products and technologies. The list of items supported in this way is reviewed annually. It includes designated energy saving equipment, designated environmentally beneficial plant and machinery, and cars with low emissions.

Annual investment allowance

All businesses, regardless of size, can claim an annual investment allowance of 100% on the first GBP 200,000 tranche *per annum* of capital expenditure incurred on most qualifying expenditure. This is restricted to a single allowance for groups of companies or associated businesses.

Research and development (R&D) incentives

SMEs, as defined, are entitled to a deduction equal to 230% of the qualifying expenditure on R&D in the year in which it is incurred, which can be surrendered for a cash payment (at a rate of GBP 33.35 for each GBP 100 of qualifying R&D spend) by companies that are trading at a loss or have not yet started to trade.

Large companies are granted an R&D 'above the line' tax credit of 12% (increased from 11% from 1 January 2018) of their qualifying expenditure.

Patent box

Where the taxable profits can be attributed to the exploitation of patents, a lower effective rate of corporation tax applies. For 2018/19, the rate is 10%. Profits can include a significant part of the trading profit from the sales of a product that includes a patent, not just income from patent royalties. This scheme closed to new entrants from June 2016 (but will continue until 2021 for existing taxpayers), when a new arrangement was introduced. The new scheme retains several of the features of the earlier scheme, but focuses more on UK-based activities and meets revised OECD principles.

Other incentives

A deduction equal to 150% of the qualifying expenditure on the remediation of contaminated or derelict land is given in the year incurred, which can be surrendered for a cash payment (at a rate of GBP 24 for each GBP 100 of qualifying land remediation spend) by companies that are trading at a loss.

There are special tax reliefs available for certain expenditure on UK film production, high-end television, animation, video games, theatres, orchestras, and museum and gallery exhibitions.

There are no tax holidays and no foreign investment incentives in the United Kingdom.

Withholding taxes

Under UK domestic law, a company may have a duty to withhold tax in relation to the payment of either interest or royalties (or other sums paid for the use of a patent). The circumstances in which such a liability arises are discussed below.

There is no requirement to deduct WHT from dividends. Therefore, dividends may always be paid gross, regardless of the terms of the applicable DTT.

Please note, however, that this is not an exhaustive list of all the deductions that might be required to be made in respect of UK tax from payments made to or by companies. In particular, non-resident companies that are subject to UK income tax on UK-source rental profits (*see the Taxes on corporate income section for more information*) will find their letting agent or tenants are obligated to withhold the appropriate tax at source (currently 20% without any allowances) from their rental payments unless the recipient has first applied and been given permission to receive gross rents under the NRL scheme. Two other important examples are the UK's deduction at source regime for entertainers and sportsmen, and the scheme under which payments to unregistered subcontractors working on big building projects may need to have tax deducted at source.

Interest WHT

As a general rule, UK domestic law requires companies making payments of interest to withhold tax at 20%. However, there are a number of exceptions to this general rule. The key exclusions are:

- Payments of interest by UK resident companies if the beneficial owner of the interest is also a UK resident company, or a UK PE, provided the interest concerned will be taxed in the United Kingdom as part of the PE's trading profits.
- Payments of interest on a quoted Eurobond.
- Payments of interest that qualify for exemption under the EU Interest and Royalties Directive.
- Payments of interest paid to or by a UK bank (or a UK PE of a foreign bank).
- Payments of 'short' interest. This is, broadly speaking, interest on loans that will not be in place for more than a year. However, the definition can be contentious, and detailed advice should be taken on this if intending to utilise this exemption.
- Payments of interest that do not 'arise' in the United Kingdom. Whether a payment constitutes UK-source interest is a complex issue, and specialist advice needs to be taken if seeking to use this exception.
- Payments of interest on private placement debts (widely defined) of UK companies.

If none of these exceptions apply, a payment of interest must be made after the deduction of WHT unless (or until) HMRC has given authorisation that the payment may be made gross (or with a reduced rate of WHT) because of the applicability of treaty relief for the recipient.

Royalties WHT

UK domestic law requires companies making payments of patent, copyright, and design royalties that arise in the United Kingdom to deduct WHT at 20%. In addition, there is also the possibility that other royalties that arise in the United Kingdom may also be subject to the same rate of WHT if they constitute 'qualifying annual payments', so specialist advice will be needed to clarify this. However, certain types of royalties, such as film royalties and equipment royalties, will generally not be subject to UK WHT.

Unlike the rule regarding interest, a company may make a royalty payment gross of WHT (or subject to a reduced rate of WHT under a treaty) without prior clearance having been given by HMRC if they reasonably believe at the time the payment is made that the payee is entitled to relief under the treaty. However, if that belief is later found to be incorrect, HMRC may direct that the payment must be made net of WHT, with the WHT paid to HMRC, and the payer may be subject to interest and penalties in respect of the WHT that should have been withheld (even if their belief was reasonable).

From September 2016 (and earlier for cases involving avoidance), a wider class of royalties, including trademarks and brand names, have been subject to deduction of income tax at source. From April 2019, it is proposed that WHT will be extended to royalty payments (and payments for certain other rights) made to some low or no tax jurisdictions in connection with sales to UK customers regardless of where the payer is located.

Double taxation treaties (DTTs)

The tables below set out the rates of WHT applicable to the most common payments of dividends, interest, and royalties under UK domestic law where such a liability arises and the reduced rates that may be available under an applicable DTT. Please refer to specific treaties to ensure the values are up-to-date and ensure you have considered the potential impact of the Multilateral Instrument (MLI). The United Kingdom has ratified its agreement to the MLI, and it will come into force three clear months after the instrument of ratification has been deposited with the OECD. The MLI will have a fundamental impact on how taxpayers access any DTT that both contracting states have opted to be covered by the MLI, subject to the options and reservations both have made in relation to a range of matters (including the date on which it will take effect for particular taxes).

Dividends

There is no requirement to deduct WHT from dividends. Therefore, dividends may always be paid gross, regardless of the terms of the applicable DTT.

Interest

WHT applies only to 'annual interest' (i.e. excluding interest on certain short-term loans). Banks and similar financial institutions are also normally able to pay annual interest to non-UK residents free of WHT. In addition, most of the UK treaties provide for a zero-rate of withholding on interest paid to governmental and quasi-governmental lenders. Such exemptions are not separately indicated in the tables below.

Resident recipients

	WHT (%)	
Resident recipient	**Interest**	**Royalties**
Corporations	0/20 (1)	0/20 (1)
Individuals	20	20

Note

1. Payments to any UK resident company can be made free of WHT if the recipient is chargeable to tax on the interest or royalty.

Non-resident recipients

	WHT (%)	
Non-resident recipient corporations and individuals	**Interest**	**Royalties**
Non-treaty territories	20	20
Treaty territories:		
Albania	6	0
Algeria	7	10
Antigua and Barbuda	20	0
Argentina	12	3/5/10/15 (1)

United Kingdom

Non-resident recipient corporations and individuals	WHT (%) Interest	Royalties
Armenia	5	5
Australia	0/10 (2)	5
Austria	0	0/10 (3)
Azerbaijan	10	5/10 (4)
Bahrain	0/20 (7)	0
Bangladesh	7.5/10 (2)	10
Barbados	0	0
Belarus (new treaty not yet in force; interest and royalty rates will be 5%)	0	0
Belgium	0/10 (5)	0
Belize	20	0
Bolivia	15	15
Bosnia-Herzegovina	10	10
Botswana	10	10
British Virgin Islands	20	20
Brunei	20	0
Bulgaria	0/5 (7)	5
Canada	0/10 (7)	0/10 (4, 6)
Cayman Islands	20	20
Channel Islands:		
Guernsey (includes Alderney and Hern)	20	20
Jersey	20	20
Chile (15% rate on interest will reduce to 10% from 1 January 2019)	4/5/15 (2)	2/10 (6)
China (excludes Hong Kong)	10	6/10/20 (4, 8)
Colombia (not yet in force)	10	10
Croatia	0/5 (7)	5
Cyprus (new treaty not yet in force; interest and royalty rates will be 0%)	10	0/5 (11)
Czech Republic	0	0/10 (11)
Denmark	0	0
Egypt	15	15
Estonia	0/10 (2)	0
Ethiopia	5	7.5
Falkland Islands	0	0
Faroes	0	0
Fiji	10	0/15 (4)
Finland	0	0
France	0	0
Gambia	15	12.5
Georgia	0	0
Germany	0	0
Ghana	12.5	12.5
Greece	0	0
Grenada	20	0
Guyana	15	10
Hong Kong	0	3
Hungary	0	0
Iceland	0	0/5 (11)

Non-resident recipient corporations and individuals	WHT (%)	
	Interest	Royalties
India	10/15 (2)	10/15 (6)
Indonesia	10	10/15/20 (7, 8)
Ireland, Republic of	0	0
Isle of Man	20	20
Israel	15	0/15 (11)
Italy	0/10 (6)	8
Ivory Coast (Côte d'Ivoire)	15	10
Jamaica	12.5	10
Japan	0/10 (10)	0
Jordan	10	10
Kazakhstan	10	10
Kenya	15	15
Kiribati	20	0
South Korea (Republic of Korea)	10	2/10 (8)
Kosovo	0	0
Kuwait	0	10
Kyrgyzstan (not yet in force)	5	5
Latvia	10	5/10 (8)
Lesotho (new treaty not yet in force; royalty rate will be 7.5%)	10	10
Libya	0	0
Liechtenstein	0	0
Lithuania	0/10 (7)	5/10 (8)
Luxembourg	0	5
Macedonia	0/10 (5)	0
Malawi	0/20 (3)	0/20 (3)
Malaysia	10	8
Malta	10	10
Mauritius	20	15
Mexico	5/10/15 (7)	10
Moldova	5	5
Mongolia	7/10 (2)	5
Montenegro	10	10
Montserrat	20	0
Morocco	10	10
Myanmar	20	0
Namibia	20	0/5 (4)
Netherlands	0	0
New Zealand	10	10
Nigeria	12.5	12.5
Norway	0	0
Oman	0	8
Pakistan	15	12.5
Panama	0/5/20 (7)	5
Papua New Guinea	10	10
Philippines	10/15 (7)	15/20 (9)
Poland	0/5 (2)	5
Portugal	10	5
Qatar	0/20 (7)	5
Romania	10	10/15 (4)

Non-resident recipient corporations and individuals	WHT (%) Interest	Royalties
Russian Federation	0	0
St. Kitts and Nevis (St. Christopher and Nevis)	20	0
Saudi Arabia	0	5/8 (8)
Senegal	10	6/10 (8)
Serbia	10	10
Sierra Leone	20	0
Singapore	0/5 (2)	8
Slovak Republic	0	0/10 (4)
Slovenia	0/5 (7)	5
Solomon Islands	20	0
South Africa	0	0
Spain	0	0
Sri Lanka	10	0/10 (9)
Sudan	15	10
Swaziland	20	0
Sweden	0	0
Switzerland	0	0
Taiwan	10	10
Tajikistan	10	7
Thailand	20	5/15 (9)
Trinidad and Tobago	10	0/10 (9)
Tunisia	10/12 (2)	15
Turkey (excludes North Cyprus)	15	10
Turkmenistan	10	10
Tuvalu	20	0
Uganda	15	15
Ukraine (changes to treaty not yet in force; rates will be 5% for interest and royalties.)	0	0
United Arab Emirates	0/20 (7)	0
United States	0/15 (11)	0
Uruguay	10	10
Uzbekistan	5	5
Venezuela	5	5/7 (7)
Vietnam	10	10
Zambia	10	5
Zimbabwe	10	10

Notes

UK domestic law generally charges WHT on patent, copyright, and design royalties, although there can be definitional uncertainties. Many treaties allow reduced rates for a wider range of royalties. These are mentioned in this table, even though there may be no UK WHT applied under domestic law.

1. 3% for news; 5% for copyright; 10% industrial; 15% other royalties.
2. Lower rate for loans from banks and financial institutions.
3. Higher rate applies if recipient controls more than 50% of payer.
4. Lower rate applies to copyright royalties.
5. 0% on loans between businesses.
6. Lower rate applies to industrial, commercial royalties.
7. Specific additional conditions apply for lower rate.
8. Lower rate applies for equipment royalties.
9. Lower rate applies to films, TV, and radio.
10. Higher rate applies to certain profit related interest.

11. Specific conditions apply for higher rate.

Tax administration

Taxable period

Companies are assessed by reference to accounting periods. Normally, the accounting period is the period for which the company makes up its accounts. However, an accounting period for corporation tax purposes cannot exceed 12 months, so companies preparing statutory accounts for longer than 12 months need to prepare more than one corporation tax return.

Tax returns

Companies must file their statutory accounts and tax return within one year from the end of the accounting period; the return must include a self-assessment of the tax payable, eliminating the need for assessment by HMRC (though HMRC retains assessing powers for certain cases where it is not satisfied with the return, or where the company fails to make a return).

Electronic filing requirements

Returns must be filed online, and such returns must be filed in a specified format that is machine readable by the tax authorities. The accompanying accounts must also be in iXBRL format.

Payment of tax

For smaller companies, corporation tax is payable nine months and one day after the end of the accounting period to which it relates (i.e. before the return must be filed). For larger companies and groups, a system of quarterly payments on account (based on estimated profits) is in place, with the first payment being due in the seventh month of the accounting period concerned. A company will generally be considered large for this purpose in any accounting period in which it has taxable profits in excess of GBP 1.5 million (that limit being reduced by reference to the number of companies under common control, where relevant).

For accounting periods beginning on or after 1 April 2019, the largest companies with profits over GBP 20 million will have earlier quarterly payments dates, with tax due in the third, sixth, ninth, and 12th months of the period concerned.

Penalties

The UK tax system can impose numerous penalties for failing to adhere to the self-assessment system. These include penalties for late filing of returns, failing to maintain appropriate records, submitting an incorrect return, making errors in certain documents sent to HMRC, unreasonably failing to report errors in assessments by HMRC, and failing to respond to a formal notice of information requested from the tax authorities within the specified time limit.

Other filing requirements

Large companies (those with turnover greater than GBP 200 million or balance sheet assets over GBP 2 billion) are required to notify HMRC of the identity of their senior accounting officer, who must certify annually that the accounting systems are adequate for the purposes of accurate tax reporting. Penalties are chargeable on the officer and the company for careless or deliberate failure to meet these obligations.

Certain tax planning and structuring transactions and arrangements must be disclosed to HMRC either before or on implementation of the transaction under the Disclosure of Tax Avoidance Schemes (DOTAS) regime or the Disclosure of Avoidance Schemes for VAT and Other Indirect Taxes (DASVOIT) regime. These schemes cover most taxes and are reporting systems only, with responsibility placed on taxpayers, advisors, or promoters to report. HMRC are not required to respond to the reporting, and this is not an advance clearance or approval process. It is a reporting mechanism only, and, on occasions, new legislation has been introduced to block specific arrangements reported.

Tax audit process

The UK corporation tax process is one of self-assessment. Following filing of the tax return, HMRC has a period of (usually) 12 months in which to raise formal enquiries. These can range from simple information requests to detailed technical challenges over treatments adopted in the tax return.

These enquiries are often settled between the taxpayer company and HMRC by exchange of information and correspondence. Where agreement cannot be reached, arbitration or litigation may be necessary.

HMRC has certain powers to demand information and, in some circumstances, to enter premises to obtain documents, etc. These powers are rarely used, and there are no routine visits by HRMC officials to taxpayer premises.

General anti-abuse rule (GAAR)

The GAAR applies to income tax, corporation tax, capital gains tax, petroleum revenue tax, diverted profits tax, apprenticeship levy, inheritance tax (IHT), SDLT, and ATED, but not VAT. It is targeted at changing behaviour of taxpayers who enter what might be considered to be abusive tax avoidance arrangements. The process includes a quasi-judicial review of the arrangements, the outcome of which must be used as evidence in any related tax litigation.

The government has stressed that the GAAR is only intended to apply to abusive tax avoidance arrangements, which are measured by reference to various indicators, some of which are subjective.

Statute of limitations

For companies that are members of medium or large groups, there is generally a period of one year after the statutory filing dates for the tax authorities to start an enquiry into any aspect of the return. For other companies, enquiries can be started up to 12 months after the date of actual filing. These periods are extended for returns submitted after the filing deadline, that are amended by the taxpayer, or where an issue is subsequently discovered that was not sufficiently disclosed within the standard period. Longer periods apply in the event of inadequate disclosure or deliberate misfiling.

Other issues

Adoption of International Financial Reporting Standards (IFRS)

IFRS is mandatory for the consolidated financial statements of listed UK companies.

Otherwise, UK companies have a choice of either using full IFRS or UK Generally Accepted Accounting Principles (GAAP) - FRS 102 - for their consolidated and non-consolidated (solus) accounts. UK companies that are subsidiaries also have an option to prepare solus accounts under either IFRS or FRS 102 methodologies with reduced disclosures. There are also additional accounting options available for small companies and micro entities. However, the options available to a company are subject to the requirements of the UK Company Law framework for consistency of GAAP within a group.

Intergovernmental agreements (IGAs) and cooperation

The United Kingdom has a wide range of international agreements, alongside DTTs, for the exchange of information about taxpayers. In addition, the United Kingdom seeks to take a participative role in the European Union and within the OECD with regard to the development of international tax principles.

The United Kingdom has implemented the United States (US) Foreign Account Tax Compliance Act (FATCA) arrangements with effect from June 2014. The FATCA legislation is being introduced by the US authorities to prevent tax evasion by US citizens who use offshore accounts, and UK-based financial institutions must comply with its requirements or face suffering WHTs on interest or dividends from US corporations.

Implementation of the Common Reporting Standard (CRS)

On 21 July 2014, the OECD released the Standard for Automatic Exchange of Financial Account Information in Tax Matters, including the Commentary on the CRS. CRS seeks to establish the automatic exchange of tax information as the new global standard. The automatic exchange of information involves the systematic and periodic transmission of extensive taxpayer information from the country in which a taxpayer's financial accounts are located to that taxpayer's country of residence.

In March 2015, the United Kingdom published the International Tax Compliance Regulations 2015, enacting the CRS into United Kingdom law effective from 1 January 2016.

UK tax legislation

Announcements of proposed new legislation generally occur at least once a year. The main announcement is made on Budget Day (generally in October [from 2017]), when tax rates are set for the coming year. Other announcements can be made at other times and, subject to becoming approved and adopted law, can apply from a specified date. The new legislation is then included in an annual Finance Act, which is expected to be finalised in February or March. Much of the legislation introduced in recent years has been due to challenges under the EC treaty, or as a result of the tax planning being notified under the UK's tax avoidance disclosure regulations. In the year of a general election (like 2017), there may be additional Budget Days and Finance Acts.

United States

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Significant developments

President Donald Trump, on 22 December 2017, signed tax reform legislation (Public Law [P.L.] No. 115-97) that lowers business and individual tax rates, modernises United States (US) international tax rules, and provides the most significant overhaul of the US tax code in more than 30 years. P.L. 115-97 lowers permanently the US federal corporate income tax (CIT) rate from 35% to 21%. The new CIT rate is effective for tax years beginning after 31 December 2017. P.L. 115-97 also repeals the corporate alternative minimum tax (AMT).

P.L. 115-97 provides the most significant overhaul of US international tax rules in more than 50 years by moving the United States from a 'worldwide' system to a 100% dividend exemption 'territorial' system. As part of this change, P.L. 115-97 includes two minimum taxes aimed at safeguarding the US tax base from erosion, along with other international tax provisions. P.L. 115-97 also includes a broad range of tax reform proposals affecting businesses, including a new 20% deduction for certain pass-through business income.

In addition, P.L. 115-97 repeals or modifies many prior-law tax provisions to offset part of the cost of the tax reforms.

President Trump signed an executive order on 21 April 2017, directing the Treasury Department to identify significant tax regulations that 'impose an undue financial burden on United States taxpayers; add undue complexity to the federal tax laws; or exceed the statutory authority of the Internal Revenue Service (IRS)' issued on or after 1 January 2016.

Pursuant to President Trump's executive order, Treasury, on 22 June 2017, issued an interim report identifying eight tax regulations to be further considered and withdrawn, modified, or revoked.

Treasury, on 4 October 2017, released a second report recommending specific actions for the eight previously identified regulations. These regulations and the corresponding recommendations include:

- Treatment of certain interests in corporations as stock or indebtedness (Section 385): Revoking and revising documentation regulations (with a prospective effective date).
- Income and currency gain or loss with respect to a qualified business unit (QBU) (Section 987): Substantially revising.
- Treatment of certain transfers of property to foreign corporations (Section 367): Substantially revising.

Treasury expects to issue additional reports on reducing the tax regulatory burdens and on the status of Treasury's actions from the 4 October 2017 report.

Taxes on corporate income

US tax reform legislation enacted on 22 December 2017 (P.L. 115-97) moved the United States from a 'worldwide' system of taxation towards a 'territorial' system of taxation. Among other things, P.L. 115-97 permanently reduced the 35% CIT rate on resident corporations to a flat 21% rate for tax years beginning after 31 December 2017.

US taxation of income earned by non-US persons depends on whether the income has a nexus with the United States and the level and extent of the non-US person's presence in the United States.

Prior to enactment of P.L. 115-97, a non-US corporation engaged in a US trade or business was taxed at a 35% US CIT rate on income from US sources effectively connected with that business (i.e. effectively connected income or ECI). However, as noted above, P.L. 115-97 significantly revised the federal tax regime. P.L. 115-97 permanently reduced the 35% CIT rate on ECI to a 21% flat rate for tax years beginning after 31 December 2017. Certain US-source income (e.g. interest, dividends, and royalties) not effectively connected with a non-US corporation's business continues to be taxed on a gross basis at 30%.

Alternative minimum tax (AMT)

AMT previously was imposed on corporations other than S corporations (*see below*) and small C corporations (generally those with three-year average annual gross receipts not exceeding 7.5 million US dollars [USD]). The tax was 20% of alternative minimum taxable income (AMTI) in excess of a USD 40,000 exemption amount (subject to a phase-out). AMTI was computed by adjusting the corporation's regular taxable income by specified adjustments and 'tax preference' items. Tax preference or adjustment items could arise, for example, if a corporation had substantial accelerated depreciation, percentage depletion, intangible drilling costs, or non-taxable income.

P.L. 115-97 repeals the corporate AMT effective for tax years beginning after 31 December 2017 and provides a mechanism for prior-year corporate AMT credits to be refunded by the end of 2021.

S corporations

Corporations with 100 or fewer eligible shareholders, none of whom may be corporations, that meet certain other requirements may elect to be taxed under Subchapter S of the Internal Revenue Code (IRC or 'the Code') and are thus known as S corporations. S corporations are taxed in a manner similar, but not identical, to partnerships (i.e. all tax items [e.g. income, deductions] flow through to the owners of the entity). Thus, S corporations generally are not subject to US federal income tax.

Gross transportation income taxes

Foreign corporations and non-resident alien individuals are subject to a yearly 4% tax on their US-source gross transportation income (USSGTI) that is not effectively connected with a US trade or business. Transportation income is any income derived from, or in connection with, (i) the use (or hiring or leasing) of any vessel or aircraft, or (ii) the performance of services directly related to the use of any vessel or aircraft.

Base erosion and anti-abuse tax (BEAT)

P.L. 115-97 creates a new US federal tax called the 'base erosion and anti-abuse tax' (BEAT). P.L. 115-97 targets US tax-base erosion by imposing an additional corporate tax liability on corporations (other than regulated investment companies [RICs], real estate investment trusts [REITs], or S corporations) that, together with their affiliates, have average annual gross receipts for the three-year period ending with the preceding tax year of at least USD 500 million and that make certain base-eroding payments to related foreign persons during the tax year of 3% (2% for certain banks and securities dealers) or more of all their deductible expenses apart from certain exceptions. The most notable of these exceptions are the net operating loss (NOL) deduction, the new dividends received deduction (DRD) for foreign-source dividends, the new deduction for foreign-derived intangible income (FDII) and the deduction relating to the new category of global intangible low-taxed income (GILTI), qualified derivative payments defined in the provision, and certain payments for services.

The BEAT is imposed to the extent that 10% (5% for the 2018 calendar year) of the taxpayer's 'modified taxable income' (generally, US taxable income determined without regard to any base-eroding tax benefit or the base-erosion percentage of the NOL deduction) exceeds the taxpayer's regular tax liability net of most tax credits. The above percentages are changed to 11% and 6%, respectively, for certain banks and securities dealers.

A base-eroding payment generally is any amount paid or accrued by the taxpayer to a related foreign person that is deductible for acquiring property subject to depreciation or amortisation, or for reinsurance payments. The category also includes certain payments by 'expatriated entities' subject to the anti-inversion rules of Section 7874.

The provision is effective for base-erosion payments paid or accrued in tax years beginning after 31 December 2017. For tax years beginning after 31 December 2025, the percentage of modified taxable income that is compared against the regular tax liability increases to 12.5% (13.5% for certain banks and securities dealers) and allows all credits to be applied in determining the US corporation's regular tax liability. Special rules apply for banks, insurance companies, and 'expatriated entities'.

Mandatory deemed repatriation 'toll charge'

P.L. 115-97 uses the mechanics of Subpart F to impose a one-time 'toll charge' on the undistributed, non-previously taxed post-1986 foreign earnings and profits of certain US-owned foreign corporations as part of the transition to a new territorial regime. The 'toll charge', found in revised Section 965, is reduced by a deduction computed in a manner that ensures a 15.5% effective tax rate on earnings represented by 'cash' and an 8% effective tax rate to the extent the earnings exceed the cash position.

State and local income taxes

CIT rates vary from state to state and generally range from 1% to 12% (although some states impose no income tax). The most common taxable base is federal taxable income, which is modified by state provisions and generally is apportioned to a state on the basis of an apportionment formula consisting of one or more of the following: tangible assets and rental expense, sales and other receipts, and payroll. Many states are moving away from a three-factor formula in favour of a one-factor receipts apportionment methodology. State and municipal taxes are deductible expenses for federal income tax purposes.

Corporate residence

A corporation organised or created in the United States under the law of the United States or of any state is a domestic corporation. A domestic corporation is a resident corporation even though it does no business or owns no property in the United States.

Permanent establishment (PE)

A PE generally is defined as a fixed place of business.

Other taxes

Sales taxes

No provisions exist for a sales tax or value-added tax (VAT) at the federal level; however, sales and use taxes constitute a major revenue source for the 45 states that impose such taxes and the District of Columbia. Sales and use tax rates vary from state to state and generally range from 2.9% to 7.25% at the state level. Most states also allow a 'local option' that permits local jurisdictions, such as cities and counties, to impose an additional percentage on top of the state-level tax and to keep the related revenues.

In general, a sales tax is a tax applied to the retail sale of tangible personal property and certain enumerated services. Although the form of the tax may vary, it is usually imposed directly upon the receipts from the retail sale of the taxable item. The tax is imposed on the purchaser of the item, but the person engaged in the business of making retail sales of the taxable item generally is obligated to collect the sales tax from the purchaser and to remit such amounts to the state. The use tax complements the sales tax and is usually assessed on purchases made out of state and brought into the jurisdiction for use, storage, or consumption. Typically, either a sales tax or a use tax can be assessed on a transaction, but not both.

Customs duties and import tariffs

All goods imported into the United States are subject to entry and are dutiable or duty-free in accordance with their classification under the applicable items in the Harmonized Tariff Schedule of the United States. The classification also identifies eligibility for special programs and free trade agreement preferential duty rates.

When goods are dutiable, *ad valorem*, specific, or compound duty rates may be assessed. An *ad valorem* rate, which is the type of duty mechanism most often applied, identifies the percentage of tax that will be assessed on the value of the merchandise, such as 7% *ad valorem*. A specific rate is a specified amount per unit of weight or other quantity, such as 6.8 cents per dozen. A compound rate is a combination of both an *ad valorem* rate and a specific rate, such as 0.8 cents per kilo plus 8% *ad valorem*. Customs requires that the value of the goods be properly declared regardless of the dutiable status of the merchandise.

Liability for the payment of duty becomes fixed at the time an entry is filed with US Customs and Border Protection (CBP), although the amount of duty owed may change subsequently if any of the information declared on entry is later determined to be erroneous. The obligation for payment is upon the person or firm in whose name the entry is filed, the importer of record.

Excise taxes

Excise taxes are generally imposed by the federal and state governments on a wide range of goods and activities, including gasoline and diesel fuel used for transportation, telecommunications, air travel, manufacturing of specified goods, and indoor tanning services.

The excise tax rates are as varied as the goods and activities upon which they are levied. For example, a federal excise tax of 7.5% is charged on commercial air transportation, and the excise tax imposed on motor fuel is 18.3 cents per gallon of gasoline and 24.3 cents per gallon of diesel fuel. These taxes usually are imposed on the provider of the goods and activities and then passed through to the purchaser.

Property taxes

Most states and local governments impose a variety of property taxes on real property. A few states also impose a tax on personal property.

Stamp taxes

No provisions exist for a stamp tax at the federal level; however, state and local governments frequently impose stamp taxes at the time of officially recording a transaction involving real property (commonly referred to as transfer taxes). Such taxes generally are based upon the value of the real property being transferred. The tax generally is imposed on the direct sale of real property, but some state and local governments also impose such a tax on the sale of a controlling interest of real property, which is the sale of a direct or indirect ownership of the real property.

Capital gain taxes

On current transactions, the long-term capital gains tax rate is the same as the tax rates applicable to ordinary income. Thus, the maximum rate is 21%, excluding the additional phase-out rates.

Accumulated earnings tax

Corporations (other than S corporations, domestic and foreign personal holding companies, corporations exempt from tax under Subchapter F of the Code, and passive foreign investment companies) accumulating earnings and profits for the purpose of avoiding shareholder personal income tax (PIT) are subject to a penalty tax in addition to any other tax that may be applicable. The accumulated earnings tax is equal to 20% of 'accumulated taxable income'. Generally, accumulated taxable income is the excess of taxable income with certain adjustments, including a deduction for regular income taxes, over the dividends paid deduction and the accumulated earnings credit. Note that a corporation can justify the accumulation of income, and avoid tax, based on its reasonable business needs.

Personal holding company tax

US corporations and certain foreign corporations that receive substantial 'passive income' and are 'closely held' may be subject to personal holding company tax. The personal holding company tax is 20% of undistributed personal holding company income and is levied in addition to the regular tax.

Payroll taxes and social security contributions

Employers are subject to federal unemployment insurance tax (FUTA) of 6.2% on the first USD 7,000 of wages paid to employees meeting certain criteria. In addition, states impose workers' compensation insurance tax at varying rates depending on state law and the nature of employees' activities. For 2018, employers also are subject to social security contributions tax of 7.65% (including 1.45% Medicare tax) on the first USD 128,700 (up from USD 127,200 in 2017) of wages paid to employees and 1.45% of Medicare tax on all wages as well as 0.9% of additional Medicare tax on wages over USD 200,000.

Environmental tax

Importers, manufacturers, and sellers of petroleum or other ozone-depleting chemicals (ODC) are subject to an environmental tax calculated per weight of the ODC used in the manufacture of the product. The tax is determined under an exact or table method provided in the instructions to Form 6667. If the weight cannot be determined, the tax is 1% of the entry value of the product.

Other state and municipal taxes

Other taxes that states may impose, in lieu of or in addition to taxes based on income, include franchise taxes and taxes on the capital of a corporation. State and municipal taxes are deductible expenses for federal income tax purposes.

Branch income

US tax law imposes a 30% branch profits tax on a foreign corporation's US branch earnings and profits for the year that are effectively connected with a US business. The taxable base for the branch profits tax is increased (decreased) by any decrease (increase) in the US net equity of the branch. The branch profits tax on profits may be reduced or eliminated entirely if a relevant treaty so provides (subject to strict 'treaty shopping' rules). The purpose of the branch profits tax is to treat US operations of foreign corporations in much the same manner as US corporations owned by foreign persons. With certain exceptions, a 30% (or lower treaty rate) branch profits tax also will be imposed on interest payments by the US branch to foreign lenders. In addition, the tax will apply if the amount of interest deducted by the branch on its US tax return exceeds the amount of interest actually paid during the year.

Income determination

Inventory valuation

Inventories generally are stated at either cost or the lower of cost or market on a first in first out (FIFO) basis. Last in first out (LIFO) may be elected for tax purposes on a cost basis only and requires that LIFO also be used for financial statement purposes.

The tax law requires capitalisation for tax purposes of several costs allocable to the manufacturing process that frequently are expensed as current operating costs for financial reporting (e.g. a portion of general and administrative costs, significant cost variances, and the excess of tax depreciation over financial statement depreciation).

When inventory is sold, the cost of goods sold is subtracted from sales to compute gross income. Amounts included in cost of goods sold are not subject to the BEAT unless the payments are made to an 'expatriated entity'.

Capital gains

Gains or losses on the sale or exchange of capital assets held for more than 12 months are treated as long-term capital gains or losses. Gains or losses on the sale or exchange of capital assets held for 12 months or less are treated as short-term capital gains or losses. The excess of net long-term capital gain over net short-term capital loss is considered net capital gain. Capital losses are allowed only as an offset to capital gains. An excess of capital losses over capital gains in a tax year may be carried back three years and carried forward five years to be used to offset capital gains.

For dispositions of personal property and certain non-residential real property used in a trade or business, net gains are first taxable as ordinary income to the extent of the depreciation/cost recovery, with any remainder generally treated as capital gain. For other trade or business real property, net gains generally are taxed as ordinary income to the extent that the depreciation or cost recovery claimed exceeds the straight-line amount, with any remainder treated as capital gain.

An exception to capital gain treatment exists to the extent that losses on business assets were recognised in prior years. A net loss from the sale of business assets is treated as an ordinary loss. Future gains, however, will be treated as ordinary income to the extent of such losses recognised in the five immediately preceding years.

Dividend income

For tax years beginning before 31 December 2017, a US corporation generally may deduct 70% of dividends received from other US corporations in determining taxable income. The dividends received deduction (DRD) is increased from 70% to 80% if the recipient of the dividend distribution owns at least 20% but less than 80% of the distributing corporation. Generally, dividend payments between US corporations that are members of the same affiliated group (*see the Group taxation section*) are deferred or eliminated until a transaction with a third party occurs. With minor exceptions, a US corporation may not deduct dividends it receives from a foreign corporation. For tax years beginning after 31 December 2017, P.L. 115-97 reduces the 70% DRD to 50% and the 80% DRD to 65%.

A 100% DRD is provided for the foreign-source portion of dividends received by a US corporation from certain foreign corporations with respect to which it is a 10% US shareholder. The 100% DRD applies to distributions made after 31 December 2017.

Stock dividends

A US corporation can distribute a tax-free dividend of common stock proportionately to all common stock shareholders. If the right to elect cash is given, all distributions to all shareholders are taxable as dividend income whether cash or stock is taken. There are exceptions to these rules, and extreme caution must be observed before making such distributions.

Interest income

Interest income is generally includible in the determination of taxable income.

Rental income

Rental income is generally includible in the determination of taxable income.

Royalty income

Royalty income is generally includible in the determination of taxable income.

Partnership income

The income (loss) of a partnership passes through to its partners so that the partnership itself is not subject to tax. Thus, each partner generally includes in taxable income its distributive share of the partnership's taxable income (or loss).

Foreign income (Subpart F income) of US taxpayers

In the case of controlled foreign companies (CFCs), certain types of undistributed income are taxed currently to certain US shareholders (Subpart F income). More specifically, in situations in which a foreign corporation is a CFC, every US shareholder owning 10% or greater of the total value of shares of all classes of stock or the total combined voting power of all classes of stock entitled to vote of such a foreign corporation (US shareholder) must include in gross income its pro rata share of the Subpart F income earned by the CFC, regardless of whether the income is distributed to the US shareholders.

With certain exceptions, Subpart F income generally includes passive income and other income that is readily movable from one taxing jurisdiction to another (i.e. income that is separated from the activities that produced the value in the goods or services generating the income). In particular, Subpart F income includes insurance income, foreign base company income, and certain income relating to international boycotts and other violations of public policy.

There are several subcategories of foreign base company income, the most common of which are foreign personal holding company income (FPHCI), foreign base company sales income (FBCSI), and foreign base company services income (FBCSvI). FPHCI is passive income (e.g. dividends, interest, royalties, and capital gains). FBCSI and FBCSvI are sales and services income earned in cross-border, related-person transactions. There are a number of common exceptions that may apply to exclude certain income from the definition of Subpart F income, including exceptions relating to highly taxed income, certain payments between related parties, and active business operations.

In situations in which the US shareholder is a domestic corporation, the domestic corporate shareholder may claim a foreign tax credit (discussed below) for foreign taxes paid or accrued by a CFC. Furthermore, certain rules track the earnings and profits of a CFC that have been included in the income of US shareholders as Subpart F income to ensure that such amounts (known as previously taxed income or PTI) are not taxed again when they are actually distributed to the US shareholders.

P.L. 115-97 also requires a US shareholder to include in income the 'global intangible low-taxed income' (GILTI) of its CFCs, effective for tax years of foreign corporations beginning after 2017. Despite the name, this provision is not limited to low-taxed income from intangible assets.

The full amount of GILTI is includible in the US shareholder's income, and generally is then reduced through a 50% deduction in tax years beginning after 31 December 2017 and before 1 January 2026, and a 37.5% deduction in tax years beginning after 31 December 2025. A corporate taxpayer generally also can claim a credit for 80% of the foreign taxes associated with GILTI.

Deductions

Depreciation and amortisation

Depreciation deductions are allowances that may be taken for capital outlays for tangible property. For property placed in service after 1986, capital costs must be recovered by using the modified accelerated cost recovery system (MACRS) method. Depending on the type of tangible property, the general cost recovery periods are three, five, seven, ten, 15, 20, 27.5, and 39 years (31.5 years for property placed in service before 13 May 1993). The cost recovery methods and periods are the same for both new and used property. Most tangible personal property is in the three, five, or seven year class. Property placed in the three, five, seven, or ten year class is depreciated by first applying the 200% declining-balance method and then switching to the straight-line method at such a time as when use of the straight-line method maximises the depreciation deduction. Property in the 15 or 20 year class is depreciated by using the 150% declining-balance method and later switching to the straight-line method. An election may be made to use the alternative depreciation system (basically, the straight-line method over prescribed lives). Residential rental property generally is depreciated by the straight-line method over 27.5 years. Non-residential real property is depreciated by the straight-line method over 39 years (31.5 years for property placed in service before 13 May 1993).

An election to use the straight-line method over the regular recovery period or a longer recovery period also is available. Alternatively, taxpayers may elect to use the 150% declining-balance method over the regular recovery period for all property other than real property. This method was required for AMT purposes. However, corporate AMT is repealed for tax years beginning after 31 December 2017.

For most tangible personal and real property placed in service in the United States after 1980 but before 1 January 1987, capital costs were recovered using the accelerated cost recovery system (ACRS), which applied accelerated methods of cost recovery over periods specified by statute. The general ACRS recovery periods were three, five, ten, 15, 18, and 19 years.

Special rules apply to automobiles and certain other ‘listed’ property. Accelerated depreciation deductions can be claimed only if the automobile is used 50% or more for qualified business use as defined in related regulations. Further, for automobiles placed in service after 1986, the allowable yearly depreciation deduction cannot exceed specific dollar limitations.

Separate methods and periods of cost recovery are specified by statute for certain tangible personal and real property used outside the United States.

Rapid amortisation may be allowable for certain pollution control facilities.

Tax depreciation generally does not conform to book depreciation. Tax depreciation generally is subject to recapture on the sale or disposition of certain property, to the extent of gain, which is subject to tax as ordinary income.

The cost of most intangible assets is capitalised and amortisable rateably over 15 years.

Section 179 deduction

Corporations can elect to expense, up to a statutory amount per year, the cost of certain eligible property used in the active conduct of a trade or business. This is commonly referred to as the Section 179 deduction.

The 2003 tax cuts temporarily increased the maximum dollar amount that may be deducted under Section 179 from USD 25,000 to USD 100,000. The 2003 tax cuts also increased the phase-out amount from USD 200,000 to USD 400,000. These amounts have been further modified and extended several times on a temporary basis, increasing up to a high of USD 500,000 and USD 2 million, respectively, for tax years beginning in 2010 and 2011, and then to USD 125,000 and USD 500,000, respectively, for tax years beginning in 2012, before reverting to the permanent amounts of USD 25,000 and USD 200,000, respectively, for tax years beginning in 2013 and thereafter. The American Taxpayer Relief Act of 2012, signed into law on 2 January 2013, increased the maximum amount and phase-out threshold in 2012 and 2013 to the levels in effect in 2010 and 2011 (USD 500,000 and USD 2 million, respectively). The Tax Increase Prevention Act of 2014, signed into law on 19 December 2014, extended the USD 500,000 and USD 2 million amounts to tax years beginning in 2014. The Consolidated Appropriations Act, 2016, signed into law on 18 December 2015, extended the USD 500,000 and USD 2 million amounts permanently, retroactive to 1 January 2015; beginning in 2016, the limitation amount is indexed for inflation.

For 2017, the inflation-adjusted amounts were USD 510,000 and USD 2,030,000, respectively.

For property placed in service in tax years beginning after 31 December 2017, P.L. 115-97 increases the dollar limitation to USD 1 million, while increasing the cost of property subject to the phase-out to USD 2.5 million. The new dollar limitations are indexed for inflation for tax years beginning after 31 December 2018.

In addition, the deduction under this election is limited to the taxable income of the business.

Bonus depreciation

A 50% special first-year depreciation allowance (i.e. bonus depreciation) applies (unless an election out is made) for new (i.e. property with respect to which the original use begins with the taxpayer) MACRS property with a recovery period of 20 years or less, certain computer software, water utility property, and certain leasehold improvements acquired after 31 December 2007. The special allowance applies for regular income tax and AMT purposes. No AMT adjustment is made if the special allowance is used. The special allowance does not apply to property that must be depreciated using the alternative depreciation system or to 'listed property' not used predominantly for business. The special allowance reduces basis before regular depreciation is figured. Additionally, claiming bonus depreciation on automobiles may affect the first-year depreciation limits on such automobiles.

P.L. 115-97 replaces 50% bonus depreciation with 100% bonus depreciation and expands the property eligible for such benefit by repealing the original use requirement. Thus, for certain new and used property acquired and placed in service after 27 September 2017 and before 1 January 2023 (with an additional year for certain aircraft and longer production period property), taxpayers may expense immediately the entire cost of such property. For qualified property placed in service in calendar years 2023, 2024, 2025, and 2026 (2024, 2025, 2026, and 2027 for certain aircraft and longer production period property), 100% is reduced to 80%, 60%, 40%, and 20%, respectively. For any property acquired prior to 28 September 2017, the pre-Act bonus depreciation rules apply.

Depletion

For natural resource properties other than timber and certain oil and gas properties, depletion may be computed on a cost or a percentage basis.

Cost depletion is a method of depletion applied to exhaustible natural resources, including timber, which is based on the adjusted basis of the property. Each year, the adjusted basis of the property is reduced, but not below zero, by the amount of depletion calculated for that year. The current year cost depletion deduction is based on an estimate of the number of units that make up the deposit and the number of units extracted and sold during the year.

Percentage depletion is a method of depletion applied to most minerals and geothermal deposits, and, to a more limited extent, oil and gas. Percentage depletion is deductible at rates varying from 5% to 25% of gross income, depending on the mineral and certain other conditions. Percentage depletion may be deducted even after the total depletion deductions have exceeded the cost basis. However, percentage depletion is limited to 50% (100% for oil and gas properties) of taxable income from the property (computed without allowance for depletion). Generally, percentage depletion is not available for oil or gas wells. However, exceptions exist for natural gas from geopressurised brine and for independent producers of oil and gas.

Goodwill

The cost of goodwill generally is capitalised and amortised rateably over 15 years, beginning in the month the goodwill is acquired.

Start-up expenses

Generally, start-up expenditures must be amortised over a 15-year period; however, certain taxpayers may elect to deduct some expenses in the tax year in which the trade or business begins.

US manufacturing deduction

Over the last several decades, various tax incentive systems have been enacted in the United States to encourage exports and were later repealed, including the extraterritorial income (ETI) regime, which was repealed as a result of a World Trade Organization (WTO) ruling that the ETI regime favoured US goods and violated the national treatment provisions of the General Agreement on Tariffs and Trade. In response, the United States enacted the American Jobs Creation Act of 2004, which introduced a phase-out repeal of ETI and introduced the domestic production activities deduction under Section 199, seeking to compensate US manufacturers for the loss of ETI benefits.

For tax years beginning before 1 January 2018, Section 199 generally provided taxpayers with a 9% deduction for qualified production activities (QPA) income (subject to a taxable income limitation). The deduction was available to all taxpayers actively engaged in QPA. For most corporate taxpayers, the deduction generally meant a federal income tax rate of 31.85% on QPA income, although certain oil- and gas-related QPA received a less generous reduction that equated to a federal income tax rate of 32.9%. Importantly, the deduction also applied in calculating the AMT.

There was a limit on the amount of the deduction equal to 50% of W-2 wages allocable to domestic production gross receipts (DPGR). The deduction generally was not allowed for taxpayers that incurred a loss from their production activities or had an overall loss (including a carryover loss) from all activities.

A taxpayer's QPA income was calculated using the following formula: DPGR less the sum of cost of goods sold allocable to such receipts and other expenses, losses, or deductions that are properly allocable to such receipts.

P.L. 115-97 repeals Section 199 for tax years beginning after 31 December 2017.

Interest expenses

Under P.L. 115-97, new Section 163(j) limits US business interest expense deductions to the sum of business interest income, 30% of 'adjusted taxable income' (ATI), and floor plan financing interest of the taxpayer for the tax year, effective for tax years beginning after 2017.

The new Section 163(j) interest limitation broadly applies to the 'business interest' of any taxpayer (regardless of form) and regardless of whether the taxpayer is part of an 'inbound' group or an 'outbound' group. That is, unlike prior-law Section 163(j), new Section 163(j) applies regardless of whether the interest payment is to a foreign person or a US person, and regardless of whether such person is related or unrelated. ATI roughly is equivalent to earnings before interest, taxes, depreciation, and amortisation (EBITDA) (similar to prior-law Section 163(j)) for tax years beginning before 1 January 2022. After that date, ATI roughly would be equivalent to earnings before interest and taxes (EBIT).

Disallowed business interest expense can be carried forward indefinitely.

Bad debt

Bad debt resulting from a trade or business may be deducted in the year the debt becomes worthless. Determining the date the debt becomes worthless may present difficulty.

Charitable contributions

Deductions for allowable charitable contributions may not exceed 10% of taxable income computed without regard to certain deductions, including charitable contributions themselves. Deductions for contributions so limited may be carried over to the five succeeding years, subject to the 10% limitation annually.

Employee benefit plans (pension plans and expenses)

Through the Code, the government provides incentives for employers to provide retirement benefits to workers. Usually, the employer will be allowed a current deduction for contributions made to the fund, and the employee's tax liability will be deferred until the benefit is paid. For-profit, non-government employers generally have two types of available plans, which generally are subject to the reporting and disclosure requirements set forth under the Employee Retirement Income Security Act of 1974 (ERISA).

The first category of tax-qualified retirement plans is a defined benefit plan, or more commonly known as a pension plan, to which an employer contributes money, on an ongoing basis, to cover the amount of retirement income owed to retired employees under the plan (which will vary based on years of service, average salary, age at retirement, and other factors). Any investment gains or losses will not affect the amount of benefits paid to participants but will affect the amount an employer needs to contribute in order to cover its obligation.

The second category of employee benefit plans is the defined contribution plan, or more commonly known in the United States as a '401(k) plan', to which an employee can contribute compensation (up to an annual limit) on a pre-tax basis to an account in the employee's name. Employers also can contribute amounts to these accounts, such as matching contributions or profit sharing contributions. Investment gains or losses and the history of contributions will affect the value of a participant's account at retirement but will not affect an employer's contributions since the employer is not obligated to ensure any specified level of benefit in the plan. Small employers have similar options available but may be subject to different requirements.

Non-profits, including churches and government entities, have similar employee benefit plans, except different requirements apply. Self-employed individuals also may set up retirement plans, but these are subject to separate requirements.

Foreign-derived intangible income (FDII)

Under P.L. 115-97, for tax years beginning after 2017 and before 1 January 2026, new Section 250 allows as a deduction an amount equal to 37.5% of a domestic corporation's FDII plus 50% of the GILTI amount included in gross income of the domestic corporation under new Section 951A (*discussed in the Income determination section*). For tax years beginning after 31 December 2025, the deduction is reduced to 21.875% and 37.5%, respectively. If, in any tax year, the domestic corporation's taxable income is less than the sum of its FDII and GILTI amounts, then the 37.5% FDII deduction and the 50% GILTI deduction are reduced proportionally by the amount of the difference.

Research and experimental (R&E) expenditures

For tax years beginning before 1 January 2022, corporations can continue to elect under Section 174 to expense all R&E expenditures that are paid or incurred during the tax year or to defer the expenses for 60 months. Taxpayers also can make a special election under Section 59(e) to amortise their research expenditures over 120 months. A portion of the research expenditures may qualify for a research tax credit, *which is described in the Tax credits and incentives section*.

For tax years beginning after 2021, P.L. 115-97 repeals expensing of R&E expenditures, including software development costs, under Section 174 and requires such expenditures to be capitalised and amortised over a five-year period, beginning with the midpoint of the tax year in which the specified R&E expenditures were paid or incurred. R&E expenditures that are attributable to research that is conducted outside the United States would be capitalised and amortised over a period of 15 years.

Bribes, kickbacks, and illegal payments

An amount paid, directly or indirectly, to any person that is a bribe, kickback, or other illegal payment is not deductible.

Fines and penalties

No deduction generally is allowed for fines or penalties paid to the government for violation of any law for amounts paid or incurred before the enactment date of P.L. 115-97 (i.e. before 22 December 2017).

For amounts paid on or after the enactment date of P.L. 115-97 (i.e. on or after 22 December 2017), all payments to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law are non-deductible, unless such payments clearly reflect amounts paid for restitution or to come into compliance with the law and are identified as such in the underlying agreement.

Taxes

State and municipal taxes imposed on businesses are deductible expenses for federal income tax purposes.

Other significant items

- No deduction generally is allowed for a contingent liability until such liability is fixed and determinable.
- Costs incurred for entertainment must meet strict tests to be deductible. The deduction for business meal and entertainment expenses generally is 50% of the expenses paid or incurred before 1 January 2018. Under P.L. 115-97, for amounts paid or incurred after 31 December 2017, this deduction generally is no longer available (note, however, that business meals without entertainment remain 50% deductible). There also are limitations on the deductibility of international and domestic business travel expenses.
- Royalty payments, circulation costs, mine exploration and development costs, and other miscellaneous costs of carrying on a business are deductible, subject to certain conditions and limits.
- Compensation paid to the CEO, CFO, and three named executive officers listed on the proxy, for a publicly traded corporation, may be subject to a USD 1 million per-year deduction limit. P.L. 115-97 eliminated the prior-law exception for performance-based compensation.

Net operating losses (NOLs)

An NOL is generated when business deductions exceed gross income in a particular tax year. NOLs generated in tax years ending before 1 January 2018 may be carried back to offset past income and possibly obtain a refund or carried forward to offset future income. Generally, a loss generated in tax years ending before 1 January 2018 may be carried back two years and, if not fully used, carried forward 20 years.

Special rules regarding NOLs generated in tax years ending before 1 January 2018 may apply (i) to specified liability losses or (ii) if a taxpayer is located in a qualified disaster area.

NOLs generated in tax years ending after 31 December 2017 generally may not be carried back and must instead be carried forward indefinitely. However, for NOLs generated in tax years beginning after 31 December 2017, the NOL deduction is limited to 80% of taxable income (determined without regard to the deduction). Note that a technical correction may be needed regarding the elimination of NOL carrybacks for tax years ending after 31 December 2017 because the conference report for P.L. 115-97 says the provision applied to tax years beginning (not ending) after 31 December 2017.

Complex rules may limit the use of NOLs after a re-organisation or other change in corporate ownership. Generally, if the ownership of more than 50% in value of the stock of a loss corporation changes, a limit is placed on the amount of future income that may be offset by losses carried forward.

Payments to foreign affiliates

Subject to certain limitations, a US corporation generally may claim a deduction for royalties, management service fees, interest charges, and other items paid to foreign affiliates, to the extent the amounts are actually paid and are not in excess of what it would pay an unrelated entity (i.e. they are at arm's length). US tax, collected through withholding, on these payments generally is required. Under certain circumstances, however, such payments may give rise to a BEAT liability for the US payer (*as discussed in the Taxes on corporate income section*).

Group taxation

An affiliated group of US 'includible' corporations, consisting of a parent and subsidiaries directly or indirectly 80% owned, generally may offset the profits of one affiliate against the losses of another affiliate within the group by electing to file a consolidated federal income tax return. A foreign incorporated subsidiary may not be consolidated into the US group, except for certain Mexican and Canadian incorporated entities. A partnership may not be included in a consolidated return, even if it is 100% owned by members of an affiliated group, since a partnership is not a corporation. However, a member's earnings that flow through from a partnership are included as part of the consolidated group's taxable income or loss. Filing on a consolidated (combined) basis is also allowed (or may be required or prohibited) in certain states.

Sales, dividends, and other transactions between corporations that are members of the same group generally are deferred or eliminated until such time as a transaction occurs with a non-member of the group. Losses incurred on the sale of members of the group are disallowed under certain circumstances.

Transfer pricing

Transfer pricing regulations govern how related entities set internal prices for the transfers of goods, intangible assets, services, and loans in both domestic and international contexts. The regulations are designed to prevent tax avoidance among related entities and place a controlled party on par with an uncontrolled taxpayer by requiring an arm's-length standard. The arm's-length standard generally is met if the results of a controlled transaction are consistent with results that would have been realised if uncontrolled taxpayers had engaged in a similar transaction under similar circumstances. If a company is not in compliance with the arm's-length standard, the IRS may raise taxable income and tax payable in the United States. After a transfer pricing adjustment, a multinational company may face double tax, paying tax twice on the same income in two countries. Multinational companies may request competent authority relief from double taxation through a tax treaty.

In order to avoid potential transfer pricing penalties, one avenue available to companies may be to obtain an advance pricing agreement (APA) with the IRS, unilaterally, or with the IRS and another tax authority, bilaterally, covering inter-company pricing.

Country-by-country (CbC) reporting

US multinational enterprises (MNEs) have to report certain financial information on a CbC basis. The CbC report will be exchanged under bilateral Competent Authority Arrangements (CAAs) negotiated between the US Competent Authority and foreign tax administrations.

Under final regulations issued by the IRS on 29 June 2016, parent entities of US MNE groups with USD 850 million or more of revenue in a previous annual reporting period file IRS Form 8975, Country-by-Country Report. Form 8975 is used to report a US MNE group's income, taxes paid, and other indicators of economic activity on a CbC basis.

Form 8975 must be filed for the US MNE group's first reporting period in the tax year that starts on or after 30 June 2016. It must be filed with the income tax return of the parent entity in which the reporting period ends and cannot be filed as a stand-alone return. Form 8975 can be filed for reporting periods that begin before the first required reporting period. Form 8975 and its schedules can be filed in the Modernized e-File (MeF) XML schema format. Parent entities not permitted to file returns electronically must file Form 8975 with their paper income tax return.

The IRS will exchange Form 8975 information automatically with tax authorities with which the United States enters into a bilateral CAA. However, a US MNE group's information will be exchanged only with countries in which the US MNE group reports doing business. Exchanged information is confidential and protected pursuant to the applicable legal instrument permitting exchange.

Thin capitalisation

See Interest expenses in the Deductions section.

Controlled foreign companies (CFCs)

Under the Subpart F regime of the IRC, a CFC is any foreign corporation with respect to which US shareholders (*defined below*) own more than 50% of either the voting power of all classes of stock entitled to vote or the total value of all classes of the corporation's stock on any day during the foreign corporation's tax year. For these purposes, a US shareholder is any US person owning (directly, indirectly through foreign intermediaries, or constructively) 10% or more of the total value of shares of all classes of stock or of the total combined voting power of all classes of stock entitled to vote of a foreign corporation (P.L. 115-97 added the value threshold to the definition).

Tax credits and incentives

Foreign tax credit (FTC)

Generally, in any year, a taxpayer can choose whether to take as a credit (subject to limitation) or as a deduction foreign income, war profits, and excess profit taxes paid or accrued during the tax year to any foreign country or US possession. An FTC reduces US income tax liability dollar for dollar, while a deduction reduces the US income tax liability at the marginal rate of the taxpayer. For taxpayers with NOLs, the FTC is of no value in such year. However, a benefit might be received either in an earlier year (through a refund of previously paid taxes) or a later year (through a reduction of future taxes). It also should be noted that a taxpayer has an ability to switch from deduction to credit at any time in a ten-year period commencing when the foreign taxes were paid or accrued. Generally, an FTC may be carried back one year and, if not fully used, carried forward ten years.

In addition, the FTC goes beyond direct taxes to include foreign taxes paid 'in lieu of' a tax upon income, war profits, or excess profits, which would otherwise generally be imposed. It also includes deemed-paid (indirect) taxes paid for certain US corporate shareholders of non-portfolio foreign corporations. FTCs (and foreign tax deductions) are disallowed for foreign taxes paid on amounts that are eligible for the new 100% DRD. Furthermore, the FTC system has numerous other limitations to mitigate the potential abuses of the credit by the taxpayer.

General business credit

Various business credits are available to provide special incentives for the achievement of certain economic objectives. In general, these credits are combined into one 'general business credit' for purposes of determining each credit's allowance limitation for the tax year. The general business credit that may be used for a tax year is limited to a tax-based amount. In general, the current year's credit that cannot be used in a given year because of the credit's allowance limitation may be carried back to the tax year preceding the current year and carried forward to each of the 20 years following the current year.

In general, the current year business credit is a combination of the following credits for 2018:

- Investment credit.
- Work opportunity credit.
- Alcohol fuels credit.
- Research credit.
- Low-income housing credit.
- Disabled access credit for certain eligible small businesses.
- Renewable electricity production credit.
- Empowerment zone employment credit.
- Employer social security credit.
- Orphan drug credit (reduced by P.L. 115-97 from 50% to 25%).
- New markets tax credit.
- Small employer pension plan start-up cost credit for eligible employers.
- Employer-provided child care credit.
- Railroad track maintenance credit.
- Biodiesel fuels credit.
- Low sulphur diesel fuel production credit.
- Distilled spirits credit.
- Advanced nuclear power facility production credit.
- Non-conventional source production credit.
- New energy efficient home credit.
- Energy efficient appliance credit.
- A portion of the alternative motor vehicle credit.
- A portion of the alternative fuel vehicle refuelling property credit.
- Mine rescue team training credit.
- A portion of the new qualified plug-in electric drive motor vehicle credit for vehicles that will vary based on the date of purchase.
- American Samoa Economic Development credit.
- Hurricane Disaster Zone employee retention credit.

Employment credits

A 'work opportunity tax credit' is available through 2019 for wages paid to certain types of workers. 'Qualified' wages generally are the first USD 6,000 of wages paid to each qualified employee for the year. The credit is 40% of qualified wages, for a maximum credit of USD 2,400 per employee.

Research credit

The research credit under Section 41 is available for companies that make qualified research expenditures (QREs) to develop new or improved products, manufacturing processes, or software in the United States. The credit was enacted in 1981 on a temporary basis to help increase R&E spending in the United States. Since then, the research credit has been extended on a temporary basis about 16 times, but was extended, retroactively to 1 January 2015, on a permanent basis as part of the Consolidated Appropriations Act, 2016.

The research credit generally is computed by calculating current-year QRE over a base. The base is calculated using either the regular research credit (RRC) method or the alternative simplified credit (ASC) method. Under the RRC method, the credit equals 20% of QREs for the tax year over a base amount established by the taxpayer in 1984 to 1988 or by another method for companies that began operations after that period.

The ASC equals 14% (for the 2009 tax year and thereafter) of QREs over 50% of the average annual QREs in the three immediately preceding tax years. If the taxpayer has no QREs in any of the three preceding tax years, the ASC may be 6% of the tax year's QREs. The taxpayer must make a timely ASC election on Form 6765 attached to an originally filed return filed by the due date for that return (including extensions), or, pursuant to final regulations published in February 2015, an amended return (subject to certain limitations).

Taxpayers using the RRC also may take a 20% credit for incremental payments made to qualified organisations for basic research. For tax years ending after 8 August 2005, taxpayers also may take the Energy Research Consortium Credit, which provides a 20% credit for expenditures on qualified energy research undertaken by an energy research consortium.

The deduction for R&E expenditures under Section 174 must be reduced by the entire amount of the credit unless an election is made to reduce the amount of the credit.

Inbound investment incentives

There generally are no specific incentives related to inbound investment at the federal level, with certain exceptions, such as certain portfolio debt and bank deposit exceptions and trading safe harbours. The portfolio debt exception enables non-residents and foreign corporations to invest in certain obligations (which must meet certain statutory requirements to qualify as 'portfolio debt') in the United States without being subject to US income (or withholding) tax on the interest income. Certain state and local benefits may also be available.

Qualified private activity bonds

Interest income received on certain qualified private activity bonds generally is exempt from federal income tax. This enables a business enterprise to issue the bonds at a lower interest rate.

Other tax incentives

State and local governments provide numerous incentives to encourage business investment and, thus, employment in their jurisdictions.

Withholding taxes

Under US domestic tax laws, a foreign person generally is subject to 30% US tax on the gross amount of its US-source (non-business) income. All persons making payments ('withholding agents') to foreign persons generally must report and withhold 30% of the gross US-source payments, such as dividends and royalties, made to foreign persons. In other situations, withholding agents may apply reduced rates or be exempted from withholding tax (WHT) at source when there is a tax treaty between the foreign person's country of residence and the United States and the foreign person certifies its eligibility for the lower rate. Reporting is always required even if no withholding applies.

The United States has entered into various income tax treaties with countries in order to avoid double taxation of the same income and to prevent tax evasion. The table below, from the IRS website, summarises the benefits resulting from these treaties.

	WHT (%)			
Recipient	**Dividends paid by US corporations in general (1)**	**Dividends qualifying for direct dividend rate (1, 2)**	**Interest paid by US obligors in general**	**Royalties ***
Non-treaty	30	30	30	30/30/30/30/30
Treaty rates:				
Australia (3)	15 (22)	5 (22, 24)	10 (5, 6, 15, 21)	NA/5/5/5/5
Austria (3)	15 (9)	5 (9)	0 (15, 19)	NA/0/0/10/0
Bangladesh (3)	15 (22)	10 (22)	10 (11, 15, 19)	NA/10/10/10/10
Barbados (3)	15 (9)	5 (9)	5	NA/5/5/5/5
Belgium (3)	15 (22, 27)	5 (22, 24, 27)	0 (15, 19, 30)	NA/0/0/0/0
Bulgaria (3)	10 (22, 27)	5 (22, 27)	5 (15, 19, 21, 27)	NA/5/5/5/5
Canada (3)	15 (22)	5 (22)	0 (15, 19)	10/0/0/10/0
China, People's Republic of (3)	10	10	10	7/10/10/10/10
Commonwealth of Independent States (CIS) (8)	30	30	0 (7)	0/0/0/0/0
Cyprus (3)	15	5	10 (21)	NA/0/0/0/0
Czech Republic (3)	15 (9)	5 (9)	0 (15)	10/10/10/0/0
Denmark (3)	15 (22, 27)	5 (22, 24, 27)	0 (15, 20)	NA/0/0/0/0
Egypt	15 (4)	5 (4)	15 (4)	NA/30/15/NA/15 (3)
Estonia (3)	15 (9)	5 (9)	10 (15, 20)	5/10/10/10/10
Finland (3)	15 (22, 27)	5 (22, 24, 27)	0 (15, 20)	NA/0/0/0/0
France (3)	15 (22)	5 (22, 24)	0 (5, 15)	NA/0/0/0/0
Germany (3)	15 (22, 27)	5 (22, 24, 27)	0 (15, 19)	NA/0/0/0/0
Greece (4)	30	30	0	0/0/0/30/0
Hungary (3)	15	5	0	NA/0/0/0/0
Iceland (3)	15 (22, 27)	5 (22, 27, 30)	0 (15, 20)	NA/5/0/5/0
India (3)	25 (9)	15 (9)	15 (12)	10/15/15/15/15

Recipient	WHT (%) Dividends paid by US corporations in general (1)	Dividends qualifying for direct dividend rate (1, 2)	Interest paid by US obligors in general	Royalties *
Indonesia (3)	15	10	10	10/10/10/10/10
Ireland (3)	15 (22)	5 (22, 30)	0 (15)	NA/0/0/0/0
Israel (3)	25 (9)	12.5 (9)	17.5 (12, 17)	NA/15/15/10/10
Italy (3)	15 (22)	5 (22)	10 (15, 23)	5/8/8/8/0
Jamaica (3)	15	10	12.5	NA/10/10/10/10
Japan (3, 25)	10 (22, 25, 27)	5 (22, 24, 25, 27)	10 (15, 25, 26, 27)	NA/0/0/0/0
Kazakhstan (3)	15 (16)	5 (16)	10 (15)	10/10/10/10/10
Korea, South (3)	15	10	12	NA/15/15/10/10
Latvia (3)	15 (9)	5 (9)	10 (15, 20)	5/10/10/10/10
Lithuania (3)	15 (9)	5 (9)	10 (15, 20)	5/10/10/10/10
Luxembourg (3)	15 (9, 28)	5 (9)	0 (4, 5, 15)	NA/0/0/0/0
Malta (3)	15 (22, 27, 30)	5 (22, 27, 30)	10 (15, 19)	NA/10/10/10/10
Mexico (3)	10 (22, 27)	5 (22, 24, 27)	15 (15, 18, 25, 27)	10/10/10/10/10
Morocco (3)	15	10	15	NA/10/10/10/10
Netherlands (3)	15	5 (24, 29)	0 (6, 30)	NA/0/0/0/0
New Zealand (3)	15 (22)	5 (22, 24)	10 (15, 19, 21)	NA/5/5/5/5
Norway (3)	15	15	10	NA/0/0/NA/0
Pakistan (4)	30	15	30	NA/0/0/NA/0
Philippines (3)	25	20	15	NA/15/15/15/15
Poland (3)	15	5	0	NA/10/10/10/10
Portugal (3)	15 (9)	5 (9)	10 (5, 15)	10/10/10/10/10
Romania (3)	10	10	10	NA/15/15/10/10
Russia (3)	10 (16)	5 (16)	0 (15)	NA/0/0/0/0
Slovak Republic (3)	15 (9)	5 (9)	0 (15)	10/10/10/0/0
Slovenia (3)	15 (22)	5 (22)	5 (15)	NA/5/5/5/5
South Africa (3)	15 (9)	5 (9)	0 (15, 19)	NA/0/0/0/0
Spain (3)	15 (9)	10 (9)	15	8/10/10/8/5 (10)
Sri Lanka (3)	15 (29)	15 (29)	10 (15, 19)	5/10/10/10/10
Sweden (3)	15 (22, 27)	5 (22, 24, 27)	0 (15)	NA/0/0/0/0
Switzerland (3)	15 (9)	5 (9)	0 (15, 19)	NA/0/0/NA/0
Thailand (3)	15 (9)	10 (9)	15 (12, 15)	8/15/15/5/5
Trinidad & Tobago (3)	30	30	30	NA/15/15/NA/0 (14)
Tunisia (3)	20 (9)	14 (9)	15	10 (13)/15/15/15/15
Turkey (3)	20 (9)	15 (9)	15 (6, 12, 15)	5/10/10/10/10
Ukraine (3)	15 (16)	5 (16)	0	NA/10/10/10/10
United Kingdom (3)	15 (22, 25)	5 (22, 24, 25)	0 (15, 20, 25)	NA/0/0/0/0
Venezuela (3)	15 (22)	5 (22)	10 (15, 20, 21)	5/10/10/10/10

Notes

* Please note the tax rates and associated footnotes appearing in the 'Royalties' column in the table address five types of royalties, as denoted in the most recent IRS publication. These five are industrial equipment royalties, know-how/other industrial royalties, patent royalties, motion picture and television royalties, and copyright royalties. The slashes '/' between each figure and associated footnote(s) are meant to demarcate these five types of royalties, respectively. For rates indicated as 'NA', if the enterprise earns income from the leasing of equipment in the conduct of a trade or business, it is covered by the Business

Profits article. For passive income from the leasing of equipment, and not in the Royalty article, it is covered by the Other Income article, if any.

1. No US tax is imposed on a dividend paid by a US corporation that received at least 80% of its gross income from an active foreign business for the three-year period before the dividend is declared.
2. Dividends paid by a subsidiary to a foreign parent corporation that has the required percentage of stock ownership are subject to a reduced rate, usually 5%, and, under some treaties, WHT may be eliminated entirely. In some cases, the income of the subsidiary must meet certain requirements (e.g. a certain percentage of its total income must consist of income other than dividends and interest)..
3. The exemption or reduction in rate does not apply if the recipient has a PE in the United States and the property giving rise to the income is attributable to this PE. Under certain treaties, the exemption or reduction in rate also does not apply if the property producing the income is attributable to a fixed base in the United States from which the recipient performs independent personal services. Even with the treaty, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a PE in the United States under IRC Section 894(b).
4. The exemption or reduction in rate does not apply if the recipient is engaged in a trade or business in the United States through a PE that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a PE in the United States to apply the reduced treaty rate to that item of income.
5. Interest determined with reference to the profits of the issuer or one of its associated enterprises typically is taxed at 15%.
6. Contingent interest that does not qualify as portfolio interest is treated as a dividend and is subject to the rates under those columns, as appropriate.
7. The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the United States and the CIS member. It does not include interest from the conduct of a general banking business.
8. The tax rates in the US treaty with the former USSR still apply to the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
9. The rate in column 2 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of Portugal, Spain, and Tunisia) in the REIT.
10. The rate is 8% for copyrights of scientific work.
11. The rate is 5% for interest (i) beneficially owned by a bank or other financial institution (including an insurance company) or (ii) paid due to a sale on credit of any industrial, commercial, or scientific equipment, or of any merchandise to an enterprise.
12. The rate is 10% if the interest is paid on a loan granted by a bank or similar financial institution. For Thailand, the 10% rate also applies to interest from an arm's-length sale on credit of equipment, merchandise, or services.
13. This is the rate for royalties for the use of, or the right to use, industrial, commercial, and scientific equipment. The rate for royalties for information concerning industrial, commercial, and scientific know-how is subject to the rate in column 5 ('other royalties').
14. The rate is 15% for copyrights of scientific work.
15. Exemption or reduced rate does not apply to an excess inclusion for a residual interest in a real estate mortgage investment conduit (REMIC).
16. The rate in column 2 applies to dividends paid by a RIC. Dividends paid by a REIT are subject to a 30% rate.
17. An election can be made to treat this interest income as if it were industrial and commercial profits taxable under article 8 of this treaty.
18. The rate is 4.9% for interest derived from (i) loans granted by banks and insurance companies and (ii) bonds or securities that are regularly and substantially traded on a recognised securities market. The rate is 10% for interest not described in the preceding sentence and paid (i) by banks or (ii) by the buyer of machinery and equipment to the seller due to a sale on credit.
19. The rate is 15% (10% for Bulgaria; 30% for Austria, Germany, and Switzerland) for contingent interest that does not qualify as portfolio interest.
20. The rate is 15% for interest determined with reference to (i) receipts, sales, income, profits, or other cash flow of the debtor or a related person, (ii) any change in the value of any property of the debtor or a related person, or (iii) any dividend, partnership distribution, or similar payment made by the debtor to a related person.
21. Interest received by a financial institution is tax exempt. For Venezuela, the rate is 4.95% if the interest is beneficially owned by a financial institution (including an insurance company).
22. The rate in column 2 applies to dividends paid by a RIC or REIT. However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (i) an individual (or pension fund, in the case of France or New Zealand) holding not more than a 10% interest in the REIT, (ii) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (iii) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

23. Interest paid or accrued on the sale of goods, merchandise, or services between enterprises is exempt. Interest paid or accrued on the sale on credit of industrial, commercial, or scientific equipment is exempt.
24. Dividends received from an 80%-owned corporate subsidiary are exempt if certain conditions are met.
25. Exemption does not apply to amount paid under, or as part of, a conduit arrangement.
26. Interest is exempt if (i) paid to certain financial institutions, or (ii) paid on indebtedness from the sale on credit of equipment or merchandise.
27. Amounts paid to a pension fund that are not derived from the carrying on of a business, directly or indirectly, by the fund are exempt. This includes amounts paid by a REIT only if the conditions in footnote 22 are met. For Sweden, to be entitled to the exemption, the pension fund must not sell or make a contract to sell the holding from which the dividend is derived within two months of the date the pension fund acquired the holding.
28. The exemption does not apply if the recipient of the gain is an individual who is present in the United States for more than 119 days during the year.
29. The rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (i) an individual holding less than a 10% interest in the REIT, (ii) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (iii) a person holding not more than a 10% interest in the REIT and the REIT is diversified.
30. 15% rate applies if income is attributable to a PE that that enterprise has in a third state, if the tax that is actually paid with respect to such income in the third state is less than 60% of the tax that would have been payable in the treaty country if the income were earned by the enterprise and were not attributable to the PE in the third state, unless derived in the active conduct of a trade or business in that third state.

Tax administration

Taxable period

US corporate taxpayers are taxed on an annual basis. Corporate taxpayers may choose a tax year that is different from the calendar year. New corporations may use a short tax year for their first tax period, and corporations may also use a short tax year when changing tax years.

Tax returns

The US tax system is based on the principle of self-assessment. A corporate taxpayer is required to file an annual tax return (generally Form 1120) by the 15th day of the fourth month following the close of its tax year. A taxpayer can obtain an additional six-month extension of time to file its tax return. Failure to timely file may result in penalties.

Important tax return due dates

Form No.	Title	Purpose	Due date
W-2	Wage and Tax Statement	Employers must provide employees with statements regarding total compensation and amounts withheld during year.	Must be sent to employees on or before 31 January.
1099 series	Various	Information returns to be provided to the IRS and recipients of dividends and distributions, interest income, miscellaneous income, etc.	Must be sent to the recipients on or before 31 January. Must be filed with the IRS on or before 28 February or 31 March, depending on the type of filing.
1120 series, including 1120S (for S Corps)	US Corporation Income Tax Return	Income tax returns for domestic corporations or foreign corporations with US offices.	15 April for C corporations, 15 March for S corporations (Form 7004 may be filed to obtain an automatic six-month extension).

Form No.	Title	Purpose	Due date
Schedule K-1	Partner's Share of Income (Loss) from an Electing Large Partnership	Information returns to be provided to partners by large partnerships.	15 March.
1065	US Return of Partnership Income	Information returns to be filed by large partnerships.	15 March (Form 7004 may be filed to obtain an automatic six-month extension).
State tax returns	Various	Income tax returns for states where corporation carries on trade/business.	Varies, often 15 April.

Payment of tax

A taxpayer's tax liability generally is required to be prepaid throughout the year in four equal estimated payments and fully paid by the date the tax return is initially due for that year. However, because a corporation that expects its tax liability for the tax year to exceed the small sum of USD 500 (based on its tax liability for the preceding year), almost all corporations are required to pay their full estimated tax liability for the year in their four estimated tax payments. For calendar year corporations, the four estimated payments are due by the 15th day of April, June, September, and December. For fiscal year corporations, the four estimated payments are due by the 15th day of the fourth, sixth, ninth, and 12th month of the tax year. Generally, no extensions to pay are allowed. Failure to pay the tax by the due dates as indicated above can result in estimated tax and late payment penalties and interest charges.

The instalment payments must include estimates of regular CIT, AMT, environmental tax, and, for foreign corporations, the tax on gross transportation income. To avoid a penalty, corporations must calculate the instalment payments based on at least 25% of the lesser of (i) the tax shown on the current tax return or (ii) the prior year's tax liability, provided that the tax liability was a positive amount in the prior year and that such year consisted of 12 months. However, corporations with taxable income of at least USD 1 million (before use of NOLs or capital loss carryforwards) in any of the three preceding years are not permitted to calculate the instalment payments based on the prior year's tax liability, except in determining the first instalment payment. Instead, such corporations must calculate the instalment payments based on the tax shown on the current tax return.

Penalties

Civil and criminal penalties may be imposed for failing to follow the Code when paying US taxes. The civil penalty provisions may be divided into four categories: delinquency penalties; accuracy-related penalties; information reporting penalties; and preparer, promoter, and protester penalties. Many, but not all, have exception provisions to cover reasonable cause. In addition, many have provisions directing how the penalties interact with the other penalties.

These four main civil penalty categories may further be divided. First, the delinquency penalties may be divided into failure to file, failure to pay, and failure to make timely deposits of tax. Failure to make timely deposits of tax applies to taxpayers required to make instalment payments and WHT payments.

Second, the penalties relating to the accuracy of tax returns are divided into the negligence penalty, the substantial understatement penalty, substantial overstatement of pension liabilities, substantial estate or gift tax valuation underestimate, and the valuation penalties. These penalties are also coordinated with the fraud penalty to eliminate any stacking of the penalties. Again, like other provisions, the fraud penalty is not intended to be imposed as a stacked penalty.

The third category of penalties is the information reporting penalties. These penalties may be imposed upon those who only have a duty to report information to the IRS.

The fourth and final major categories of civil penalties are the preparer, promoter, and protester penalties. Currently, the most notable of these is the return preparer penalty for which there is a penalty for a position on a return for which the preparer did not have substantial authority. Also included in this provision is a penalty for wilful or reckless attempt to understate the tax liability of another person. Additionally, return preparer penalties may be imposed for failure to furnish a copy of a return or claim for refund to the taxpayer, sign the return or claim for refund, furnish one's identifying number, or file a correct information return.

Other promoter and protestor penalties include a penalty for promoting abusive tax shelters, aiding and abetting the understatement of tax liability, and filing frivolous income tax returns. Additionally, a court may award sanctions and costs if a person institutes or maintains a proceeding primarily for delay, takes a position that is frivolous, or unreasonably fails to pursue available administrative remedies.

In addition to these major civil penalties, international tax-related penalties for failures other than timely and accurate filing (e.g. wilful failure to report international boycott activity, failure of an agent to furnish a notice of a false affidavit relating to the WHT on dispositions of US real property interests, failure of a US person to furnish information relating to CFCs and controlled foreign partnerships, failure of a US person to report foreign bank accounts) exist. Pension and employee benefit related tax penalties exist that protect the policy reasons for the tax incentives, including, most notably, early withdrawal of pension funds. Another group of specialised penalties apply to exempt organisations.

Criminal penalties exist for situations when the failures to stay within the tax system are more egregious. Although applicable to corporate taxpayers, they are applied more frequently to individuals.

In addition to the penalty provisions, interest at statutory rates generally applies to underpayments of tax.

Tax audit process

Generally, the US tax system is based on self-assessment; however, many large and mid-size businesses are under continuous audit by the IRS and state tax authorities. The audits may include the entire list of taxes for which the business is liable. Smaller businesses and persons with lower incomes are generally subject to audit on a random basis.

Statute of limitations

The IRS generally has three years after an original return is filed to assess income taxes. A return will be deemed to have been filed on its due date even if the return is actually filed on an earlier date.

Topics of focus for tax authorities

Currently, the IRS is focused on abusive payments related to contribution to capital of a corporation, domestic manufacturing deduction, foreign earnings repatriation, FTC generators, repairs vs. capitalisation change in accounting method, research credit claims, transfer of intangibles/offshore cost sharing, WHTs, and employee classification.

Tax shelter

Treasury regulations require taxpayers to disclose transactions determined to be abusive or possibly abusive. Current information on these transactions, known as listed and reportable transactions, is available from the IRS website (*www.irs.gov*).

Methods of accounting

For US federal tax purposes, the two most important characteristics of a tax method of accounting are (i) timing and (ii) consistency. If the method does not affect the timing for including items of income or claiming deductions, it is not an accounting method and generally IRS approval is not needed to change it. In order to affect timing, the accounting method must determine the year in which an income or expense item is to be reported.

In general, in order to establish an accounting method, the method must be consistently applied. Once an accounting method has been adopted for federal tax purposes, any change must be requested by the taxpayer and approved by the IRS. Changes in accounting methods cannot be made through amending returns. The two most common methods of accounting are the accrual basis and cash basis methods.

Other issues

Tax accounting

The Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) addresses financial accounting and reporting matters under US Generally Accepted Accounting Principles (US GAAP). ASC 740, Income Taxes, addresses how companies should account for and report the effects of taxes based on income.

Financial statements of domestic (US) Securities and Exchange Commission (SEC) registrants are required to be prepared in accordance with US GAAP. Foreign private issuers may include in their filings with the SEC financial statements prepared in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB) without reconciliation to US GAAP.

Corporate reorganisations

In general, a corporate reorganisation involving a merger, acquisition, or consolidation is a taxable event under the general recognition provisions of the Code. However, a corporate reorganisation that meets certain statutory and judicial requirements may qualify as a tax-free transaction, with gain or loss generally not recognised or deferred to a later date.

Foreign Account Tax Compliance Act (FATCA)

FATCA was enacted in 2010 to prevent and detect offshore tax evasion by US persons. FATCA seeks to compel disclosure of US ownership of foreign accounts, interests, and assets. While the name may imply that FATCA is directed at financial institutions, many global companies outside the financial services industry may be affected if they have entities in their worldwide network falling under the purview of FATCA, or have operational areas that make or receive payments subject to FATCA.

Multinational enterprises that are withholding agents were already obligated to report, withhold, and document payees, but FATCA requires changes to these activities. FATCA mandates that multinational businesses evaluate entity payees differently, engage in withholding on certain gross proceeds transactions (30% US WHT will apply to any gross proceeds from the sale or other disposition after 31 December 2018 of any property of a type that can produce certain US-source income, a change from historic processes), as well as report different information to the IRS.

The withholding provisions of FATCA began 1 July 2014. Compliance with FATCA may require changes to existing systems and processes across business units and regions, the renewal of policies and day-to-day practices, and new tasks, such as registering with the IRS.

To mitigate certain foreign legal impediments to FATCA compliance, intergovernmental agreements (IGAs) also have been negotiated between the US Treasury and foreign governments. Under certain IGAs, including most of the IGAs signed thus far, information will be exchanged directly between the IRS and local governments. This obligates entities in IGA jurisdictions to report information to their government that may not have been required or permitted in the past.

Assessing FATCA's impact will require identifying whether an IGA may apply to the entity or payment stream at issue. Provisions in the final FATCA regulations or, if applicable, an IGA that provides more favourable results may be utilised. This likely will increase the complexity of the process, due in part to the multiple paths to compliance (e.g. regulations or an IGA). The regulators have focused on having consistent requirements in each IGA, but there are noticeable differences in the agreements signed to date.

Common Reporting Standard (CRS) and Multilateral Instrument (MLI)

The OECD, on 21 July 2014, released the Standard for Automatic Exchange of Financial Account Information in Tax Matters, including the Commentary on the Common Reporting Standard (CRS). CRS seeks to establish the automatic exchange of tax information as the new global standard. The automatic exchange of information involves the systematic and periodic transmission of extensive taxpayer information from the country in which a taxpayer's financial accounts are located to that taxpayer's country of residence. As of 31 May 2018, the United States has not adopted the CRS.

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (the Multilateral Instrument or MLI) will enter into force on 1 July 2018. The MLI covers recommendations from the OECD BEPS project that affect double tax treaties (DTTs). This applies both to various minimum standards and some additional recommendations. The MLI was developed under BEPS Action 15 and encompasses recommendations for Action 2 (hybrid mismatches), Action 6 (treaty abuse), Action 7 (permanent establishments), and Action 14 (dispute resolution). The United States is one of the countries that were part of the post-BEPS discussions on the MLI but have not signed the MLI. These countries, including the United States, will be expected to meet the BEPS minimum standards in alternative ways (e.g. via bilateral agreement or protocol).

US possessions

Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the US Virgin Islands have their own independent tax departments. Accordingly, they have their own rules. *See the Puerto Rico summary for more information about Puerto Rico taxation*.

Uruguay

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Significant developments

2016 Law of Accountability

In September 2017, the Uruguayan Congress passed the law for the accountability of the national budget for the year 2016. The law includes tax amendments that became effective from 1 January 2018. The most relevant tax provisions refer to the following matters:

Taxation of Internet-related services

The law provides new rules on the taxation of the following cross-border activities that take place at least partially in Uruguay:

- Income derived from production, distribution, or intermediation of cinematographic films and tapes, as well as income derived from direct TV broadcasting, will be considered entirely Uruguayan-sourced and fully subject to corporate income tax (CIT) or non-resident income tax (NRIT).
- Services provided by non-resident entities directly through the Internet, technology platforms, computer applications (apps), or similar means will be considered entirely Uruguayan-sourced to the extent the service user is located in Uruguay.
- Income derived from mediation and intermediation in the supply or demand of services provided through the Internet, technology platforms, apps, or similar means will be considered entirely sourced in Uruguay when both the supplier and user of the service are located in Uruguay, and considered 50% sourced in Uruguay if either the supplier or the user are located outside Uruguay.

Unless otherwise proved, the user would be deemed located in Uruguay when the service fees are paid through electronic means managed in Uruguay (e.g. bank accounts, debit/credit cards, e-money).

For value-added tax (VAT) purposes, services used in Uruguay and provided directly through the Internet, technological platforms, apps, or similar means will be considered entirely rendered in Uruguay and subject to VAT. Services will be deemed used in the country if they have Uruguay as the destination or are consumed or economically used in Uruguay. Services mentioned in the third bullet above will be considered entirely rendered within Uruguay when both parties are located in the country.

The Executive Branch will shortly issue regulatory provisions.

Software

Software amortisation will continue to be deductible for CIT purposes to the extent the following new conditions are met: (i) income derived from the software must be subject to local or foreign taxation and (ii) the amortisation deduction is proportional to the effective tax rate applicable to the income if the effective tax rate is lower than 25% (the CIT statutory rate).

The CIT exemption for income from software production and related services is widened and does not require the services to be used/destined abroad. When used/destined abroad, it will be exempted exclusively in the proportion of direct software development expenses to total direct expenses.

Amendments to Free Zone (FZ) regime

Enacted Law N° 19,566 became effective on 8 March 2018 and includes the following measures to improve and amend the Uruguayan FZ regime, without affecting the rights acquired by FZ users (as guaranteed by the Uruguayan government):

- FZ users now may provide all types of services, under the broad tax exemption, from an FZ to Uruguayan non-FZ territory entities subject to Uruguayan CIT. Additionally, certain services activities could reduce the Uruguayan-citizens-over-total-staff ratio from 75% to 50%.
- Income from intellectual property (IP) rights and other intangibles will be tax exempt if derived from research and development (R&D) activities performed within the FZ.
- The Law introduces maximum term limits for FZ contracts, generally up to 5, 10, or 15 years (depending on the activity and type), and filing will be required to FZ users with existing agreements not complying with such limits.
- The new provisions clarify that: (i) activities developed outside national territory must be necessary or complementary to the FZ user activities, and (ii) auxiliary activities could be exceptionally developed in Uruguayan territory outside the FZ.
- Additionally, the Law establishes exemptions for thematic zones for the provision of audio-visual, leisure, and entertainment services outside the metropolitan area.

The Executive Branch will shortly issue regulatory provisions.

Taxes on corporate income

Net income derived from business activities conducted in Uruguay, obtained by legal entities resident in Uruguay and non-residents operating through a permanent establishment (PE) in Uruguay, is taxed at a CIT rate of 25% under the source principle (i.e. the territorial system of taxation). Accordingly, Uruguay taxes only income that is derived from activities conducted within its borders, income generated from property located in Uruguayan territory, or income derived from the economic use of rights within its territory (*see Foreign income in the Income determination section for an exception to this principle*).

In order to determine the net taxable income, all accrued expenses that are necessary for the generation of Uruguayan-source income and that are duly documented are allowed as deductions. Additionally, taxpayers are able to deduct expenses from their gross income if such expenses are subject to taxation (either foreign or local taxation) in the hands of their counterpart. A compulsory proportional deduction must be calculated when the taxation in the hands of their counterpart is lower than 25% (CIT rate).

A 12% withholding tax (WHT) is imposed on Uruguayan-sourced income obtained by non-residents, except in cases where the income is obtained through the operations of a PE in Uruguay (*see the Withholding taxes section for more information*).

Trading companies

Uruguayan corporations that sell and buy foreign goods and/or services from Uruguay (which are not physically introduced to the country, in the case of goods; or which are not economically used in Uruguay, in the case of services) may determine the net Uruguayan-source income on a notional basis of 3% of the gross margin (difference between the selling price and the purchase price). This gross margin has to be compliant with transfer pricing rules (in line with Organisation for Economic Co-operation and Development [OECD] guidelines). The applicable effective CIT rate is 0.75% (25% x 3%).

Local income taxes

No taxes on corporate income may be levied by municipal authorities or other local governments.

Corporate residence

Legal entities are deemed to be resident in Uruguay when they are incorporated according to the local legislation.

Permanent establishment (PE)

The concept of PE in the Uruguayan tax legislation follows, in general terms, the definition provided in the OECD Model Tax Convention, although it has some special clauses that may be found in the United Nations (UN) Model Tax Convention. From a Uruguayan law perspective, the term PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on in Uruguay. The term PE especially includes: (i) places of management; (ii) branches; (iii) offices; (iv) factories; (v) workshops; (vi) mines, oil or gas wells, quarries, or any other place of extraction of natural resources; (vii) buildings, constructions, installation projects, or the management activities associated to them, when they last more than three months; and (viii) services, including consultancy services, rendered by a non-resident through employees or other hired personnel by the company for that purpose, to the extent that such activities are developed (in relation with the same or a connected project) during a period or periods exceeding, in total, six months within any 12-month period. Please note that item (viii) constitutes an exception to the OECD model and is based on the provisions of the UN model.

Other taxes

Value-added tax (VAT)

Uruguayan VAT is levied at a general rate of 22% on the provision of services and on the circulation of goods within the limits of the Uruguayan territory. The import of goods and value-added in regard to the construction of immovable assets are also within the scope of this tax.

Uruguay

The following items are either subject to a reduced 10% VAT rate or exempt from VAT entirely.

Items subject to the 10% VAT rate:

- Food and medicines.
- Hotel services.
- Health services.
- The first sale of immovable assets.

Items exempt from VAT:

- Milk.
- Books.
- Magazines.
- Agricultural machinery.
- Certain bank services.
- Accessories.

Exports are zero rated for VAT purposes. VAT on purchases of the exporters can be recovered in the form of credit certificates that can be (i) used to pay other taxes, (ii) used to pay social security contributions, or (iii) endorsed to suppliers who can pay their own national taxes or their own social security contributions.

According to Law N° 19,210 of financial inclusion and electronic payment means and its regulations, the VAT rate has been reduced for the disposal of goods and services made to final consumers, provided that payment is made through debit cards or electronic money instruments. The current rate reduction results in a VAT rate of 18% when the transaction does not exceed approximately 14,000 Uruguayan pesos (UYU), and a 20% rate for operations above this value.

VAT requires monthly payments and may require monthly or annual tax returns, depending on the qualification of the taxpayer.

Customs duties

- Consular Duty: 2%. Capital goods with a destination in the industrial, agricultural, and fisheries sectors are exempt. From January 2018 and onwards, the rate is 3% for products with Mercosur Origin and 5% for products originated in the rest of the world. The rate applicable to automobiles is 5%, regardless of their origin. Products originated in Mexico, as well as products introduced to Uruguay in the framework of the Temporary Admission regime, and capital goods are exempt from the Consular Duty.
- Customs Services Duty: 0.2%, with a maximum of 50 United States dollars (USD).
- Customs Extraordinary Duty: A scale flat duty, with a limit of USD 600.
- Global Customs Duty (TGA): Depends on the origin of goods. If the products are originated in a Mercosur member country, the TGA is generally zero (in particular cases, the payment of the TGA still applies). If not (i.e. not Mercosur origin), it varies depending on the type of product, with a maximum rate of 35%. For goods classified as 'fixed assets' and 'information and telecommunication goods', there is a special regime that, in general terms, foresees lower TGAs.

All imports and exports duties are applied on the 'customs value' (in general, in imports it is considered as cost, insurance, and freight [CIF] and in exports as free on board [FOB]).

On imports, VAT is also applicable according to the following detail:

- Goods subject to the general VAT rate (22%):
  - 'Import VAT' at the rate of 22%.
  - 'Advanced payment import VAT' at a rate of 10%.
- Goods subject to the reduced VAT rate (10%):
  - 'Import VAT' at the rate of 10%.
  - 'Advanced payment import VAT' at a rate of 3%.

The tax base of VAT on imports is the customs value plus the customs duties.

Additionally, some goods are also subject to an 'advanced payment import on account of CIT' at a rate of 4% or 15%, depending on the type of good, which can be deducted from the amount of CIT for the fiscal year.

Export duties

Exports are not subject to any taxes, and there are almost no prohibitions regarding the type of goods to be exported. On the contrary, several instruments are offered to promote exports, such as the reimbursement of taxes. *For VAT on exports, please see VAT above.*

The exporter may also recover internal taxes that are added to the cost of the products exported. The amount to be reimbursed is a percentage of the FOB value set by the Executive Power for each product.

Additionally, temporary admission consists of the import of raw materials, pieces, motors, package material, and other industrial input without import duties or taxes. To be subject to this customs duties exemption, the company has to export the finished goods within 18 months from the introduction of the exempt goods or materials. The subsequent local sale of such finished goods is not entitled to this benefit.

Excise tax (IMESI)

In general, excise tax applies on the first transaction effected in the domestic market by manufacturers or importers of goods. Exports are not taxable.

Excise tax rates vary for each item, and they are generally fixed by the government within maximum parameters established by law.

Goods subject to the highest rates are alcoholic beverages (from 20.20% to 80%, depending on the alcohol degree), tobacco (from 28% to 70%), lubricants (from 5% to 39%), and gasoline, fuel, and other petroleum products (from 5% to 133%).

This tax requires monthly payments and/or tax returns.

Net wealth tax (NWT)

All types of legal entities and business enterprise owners are subject to an annual NWT at a rate of 1.5% on the value of net assets. This tax also follows the source principle, whereby only assets located or economically used in Uruguay are taxable. Taxpayers may deduct from the NWT the CIT of the same fiscal year; however, the deduction is currently capped at 1% of the NWT.

The deduction of liabilities from the amount of taxable assets to determine the NWT basis is limited to: (i) the average of debts with local financial institutions, (ii) debts with suppliers of goods (except imports) and services, (iii) taxes not yet due, (iv) debts with governments, international credit offices of which Uruguay is a member and with foreign state financial institutions that lend funds for long-term productive projects, and (v) debts documented in debentures and obligations if their emission is done in a public offering and such papers are quoted in a stock exchange.

Property taxes

Regarding taxes of relevance for those doing business in Uruguay, *please see Net wealth tax (NWT) above*. There are additional property taxes of less significance, levied by Municipal authorities (e.g. *Contribución Inmobiliaria*) and by National authorities (e.g. Primary School Tax [*Impuesto de Primaria*]).

Note that the Primary School Tax levied on rural assets has been re-established.

Tax on real estate transfer (ITP)

A tax on real estate transfer applies to the transfer of immovable assets. Transfer is defined in an ample sense, as a sale, a cession of the right to use, a transfer of inheritance rights, etc.

Both parties to the transfer contract are subject to this tax at a rate of 2% on the property's tax value (according to a National Register, a value generally lower than market value). When the property is transferred without payment, the beneficiary pays tax at a rate of 4% on the property tax valuation, except in instances where the property is transferred to direct heirs or legatees, who pay this tax at a rate of 3%.

The transmissions of taxable assets that take place as a result of the replacement or removal of trustees is excluded from this tax.

Stamp taxes

Stamp taxes are not applicable in Uruguay.

Tax of control of corporations (ICOSA)

Upon the set-up of a corporation, a tax is payable at a 1.5% rate on a notional basis amount, which is determined annually by the authorities. For fiscal year 2018, the amount of this tax (lump sum) is UYU 32,341.

This tax is also due annually for corporations at the end of each fiscal year, at a rate of 0.75% on said notional amount. Even though this tax can be deducted from the NWT, the excess cannot be refunded, acting as a minimum NWT payment. For fiscal year 2018, the amount of this tax (lump sum) is UYU 16,171.

Payroll taxes

Individual income taxes applicable on employees' remunerations must be withheld by the employer.

Social security contributions

The Uruguayan Social Security regime states that hiring personnel under a dependency relationship implicates the obligation (both for employer and employee) of making contributions over the compensations that constitute the taxable basis.

Taxable basis consists of all earning that in a regular and permanent basis, in cash or kind, susceptible to pecuniary appreciation, is perceived by the dependant personnel, in concept of remuneration and product of its personal activity, in the frame of the working relationship. As a general rule, any compensation originated in activities carried out in Uruguay is subject to social security contributions.

The social security contribution rates are applicable on gross remunerations, according to the following percentages:

Contribution	Employer contributions (%)	Employee contributions (%)
Retirement contributions *	7.5	15
Health insurance	5	3/4.5/5/6/6.5/8 **
Labour restructuring fund	0.125	0.125
Total social security contributions	12.625	18.125 to 23.125

* Both employer and employee retirement contributions rates are applicable, up to the monthly amount of UYU 160,121 (until 31 December 2018); the exceeding amount will be exempt.

** May vary depending on whether the employee is married and whether they have children.

Branch income

CIT is imposed at a rate of 25% on net income derived from business activities carried out in Uruguay. A 7% WHT is imposed on profits remitted or credited to a home office. Profits paid or credited to a non-resident home office will not be subject to WHT when they are paid out of non-taxable income for CIT purposes.

Furthermore, those profits and/or losses derived from financial operations between the branch and its home office will be disregarded for Uruguayan tax purposes (i.e. not taxed in case of income or not deductible in case of costs and/or expenses).

Income determination

Inventory valuation

Replacement cost is permitted for tax purposes, as well as the first in first out (FIFO), last in first out (LIFO), or average cost methods, irrespective of the inventory valuation method used for accounting purposes.

Capital gains

Capital gains are treated as ordinary income for CIT purposes.

As a general rule, capital gains are calculated as the selling price minus the fiscal cost (usually acquisition cost updated by certain inflationary indexes) of goods being sold. In certain cases, not all the fiscal cost may be deductible, depending on the application or not of the compulsory proportional deduction *mentioned previously in the Taxes on corporate income section*.

Furthermore, for certain capital gains, there are special ways of determining the taxable income (e.g. based on notional income).

Bearer title transfer capital gains are subject to a 12% tax rate, applicable to a notional 20% of the transfer price (or 20% of market value of the titles transferred if there is no price). The same tax treatment applies to capital gains derived from the transfer of nominative titles.

Dividend income

Dividends received from local subsidiaries are exempt. Dividends received from foreign subsidiaries are out of the scope of this tax since they are considered foreign-sourced, thus non-taxable, income.

Interest income

Uruguayan-sourced interest income, derived by companies resident in the country, is subject to CIT under the general regime (i.e. taxed at 25%).

Royalty income

Uruguayan-sourced royalty income, obtained by companies resident in the country, is subject to CIT under the general regime (i.e. taxed at 25%).

Foreign income

Uruguayan legal entities (CIT payers) and non-residents operating through a PE in Uruguay are only subject to tax on income from Uruguayan sources under the territorial system of taxation. Hence, foreign-source income is not subject to tax.

However, there is an exception to this principle, as follows. When a CIT payer obtains income as a consequence of rendering technical services outside the limits of Uruguayan territory to another CIT payer and such technical services are used by the recipient to obtain its income subject to CIT, the income obtained by the company rendering the services will be subject to CIT, even when foreign sourced. Technical services are those rendered in the fields of management, technical administration, or advice of any kind.

The following will also be considered Uruguayan-source income:

- Advertising services rendered from outside Uruguay to CIT payers.
- Mediation, leasing, use, transfer of use, or transfer of federate rights, image rights, and similar of athletes registered in resident sports entities, regardless of the registration period or permanence in Uruguay.

Income derived from activities performed, assets located, or rights utilised outside Uruguay, regardless of the nationality, domicile, or residence of the parties participating in the transactions and the place where the transaction agreements are subscribed, is not subject to CIT.

Income adjustment for inflation

An income adjustment for inflation has been in force since 1 January 1981 and is calculated by multiplying the variation in the consumer price index (CPI) for the financial year by the difference between:

1. total assets at the beginning of the year (excluding fixed assets) and
2. total liabilities at the beginning of the year.

Under an inflation scenario, if (1) is higher than (2), then an inflation loss adjustment is deducted from gross income. However, if (2) is higher than (1), then an inflation gain adjustment is added.

Tax regulations disallow Uruguayan taxpayers to calculate tax inflation adjustment in their CIT return if inflation is below 100% (variation of the CPI accumulated in the 36 months prior to the close of the fiscal year end).

Deductions

As a general rule, accrued and duly documented expenses that are necessary to obtain and preserve gross taxable income are tax deductible. On the contrary, those expenses associated with deriving or preserving income not subject to CIT are not deductible from the taxable basis. Furthermore, for CIT purposes, all costs and expenses will be subject to the compulsory proportional deduction *mentioned in the Taxes on corporate income section* (with some exceptions).

Depreciation and depletion

Straight-line depreciation over useful life is mandatory. Specific rates exist for the following cases: (i) 2% per year for urban buildings, (ii) 3% per year for rural buildings, and (iii) not less than 10% per year for new vehicles. Other rates are accepted if economically justified. No conformity between book and tax depreciation is required.

Percentages for depletion computed on the cost of natural resource properties are allowed in accordance with generally accepted criteria.

Depreciation and depletion percentages are computed on the historical cost of fixed assets revaluated at year-end, based on the variation of the CPI. Capital gains derived from the revaluation of fixed assets are not taxable income.

Goodwill

When transferring a business or a business unit, the difference between selling price and fiscal costs of the assets being transferred constitutes ‘goodwill’. This goodwill constitutes an asset for the buyer and must not be depreciated, neither for CIT nor NWT purposes.

Start-up expenses

Start-up expenses should be depreciated within a period of three to five years. The taxpayer may elect the number of years to depreciate those expenses within those period limits.

Interests expenses

Interests expenses, as well as other costs and expenses, are subject to the compulsory proportional deduction *mentioned in the Taxes on corporate income section*.

When companies derive both income subject to CIT and either income exempt or not included in CIT (e.g. from a foreign source), interest expenses associated to the former (i.e. deductible interest) will be determined by applying a proportion based on assets.

Bad debt

As a general rule, only those debts that are at least 18 months old will be deductible as 'bad debts'. However, national rules allow deductions under some other special situations.

Charitable contributions

Deductibility of charitable contributions will depend on the organisations receiving them.

Furthermore, there is a special regime to certain charitable contributions under which the contributor may deduct 25% of the contribution and the other 75% will be recovered through credit certificates that may be used to pay taxes (with certain limitations).

Fines and penalties

Fines and penalties generated from unduly paid taxes are not deductible for CIT purposes.

Taxes

CIT and NWT are not deductible.

Net operating losses

Losses may be carried forward and deducted from the net taxable income of the following five years, once adjusted for inflation. For fiscal years initiated on or after 1 January 2017, this deduction will be capped at 50% of net annual taxable income.

There is no loss carryback.

Payments to foreign affiliates

All accrued expenses that are necessary for the generation of Uruguayan-source income and that are duly documented are allowed as deductions. Additionally, a taxpayer may deduct expenses from its gross income if such expenses are subject to taxation (either via foreign or local taxation) in the hands of the other party. A compulsory proportional deduction must be calculated when the taxation in the hands of the counterpart is lower than 25% (CIT rate).

Group taxation

Group taxation is not permitted in Uruguay.

Specific dispositions regarding the existence of an 'administrative economic unit' are included in NWT law, but only for agricultural and/or farming investments for determining the application of NWT exemption and corresponding NWT rates (i.e. group taxation is still not permitted).

Tax Transparency Law N° 19,484 introduced a set of provisions aimed to enhance the achievement of international standards on tax transparency and prevention of money laundering. The Law introduces the following:

- Provisions that regulate the automatic information that the financial entities must submit to the Uruguayan Tax Office.

- Provisions that seek the identification of final beneficiaries of local and foreign entities with a relevant nexus with the country.
- Tax rules aimed to discourage the use of entities resident, domiciled, or located in low or no-tax jurisdictions (LNTJs):
  - The bill introduces a change from the 'exhaustive list' approach by which a jurisdiction is considered a tax haven towards a substantive criterion. The rules to be issued by the Ministry of Finance will determine the conditions (minimum effective CIT rate, minimum levels of cooperation and transparency) that countries, jurisdictions, or entities must meet to be considered as LNTJ.
  - Income derived from the transfer of shares or participations in entities from LNTJs whose assets located in Uruguay exceed 50% of their total investments is deemed to be Uruguayan sourced (thus taxable) for CIT purposes. Similar provisions apply to resident individuals and to non-resident taxpayers.
  - Discouraging the use of intermediary entities that reside in LNTJs, when a resident individual participates in their capital, passive income and/or capital gains received by these entities will be assigned as deemed dividend, thus taxed in the hands of the individual beneficiaries.
  - In line with this through the 2015 Tax Accountability Law, rates are increased from 12% to 25% for Uruguayan-sourced income obtained by entities resident in LNTJs.
- Adjustments to the transfer pricing regime (*see below*).

Transfer pricing

As a general principle, transfer pricing rules are applicable to international transactions between related parties. However, Uruguayan legislation has extended the scope of these regulations to transactions carried out with LNTJs (either international or domestic) and to certain operations through third-party intermediaries. Domestic transactions with Uruguayan FZ users fall under this category.

The definition adopted by the law for related parties is quite broad. Such a relationship is configured when both parties are subject (directly or indirectly) to the management or control of the same individuals or legal entities, or when they have power of decision to direct or define the taxpayer's activities due either to their participation in capital interest, the level of their credit rights, or their functional or any other type of influence (whether contractual or not).

Regarding transfer pricing administration rules, the Executive Power can enter into advance pricing agreements (APAs) with taxpayers, which cannot cover more than three fiscal years. Furthermore, strong penalties are provided for failure of compliance with transfer pricing formal duties and with other formal documentation requirements.

As to transfer pricing, the Tax Transparency Law includes the adoption of the OECD's recommendations for a country-by-country (CbC) report (*see below*) and the Master File concept for transfer pricing documentation. It also introduces the possibility that taxpayers obtain bilateral and multilateral APAs.

Country-by-country (CbC) report

A CbC report is required in Uruguay for fiscal years commencing after 1 January 2017. Legislation contemplates an annual obligation for Uruguayan taxpayers that integrate a multinational enterprise (MNE) of large economic dimensions and verify the related party assumptions to file the CbC report.

Taxpayers referred to above shall notify the local tax authorities of the identity and tax residence of the reporting entity.

Taxpayers will not be subject to file a CbC report when the return is submitted by an entity that integrates the MNE to a foreign tax administration of a jurisdiction with whom Uruguay has an exchange of information agreement in force, and the report can be effectively exchanged with the tax authorities of the jurisdictions of the MNE.

Thin capitalisation

There are no thin capitalisation rules in Uruguay.

Controlled foreign companies (CFCs)

There are no CFC rules in Uruguay other than those applicable to individuals.

Tax credits and incentives

Foreign tax credit

There is no foreign tax credit regime in Uruguay for CIT purposes, except for that provided in the double tax treaties (DTTs) currently in force.

CIT reduction for income reinvested in fixed assets

40% of income reinvested in the purchase of (i) industrial and agricultural machinery, (ii) vehicles and installations, (iii) computers, (iv) telecommunications equipment, and (v) some assets for the tourism industry is exempt from CIT.

20% of income reinvested in the construction and expansion of industrial, agricultural, and tourism buildings is exempt from CIT (limited to 40% of net taxable income in the year of expenditure).

The joint amount of said investments can be deducted from the taxable basis, with a limit of 40% of the annual net profit, once the amount of other exemptions has been deducted. The excess can be deducted (with the same limitations) in the following two tax periods. It is important to mention that income exempt by these provisions cannot be distributed and must be retained as a reserve account, which ultimately can only be capitalised.

Note that the above-mentioned CIT benefit will be exclusively applicable to taxpayers whose income in the immediately preceding fiscal year to which the investment is executed does not exceed approximately UYU 30 million. This limitation is not applicable to professional cargo transport companies.

NWT exemption

Movable fixed assets directly connected to the industrial cycle and equipment for data processing are exempt from NWT.

All assets directly associated to the development of agricultural and/or farming activities will be exempt from NWT as long as the owners are individuals or companies with nominative shares also owned by individuals. As a consequence of the elimination of the Rural Real Estate Concentration Tax (ICIR), this NWT exemption has been modified. According to Law N° 19,088, this exemption will apply only in cases where the referred assets do not exceed 12 million 'index units' (approximately UYU 44,500,000).

Investment Law (IL) - Law N° 16,906

Uruguay has modified the IL, achieving a better framework for local and foreign investments carried out in the country. To obtain tax benefits, the IL requires that enterprises obtain a government statement in this regard. The Bureau of Investor Assistance is in charge of monitoring the correct compliance of these projects.

The IL grants two types of benefits:

Automatic benefits

This kind of benefit is only for manufacturing, extractive, or farming/ranching activities, and includes:

- Exemption from NWT for chattel property directly engaged in the production cycle and data-processing equipment.
- Exemption from VAT and CIT paid on the importation of such goods, and reimbursement of VAT in the case of locally purchased items.

Discretionary benefits

Benefits that may be obtained at the discretion of the Executive Power for any type of business activity (not cumulative with automatic benefits) include:

- VAT and CIT exemptions (among other taxes) on importation of fixed assets items.
- NWT exemptions: Permanent for chattel property items, for a period of eight years for construction work in Montevideo (capital city), and for a period of ten years in the rest of the country.
- VAT reimbursement on local purchase of goods and services for civil construction work.
- Increased deductions for CIT in respect of fees and remunerations related to technological developments.
- Exemption from CIT, depending on the nature and size of the project to be carried out. The Executive Power takes into account the following criteria to grant this benefit:
  - Addition of technology to improve competitiveness.
  - Contribution to export growth and diversification.
  - Contribution to geographic decentralisation.
  - Improvement of technological investigation, innovation, and development.
  - Generation of employment.

Auto-saving 'direction' benefit

The auto-saving 'direction' benefit allows a company to deduct from the CIT basis the amount of the capital increase that occurred as a consequence of the reserves capitalisation or of the in-kind distribution of shares, for an amount equivalent to the investment carried out with the investor's own funds. The amount of the CIT deduction and the period(s) to which said exemption will apply is granted by the government through a statement issued by the Executive Power.

Free zones (FZs)

Following the approval of the FZ law in 1987, this system has become an important tool for attracting investments to Uruguay.

It has been utilised for carrying out traditional activities in the FZs (warehousing, logistics, and distribution), for the provision of services (software, finance, call centres, etc.), and for manufacturing activities such as cellulose pulp and leather production. In a clear sign of stability, none of the administrations in office over the last three decades has modified the basics of the FZ system.

The law defines FZs as privately or publicly owned isolated and fenced off areas of Uruguayan territory determined by the Executive Branch with the purpose of carrying out all types of manufacturing, commercial, and service activities within the zone, while enjoying tax exemptions and other benefits envisaged in the law.

Companies in these areas cannot carry out industrial, trading, or service activities in the non-FZ Uruguayan territory (Law N° 19,566 introduces modifications in this regard; *see below*), except for services expressly authorised by the government (listed below), but are allowed to render all types of services within the FZs or to third countries.

FZ users are allowed to render the following services to the non-FZ Uruguayan territory:

- International call centres, except for those whose main destination is the non-FZ Uruguayan territory.
- E-mail, distance learning, electronic signature certificate issuance.
- Software production, technology consulting, and related training services. (*)
- Accounting, administration, and management services rendered to related companies, provided these services do not exceed 5% of the total income of the fiscal year, granted by Decree 330/016. (*)
- Processing of film material and data. (*)

(*) The provision of these services is subject to the general tax system, not to the tax holidays.

In order to operate in/from the FZ, certain requirements must be fulfilled from an 'economic substance' perspective (i.e. there must be an actual economic activity developed in the FZ). In this sense, some modifications were introduced to the FZ Law to determine which substantial activities can be developed outside the FZ.

FZ users are exempt from all current and future national taxes, including those taxes for which a specific legal exemption is required, in connection with the activities performed within the FZs. The Uruguayan government guarantees all the exemptions and benefits granted by the law for the term of their contracts. FZs can be located outside or inside the cities; it depends on the kind of FZ.

Social security taxes, as well as certain WHTs, are excluded from the exemption. WHT on payments of dividends made by these companies to their non-resident shareholders are exempt.

Effective from 8 March 2018, Law N° 19,566 included measures to improve and amend the Uruguayan FZ regime, without affecting the rights acquired by FZ users (as guaranteed by the Uruguayan government).

- FZ users can provide all types of services, under the broad tax exemption, from an FZ to Uruguayan non-FZ territory entities subject to Uruguayan CIT. Additionally, certain services activities could reduce the Uruguayan-citizens-over-total-staff ratio from 75% to 50%.
- Income from IP rights and other intangibles will be tax exempt if derived from R&D activities performed within the FZ.
- The Law introduces maximum term limits for FZ contracts, generally up to 5, 10, or 15 years (depending on the activity and type), and filing will be required to FZ users with existing agreements not complying with such limits.
- The new provisions clarify that: (i) activities developed outside national territory must be necessary or complementary to the FZ user activities, and (ii) auxiliary activities could be exceptionally developed in Uruguayan territory outside the FZ.
- Additionally, the Law establishes exemptions for thematic zones for the provision of audio-visual, leisure, and entertainment services outside the metropolitan area.

The Executive Branch will shortly issue regulatory provisions in relation to Law N° 19,566.

CIT exemption widened for trading activities with transit of goods through Uruguay

The CIT Act establishes a tax exemption for non-residents on income derived from activities performed in Uruguayan customs areas, port customs areas, customs deposits, and FZs, with goods of foreign origin declared in transit or stored in the referred areas. This exemption applies to the extent that such goods are in transit (not having as origin or as destination the Uruguayan customs territory). This exemption also applies on a percentage of the sales that have as final destination the Uruguayan internal market. This tax benefit has been widened and, while originally applicable only to non-residents, is now available for tax residents in Uruguay. In addition, these activities with goods deposited in the country can be performed from outside Uruguay.

Industrial park incentives

Individuals or legal entities that establish industrial parks within Uruguayan territory, as well as companies located within such industrial parks, are entitled to CIT exemption for their industrial equipment, excise tax and VAT exemption on the acquisitions of such goods, and other benefits.

Holding companies

Uruguayan legal entities holding shares in non-resident entities or investing in assets not located in Uruguay are not subject to tax (due to the application of the source principle).

Tax benefits for Shared Service Centre (SSC) activities

Activities carried out by SSCs are granted relevant tax benefits under certain conditions.

For these purposes, an SSC is defined as a subsidiary of a multinational group that provides to its related parties, on an exclusive basis, advisory and data processing services, management or administration (strategic planning, business development, advertising, management, and staff training), logistics and storage, financial management, and R&D support used exclusively outside Uruguay.

Tax benefits granted include the exemption of CIT of 90% of the income derived from the promoted activities and exemption of NWT on the assets involved for five or ten fiscal year-ends, depending on specific compulsory requirements that must be fulfilled. To have access to the five year-end tax benefits, an SSC must comply simultaneously with the following conditions:

- Generate at least 150 new direct qualified jobs at the end of the first three year-ends, jobs that must be preserved until the end of the fifth year-end.
- Implement a training plan with a minimum budget of 10 million 'index units' (approximately UYU 38,000,000) for the Uruguayan citizen employees during the whole first three year-ends, which must be for new projects.

The tax exemption period will be extended to ten years when (i) the minimum number of jobs exceeds 300 at the end of the first five year-ends and remains until the end of the exemption period and (ii) the referred training expense exceeds twice the aforementioned amount in the course of the first six year-ends.

Tax benefits under the SSC regime have been extended through Decree Nbr. 330/016. Making benefits more accessible, a CIT exemption of 70% of the income derived from the promoted activities by complying with the following conditions is available:

- Generate at least 100 new direct qualified jobs at the end of the first three year-ends (fulfilling the same conditions that are required for the original benefits).
- Implement a training plan with a minimum budget of five million 'index units' (approximately UYU 18,550,000) for the Uruguayan citizen employees during the whole first three year-ends (fulfilling the same conditions that are required for the original benefits).

The possibility of providing services to related residents is maintained with the ceiling of 5% of the total amount of services. Although they are not included in the exoneration, they do not affect the applicability of the exemption on the promoted activities.

Regarding NWT, the exoneration of the assets affected by the activity promoted by the CIT exemption period remains unchanged.

Industry-specific incentives

Printing industry incentives

Companies that print books and educational material are exempt from the NWT and VAT.

Long distance services and call centres

Companies developing long distance services and call centre activities have special benefits regarding CIT (from 70% to 100% exemption).

Condo Hotels

Companies running a Condo Hotel have special benefits regarding CIT (from 70% to 100% exemption), among other taxes. There are also exemptions and other tax benefits granted on behalf of the promoting company.

Electric power industry incentives

Companies that generate electric power from non-traditional energy sources have special benefits regarding CIT (from 40% to 90% exemption).

Machinery industry incentives

Companies that build and/or assemble (under certain conditions) machinery with agricultural purposes have special benefits regarding CIT (from 50% to 90% exemption).

Shipping industry incentives

Imports of material, supplies, and equipment required for the construction, maintenance, and repair of shipyards or vessels are exempt from VAT. The shipbuilding industry has special benefits regarding CIT (from 50% to 100% exemption).

Water and air transportation incentives

The income of water and air transportation companies is tax exempt. In the case of foreign companies, the exemption is subject to reciprocal treatment. The government may exempt from CIT companies engaged in transportation by land, subject also to the conditions of reciprocal treatment.

Forestry plantation incentives

Income derived from forestry plantations made before July 2007 is tax exempted. For income derived from forestry plantations made since July 2007, stricter conditions, such as 'quality wood', are required to be exempted from CIT.

Software industry incentives

Software production and related services are exempt from CIT. When used/destined abroad, it will be exempted exclusively in the proportion of direct software development expenses to total direct expenses.

Electronic industry incentives

The production of electronic devices has special benefits regarding CIT (from 50% to 100% exemption).

Tourism industry incentives

Investments in the tourism industry have tax benefits related to CIT, VAT, and NWT, as follows:

- Deduction of up to 40% of CIT in investments made in the fiscal year in hotel equipment and equipment for improving entertainment and information services to tourists and deduction of up to 20% of CIT in investments made in construction and expansion of hotel buildings, with the limits mentioned in previous sections (40% of the annual net profit, once the amount of other exemptions has been deducted).
- VAT refund included in local acquisitions of goods and services for construction, improvement, or expansion of tourist complexes.
- VAT exemption on import of goods for construction, improvement, or expansion of tourist complexes.
- The list of operations included in the concept of exports of services for VAT purposes (thus zero-rated and with the possibility to recover input VAT) was broadened to include, among others, services related to accommodation that hotels, apartments,

and rural tourism establishments provide to tourists, as well as for international event organisation services.
- NWT exemption for ten years on investments in infrastructure and civil work for construction, improvement, or expansion of tourist complexes.
- NWT exemption for four years on fixed assets investment for tourist complexes.
- 50% exemption of import duties on materials and goods for construction, improvement, or expansion, as well as fixed assets, of tourist complexes.

Withholding taxes

All Uruguayan-sourced income obtained by non-residents (other than those obtained through a PE in Uruguay) is taxed at flat rates of up to 12% on gross income, with some exceptions. This tax is basically collected by way of WHT.

The exceptions are as follows:

- Interest on deposits in local currency for terms exceeding one year is taxed at 7%.
- Interest on public bonds is not taxed.
- Dividends paid or credited by CIT payers are taxed at 7%, provided they are derived from taxable income (under certain circumstances, non-distributed earnings will also be subject to 7% dividend WHT after three years of being generated).
- Income obtained by entities resident, domiciled, or located in LNTJs is taxed at 25%.

Although the Uruguayan tax law follows the source principle, technical services (defined as services rendered in the fields of management, technical administration, or advice of any kind) rendered in another country by non-residents but associated with taxable income obtained by the local user in Uruguay are considered to be Uruguayan sourced for tax purposes and subject to WHT. However, when the taxable income obtained by the local user of the service does not exceed 10% of its total income, then only 5% of the service fee paid or credited abroad will be subject to non-resident WHT. Therefore, in these cases, the effective WHT rate is only 0.6% (5% x 12%). In those cases where the local taxpayer receiving the service does not obtain any taxable income, the service received will be entirely associated to foreign-source income and thus not subject to WHT.

This WHT should be declared and paid to the Tax Office on the month following the one in which the tax is withheld.

For those countries with which Uruguay has entered DTTs, the maximum WHT rates are the following (in those cases where the maximum WHT provided by the DTT is higher than the internal law WHT, the latter will be applicable):

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Under internal law	0/7	0/7/12	0/12
Treaty:			
Belgium	5/15 (4)	0/10	10
Ecuador	10/15 (7)	15	10/15 (2)
Finland	5/15 (3)	0/10	5/10 (2)
Germany	5/15 (4)	0/10	10
Hungary	15	15	15

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
India	5	0/10	10
Korea	5/15 (8)	0/10	10
Liechtenstein	5/10 (5)	0/10	10
Luxembourg	5/15 (4)	0/10	5/10 (2)
Malta	5/15 (3)	10	5/10 (2)
Mexico	5	0/10	10
Portugal	5/10 (6)	10	10
Romania	5/10 (9)	0/10	10
Singapore	5/10 (4)	0/10	5/10 (2)
Spain	0/5 (1)	0/10	5/10 (2)
Switzerland	5/15 (3)	0/10	10
United Arab Emirates	5/7 (10)	0/10	5/10 (2)
United Kingdom	5/15 (4)	0/10	10
Vietnam	5/10 (11)	10	10

Notes

1. Source country may tax at a rate not higher than 5%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 75% of the capital of the company distributing dividends, then the WHT will be 0%.
2. Will depend on the kind of royalty paid.
3. Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 25% of the capital of the company distributing dividends, then the WHT will be 5%.
4. Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 10% of the capital of the company distributing dividends, then the WHT will be 5%.
5. Source country may tax at a rate not higher than 10%. However, if the beneficial owner is an entity, other than an individual, resident in the other contracting state and holds at least 10% of the capital of the company distributing dividends, then the WHT will be 5%.
6. Source country may tax at a rate not higher than 10%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 25% of the capital of the company distributing dividends, then the WHT will be 5%.
7. Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and directly holds at least 25% of the capital of the company distributing dividends, then the WHT will be 10%.
8. Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 20% of the capital of the company distributing dividends, then the WHT will be 5%.
9. Source country may tax at a rate not higher than 10%. However, if the beneficial owner is an entity, other than partnerships, resident in the other contracting state and holds at least 25% of the capital of the company distributing dividends, then the WHT will be 5%.
10. Source country may tax at a rate not higher than 7%. In some special cases mentioned in the DTT, the source country may tax at a rate not higher than 5%.
11. Source country may tax at a rate not higher than 10%. However, if the beneficial owner is an entity, other than partnerships, resident in the other contracting state and holds at least 70% of the capital of the company distributing dividends, then the WHT will be 5%.

Tax administration

Taxable period

The taxable period may be chosen by the company. However, certain sectors or industries have mandatory fiscal year closing dates.

Tax returns

CIT and NWT are self-assessed and their tax returns are filed by the end of the fourth month following the date of the year-end.

Payment of tax

Income and capital taxes are paid monthly by way of advanced payments, which are calculated on the basis of the previous year's tax. The difference between the advanced tax payments and the total annual tax calculated at fiscal year-end is paid by the end of the fourth month after the fiscal year-end.

Tax audit process

The taxpayer has the right to appeal an Administrative Act to the Tax Bureau and, simultaneously, to the Executive Branch in an administrative process. Both appeals must be filed jointly within ten days from the notification of the administrative act. If both appeals are tacitly (not expressly resolved within a period of 150 days) or expressly rejected, the taxpayer has the right to appeal to a special court through a judicial proceeding.

Statute of limitations

The statute of limitations in Uruguay is five years, which can be extended to ten years in the case of: (i) tax fraud, (ii) not complying with Tax Office registration, (iii) lack of communication of a taxable event, or (iv) not submitting a tax return (among other cases).

Topics of focus for tax authorities

There are several topics the tax authorities are currently focusing on.

One of the newest topics of interest for the tax authorities concerns 'transfer pricing' rules and their impact on multinational companies operating in Uruguay.

During the last few years, important investments have been made by the government to automate processes and improve assistance to taxpayers.

Other issues

Bank secrecy and identification of title holders

The inclusion of the request of information by a treaty partner is approved as one of the hypotheses under which banking secrecy can be lifted.

The identification of holders of bearer titles representing the capital of entities domiciled or doing business in Uruguay is mandatory. In this regard, Law N° 18,930 includes the compliance of certain obligations for identification purposes. This obligation relies on the holders, who must identify themselves with the Central Bank of Uruguay, providing not only their identity but also the percentage of their participations in the entity.

Information shall be kept by the Central Bank of Uruguay and subject to secrecy, although the National Tax Office, anti-money laundering authorities, penal and family courts, and related entities may access them in certain cases.

The duty of identification applies to all entities domiciled in Uruguay and to companies incorporated abroad, provided that they act in Uruguay through a PE or if their management is carried out in Uruguay.

Ultimate beneficial ownership

According to Law N° 18,930 and 19,484, entities whose share capital is represented through bearer or nominative certificates, as well as partnerships and other entities, must identify and communicate to the Central Bank of Uruguay the ownership of those participations as well as the ownership chain until reaching its ultimate beneficial owners.

In this regard, the law considers as 'beneficial owners' those natural people who directly or indirectly hold at least 15% of the paid-in capital or its equivalent, the rights to vote, or who otherwise exercise the final control of the company.

The law foresees exemptions to the obligation of communicating the mentioned information, such (i) those particular cases where beneficial owners do not hold at least 15% of the paid-in capital; (ii) companies whose titles are listed on a stock exchange of recognised prestige (national or international); or (iii) when in the ownership chain exists an investment fund or trust, also with their participations contributed publicly in the stock exchange. It is worth mentioning that qualifying for this exception does not necessarily consist in not requesting information from those companies since the form must be filled anyway but with less information requested.

Tax treaties

Tax information exchange agreements (TIEAs) with Guernsey and South Africa entered into force as of October 2017.

Furthermore, a TIEA with Brazil is ratified by the Uruguayan government.

As for DTTs, the DTT with Chile was ratified by the Parliament (October 2017). In February 2018, the Executive Power submitted to Parliament the bill of law regarding the DTT with Paraguay (signed in 2017).

Uzbekistan, Republic of

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Significant developments

The following notable changes were introduced to Uzbek legislation during 2017 and the beginning of 2018:

- New customs duties and excise tax rates were introduced. Import duties and excise tax for some goods (e.g. oil and oil products, certain types of fish, potatoes, wheat) are abolished.
- By virtue of the Presidential Decree #УП-5308 of 22 January 2018, a moratorium is declared for inspections of the economic activities of entrepreneurs by the regulatory authorities for two years. Inspections can be carried out only with respect to criminal cases and liquidation of legal entities.
- As of 5 September 2017, the Central Bank of the Republic of Uzbekistan sharply devalued the official exchange rate of Uzbekistani som (UZS) against other foreign currencies. For example, the exchange rate of the United States dollar (USD) increased by approximately 92% from UZS 4,210.35 to UZS 8,100 per US dollar.
- Further to devaluation, legal entities and individuals can purchase foreign currency in commercial banks without restrictions.
- As of 1 January 2018, corporate income tax (CIT) is unified with the infrastructure development tax (IDT).
- Mandatory contributions to designated funds (i.e. pension fund, road fund, and educational/medical institutions fund) are unified into a single contribution, the mandatory contribution to the state funds.
- A number of tax incentives are abolished effective 1 April 2018, including:
  - tax incentives provided to entities involved in localisation programs, including currently implemented localisation projects, and
  - rate reduction for CIT, property tax, and unified tax payment (UTP) for exporters.
- Taxable object for property tax was amended to replace 'fixed assets' with 'immovable property'. Hence, fixed assets, except for immovable property, are excluded from the taxable base for property tax.
- The Tax Code was supplemented by a concept of 'tax holidays'. Tax holidays are provided by changing deadlines for settlement of tax liabilities, allowing to defer tax payments.

Revised rates of certain taxes were introduced to the tax legislation effective as of 1 January 2018:

- CIT is increased significantly due to unification with the IDT. The standard CIT rate is fixed at 14% (previously, CIT 7.5% and IDT 8%).
- Land tax rates for legal entities and individuals and water-use tax rates for individuals are raised by approximately 15%.

- The monthly fee payable by mobile operators for each customer number is increased from 2,000 Uzbekistani som (UZS) in 2017 to UZS 4,000.
- Excise tax rates for production of alcoholic drinks and cigarettes (and certain other goods) are increased. At the same time, the excise tax rate for production of vegetable oil is decreased. Petrol and diesel consumption tax decreased twice.
- Rates of compensation payments for pollution of the environment are increased by approximately two times.

Effective 1 December 2017, minimum monthly wage (MMW) is set at UZS 172,240 (previously UZS 149,775).

Taxes on corporate income

Resident corporations pay CIT on their worldwide income, whereas non-residents (i.e. foreign legal entities that have a permanent establishment [PE] in Uzbekistan or have income from sources in Uzbekistan not associated with a PE) pay CIT on income resulting from activities/sources in Uzbekistan.

Non-resident corporations are taxed directly at the level of their Uzbek PE, if there is one, or via withholding tax (WHT) at the source of payment of the Uzbek-source income.

CIT is charged on taxable profit calculated as a difference between gross income and deductible expenses reduced by applicable incentives granted by the Tax Code, other laws, or presidential decrees.

The CIT rate is set annually by presidential decree. In 2018, enterprises (i.e. legal entities), due to unification with the IDT, are generally subject to CIT at the rate of 14%. Commercial banks are subject to CIT at the rate of 22%.

Companies providing mobile services are taxable on excess profits through differentiated CIT rates as follows:

- If profitability is lower than 20%, the CIT rate is 14%.
- If profitability is higher than 20%, 50% of the CIT rate is charged on profits exceeding the 20% level of profitability.

See the Withholding taxes section for WHT rates applicable in Uzbekistan.

Simplified tax regime

An optional simplified tax regime is available for micro-firms and small businesses, which prescribes payment of one of the following taxes: unified tax payment (UTP), unified land tax (ULT), or fixed tax for certain types of entrepreneurs. For these taxpayers, the UTP, ULT, or fixed tax replaces the CIT, value-added tax (VAT), water-use tax, property tax, and other local taxes and duties.

Excise and customs duties remain applicable for this group of taxpayers (unless a specific exemption applies). However, micro-firms and small businesses producing excise-liable goods or engaged in subsurface extraction may not opt for the UTP regime.

UTP payers that have land plots with total area exceeding 1 hectare as of 1 January 2018 are subject to land tax.

UTP is obligatory for companies engaged in catering, retail, and wholesale, irrespective of headcount.

The general UTP rate is 5%.

ULT is payable by agriculture companies, and the rate is 0.95% of normative value of agricultural land.

Corporate residence

For Uzbek tax purposes, corporations are classified as resident or non-resident. A resident corporation is a legal entity that passed state registration in Uzbekistan (i.e. Uzbek legal entity). Other legal entities are regarded as non-resident corporations for tax purposes.

Permanent establishment (PE)

PE is defined by the Tax Code as "any place through which a non-resident carries out entrepreneurial activity in the Republic of Uzbekistan, including activity carried out through an authorised person. PE is also existent where a non-resident carries on entrepreneurial activity for 183 days (or more) in any consequent 12-month period".

Other taxes

Value-added tax (VAT)

Legal entities are subject to VAT, which is applied to taxable turnover and taxable imports. The rate for taxable turnover is 20%. This rate also applies to taxable imports, for which the tax base is determined as the customs value plus import duties and excise tax (on excise-liable goods). Export of goods for hard currency is generally zero-rated. Insurance and most types of financial services are exempt from VAT.

VAT is reported quarterly by micro-firms and small enterprises and monthly by other categories of taxpayers.

Customs duties

Import of certain goods to Uzbekistan is subject to customs duties. The taxable base is determined as the customs value of imported goods. Rates of customs duties vary from 5% to 70%, depending on the type of imported goods. There is also a customs clearance fee of 0.2% from the customs value of imported goods, but not less than USD 25 and not exceeding USD 3,000.

Excise taxes

Legal entities producing or importing excise-able goods (e.g. cigarettes, jewellery, petrol, alcohol drinks) are subject to excise tax. Rates vary from 5% to 70%, depending on the type of goods produced/imported. The taxable base is determined as the value of produced/imported goods, excluding VAT. Excise tax is reported monthly.

Property taxes

The property tax rate is 5% for legal entities. The tax is computed annually, based on the net book value of the immovable property, adjusted for the effect of revaluation, which should be performed annually on 1 January, and the value of overdue construction/installation-in-progress. The rate is doubled for equipment not installed in due time, and may be tripled in relation to overdue construction-in-progress and land plots allocated for construction.

A charge of 0.25% of the historic value of outdated equipment is collected from legal entities (except for micro-firms and small enterprises) for exploitation of fully depreciated equipment.

Newly opened enterprises are exempt from property tax for a period of two years from their date of registration, unless such enterprises have been created on the basis of production facilities or assets of existing enterprises.

Property tax is reported annually.

Obligatory revaluation of immovable property as part of fixed assets is to be performed by micro-firms and small enterprises once every three years (other categories of enterprises that are subject to this requirement should perform revaluation every year).

The Tax Code provides for the list of certain non-taxable property, mostly including public service facilities (e.g. waterwork facilities), gas and heat distribution lines, railways, and highways.

Land tax

Enterprises, including foreign legal entities operating in Uzbekistan via a PE, owning land plots or rights of their use are subject to land tax or land lease payment annually. Land tax is charged at fixed fees that vary depending on the quality, location, and level of water supply of each land plot. Land lease payment is charged at negotiable rates; however, the minimum amount cannot be less than the land tax rate for the respective land plot. Land tax and land lease payment are computed based on the area of the land in use.

Transfer taxes

There are no transfer taxes in Uzbekistan.

Stamp duties

According to Uzbek legislation, stamp duty (state due) is an obligatory payment charged for performance of legal actions and/or issuance of legal documents. The following actions, among others, are subject to stamp duties: filing claims, performing notary actions, civil registration, state registration of a legal entity, obtaining licences/permits to carry out certain activities, etc.

The rates of stamp duties generally vary from 0.5 to 20 times MMW, depending on the type of action executed. For instance, duty for filing a claim depends on the amount and nature of the claim. If the amount of civil claim is less than 20 MMW, the duty comprises 5% of this amount; for business claims, the duty is 1% of the claim amount. Duty for notarisation of copies of documents for legal entities is 2% of the MMW per each page of the document. Duty for registration of legal entities with foreign investment comprises 32 times the MMW if submitted in person and 50% of this if submitted through the automated online registration system.

Turnover tax

As of 1 January 2018, mandatory contributions to designated funds (i.e. pension fund, road fund, and educational/medical institutions fund) are unified into a single contribution, the mandatory contribution to the state funds, which is charged on the enterprise's gross annual turnover (less VAT and excise tax). The mandatory contribution to the state funds is charged on turnover at a rate of 3.2% (previously, the combined rate for the three contributions was 3.5%).

The taxable base for the mandatory contribution to the state funds may differ depending on the type of activity of a company. Turnover tax is reported quarterly.

Micro-firms and small enterprises paying taxes under the standard tax regime (except enterprises producing excisable goods and extracting mineral products subject to subsurface use tax) are not subject to the mandatory contribution to the state funds.

Unified social payment (USP)

Employers are subject to USP assessed on total payroll cost related to local and expatriate staff. This payment is collected by the tax authorities. The rate of USP is 25% (15% for micro-firms, small enterprises, and farms).

Income of foreign personnel paid to non-resident legal entities as part of secondment fees under personnel provision agreements is subject to USP. The taxable base for calculation of USP on such income shall be the income of foreign personnel provided, but not less than 90% of the secondment fee payable under the personnel provision agreement. USP is reported monthly.

Payroll taxes

In addition to USP, employers are responsible for withholding personal income tax (PIT) and pension fund contributions from salaries and remitting them to the state budget.

Water-use tax

Enterprises (including PEs) using water in their production are subject to water-use tax. The tax rate is set by Presidential Resolution and depends on the source of water consumption (i.e. surface or underground). Water-use tax is calculated based on the volume of the water consumed. Water-use tax is reported annually.

Taxes of subsurface users

In addition to standard taxes, subsurface users (i.e. legal entities and individuals exploring and extracting natural resource) are subject to subsurface users' specific taxes, as listed below:

Subsurface use tax (royalty)

Subsurface use tax is charged on volume of produced (extracted) natural resources that are ready for sale or transfer (including free of charge) and consumption for internal purposes. The taxable base is determined as the average weighted sales price.

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Business activity	Tax rate examples
Extraction of natural resources	natural gas 30%, precious stones 24%, oil 20%, gold 5%, silver 8%
Utilisation of by-products received during the extraction of natural resources	30% of tax rate applicable to main natural resources extracted

Subsurface use tax is reported quarterly.

Excess profits tax

Excess profits tax is assessed on the difference between the selling price of the extracted natural resources (as per the list) and the statutory price set by the legislation. Excess profits tax is not payable by entities operating under production sharing agreements.

The list of natural resources and goods subject to excess profits tax includes copper, cement, natural gas, polyethylene granules, and clinker. Excess profits tax is paid at 50% of the taxable base.

Signing and commercial discovery bonuses

Signing and commercial discovery bonuses are one-off payments to the state budget. The signing bonus is payable for the right to engage in exploration and extraction of natural resources and range from 100 to 10,000 times the MMW, depending on the type of minerals. The commercial discovery bonus is paid for each field where a subsurface user discovers the natural resources and comprises 0.1% from the cost of the proved reserve volume.

Branch income

The Civil Code of the Republic of Uzbekistan provides that enterprises can establish and operate branches. However, the by-laws governing procedures for establishing entities with foreign investments do not provide sufficient guidance on establishing branches of foreign legal entities, creating a practical problem with registering of branches of foreign legal entities. Instead, such entities use a PE registration to perform business activities without establishing an Uzbek company.

Income determination

Inventory valuation

Uzbek legislation permits the application of the weighted average cost method (AVECO) and the first in first out (FIFO) method for the valuation of inventory for tax purposes.

Capital gains

Capital gains arising from the disposal of tangible and intangible assets are calculated as the difference between the selling price and the net book value of an asset. The capital gain is included in taxable profits (unless specifically exempt), and the capital losses are deductible (only if the disposed asset had been used for business purposes for three or more years). This is applicable to Uzbek legal entities and PEs of foreign legal entities.

Capital gains of non-resident companies are subject to WHT at 20% as 'other' income. The obligation to withhold and pay the tax on income of a non-resident of the Republic of Uzbekistan is levied on the buyer of the property, a tax agent.

In the absence of the documents supporting the acquisition price, WHT on capital gains from the sale of property shall be assessed based on the sales price.

Dividend income

Dividends paid by a domestic subsidiary are subject to 10% WHT at the source. The net dividends received by its domestic parent company are then excluded from the parent's CIT base. Such net dividends received by a foreign parent company are taxed in accordance with the respective country's internal legislation or double tax treaty (DTT) provisions (if Uzbekistan has a DTT with this country).

Income of non-residents subject to WHT (including income in the form of dividends, interest, and royalties) is to be paid without withholding of WHT at source or with application of a reduced WHT rate as provided by a tax treaty, provided that there is a tax certificate confirming that non-residents are registered for tax purposes in the state with which Uzbekistan has the effective tax treaty (with certain exemptions).

See the Withholding taxes section for a list of countries with which Uzbekistan has an applicable tax treaty.

Interest income

Interest income is subject to 10% WHT at the source. The net interest income received by companies is then excluded from its CIT base. Such net interest income received by foreign companies is taxed in accordance with the respective country's internal legislation or DTT provisions (if Uzbekistan has a DTT with this country). Similar to other types of income of non-residents subject to WHT (including income in the form of dividends and royalties), interest income is to be paid without withholding of WHT at source or with application of a reduced WHT rate by automatic application of a DTT, provided that there is a relevant residence certificate.

See the Withholding taxes section for a list of countries with which Uzbekistan has an applicable tax treaty.

Royalty income

Royalty income includes payments for:

- usage and granting of the right to use works of science, literature, and art, including software programs, audio-visual production, and objects of related rights, including performances and soundtracks, and
- usage of a patent (certificate) confirming the right to an industrial property object, a brand (service mark), a trademark, design or model, plan, secret formula or process, or information (know-how) concerning industrial, commercial, or scientific expertise.

Royalty income of Uzbek legal entities and PEs of foreign legal entities is included in taxable profits.

Royalties paid to non-resident companies with no PE are subject to WHT at 20% as 'other' income. The obligation to withhold and pay the tax on income of a non-resident of the Republic of Uzbekistan is levied on the payer of the royalty, a tax agent.

Foreign income

Gross foreign income of a resident corporation (e.g. income from its foreign branch) should be included in its aggregate income on an accrual basis, regardless of remittance date. Expenses incurred abroad in relation to such foreign income can be deducted, subject to provisions of the Uzbek Tax Code. Foreign income tax paid on such income should be credited against the Uzbek CIT only if this branch is registered in a country with which Uzbekistan has a DTT. There are no deferrals for foreign income to be recognised for Uzbek tax purposes.

Deductions

The tax base for CIT purposes varies significantly from the computation of taxable profits in most Western jurisdictions. Expenditures such as benefits in-kind and business trip allowances exceeding the statutory norms (that are generally low) are non-deductible.

There are additional costs that cannot be deducted by PEs of foreign legal entities, such as interest on head office loans; commission fees charged by the head office; and royalty, administrative, and management expenses of the head office incurred outside Uzbekistan. However, PEs are eligible to deduct expenses incurred outside of Uzbekistan if they directly relate to their business in Uzbekistan.

Depreciation and amortisation

For tax purposes, depreciation/amortisation is calculated with application of rates defined by the Tax Code. If depreciation for accounting purposes is charged at higher rates (compared with the Tax Code rates), the difference is treated as a temporary difference for CIT purposes (i.e. deducted in future periods).

Depreciation is calculated from a month following the month when the asset was put into use until it is fully depreciated, disposed of, or written off. The maximum annual depreciation rates applicable to different types of fixed assets are outlined in the table below.

Depreciable item	Rate (%)
Buildings and other structures	5
Cars, tractors, special equipment, computers and related hardware	20
Lorries, buses, special cars and trucks, industrial machinery and equipment, agricultural machinery and equipment, oil extraction and mining equipment, office furniture	15
Railway, river and air transport vehicles, thermo-technical equipment, turbines, electric and diesel drives, power supply and communication lines, pipelines	8
Depreciable assets not mentioned above	15

For statutory accounting purposes, fixed assets can be depreciated using one of the following methods:

- Straight-line method.
- Production method.

- Double-declining-balance method.
- Sum-of-the-years' (cumulative) method.

Intangible assets, including leases and other property rights, are amortised over the shorter of an asset's useful life or the period of activity of the enterprise. Where an asset's useful life cannot be determined, the asset can be amortised over five years.

Expenses related to geological exploration and developmental works necessary for the extraction of natural resources are deductible for CIT purposes through depreciation at the rate of 15% *per annum*.

Goodwill

For tax purposes, expenses incurred for acquisition of goodwill should be deductible through monthly amortisation charges at norms calculated by the taxpayers based on historical cost of goodwill and its useful life.

Start-up expenses

Current legislation does not provide specific guidance on tax treatment of start-up expenses. However, as per Uzbek accounting legislation, certain types of start-up expenses (e.g. expenses for acquisition of right for production, right for rendering services and carrying out works, right to use economic or other privileges) can be considered as expenses for procurement of intangible assets and, respectively, can be deducted through monthly depreciation charges.

Interest on short-term loans

Interest is deductible, except for interest on overdue/delayed loans (i.e. 'penalty interest') and interest capitalised in the value of fixed assets (i.e. in cases where a loan was obtained to purchase fixed assets).

Bad debt

Bad debts are deductible for tax purposes in cases where they are recognised in accordance with Uzbek accounting legislation. Otherwise, such expenses should be considered as non-deductible. According to the current Uzbek legislation, arrears are recognised as bad debts upon expiration of three-years from their due date.

Charitable contributions

Charitable contributions are generally treated as non-deductible expenses and added-back to the taxable base.

However, taxable income can be reduced for the amount of charitable contributions to ecological and charitable foundations and cultural, medical, educational, and municipal institutions, not exceeding 2% of the taxable income.

Fines and penalties

Fines and penalties are considered as non-deductible expenses.

Taxes

Generally, taxes are deductible for CIT purposes.

Other tax losses

In cases where goods or services are sold below cost (or given for free), the revenue should be adjusted for tax purposes to the cost or purchase price of the goods or services. However, in cases of export below cost, the CITable income shall be determined based on the actual export price upon approval by a special authorised body

Production wastes and defects within statutory norms, and losses resulting in *force-majeure* circumstances, are generally deductible.

Losses from the disposal of fixed assets also may be deducted if the fixed asset has been used for three or more years.

Net operating losses

Tax losses may be carried forward for a period of five years, allowing a reduction of taxable income of the respective year by up to 50%. Loss carrybacks are not permitted.

Payments to foreign affiliates

There are no special tax provisions regarding deductibility of payments to foreign affiliates for services provided. They may be deducted in full if the general deductibility criteria are met (*see Transfer pricing in the Group taxation section*).

Group taxation

There is no provision for consolidation of income or losses by related companies for tax purposes in Uzbekistan. A foreign legal entity that has several PEs in Uzbekistan may not consolidate those for tax purposes.

Transfer pricing

The transfer pricing concept in the Uzbek Tax Code is limited to a couple of paragraphs stating that tax authorities may adjust prices used by interrelated parties if these prices differ from the prices that would have been used in transactions with independent parties. There is no further guidance for application of this rule, which gives rise to different interpretation by tax authorities and taxpayers.

Thin capitalisation

Effective legislation does not provide for thin capitalisation rules, except for debt-to-equity ratios set up by the Central Bank of Uzbekistan (CBU) for commercial banks.

Controlled foreign companies (CFCs)

Uzbek tax legislation currently does not provide for any CFC rules or regulations.

Tax credits and incentives

The current tax legislation offers tax incentives for enterprises in oil and gas exploration/development projects and companies rendering certain services.

Before 2017, three economic zones have been operating in Uzbekistan. Namely, the Free Industrial Economic Zone in the Navoi region (established in 2009), Special

Industrial Zone in Angren (established in 2012), and Special Industrial Zone in Djizzak (established in 2013).

In 2017, four new free economic zones, namely 'Urgut' in Samarkand region, 'Gijduvan' in Bukhara region, 'Kokand' in Ferghana region, and 'Khazarasp' in Khorezm region of Uzbekistan, as well as seven pharmaceutical free economic zones (Nukus-pharm, Zaamin-pharm, Kosonsoy-pharm, Sirdaryo-pharm, Boysun-pharm, Bustanlik-pharm, and Parkent-pharm), were established. Free economic zones will operate up to 30 years, with possibility of prolongation.

In accordance with the unified tax and customs regime for free economic zones operating in Uzbekistan, participants of free economic zones are exempt from:

- land tax, CIT, property tax (for legal entities), UTP for micro-firms and small enterprises, as well as mandatory contributions to the road fund and educational and medical institutions fund (for reconstruction, capital repair, and equipment), and
- customs payments (except for fees for customs clearance) for equipment, raw materials, and components imported for own production needs, as well as construction materials not produced in Uzbekistan and imported for implementation of projects as per the list approved by the Cabinet of Ministers of Uzbekistan.

The duration of the above incentives differs depending on the size of investment, as described below.

- From USD 300,000 to USD 3 million: Exemption is valid for three years.
- From USD 3 million to 5 million: Exemption is valid for five years.
- From USD 5 million to USD 10 million: Exemption is valid for seven years.
- More than USD 10 million: Exemption is valid for ten years; in the following five years, the income tax and unified tax rates are set at 50% of then effective tax rates.

The following incentives are provided to participants of operating free economic zones:

- Exemption from customs payments (except customs clearance fees) on imported raw material and components for products required for production of exported goods for the whole period of free economic zones functioning.
- Payments in foreign currency within the free economic zones.
- Payments in foreign currency to Uzbek suppliers for goods, works (services), as well as use of preferable conditions and means of payment for exported and imported goods.

Furthermore, five small industrial zones in Tashkent were established. Participants shall be exempt from payment of property tax and CIT, as well as unified tax payment for a two-year period starting from registration of a participant. To apply the above exemptions, the following conditions should be met:

- The amount of investment by the participant is at least 3,000 times the MMW.
- Annual revenue of the participant is above 2,000 times MMW; otherwise, the above exemptions are forfeited and the participant should be responsible for payment of tax liabilities for the respective reporting year in accordance with effective legislation.
- Validity of the above exemptions shall be extended for an additional two years if at least 30% of produced goods are exported.

One more small industrial zone was established in Yangier town in Syrdarya region. It will also operate for 30 years with possible prolongation. Micro-firms and small enterprises operating in the small industrial zone shall be exempt from unified tax payment and customs payments (except for customs clearance fees) for imported equipment, raw materials, spare parts, and components for their own production needs in the framework of projects being implemented in the industrial zone, as well as metalware and construction materials as per the lists approved by the Cabinet of Ministers.

These exemptions are valid for the period of three years, provided that the investment amount is not less than 2,000 MMW and annual revenue is not less than 1,000 MMW. Moreover, if equipment, raw materials, spare parts, and components, as well as metalware and construction materials imported with exemption from customs payments, are sold or transferred within three years after importation, customs payments shall be paid in full.

Incentives for oil and gas exploration and extraction companies

Foreign companies carrying out oil and gas exploration works, as well as their foreign contractors/subcontractors engaged in such works, are exempt from payment of all forms of taxes and contributions to non-budget funds during the exploration period. Additionally, import by these companies of equipment, material, and technical resources and services necessary for the exploration and related works is exempt from customs duties.

Resident corporations supplying materials and rendering services to foreign companies carrying out oil and gas exploration are exempt from VAT.

Furthermore, if foreign companies carrying out oil and gas exploration form joint venture companies for extraction of oil and gas at respective fields, such companies are granted a seven-year CIT holiday starting from the date of commencement of extraction.

Incentives for carrying out export activities

Enterprises exporting goods (works, services) of their own production for freely convertible currency may defer payment of their import VAT in respect of material and technical resources used for production of goods to be exported. The deferral is granted for up to 90 days without application of any interest.

Incentives for service companies

Micro-firms and small enterprises engaged in certain types of activity are exempt from CIT and UTP until 1 January 2020. The exemption is no longer applicable to entities providing financial and banking services, including but not limited to leasing, audit, tax consulting, accounting services, and other services, like realtor services or veterinary services.

Exemptions from customs duties

There are certain exemptions from payment of customs duties offered by the legislation for the following, without limitation:

- Vehicles used for the international transportation of goods, luggage, and passengers.
- National currency of the Republic of Uzbekistan, foreign currency (excluding those for numismatic purposes), as well as securities.

- Goods imported as humanitarian aid.
- Goods imported for charitable purposes, including technical assistance.
- Goods under transit regime.
- Goods imported by legal entities at the expense of loans granted by international and foreign governmental financial organisations under international agreements, and at the expense of grants.
- Property imported for production needs by foreign investors and enterprises with foreign investment with foreign participation of not less than 33% within two years after state registration.
- Property imported for personal needs of foreign investors, citizens, or stateless persons residing in Uzbekistan in accordance with labour contracts concluded with foreign investors.
- Goods imported into the customs territory by foreign legal entities that made direct investments in the economy of the Republic of Uzbekistan for a total amount equivalent to or more than USD 50 million, provided that the imported goods are products of their own production.
- Goods intended for works under the production sharing agreement and imported under the project documentation by a foreign investor or other persons engaged in the performance of the production sharing agreement, as well as goods exported by the investor under the production sharing agreement.
- Technological equipment imported according to the list approved in accordance with legislation, as well as components and spare parts, provided that their supply is stipulated by the terms of the contract (agreement). In case of sale or gratuitous transfer of imported technological equipment for export within three years from importation, this exemption is revoked along with restoration of obligations to pay customs duties for the entire exemption period.

Foreign tax credit

In accordance with international tax treaties of the Republic of Uzbekistan, legal entities/residents of Uzbekistan can obtain tax relief in respect of CIT paid outside of Uzbekistan. Depending on the provisions of a particular DTT, a credit or exemption may be claimed. In order to claim tax relief, legal entities should provide a copy of the tax payment order, confirmation from a competent tax authority, or any other document confirming payment of the tax outside of Uzbekistan.

Withholding taxes

WHT is to be withheld and remitted to the state budget by entities paying income to non-residents if these entities qualify under a tax agent definition (i.e. by [i] Uzbek legal entities and [ii] non-residents operating in Uzbekistan via PE).

Income of non-residents subject to WHT (including income in the form of dividends, interest, and royalties) is to be paid without withholding of WHT at source or with application of a reduced WHT rate as provided by the tax treaty (with certain exemptions), provided that there is a duly formalised tax certificate issued by a competent authority confirming that non-residents are registered for tax purposes in the state with which Uzbekistan has the effective tax treaty.

The domestic WHT rates are as follows:

Uzbekistan, Republic of

Payment	WHT (%)
Dividends and interest	10
Insurance and reinsurance payments	10
Freight	6
Royalties, services (including management, consulting services), rents, other income	20

Double taxation treaty (DTT) relief

Foreign legal entities that do not carry on activities in Uzbekistan through a PE are subject to WHT on income from sources in Uzbekistan, subject to the terms of a relevant DTT. Uzbekistan has enforced DTTs with 52 countries.

DTTs in force establish WHT rates as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Austria	5 (2)/15	10	5
Azerbaijan	10	10	10
Bahrain	8	8	8
Belarus	15	10	15
Belgium	5 (2)/15	10	5
Bulgaria	10	10	10
Canada	5 (1)/15	10	5 (3, 4, 6)/10
China	10	10	10
Czech Republic	5 (8)/10	0 (9)/5	10
Estonia	5 (8)/10	5	10
Finland	5 (1)/15	5	0 (6)/5 (5)/10 (4)
France	5 (2)/10	0 (7)/5	0
Georgia	5 (8)/15	0 (9)/10	10
Germany	5 (8)/15	0 (9)/5	3 (3, 5, 10)/5 (4)
Greece	8	0 (9)/10	8
Hungary	10	0 (9)/10	10
India	10	0 (7a, 7b)/10	10
Indonesia	10	10	10
Iran	8	10	5
Ireland	5 (2)/10	5	5
Israel	10	10	5 (4)/10
Italy	10	0 (9)/5	5
Japan	15	0 (7)/10	0 (4)/10 (3, 5, 6, 10)
Jordan	7 (8)/10	10	20
Kazakhstan	10	0 (7)/10	10
Kuwait	5 (8)/10	0 (9)/8	20
Kyrgyzstan	5	5	15
Latvia	10	0 (7a, 7b)/10	10
Lithuania	10	0 (7a, 7b)/10	10
Luxembourg	5 (8)/15	0 (7d)/10	5
Malaysia	10	0 (9)/10	10
Moldova	5 (1)/15	0 (9)/10	15
(The) Netherlands	0 (13)/5 (8)/15	0 (14)/10	0 (14)/10
Oman	0 (9)/7	0 (9)/7	10
Pakistan	10	0 (9)/10	15

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Poland	5 (11)/15	0 (7a)/10	10
Romania	10	0 (7a, 7b)/10	10
Russia	10	0 (7a, 7b, 7c)/10	0
Saudi Arabia	7	7	10
Singapore	5	5	8
Slovak Republic	10	10	10
Slovenia	8	8	10
South Korea	5 (8)/15	5	2 (10)/5
Spain	5 (8)/10	0 (7a, 7b)/5	5
Switzerland	5 (11)/15	0 (7)/5	5
Thailand	10	0 (7a, 7b)/10 (12)/15	15
Turkey	10	0 (7a)/10	10
Turkmenistan	10	0 (9)/10	10
Ukraine	10	10	10
United Arab Emirates	0 (7a)/5 (8)/15	0 (7a)/10	10
United Kingdom	5 (1)/10	5	5
Vietnam	15	0 (7a, 7b)/10	15

Notes

1. Where the beneficial shareholder owns not less than 10% of the voting shares.
2. Where the beneficial owner holds at least 10% of the capital of the paying entity.
3. Where royalties are paid for patents, trademarks, know-how, etc.
4. Where royalties are paid for copyrights on literature, cinema, musical works, etc.
5. Where royalties are paid for secret formulas, processes, or know-how.
6. Where royalties are paid for computer software, patents, designs, models, or plans.
7. Where one of the following conditions is met:
    a. recipient is a local authority or corporate body constituted under public law, including the central bank of the state, or interest is paid by the local authorities or corporate bodies
    b. interest is paid in respect to debt claims or loans, guaranteed, insured, or aided by the state or on behalf of the state
    c. interest is paid in respect to credit sales of industrial, commercial, or scientific equipment, goods and merchandise, or provision of services by an enterprise to another enterprise, or
    d. interest is paid in respect to a loan of any kind granted by a bank.
8. Where the beneficial shareholder owns no less than 25% of the capital of the paying entity.
9. Where the recipients of the interest are governments of contracting states or any governmental body (such interest is exempt from WHT).
10. Where royalties are paid in respect to use or the right to use industrial, commercial, or scientific equipment.
11. Where the beneficial shareholder owns no less than 20% of the voting shares.
12. Where the interest is received by any financial institution (including insurance companies).
13. Under the provisions of the Netherlands' Company Tax Act and the future amendments thereto, a company that is a resident of the Netherlands is not charged to Netherlands company tax with respect to dividends the company receives from a company that is a resident of Uzbekistan.
14. If and as long as the Netherlands, under its national legislation, levies no WHT on interest or royalties paid to a resident of Uzbekistan, the WHT rate for interest and royalty income paid at source in Uzbekistan shall be reduced to 0%.

Tax administration

Taxable period

The taxable period for CIT is a calendar year.

Tax returns

CIT is reported quarterly before the 25th day of the month following the reporting quarter, with an annual return due by 25 March following the reporting year for enterprises with foreign investment and 15 February following the reporting year for other categories of CIT payers. PEs report on CIT once a year prior to 25 March following the reporting year.

Payment of tax

Uzbek enterprises, including enterprises with foreign investment, are required to make advance instalments of CIT in each quarter based on estimated profits in the quarter. The instalments are payable by the tenth day of each month. Final quarterly payments based on actual profit figures are payable no later than the filing deadline for the quarterly tax returns (which is the 25th day of the month following the period of assessment). In case the final quarterly payment is more than 10% higher than advance instalments made in this quarter, tax authorities have the right to recalculate the advance instalments based on the actual quarterly profit figures and charge late payment interest accordingly.

Final CIT payment should be made no later than the date set as the deadline for annual return submission.

Payment of CIT by a PE is made annually within a month after the filing deadline.

Tax audit process

Scheduled statutory tax audits are to be carried out once in three years (once in four years for micro-firms, small enterprises) by the tax authority of the district where the enterprise is registered (i.e. district tax inspectorates). However, in certain cases, the tax audit is undertaken by the State Tax Committee, which is the highest tax authority. Scheduled tax audits of private banks and other private financial institutions are to be carried out not more than once in five years.

The tax audits are aimed at verification of the tax returns submitted by the taxpayer. Normally, the tax authorities will review the accounting records, copies of tax returns, and source documents as required.

Effective 1 January 2017, all types of unscheduled audits of business entities were abolished, except for audits due to liquidation of legal entity or short-term audits carried out exclusively by decision of the Republican Council on coordination of regulatory authorities. Also, all types of cross audits of business entities, including those under criminal investigation, were abolished.

In case of tax breaches revealed during tax audits, taxpayers should remove tax violations and pay respective taxes/obligatory payments and late payment interest within 30 days after the tax authority's decision is released. If accomplished within the deadline, the tax authority's decision on applying penalty may be cancelled. If not accomplished, the unpaid taxes/obligatory payments and late payment interest are to be withdrawn from (i) the taxpayer's bank accounts (by issuing tax liability claim without acceptance), (ii) the taxpayer's debtors (by issuing tax liability claim on the debts payable to taxpayer), or (iii) the taxpayer's property (by issuing tax liability claim upon decision of the court).

Another form of monitoring accuracy and completeness of fulfilment of tax liabilities imposed by the tax authorities is 'cameral control', which is performed at the time of tax returns submission. The tax authorities may require the taxpayer to amend the tax return(s) if they have revealed mistakes or inconsistencies therein. The amended tax returns should be filed within ten days.

By virtue of the Presidential Decree #УП-5308 of 22 January 2018, a moratorium is declared for inspections of the economic activities of entrepreneurs by the regulatory authorities for two years. Inspections can be carried out only with respect to criminal cases and liquidation of legal entities.

Statute of limitations

The statute of limitations for tax purposes in Uzbekistan is set to five years.

Topics of focus for tax authorities

There are no officially announced areas of focus during tax audits. In practice, the tax authorities usually focus on currency control, cash discipline, deductibility of expenses for CIT purposes, and taxes on resources (e.g. excess profits tax, subsurface use tax).

Other issues

Intergovernmental agreement (IGA) on the Foreign Account Tax Compliance Act (FATCA)

On 3 April 2015, a Model 1 IGA between the Government of the United States of America and the Government of the Republic of Uzbekistan to Improve International Tax Compliance and to Implement FATCA was signed. Uzbekistan approved the IGA as of 5 July 2017, and the Ministry of Foreign Affairs of Uzbekistan was ordered to notify on completion of domestic procedures. The IGA is in force starting 7 July 2017.

More than 110 countries around the world have concluded IGAs on FATCA with the United States, while, as per a statement by the US Embassy in Uzbekistan, Uzbekistan is the first country in Central Asia to sign an IGA on FATCA with the United States.

The IGA will ensure compliance with US tax laws for US citizens working in Uzbekistan. According to the FATCA regulations, foreign financial institutions (FFIs) (i.e. all financial institutions outside of the United States) are faced with disclosure requirements regarding their account holders who are US persons. This means that FFIs in Uzbekistan are obligated to periodically transmit information on financial accounts held by US persons to the US Internal Revenue Service (IRS) or face a 30% WHT on payments made from the United States. In order to fulfil this obligation, FFIs should implement procedures to ensure information collecting systems are in place and required information in respect to US investors is duly reported to the US IRS.

Venezuela

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Significant developments

Sanctioning Tax Unit

The Constitutional Law of creation of the Sanctioning Tax Unit was enacted on 21 December 2017 as published in Official Gazette N° 41,305. The Sanctioning Tax Unit shall be used exclusively to determine the value of fines expressed in Tax Units in the corresponding regulations. The Sanctioning Tax Unit value must be established by the Executive Branch on the basis of the variation of the Consumer Price Index (CPI) of the Caracas Metropolitan area in the previous year. To date, the basis for the calculation has not been published.

Currency reconversion

According to a Decree dated 1 June 2018, as of 4 August 2018, the Venezuela new unitary currency value shall be restructured at a value equivalent to current 1,000 bolívar fuerte (VEF). Consequently, obligations in national currency shall be expressed on the basis of the new currency unit as of the date of enforcement.

Exchange Agreement N° 39

Exchange Agreement N° 39 was enacted on 26 January 2018. The aforesaid agreement sets forth the terms of a new auction-based DICOM system for the offer and purchase of foreign currency and abrogates the protected exchange rate (DIPRO) and the previously in force auction-based system as provided in Exchange Agreement N° 38.

Taxes on corporate income

Corporations resident in Venezuela are subject to corporate income tax (CIT) on their Venezuelan and foreign-source income, whereas corporations resident abroad with a permanent establishment (PE) in Venezuela are levied CIT on only their Venezuelan and foreign-source income attributable to said PE. Corporations are able to claim any similar taxes paid abroad on foreign-source income as a tax credit. Non-resident corporations without a PE are subject to CIT only on Venezuela-source income.

Corporate income is taxed at the following progressive rates based on tax units (TU) (*see below*) (i.e. Tariff 2):

Taxable income (TU)			
Over	**Not over**	**Rate (%)**	**Subtract (TU)**
0	2,000	15	0
2,000	3,000	22	140

Taxable income (TU)			
Over	Not over	Rate (%)	Subtract (TU)
3,000	-	34	500

Tax units (TU)

The 1994 Income Tax Law reform established the concept of a taxable unit as an element that reduces the negative effects created by inflation on the determination of the tax rates. The tax code established the initial TU at VEF 1, with annual basis adjustments according to the variation on the CPI from the previous year. For 2017, TU was VEF 300. For 2018, TU is VEF 500.

Additional rates and considerations

Income for oil exploitation and certain related activities is taxed at a flat rate of 50%. Related activities are comprised of those such as refinery, transportation, and purchases for the exports of hydrocarbons and by-products for exploitation. Joint venture corporations are also subject to a 50% CIT rate.

The above-indicated regime does not apply to corporations engaged in the exploration and exploitation of non-associated gas (and the processing, refining, transportation, distribution, commercialisation, and exportation of the gas and its components) or companies exclusively engaged in the refining of hydrocarbons or improvement of extra heavy oil, which are subject to Tariff 2.

Net income from banking, financial, insurance, and re-insurance activities carried out by entities domiciled in Venezuela is subject to a 40% flat rate.

Local income taxes

See Municipal business licence tax in the Other taxes section for a description of local taxes on income.

Corporate residence

According to the Venezuelan tax code, the following companies are regarded as resident:

- Companies incorporated in Venezuela and registered with the Mercantile Registry as established by commercial law.
- Foreign companies registered to be domiciled in Venezuela as branches duly registered with the Mercantile Registry.

The following companies are non-residents but subject to Venezuelan taxes:

- Foreign companies that provide technical assistance, technological services, royalty items, and professional services from abroad.
- Foreign banks granting loans to local companies.
- Foreign companies leasing goods to local companies.
- Foreign companies deriving income from economic activities carried out in Venezuela or from assets in Venezuela.

Permanent establishment (PE)

According to the Venezuelan Income Tax Law (VITL), generally, a passive party is deemed to be carrying out operations in Venezuela through a PE when:

- The passive party owns, directly or through an agent, employee, or representative in the Venezuelan territory,:
  - an office, fixed place of business, or an activity centre where its activities are totally or partially carried on
  - management headquarters, branches, offices, factories, shops, facilities, warehouses, stores, construction, installations, or assembling works, when the duration thereof exceeds six months, or
  - agencies or representatives authorised (according to the VITL) to contract in the name of or on behalf of the passive party.
- The passive party performs, directly or through an agent, employee, or representative in the Venezuelan territory, professional, artistic activities.
- The passive party possesses, directly or through an agent, employee, representative, or other contracted personnel in the Venezuelan territory, other work places where the operations are wholly or partially performed.

Any agent acting independently shall be excluded from this definition, except if such representative has the power to conclude contracts in the name of the principal.

Other taxes

Value-added tax (VAT)

Federal VAT (*Impuesto al Valor Agregado* or IVA) is a one-time tax payable by the ultimate consumer of all types of products and services. However, each business entity involved in the process, from the sale of raw materials to the production and distribution of finished products to the ultimate consumer, is required to include the tax on its products to customers (output tax) and to pay the tax on its purchases or imports of goods and services (input tax), crediting the amounts paid against the amounts due on its own activities. The net amount payable by each entity is considered to represent a tax on the value added.

In general, VAT does not represent an additional cost to business enterprises because even though all types of business enterprises, including government departments and agencies (with some exceptions), are required to accept charges of the tax by suppliers on their purchases of goods and services, such amounts are normally deductible from the liability of the business enterprises for the tax on their bills to customers.

There are exceptions, principally when the sales of an enterprise are exempt from VAT, in which case the enterprise is treated as the final consumer and must absorb any VAT charges on its purchases except insofar as its activities are subject to the zero rate (*see below*). However, input tax paid on goods or services used to produce items that are exempt from VAT may be deducted for CIT purposes.

Taxable transactions

In general, VAT is payable on all sales, rental, and importation of goods, and rendering of services executed or used in the country, although a number of significant exceptions are provided by law.

Sales of goods

The law defines a sale as any transmission of tangible goods, including those made on a conditional basis or through an irrevocable trust. The taxable amount of a sale includes the sale price as well as other amounts charged to the purchaser for other taxes, duties, interest, or surcharges of whatever nature. VAT becomes payable when the goods are invoiced or shipped to the customers or when the price is paid in full or in part.

Exempt sales include the following:

- Certain foods and other products for human consumption.
- Fertilisers, as well as any natural gas used in the manufacturing thereof.
- Some products for animal consumption.
- Medicine.
- Products derived from hydrocarbons and some raw materials intended to improve the quality of gasoline.
- Wheelchairs.
- Books, magazines, newspapers, and the paper used in producing these products.
- Vehicles, aircraft, and trains for passenger transport.
- Machinery and equipment for agribusiness.
- Scientific equipment purchased by the government.

Services

Taxable services are those rendered within Venezuela by one person to another on an independent basis, transportation of passengers or goods, agency activities, technical assistance, and transfer of technology. VAT is payable to service providers at the time the invoice is issued, the service is rendered, or the fee becomes demandable, whichever comes first. The taxable amount includes not only the price of services, but also charges to the customers for other taxes, interest, etc.

Exempt services include the following:

- Domestic land and maritime transportation of passengers.
- Educational services.
- Accommodations for students and persons with disabilities.
- Healthcare and dental services, surgery, and hospitalisation.
- Theatres, sports, and cultural events.
- Food services for employees and students.
- Certain utilities (e.g. electricity, water).
- Housecleaning.
- Transport services for hydrocarbon-derived fuels.
- Services involving livestock, poultry, and other minor species, including breeding and production.

Exports

Exports are zero-rated. Consequently, VAT is not payable on exports, including exports of in-bond processing companies, technical fees to foreign residents, and sales to in-bond processing companies and companies that export their entire production. Sale of natural hydrocarbon by joint ventures regulated by the Hydrocarbon Law to the National Oil Company (PDVSA) and affiliated companies are also taxable at 0%. Though exporters do not collect VAT on export sales, they may recover VAT charges on their purchases of goods and services by means of a refund certificate. This certificate may be used to pay other tax obligations. If such exporters carry out sales in the country, they will be entitled to recover only input VAT related to foreign sales.

Additionally, a zero rate applies to independent personal services provided by residents in Venezuela that are used solely by and for the benefit of persons abroad without a PE or fixed base in Venezuela.

Tax rates

The rate may change every year, within the range of 8% to 16.5%. Currently, the general VAT rate is 12%.

A 15% VAT applies to the sale and imports of luxury products (e.g. vehicles valued at 40,000 United States dollars [USD] or more, motorcycles valued at USD 20,000 or more, nickel or token game machines, aircraft used for recreational or sport purposes, jewellery valued at TU 2,500 or more).

An 8% VAT applies to the following transactions:

- Goats, sheep, and minor species for slaughter or breeding.
- Meats in their natural state, or refrigerated, frozen, or salted meats, or meats in brine of goats, sheep, and poultry.
- Shortening.
- Rendering of professional services to any government entity, in any level or branch of government, provided such services do not involve any commercial transactions but rather predominantly intellectual work or efforts.
- Domestic air passenger transportation.

Payment and collection

Excess VAT charged or chargeable to customers over VAT paid to vendors or customs authorities (*Servicio Nacional Integrado de Administración, Aduanera y Tributaria* or SENIAT), including the correspondent payment, must be remitted to SENIAT within the first 15 days of the following month.

Customs duties

As a general rule, the importation of goods into Venezuela is subject to customs duties. These duties are generally levied on the cost, insurance, and freight (CIF) value of the product being imported, excluding VAT.

Customs duty rates generally range from 5% to 35%. The duty rates vary depending on the product involved. In general, import tariffs are 5% for capital goods, 10% to 15% for raw materials and intermediate goods, and 15% to 35% for finished products. In addition, all imports are subject to customs handling charge, a duty import, and VAT.

With regard to procedural aspects, the Master Customs Law establishes two modes of customs declaration: (i) the anticipated informative declaration, only applicable to imports, and (ii) the definitive declaration for customs regime, also known as the single customs declaration. In this regard, it establishes that entities with competence for the issuance of permits and licences are to issue the corresponding documents, at least 25 business days in advance to the arrival of the merchandise, in order for importers to register the advanced informative customs declaration.

Additionally, an element has been created, named Authorised Economic Operator, who will be the company domiciled in the country, involved in the international logistic chain, which will serve as the substitute of simplified control procedures and customs clearance. With regard to the sanctioning system, pecuniary penalties applicable to transporters, porters, consolidating companies, and customs agents, as well as those applicable to infringements committed in the customs declaration of merchandise, have been increased.

Excise taxes

Tax on alcohol and alcoholic beverages

In general terms, the manufacture, commercialisation, and importation of alcohol and alcoholic beverages are subject to excise taxes. The Law of Tax on Alcohol and Alcoholic Beverages provides for three main types of excise taxes:

- Tax on the national production and importation of alcohol and alcoholic beverages, which is established on the basis of TU per litre and varies depending on the type of product.
- Additional excise tax per litre for national and imported beer and for other alcoholic beverages is levied on the sale of those products to the public, which is also provided on the basis of TU per litre, depending on the type of product.
- In addition to the above, another excise tax is imposed on the importation or local sale of national and imported alcoholic beverages to the public, which is levied on the sales price and provided on the basis of a percentage on the price of sale to the public depending on the type of product, as follows: 15% for beer, 35% for natural wines, and 50% for other beverages up to 50 grade on the Gay-Lussac scale.

The Alcohol and Alcoholic Species Tax Law specifies the time of payment of the tax as follows: (i) for importers, at the moment the merchandise is nationalised and (ii) for producers, upon withdrawal of the products from the establishment.

Tax on cigarettes and manufacturing of tobacco

The importation and national production of cigarettes and tobacco, fine cuts, and other tobacco derivatives to be consumed in Venezuela is subject to an excise tax. This proportional tax is levied at a rate of 70% on the retail price of cigarettes, tobacco, and its derivatives. As per the Cigarette and Tobacco Manufacturing Tax Law, produced and imported taxable products for zones under the Territorial Customs Regime, duty free shops, and special development regions shall also be subject to tax.

The time of payment of tax on cigarettes and manufacturing of tobacco is as follows: (i) for national production, before the products are removed from the manufacturing establishments and (ii) for imports, at the time of customs declaration.

Urban Property Tax

The Urban Property Tax is a local or municipal tax payable by any person who owns property rights or any other real rights on urban real estates. The taxable basis is the value of the urban real estate. For these purposes, the fair market value of the real estate is provided as a point of reference. The applicable rate varies according to each municipality.

Public registry tax

Commercial companies are registered with the Mercantile Registry Office and are subject to a tax levied upon incorporation of a company and registration of capital increases. The tax is 1% of the amounts of subscribed or increased capital.

The sale of a going concern is also registered in the Mercantile Registry Office and is subject to a tax levied upon the total amount of the sell. The tax is 2% of the amount.

Stamp duties

The Stamp Duties Law establishes a number of stamp duties on the issuance of official documents (e.g. certificates, permits, authorisations, registrations). Stamp duties may be levied at fixed amounts (ranging from TU 0.01 to TU 10,000) or at a rate based on the value of the transaction or work in question and vary depending on the jurisdiction.

District Capital stamp tax

The District Capital stamp tax on subscribed or increased capital of companies is 2%.

Tax on Large Financial Transactions

Taxpayers for the purposes of the Tax on Large Financial Transactions comprise:

- Entities qualified as ‘special taxpayers’ by the tax authorities, for payments made from their accounts in banks or financial institutions and payments that do not involve financial institutions (debt offsetting, debtor or creditor substitution, and debt forgiveness).
- Entities related to those qualified as ‘special taxpayers’ for the above-indicated transactions.
- Individuals and entities acting on behalf of ‘special taxpayers’ for the above-indicated transactions.

Special taxpayers are comprised of individuals and entities with specific characteristics with regard to income level or type of activity and have been designated as such by the tax authorities by notification.

The tax applies, among others, to the following transactions:

- Debits made in bank accounts, or any other deposit instrument, held in financial entities.
- Transfer of securities as of the second endorsement.
- Acquisition of cashier’s check.
- Cross-border payments
- Payments of debts obligations (even if not executed through the formal financial system).

The applicable rate is 0.75% on the total bank debit or taxable transaction.

Certain transactions involving state-issued securities, payments of taxes, and transfer of funds among same-holder accounts are exempted from this tax.

The tax is not deductible for Venezuelan income tax purposes.

The tax due shall be determined on a daily basis.

Gift tax

Overall, the Inheritance and Donations Tax Law, published on 1999, stipulates the taxes attributable to inheritances left by individuals. Nonetheless, this Law provides regulation about donations, which are significant to corporations. Subject to payment of the gift tax are the beneficiaries of gifts in the form of movable or real property, rights, or shares located in the country.

For tax calculation purposes, the progressive tax rate (up to 55%) set forth in the Law will be applied to the donated good. Both donors and donees are jointly liable for the tax generated from the gift.

The gift tax is applicable from the time in which the donors manifest before the National Treasury their will to donate and must be paid before the registration of any document formalising or evidencing the authenticity of the gift. Should the donation not be perfected due to express will of the donor or rejection on the part of the donee, the obligation to pay the tax will be eliminated and reimbursement may be requested of the amounts paid in this connection.

Under the transfer pricing rules contained in the VITL, the tax authorities are empowered to impute income in inter-company transactions at a price reflecting the fair market value of the property being transferred.

Before the introduction of transfer pricing rules, under the Inheritance and Donations Tax Law, the tax authorities could and still can presume in transactions involving a sale, assignment, barter, or transfer, the existence of a donation if, for instance, the price stipulated in such transaction does not reflect the real value of the property being transacted. In such a case, a gift tax may be imposed on the difference between the fair market value of the property being transacted and the consideration received in return.

Also, a cancellation of a debt gives rise to gift tax issues. In this regard, the Inheritance and Donations Tax Law provides that the total or partial forgiveness or cancellation of a loan must be viewed as a gift and, as such, is subject to gift tax.

Windfall tax on oil production

The windfall tax on oil companies is provided in the following terms:

- The contribution on extraordinary oil prices is a 20% tax on the difference in price when the internationally quoted price per barrel exceeds the budgeted price per barrel (for purposes of the Venezuelan Annual Budget Law), provided that the quoted price per barrel is equivalent or lower than USD 80 per barrel (i.e. the maximum basis is the difference between USD 80 per barrel and the current budgeted price of USD 55).
- The contribution on exorbitant oil prices is comprised of the following:
  - 80% tax on income generated by quoted oil prices between USD 80 and USD 100 per barrel (i.e. 80% on the range from USD 80 to USD 100 quoted price per barrel).
  - 90% tax on the difference in the quoted oil prices between USD 100 and USD 110 per barrel.
  - 95% tax on the difference over the threshold of USD 110 per barrel.

The tax is payable by oil companies exporting with sale purposes. Also, the mixed companies (*empresas mixtas*) created in accordance with the Master Hydrocarbons Law that sell oil and by-products to PDVSA, or any of its affiliates, are also obligated to pay the above-described tax.

On the other hand, tax exemption is provided for the following cases:

- For mixed companies when their activities are the result of the performance of projects for new developments of reservoirs, enhanced production, or projects to remediate production, declared as such by the Ministry of the Popular Power for Petroleum and Mining, until they have recovered their total investment. Parameters to determine the volumes exempted are to be separately established by the aforesaid Ministry by Resolution.
- Exports executed in connection with cooperation or financing international agreements.

The tax is payable on a monthly basis in foreign currency. Other terms of payments are to be regulated by Resolution.

Additionally, USD 80 per barrel is the maximum price to be used as the calculation basis for the payment of royalties, extraction tax, and export registration tax provided for in the Master Hydrocarbons Law.

Hydrocarbons Organic Law

The state is entitled to 30% of the volume of hydrocarbons extracted from any deposit, by way of royalties. The National Executive can reduce this within certain limits, when it is shown that certain types of deposits are not economically exploitable.

Persons conducting activities related to hydrocarbons must pay the following taxes:

Surface tax

For the portion of the surface area granted that is not under development, the equivalent of TU 100 for each square kilometre or portion of a square kilometre for every elapsed year is due as a surface tax. This tax will increase annually by 2% during the first five years and 5% during the following years.

Tax on own consumption

10% of the value of each cubic metre of hydrocarbon by-products produced and consumed as fuel in wholly-owned operations, based on the price of the end consumer, is due as a tax. In the case that said product fails to be sold in a domestic market, the Ministry of Energy and Mines shall provide the price.

General consumption tax

For every litre of hydrocarbon by-products sold in the domestic market, a tax is due at the rate of between 30% and 50% of the price paid by the end consumer, whose aliquot should be implemented annually between the two extremes under the Budget Law. This levy to be paid by the end consumer should be withheld at the supply source, to be handed over to the National Treasury on a monthly basis.

The National Executive may waive, in whole or in part, by the time specified, the general consumption tax, in order to encourage certain activities of public or general interest. The National Executive can also reinstate this levy to its original level when the causes for the waiver cease to exist.

Gaseous Hydrocarbons Organic Law

The Gaseous Hydrocarbons Organic Law establishes a system of royalties, determinable by the volumes of gaseous hydrocarbons extracted from any deposit and not re-injected. The state is also entitled to a 20% share for this item.

The Law also provides that additional legislation may obligate these entities to pay taxes on hydrocarbons consumed, such as fuel. However, no additional regulations have been enacted for enforcement of this obligation.

Additional taxes are provided for in the licence agreements, which vary for each particular case.

Science, technology, and innovation contribution

The Law on Science, Technology, and Innovation (LOCTI), establishes a mandatory contribution to be paid by companies that obtained, in the previous fiscal year, over TU 100,000 in gross income.

The kind of companies that are required to pay this contribution are stock companies, limited liability companies, partnerships, communities, irregular associations, associations, foundations, and PEs or fixed bases located inside or outside the national territory with current activities in Venezuela.

Contributions established in the LOCTI are as follows:

- Contributions made from companies related to bingos and casinos activities, alcoholic drinks, or tobacco: The companies engaged in activities related to bingos and casinos, alcoholic drinks, or tobacco must contribute annually the equivalent of 2% of gross income.
- Contributions made by private companies engaged in hydrocarbon or mining activities: The companies that are engaged in hydrocarbon activities, including gaseous hydrocarbons, or mining activities, must contribute the equivalent amount of 1% of gross income.
- Contributions made by companies engaged in other economic activities: These companies must contribute annually the equivalent of 0.5% of gross income.
- The company that performs activities with two different percentages will apply the highest one.

The National Fund for Science, Technology, and Innovation (FONACIT) is the entity responsible for the administration, collection, control, verification, and qualitative and quantitative determination of the contributions.

The contribution must be paid to FONACIT during the second quarter after the end of the corresponding fiscal year.

Contribution to support Organic Law on Sports, Physical Activity, and Physical Education

The purpose of the Organic Law on Sports, Physical Activity, and Physical Education (Sports Law) is to establish the public service nature of physical education and the promotion, organisation, and administration of sports and physical activity, as well as their organisation as an economic activity with social aims.

The provision of the Sports Law are of a public nature and are applicable to the public national, state, and municipal administration and organisations, and also to individuals and legal entities that conduct any activity related to the practice, promotion, organisation, sponsorship, administration, or any economic activity associated with sports or physical activities and education.

The Sports Law creates the National Fund for the Development of Sports, Physical Activity, and Physical Education, which will be constituted with the contributions made by companies or other public or private organisations that perform economic activities for profit in the country; by donations, gifts, or any other special contribution made by the Republic, the states, the municipalities, or any other public or private entity; and by the revenue produced by such funds.

The contribution is 1% of the annual net of accounting profit and is payable by all companies or other public or private organisations that perform economic activities within the country and obtain an annual net or accounting profit of more than TU 20,000. Up to 50% of the contribution can be for the implementation of the taxpayer's own projects, provided the respective project follows the guidelines to be issued by the National Sports Institute, which will be updated every two years.

Anti-drugs contribution

The Organic Drug Law stipulates that any company employing 50 or more employees must make an annual contribution from their operating profit equivalent to 1%. On the other hand, corporations with the specifications mentioned before but that are dedicated to the manufacture or import of alcohol beverages, tobacco, or their mixtures are required to make a contribution equivalent of 2% from their operating profit. Under the definitions established by this Law, operating profit can be understood as the result from subtracting the operating expenses from the income profit in accordance with the accepted Venezuelan general accounting principles.

This contribution will be collected by the National Anti-Drug Fund (FONA) within 60 continuous days counted from the end of the fiscal year.

Note that this contribution can be retrieved if the company performs:

- prevention programs and projects intended for the company employees and their family environment
- prevention programs for children and adolescents, or
- programs to fight drug trafficking.

Payroll taxes and other contributions

Contributions applicable to resident companies in Venezuela:

Contributions	Basis	Contribution basis (cap)	Employer contributions (%)	Employee contributions (%)	Notes
Mandatory social security regime contribution	Wages (normal or regular wages)	Up to five minimum salaries for urban workers	9/10/11	4	(1, 2, 5)
Employment benefit regime contribution	Wages (normal or regular wages)	Up to ten minimum salaries for urban workers	2	0.5	(1)

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Contributions	Basis	Contribution basis (cap)	Employer contributions (%)	Employee contributions (%)	Notes
Housing regime contribution	Total monthly (or integral) salary	No cap (5, 6)	2	1	(5, 6)
Employee training contribution (INCES)	Total salaries paid by the employer for purposes of the employer's contribution.	No cap	2	0.5 (4)	(3, 4)
Workplace prevention, conditions, and environment contribution (LOPCYMAT)	Total salaries paid to employees	No cap is established	From 0.75 to 10	N/A	(7, 8)

Notes

1. As of 30 April 2018, the minimum monthly salary amount is VEF 1 million.
2. The employer's contribution to social security depends on the company's risk qualification (minimum risk, middle risk, or maximum risk).
3. Regarding *Instituto Nacional de Capacitación y Educación Socialista* (INCES) contribution, the employer must contribute 2% of the total wages and salaries paid to employees.
4. Employers are also required to withhold 0.5% of the annual profit-sharing bonus paid to employees.
5. According to the *Ley Orgánica del Sistema de Seguridad Social* (LOSSS), the general rule for contribution basis for the new systems may not exceed ten minimum salaries. The transition rules establish a contribution basis of five metropolitan minimum salaries for urban workers for social security purposes. No cap is expressly established in the transition rules for the housing system and work, security, and health regime.
6. The basis of calculation of the housing contributions is the 'Integral Salary'. The Integral Salary is a concept established in the Organic Labour Law, and it comprises the following payments: commissions, gratifications, profit sharing bonuses, vacation bonus as well as surcharges for holidays, overtime, night shifts, among others, all of which are made to the employee and correspond to the services rendered by the individual.
7. Contributions to be made to this regime are exclusively for the employer and vary depending on the risk associated to the company. A company's risk is to be determined by the *Instituto Nacional de Prevención, Salud y Seguridad Laborales* (INPSASEL).
8. *Ley Orgánica de Prevención, Condiciones y Medio Ambiente de Trabajo* (LOPCYMAT) regulations do not establish a cap for the contribution. However, as mentioned, the LOSSS establishes a maximum of the minimum urban salaries. For this reason, there are several contrary interpretations on whether a cap should be applied in this case.

Other contributions (see above)	Basis	Contribution basis (cap)	Employer contributions (%)	Employee contributions (%)
Science, technology, and innovation contribution (LOCTI) (1)	Total annual income	N/A	0.50/1/2	N/A
Anti-drug contribution (LOD) (2)	Operating profit	N/A	1/2 (3)	N/A

Notes

1. *Ley Orgánica de Ciencia, Tecnología e Innovación* (LOCTI).
2. *Ley Orgánica de Drogas* (LOD).
3. 2% in the case of companies that manufacture or import alcohol beverages or tobacco. 1% for companies that employ 50 or more employees.

Municipal business licence tax

Companies and business entities, as well as individuals and unincorporated companies, are subject to municipal tax on gross income from industrial or trade activities carried on in the municipality during the fiscal year. The rates range from 0.1% to 10.0%, depending on the activity and the municipality.

Other municipal taxes

Municipalities also tax vehicles, public entertainment, legal bets, and commercial advertisements. There are also various municipal tariffs and fees.

Branch income

Branches of foreign corporations are subject to the same tax rules as Venezuelan corporations. Inter-branch income and deductions must be eliminated. The positive difference between a branch's annual book and taxable income is deemed to be remitted to the branch's head office (branch profits tax). Such remittances are subject to the 34% flat dividend tax (*see Dividend tax in the Income determination section for more information*) regardless of whether there is an actual payment unless the branch can provide proof of reinvestment of its profits for a five-year period. If such proof is established, no deemed remittance is assumed.

A Venezuelan taxpayer has to recognise, annually on an accrual basis, income generated in a company or other legal entity it controls that is located in a jurisdiction with low fiscal taxation (JLFT). Further, investments in a JLFT must be declared to the SENIAT.

Income determination

Inventory valuation

Inventories may be valued at cost or the lower of cost or market value. Any method generally accepted for accounting purposes can be accepted for tax purposes.

Capital gains

Capital gains are taxable as ordinary income, and capital losses are deductible from ordinary income. Note that capital losses resulting from the sale of stock, capital reduction, or liquidation of a company are only deductible if they meet one of the following conditions:

- The cost of the capital stock was not in excess of the price quoted on a stock exchange or an amount with a reasonable relationship to the book value of the capital stock.
- The holding period of the investment was for at least two years immediately preceding the date of the sale.
- The stockholder proves that the company selling the shares carried on economic activities for at least two years preceding the date of sale.

At present, the tax law contains two different rulings relevant to the deductibility of losses incurred through operations on the Venezuelan Stock Market, one of which has been described above. The second ruling pertains to income obtained from operations on the local market. This income is subject to a final 1% tax that is withheld at the source. Losses in this kind of operation are not deductible against other income. Corporate shareholders not domiciled in Venezuela may not deduct such losses from other taxable income other than dividends arising from Venezuelan sources.

Gains upon liquidation or reduction of capital are taxable to the liquidating entity.

Dividend income

A dividend tax is levied at a flat rate of 34% on the positive difference between book income and tax income generated after 2000. Book income is understood to be that approved at a shareholders' meeting and based on the financial statements prepared pursuant to generally accepted accounting principles (GAAP). To determine the applicable difference, a last in first out (LIFO) method applies. The tax is triggered when a dividend is paid and shall be remitted via withholding. Withholding is to be made at the moment a dividend is declared or credited to the account of a recipient. The 34% (domestic) rate can be mitigated under tax treaties.

Dividends obtained from companies incorporated or resident abroad or incorporated abroad and resident in Venezuela are taxed at a flat 34% rate.

Stock dividends

Dividends of stock are subject to payment of the aforementioned dividend tax. Moreover, stock dividends are subject to an advanced payment of dividend tax equivalent to 1% of the dividend distributed. Stock dividends have no cost for tax purposes.

Interest income

Unless the debtor can prove otherwise, any sum paid by a debtor in excess of the principal is deemed to be interest. As a general rule, interest is sourced in Venezuela if it is derived from activities carried out in Venezuela or from property located in Venezuela. Specifically, interest is deemed to be derived from activities carried out in Venezuela if the loan principal is used or enjoyed in the country. Interest received by non-resident corporations is therefore subject to Venezuelan income tax if the loan is granted or invested in Venezuela.

Interest paid on loans granted by non-resident financial institutions is subject to a final withholding tax (WHT) at source at a rate of 4.95% on gross income. Interest paid to other non-resident legal entities is subject to tax at a rate of 34% applied to 95% of the gross income.

Royalty income

Royalties derived by non-residents are subject to income tax on 90% of gross receipts in the case of royalties and similar payments, other than those derived from mining activities, resulting in an effective WHT rate of 30.6%.

Foreign income

Extraterritorial income is subject to Venezuelan CIT based on the concept of worldwide income taxation, according to which:

- Resident companies must pay a tax on total income whether from national or foreign source.
- Non-resident companies with PE in Venezuela will pay tax on their income, whether of national or foreign source, attributable to the Venezuelan PE.
- Non-resident companies will pay taxes on their income originated or caused in Venezuela.

- Resident companies as well as non-resident companies with PE in Venezuela may credit the tax paid abroad for earnings of an extraterritorial source against the income tax payable in Venezuela, subject to limitations.
- In general terms, taxation of foreign-source income is ruled by domestic provisions on taxation of territorial-source income. Foreign-source dividends are taxable when dividends are received. However, in case of investments located in a JLFT, anti-deferral rules in the international fiscal transparency regime apply (*see below*).

Foreign technical assistance and services

Taxable income of foreign taxpayers providing technical assistance or technological services from abroad to individuals or entities that use them in Venezuela or assign them to third parties is presumed to be 30% of gross income for technical assistance fees and 50% of gross income for technological service fees. If the contract does not specify the proportion in which the services are rendered, the law provides that 60% of the technical assistance and technological service fees are deemed to be rendered abroad (i.e. foreign-source), with the other 40% deemed to be rendered in Venezuela. The law also provides that 75% of the entire income related to technological services and 25% of that related to technological assistance is rendered abroad if not otherwise specified in the contract. *See the Withholding taxes section for more information*.

International fiscal transparency regime

A regime of international fiscal transparency is created for the purpose of establishing special standards of fiscal control, governing capital investments in countries classified as a JLFT, or tax havens. Under certain conditions, a Venezuelan taxpayer may be required to recognise income generated in its JLFT subsidiary on an accrual basis in its tax return.

Inflation adjustment

A system for the adjustment of non-monetary assets, non-monetary liabilities, and shareholder's equity has been established. 'Non-monetary assets' include land, construction, machinery, vehicles, installations, inventories, and investments other than in securities (e.g. bonds and stocks).

There are two phases to the adjustments: (i) initial adjustments and (ii) annual adjustments. Both phases are mandatory adjustments for taxpayers engaged in commercial and industrial operations, and in the exploitation of mines and hydrocarbons. The annual adjustment is optional for taxpayers performing non-business activities.

The following taxpayers are excluded from the inflation adjustment: (i) taxpayers engaged in banking, financial, insurance, and reinsurance activities and (ii) taxpayers designated by the tax authorities as 'special taxpayers'.

For those taxpayers subject to inflation accounting for tax purposes, the inflation adjustment is based on the National Consumer Price Index (NCPI).

Initial adjustment

The initial adjustment on depreciable fixed assets requires a registration tax of 3% on the amount of the adjustment.

The initial adjustment must be filed at the closing date of any fiscal year ending after 1 January 1993. This adjustment is applicable to all non-monetary assets and non-monetary liabilities.

The initial adjustment is calculated by applying the variations between the NCPI prevailing in the month in which the non-monetary assets were acquired and the month corresponding to the initial adjustment. Assets acquired before 1950 are deemed to have been acquired in January 1950.

A registry tax of 3% is applied exclusively to the initial revaluation adjustment of depreciable fixed assets. For payment, taxpayers must be registered with the Asset Revaluation Registry, maintained by the tax administration. The resulting tax may be paid in three consecutive annual instalments, beginning on the date of registration.

Companies in the pre-operating stage, deemed to end with the first invoice, must determine and pay a 3% tax once the pre-operating period has ended.

Depreciation or amortisation on the revaluation adjustment is allowed, based on the original estimated life of the asset.

Annual adjustment

The annual adjustment is applied each year in determining taxable income. The adjustment factor must be applied to the following balance sheet items at the closing date of the fiscal year. The resulting adjustment will increase or decrease taxable income.

Balance sheet items	Adjustment factor	Tax effect
Non-monetary assets:		
Inventories (including inventories in transit) (2)	Annual variation of the NCPI	Increase taxable income
Fixed assets (3)	Annual variation of the NCPI	Increase taxable income
Other assets, trademarks, patents, production licences, other rights, and investments in stock not registered in the *Superintendencia Nacional de Valores* (SNV) and deferred charges (except interest).	Annual variation of the NCPI	Increase taxable income
Investments in shares registered in the SNV	Adjusted to the share market value at the end of the year	Increase taxable income
Non-monetary liabilities:		
Deferred credits (except interest)	Annual variation of the NCPI	Decrease taxable income
Equity:		
Tax initial equity (1)	Annual variation of the NCPI	Decrease taxable income

Notes

1. Tax initial equity is defined as the difference between assets and liabilities at the beginning of the tax year, less accounts receivable from administrators, affiliated companies, and related companies. In order to determine the initial tax equity, assets not located in the country, as well as goods, debts, and liabilities entirely applied to the production of deemed, exempt, or exonerated income, are excluded.
2. Inventories are to be valued at historical cost for purposes of applying the NCPI. The provisions of the VITL detail the procedures for applying the NCPI. The revaluation of inventories in the tax year is included as part of the initial inventories of the following year.

3. The annual revaluation adjustment of fixed assets is considered part of the cost when the assets are sold.

More recently, there has been a delay in publishing the NCPI. To date, the last NCPI published is that corresponding to December 2015.

Net losses arising from the annual adjustment that have not been offset cannot be carried forward.

Gains or losses originating from the adjustment of accounts receivable or investments, as well as debts and liabilities in foreign currency or with a re-adjustability clause, are deemed to be carried out during the fiscal year in which they become demandable, collected, or paid, whichever comes first.

Deductions

Depreciation and amortisation

Companies may deduct depreciation of tangible fixed assets and amortisation of intangible fixed assets that are used in the production of income. Depreciation is generally computed on a straight-line basis although any other generally accepted method for accounting purposes is also accepted. Depreciation is not allowed on real estate used as rental property. Depreciation on the stepped-up portion of assets revalued by any method other than the inflation adjustments (*see the Income determination section*) is not permitted. In principle, useful lives of assets shall be consistent with the parameters used in accordance with accounting principles. Although domestic standards provide that tables with depreciation and amortisation rates to be applied by taxpayers may be provided via the Income Tax Rules, such a table has not been provided to date.

Goodwill

Deduction of the amortisation of goodwill is allowed for income tax purposes. Deduction of the cost basis for purposes of calculating the capital gain on the sale is also allowed for income tax purposes.

Organisational and pre-operating expenses

Domestic income tax regulations do not provide for specific guidance as to the treatment of organisational and pre-operating expenses. The accepted practice is to follow GAAP.

Interest expenses

Interest paid on a loan, the principal of which is invested to generate income, is deductible.

Bad debt

Losses arising from bad debts are deductible, provided:

- the loan concerned was granted as part of the taxpayer's business
- the amount of the debt was previously included in the taxpayer's gross revenue (except in the case of loans granted by financial institutions or by employers to their employees), and

- either the debtor and the debtor's guarantors are insolvent or the amount of the loan does not justify collection expenses.

Charitable contributions

Deductions for allowable charitable contributions are limited to 10% of taxable income (before deducting contributions) when taxable income does not exceed TU 10,000. When taxable income exceeds TU 10,000, charitable contributions are limited to 8% of taxable income. For oil extraction companies, the deduction is limited to 1% of the pre-contribution tax amount.

Fines and penalties

Income tax regulations do not expressly provide for the treatment of fines and penalties; however, such expenses are not deductible as they do not meet the normality and necessity requirements.

Taxes

Municipal, state, and local taxes are deductible in determining taxable income. Corporate taxes are not deductible.

Other significant items

Payments required by the labour law, such as profit sharing (generally between 15 days and four months' salary) and severance indemnity accruals, are also deductible. In cases of unjustified dismissals, double severance indemnities must be paid. However, accruals for such additional indemnities are generally not deductible until paid.

Corporate tax deduction of employees' compensation and professional fees is subject to compliance with the taxpayer's obligations as employer as provided for in the Law, which entail, among others, withholding obligations.

Net operating losses

Losses may be carried forward for three years. During the three-year term, the amount of losses available to carry forward cannot exceed 25% of the tax period's taxable income. Carryforward losses derived from the inflation adjustment have been eliminated. Losses may not be carried back. Foreign losses may be offset only against foreign profits.

Payments to foreign affiliates

A Venezuelan corporation may claim a deduction for royalties and technical assistance and for technical service fees paid to foreign affiliates, subject to the following conditions:

- Income tax payable by the recipient is withheld at the source.
- Transfer pricing requirements are met.
- In the case of technical assistance and technological services fees, the expenses may be deducted if such services cannot be otherwise provided in Venezuela.

Foreign companies domiciled in Venezuela are allowed to deduct royalties paid to parent companies or foreign affiliates (*see the Withholding taxes section for more information*). Branches of foreign companies, however, may not deduct such payments to head offices or related parties.

Group taxation

Group taxation is not possible in Venezuela.

Transfer pricing

Taxpayers that carry out operations with related parties abroad must calculate their income, costs, and deductions by applying a defined methodology of transfer pricing. This regime is applicable to imports, exports, and interest paid to recipients abroad as well as technical assistance, technological services, and royalty fees.

Thin capitalisation

Thin capitalisation rules limit the deduction of interest from debt with related parties in excess of a 1:1 debt-to-equity ratio. Under these rules, if the average of a taxpayer's debt (with related and unrelated parties) exceeds the average amount of its equity for the respective fiscal year, the excess debt is treated as equity for income tax purposes. Consequently, the ability to deduct interest on related-party loans may be affected.

Controlled foreign companies (CFCs)

Venezuelan tax legislation does not provide for CFC rules but does provide for international fiscal transparency rules where income from investments in a JLFT must be recognised on an accrual basis (*see Foreign income in the Income determination section*).

Tax credits and incentives

Foreign tax credit

Foreign income tax paid on taxable foreign income may be offset by the payable Venezuelan tax, up to the proportion of Venezuelan payable tax related to foreign-source income. Taxpayers must keep documentation of foreign tax. No carryforward rules are provided for in domestic regulations.

Other incentives

Customs duty incentives are also available, such as drawbacks on the import of materials used for exporting products. This may take the form of a tax refund certificate issued by the Ministry of Finance. The certificate is a negotiable bond and will be accepted by the Treasury Funds Office for payment of national taxes. Determination of the amount of the refund will take into account the import duties effectively paid at the time the materials used in the manufacture of the exported product were received in Venezuela.

Withholding taxes

Resident corporations making certain types of payments must withhold taxes. T2 refers to Tariff 2. These include the following:

	Resident (%) (1)		Non-resident (%)	
Type of payment	**Corporation**	**Individual**	**Corporation**	**Individual**
Commissions (2)	5	3	5	34

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Type of payment	Resident (%) (1) Corporation	Individual	Non-resident (%) Corporation	Individual
Dividends (5)	34	34	34	34
Royalties (3)	5	3	T2 on 90	34 on 90
Interest to foreign financial institutions	N/A	N/A	4.95	N/A
Other interest	5	3	T2 on 95	34 on 95
Professional fees	5	3	T2 on 90	34 on 90
Technical assistance fees (3)	5	3	T2 on 30	34 on 30
Technological service fees (3)	5	3	T2 on 50	34 on 50
Real estate rentals	5	3	5	34
Tangible personal property rentals	5	3	5	34
Contractor and subcontractor services	2	1	T2	34
Film and television exhibition rights	5	3	T2 on 25	34 on 25
Insurance and reinsurance premiums	N/A	N/A	10 on 30	N/A
Payments to international media organisations	5	3	T2 on 15	N/A
Acquisition of Venezuela commercial funds	5	3	5	34
Payments to non-domiciled international transportation companies (4)	N/A	N/A	T2 on 5	N/A

Notes

1. WHTs constitute prepayments against final tax liabilities as determined by the income tax return when filed.
2. Includes commissions earned in instances other than through a dependent relationship (e.g. employer/employee). Commissions are subject to withholdings in the same manner as salaries and wages.
3. The rates for non-residents are similar to those rates applicable for payments to a non-domiciled corporation not resident in a treaty country and rendering services from abroad with no PE in Venezuela.
4. Excludes payments exempted under international shipping agreements.
5. Withholding applicable only on the excess on profits taxed at the corporate level (*see Dividend income in the Income determination section*).

Tax treaties

There are currently comprehensive treaties for the avoidance of double taxation with the following countries:

Recipient	WHT (%) Dividends	Interest	Royalties
Non-treaty (1)	34	4.95/T2 on 95 (2)	T2 on 90
Treaty:			
Austria	5/15 (3)	4.95/10 (4)	5
Barbados	5/10 (5)	5/15 (6)	10
Belarus	5/15 (7)	5	5/10 (8)
Belgium	5/15 (7)	10	5
Brazil	10/15 (9)	15	15
Canada	10/15 (10)	10	5/10 (11)
China	5/10 (12)	5/10 (13)	10
Cuba	10/15 (10)	10	5
Czech Republic	5/10 (14)	10	12
Denmark	5/15 (7)	5	5/10 (15)
France	0/5/15 (16)	5	5

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Germany	5/15 (3)	5	5
Indonesia	10/15 (17)	10	10/20 (18)
Iran	5/10 (14)	5	5
Italy	10	10	7/10 (19)
Korea	5/10 (12)	5/10 (20)	5/10 (21)
Kuwait	5/10 (12)	5	20
Malaysia	5/10 (12)	15	10
Mexico (not in force)	5	4.95/10/15 (22)	10
Netherlands	0/10 (23)	5	5/7/10 (24)
Norway	5/10 (25)	5/15 (6)	9/12 (26)
Portugal	10	10	10/12 (27)
Qatar	5/10 (40)	5	5
Russia	10/15 (28)	5/10 (20)	10/15 (29)
Saudi Arabia	5	5	8
Spain	0/10 (30)	4.95/10 (31)	5
Sweden	5/10 (32)	10	7/10 (33)
Switzerland	0/10 (34)	5	5
Trinidad and Tobago	5/10 (32)	15	10
United Arab Emirates	5/10 (40)	10	10 (41)
United Kingdom	0/10 (35)	5	5/7 (36)
United States	5/15 (37)	4.95/10 (38)	5/10 (39)
Vietnam	5/10 (40)	10	10

Notes

1. Domestic rate applicable to payments to non-resident corporations.
2. The 4.95% rate applies to non-resident financial institutions, and the Tariff 2 on 90% on the gross income in all other cases of non-resident entities.
3. The 5% rate applies when the beneficial owner is a company that holds at least 15% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
4. The 4.95% rate applies to interest paid to banks, and the 10% rate applies in other cases.
5. The 5% rate applies when the beneficial owner is a company that holds at least 5% of the capital of the company paying the dividends, and the 10% rate applies in all other cases.
6. The 5% rate applies to interest paid to banks, and the 15% rate applies in other cases.
7. The 5% rate applies when the beneficial owner is a company that holds at least 25% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
8. The 5% rate applies to payments for the use or the right to use copyrights on scientific work, software, trademarks or for the use or the right to use any type of equipment or transportation vehicles. The 10% rate applies in all other cases.
9. The 10% rate applies when the beneficial owner is a company that holds at least 20% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
10. The 10% rate applies when the beneficial owner is a company that holds at least 25% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
11. The 5% rate applies to artistic copyright, computer software, patent, and industrial, commercial, and scientific royalties. The 10% rate applies in all other cases.
12. The 5% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends, and the 10% rate applies in all other cases.
13. The 5% rate applies to interest paid to banks, and the 10% rate applies in other cases.
14. The 5% rate applies when the beneficial owner is a company that holds at least 15% of the capital of the company paying the dividends, and the 10% rate applies in all other cases.
15. The 10% rate applies to royalties, and the 5% rate applies to technical assistance.
16. No withholding applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends. The 5% rate applies in all other cases. The 15% rate applies to a resident of Venezuela who receives from a company that is a resident of France dividends that would give the right to a tax credit (avoir fiscal) if they were received by a resident of France and shall have the right to a payment from the French Treasury of an amount equal to this tax credit (avoir fiscal), subject to deduction of the tax.
17. The 10% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.

18. The 20% rate applies to royalties, and the 10% rate applies to technical assistance.
19. The 7% rate applies to literary, artistic, and scientific work copyright royalties, and the 10% rate applies in other cases.
20. The 5% rate applies to interest in the case of banks, and the 10% rate in other cases.
21. The 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment. The 10% rate applies in other cases.
22. The 4.95% rate applies to interest in the case of banks and insurance companies. The 10% rate applies to the aforesaid entities when the payment is carried out by banks. The 15% applies in other cases.
23. No withholding applies when the beneficial owner is a company whose capital is totally or partially divided into shares and controls at least 25% of the capital of the company paying the dividends. The 10% rate applies in other cases.
24. The 5% rate applies to patent royalties and to industrial, commercial, and scientific equipment royalties, the 7% rate applies to trademark royalties, and the 10% rate applies to literary, artistic, and scientific work copyright royalties.
25. The 5% rate applies if the beneficial owner is a company that directly controls at least 10% of the company paying the dividends.
26. The 12% rate applies in the case of royalties, and the 9% rate applies to technical assistance.
27. The 12% rate applies in the case of royalties, and the 10% rate applies to technical assistance.
28. The 10% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends and has invested in this company not less than the equivalent to USD 100,000. The 15% rate applies in all other cases.
29. The 15% rate applies to royalties, and the 10% rate applies to technical assistance.
30. No withholding applies when the beneficial owner is a company whose capital is totally or partially divided into shares and controls at least 25% of the capital of the company paying the dividends. The 10% rate applies in other cases.
31. The 4.95% rate applies to interest in the case of banks. The 10% rate applies in other cases.
32. The 5% rate applies when the beneficial owner is a company that holds at least 25% of the capital of the company paying the dividends. The 10% rate applies in all other cases.
33. The 10% rate applies to literary, artistic, and scientific work copyright royalties, and the 7% rate applies in other cases.
34. No withholding applies when the beneficial owner is a company that controls at least 25% of the capital of the company paying the dividends. The 10% rate applies in other cases.
35. No withholding applies when the beneficial owner is a company that controls at least 10% of the capital of the company paying the dividends. The 10% rate applies in other cases.
36. The 5% rate applies to patent and trademark literary, artistic, or scientific work copyrights, including films, and the 7% rate applies in other cases.
37. The 5% rate applies if the beneficial owner is a company that owns at least 10% of the voting stock of the company paving the dividends. The 15% rate applies in other cases.
38. The 4.95% rate applies to interest to financial institutions (including insurance companies), and the 10% applies in other cases.
39. The 5% rate applies to industrial, commercial, and scientific equipment royalties, and the 10% rate applies in other cases.
40. The 5% rate applies if the beneficial owner is a company that controls at least 10% of the capital of the company paying the dividends. The 10% rate applies in other cases.
41. The Article also includes technical assistance.

The treaty with Mexico has been published in the Official Gazette and signed by the contracting parties but has not entered into force since diplomatic notes have not been exchanged.

Treaties with additional countries are being negotiated.

Tax administration

Taxable period

Taxable years may not exceed 12 months, but the first year may be less than 12 months. Taxpayers engaged in commercial, industrial, or service activities may choose a taxable year that does not coincide with the calendar year. A taxpayer that makes such an election may only change it after obtaining prior authorisation from the tax authorities. All other taxpayers are require to conform their taxable year to the calendar year.

Tax returns

Final tax returns must be filed within three months following the end of the tax year or at the date indicated on the corresponding calendar for those designated as a 'special taxpayer' by the tax authorities. The system is one of self-assessment.

Payment of tax

The total amount of tax due must be paid at the time of filing the annual return. Estimated tax payments must be paid consecutively in six monthly instalments. Companies engaged in mining, hydrocarbon exploitation, and related activities must make 12 equal monthly estimated tax payments.

Penalties

Fines for omitted taxes when assessed as a result of tax audits range from 100% to 300% of the omitted tax. The tax authorities generally assess the average fine (200%) unless aggravating or mitigating circumstances apply.

Fines are reduced to 30% if assessment is accepted within a specific timeframe.

Fines are adjusted according to the value of the Tax Unit.

Late payment interest is 1.2 times the average banking lending rate considering the six major banks.

Tax audit process

According to the Master Tax Code, the tax administration is entitled to review the existence of a taxpayer's liability, whether it has been reported or not. In exercising this power, the tax administration is entitled to obtain and verify information in connection with a determined tax liability. Verifications may be carried out on the basis of available information or on a presumptive basis if concrete information is not available.

Statute of limitations

According to the Master Tax Code, the statute of limitations for tax liabilities is six years starting to run on 1 January of the year following the tax period involved. Regarding taxes that are assessed by periods (e.g. income tax and VAT), it is understood that the taxable event occurs at the end of such period. Exceptionally, the statute of limitations is extended to ten years in any of the following circumstances: (i) the taxpayer fails to declare the taxable event or submit the relevant returns; (ii) the taxpayer does not comply with its obligation to register with the tax administration; (iii) the tax administration was not able to become aware of the taxable event; (iv) the taxpayer has extracted from the country property that is subject to the payment of the tax liability or if the tax liability is related to taxable events occurring abroad; or (v) the taxpayer does not keep its accounting in accordance with the relevant standards.

Topics of focus for tax authorities

Tax audits are generally focused on 'special taxpayers'. The main subjects of focus of tax audits on corporate taxpayers are related to compliance of formal obligations for direct and indirect taxes and transfer pricing.

Other issues

Sample corporate tax calculation

Taxable income (manufacturing company)	VEF	1,500,000.00
Divided by the value of the TU (VEF 500/1 TU)	VEF	500
Taxable income in TU	TU	3,000.00
Tax thereon:		
Tariff 2: 34%	TU	1,020.00
Subtract (per tax table)	TU	(500.00)
Total tax	TU	520.00
Less: Withholding taxes	TU	(100.00)
Less: Advance payments	TU	(50.00)
Net income tax payable in TU	TU	370.00
Net Income tax payable in VEF *	VEF	185,000.00

* Multiplied by the TU value, (i.e. VEF 500/1 TU)

Exchange control

In January 2003, the Venezuelan government and the Venezuelan Central Bank (VCB) restricted the free trade of foreign currency and established an Exchange Control Regime, which is currently administered by the VCB and the National Center of Foreign Commerce (CENCOEX). Nowadays, the main mechanism for the offer and purchase of foreign currency is that provided in Exchange Agreement N° 39 enacted on 26 January 2018 (and reprinted on 14 February 2018), which provides an auction-based mechanism for the Complementary Floating Exchange Market System (DICOM as per its Spanish Acronym). Main considerations of Exchange Agreement N° 39 may be summarised as follows:

- The applicable exchange rate reference resulting from the auctions will be the lowest rate awarded to legal persons. The DIPRO, or protected exchange rate, as provided in Exchange Agreement N° 35 has been abrogated.
- Individuals are allowed to purchase a maximum of 420 euros (EUR) per quarter, and legal persons must calculate the maximum allowed amount per month on the basis of gross income reported in the CIT return, with a limit of EUR 340,000.
- The auction-based system provided in Exchange Agreement N° 38 has been abrogated.

The Law on the Currency Exchange Regime and Currency Exchange Violations is in effect, thereby establishing the actions that constitute exchange crimes and their respective penalties. Said penalties may be both criminal and pecuniary.

Vietnam

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Significant developments

In 2017, the most significant developments related to transfer pricing. Following the establishment of a transfer pricing audit department in the General Department of Taxes (GDT) and some key provinces such as Hanoi, Binh Duong, Dong Nai, and Ho Chi Minh City, in July 2016, the GDT announced the establishment of a Base Erosion and Profit Shifting (BEPS) Working Group, which is responsible for preparing action plans to implement the Organisation for Economic Co-operation and Development (OECD) BEPS Initiatives and overseeing the implementation process.

More recently, the Vietnamese government released Transfer Pricing Decree No. 20/2017/ND-CP guiding the implementation of transfer pricing (Decree 20) and guiding circular 41/2017/TT-BTC (circular 41), which entered into effect from 1 May 2017.

The Ministry of Finance recently released a draft tax law amending the current laws on value-added tax (VAT), special sales tax (SST), corporate income tax (CIT), personal income tax (PIT), natural resources tax (NRT), and customs duty.

There are various changes proposed, notably as follows:

- Transfer of capital outside Vietnam will be subject to capital assignment profit tax at 2% on net gain.
- Preferential CIT rates (from 15% to 17%) will be granted to small and medium enterprises (SMEs).
- New CIT incentives have been introduced:
  - Preferential 10% CIT for 15 years plus 4 years of exemption and subsequent 9 years of 50% reduction for investments in encouraged locations or sectors with especially difficult conditions.
  - Preferential 17% CIT for 10 years plus 2 years of exemption and subsequent 4 years of 50% reduction for investments in encouraged locations or sectors with difficult conditions.
- Proposed to increase VAT rates to 11% from 1 January 2020 and 12% from 1 January 2022. Whereas the 5% VAT rate shall be increased to 6% from 1 January 2022.

It is planned that the draft law will be presented to the government for presentation to the National Assembly in October 2018, and will take effect 1 January 2019.

Taxes on corporate income

Standard rates

All taxes are imposed at the national level. The standard CIT rate is 20%. Enterprises operating in the oil and gas industry are subject to CIT rates ranging from 32% to 50%, depending on the location and specific project conditions. Enterprises engaging in prospecting, exploration, and exploitation of mineral resources (e.g. silver, gold, gemstones) are subject to CIT rates of 40% or 50%, depending on the project's location.

There is no concept of tax residency for CIT. Business organisations established under the laws of Vietnam are subject to CIT and taxed on worldwide income. 20% CIT shall be applicable to foreign income. There are no provisions for tax incentives for such income.

Foreign organisations carrying out business in Vietnam without setting up a legal entity in Vietnam and/or having Vietnam-sourced income are considered foreign contractors, irrespective of whether the services are performed inside or outside Vietnam. Payments to foreign contractors are subject to Foreign Contractor Tax (FCT), which consists of VAT and CIT elements. *See the Withholding taxes section for more information.*

Preferential rates

Preferential CIT rates of 10%, 15%, and 17% are available where certain criteria are met. *See the Tax credits and incentives section for more information.*

Calculation of taxable profit

Taxable profit is the difference between total revenue, whether domestic or foreign sourced, and deductible expenses (*see the Deductions section*), plus other assessable income.

Taxpayers are required to prepare an annual CIT return, which includes a section for making adjustments to accounting profit to arrive at taxable profit.

Local income taxes

There are no local, state, or provincial income taxes in Vietnam.

Corporate residence

There is no concept of tax residency for CIT. Enterprises established under the law of Vietnam are subject to CIT in Vietnam. In addition, Vietnam has a broadly worded 'permanent establishment' definition.

Permanent establishment (PE)

In Vietnam, a PE is defined as "a fixed place of business through which a foreign enterprise carries out part or the whole of its business or production activities in Vietnam". The PE of a foreign enterprise shall include:

- A branch, an operating office, a factory, a workshop, means of transportation, a mine, an oil and gas field, or any place relating to the exploitation of natural resources in Vietnam.
- A building site; a construction, installation, or assembly project.

- An establishment providing services, including consultancy services, through its employees or other persons.
- An agent for a foreign enterprise.
- A representative in Vietnam where one has authority to sign contracts under the name of the foreign enterprise, or where one does not have authority to sign contracts under the name of the foreign enterprise but regularly delivers goods or provides services in Vietnam.

Foreign enterprises with their PEs in Vietnam shall pay tax on the taxable income earned in Vietnam (irrespective of whether it relates to the PE) and on the taxable income generated out of Vietnam and related to operations of the PEs.

Where a treaty on avoidance of double taxation to which Vietnam is a signatory contains different provisions relating to PE, such treaty shall apply (*see the Withholding taxes section for a list of countries with which such treaties exist*).

Other taxes

Value-added tax (VAT)

VAT applies to goods and services used for production, trading, and consumption in Vietnam (including goods and services purchased from non-residents), with certain exemptions. Depending on the category of goods or services, the VAT rates are as follows:

- A 0% rate applies to exported goods/services, including goods/services sold to overseas/non-tariff areas and consumed outside Vietnam/in the non-tariff areas, goods processed for export or in-country export (subject to conditions), goods sold to duty free shops, certain exported services, construction and installation carried out for export processing enterprises, and aviation, marine, and international transportation services.
- A 5% rate applies generally to areas of the economy concerned with the provision of essential goods and services. These include: clean water, teaching aids, books, unprocessed foodstuffs, medicine and medical equipment, husbandry feed, various agricultural products and services, technical/scientific services, rubber latex, sugar and its by-products, social housing, and certain cultural, artistic, and sport services/products.
- The 10% 'standard' rate applies to activities not specified as not subject to VAT, exempt, or subject to the 0% or 5% rate.

There is a draft law proposed to increase the VAT rates.

Goods or services where VAT declaration and payment are not required

A separate category includes supplies not subject to output VAT, but where related input VAT can, nevertheless, be credited. This category includes the following:

- Compensation, bonus, subsidies, except those provided in exchange for certain services.
- Transfers of emission rights and various financial revenues.
- Certain services rendered by a foreign organisation, which does not have a PE in Vietnam where the services are rendered outside of Vietnam, including repairs to means of transport, machinery, or equipment, advertising, marketing, promotion

of overseas investment and trade, brokerage activities for the sale of overseas goods and services, training, and certain international telecommunication services.
- Sales of assets by non-business organisations or individuals not registered for VAT.
- Transfer of investment projects.
- Sale of agricultural products that have not been processed into other products or have only been through preliminary processing.
- Capital contributions in kind.
- Certain asset transfers between a parent company and its subsidiaries or between subsidiaries of the same parent company.
- Collections of compensation/indemnities by insurance companies from third parties.
- Collections on behalf of other parties that are not related to the provision of goods/services (e.g. if company A purchases goods/services from company B but pays to company C, and, subsequently, company C pays to company B, then the payment from company C to company B is not subject to VAT).
- Commissions earned by (i) agents selling services, including postal, telecommunications, lottery, airlines/bus/ship/train tickets, at prices determined by principals; and (ii) agents for international transportation, airlines, and shipping services entitled to 0% VAT; or (iii) insurance agents.
- Commissions from the selling of exempt goods/services.
- Lending or return of machinery, equipment, goods.
- Goods exported and then re-imported back to Vietnam due to sales returns by overseas customers.

Exempt goods and services

There are stipulated categories of VAT exemptions, including certain agricultural products; goods/services provided by individuals having annual revenue of 100 million Vietnamese dong (VND) or below; imported or leased drilling rigs, aeroplanes, and ships of a type that cannot be produced in Vietnam; transfer of land use rights (subject to limitations); various financial services; various securities activities including fund management; capital assignments; foreign currency trading; debt factoring; certain types of insurance, medical services, education, printing/publishing, public transportation, export of unprocessed natural resources, etc.

When a supply cannot be readily classified based on the tax tariff, VAT must be calculated based on the highest rate applicable for the particular range of goods that the business supplies.

Taxpayers must file VAT returns on a monthly basis by the 20th day of the subsequent month or on a quarterly basis by the 30th day of the subsequent quarter (for companies with prior year annual revenue of VND 50 billion or less).

Customs duties

Import duty rates are classified into three categories: ordinary rates, preferential rates, and special preferential rates.

Preferential rates are applicable to imported goods from countries that have most-favoured-nation (MFN, also known as normal trade relations) status with Vietnam. The MFN rates are in accordance with Vietnam's World Trade Organization (WTO) commitments and are applicable to goods imported from other member countries of the WTO.

Special preferential rates are applicable to imported goods from countries that have a special preferential trade agreement with Vietnam. Currently effective free trade agreements (FTAs) to which Vietnam is a party include FTAs between ASEAN member states, between ASEAN members and Japan, ASEAN and China, ASEAN and India, ASEAN and Korea, ASEAN and Chile, ASEAN and Australia, ASEAN and New Zealand, Vietnam and Japan, Vietnam and Chile, Vietnam and Korea, Vietnam and the Eurasian Economic Union (Vietnam and the Customs Union of Russia, Belarus, Kazakhstan).

Vietnam has concluded two important agreements, the European Union FTA (EFTA) and Trans-Pacific Partnership (TPP, although its future is uncertain given the United States [US] withdrawal). In addition, Vietnam is negotiating other agreements, including the Regional Comprehensive Economic Partnership (RCEP) and FTAs between ASEAN and Hong Kong, and with Israel.

Import duty exemptions are provided for encouraged projects and goods imported in certain circumstances.

Export duties are charged only on a few items, basically certain natural resources. Rates range from 0% to 40%.

Special sales tax (SST)

SST is a form of excise tax that applies to selected goods and services (*see below*). For goods, SST is charged at the production or importation stage. Imported goods (except for various types of petrol) are subject to SST at both the import and selling stages. The SST paid at importation will be creditable against SST paid at the selling stage.

The SST rates are as follows:

Products/services	SST rate (%)
Cigar/cigarette:	
From 1 January 2016 to 31 December 2018	70
From 1 January 2019	75
Spirit/wine:	
With ABV ≥ 20°:	
From 1 January 2018	65
With ABV < 20°:	
From 1 January 2018	35
Beer:	
From 1 January 2018	65
Automobiles having less than 24 seats:	
From 1 January 2018	10 to 150
Motorcycle with cylinder capacity above 125cm^3	20
Airplanes	30
Boats	30
Petrol	7 to 10
Air-conditioners (not more than 90,000 BTU)	10
Playing cards	40
Votive paper	70
Discotheques	40
Massage, karaoke	30
Casinos, jackpot games	35
Entertainment with betting	30

Products/services	SST rate (%)
Golf	20
Lottery	15

Property taxes

Foreign investors generally pay rental fees for land use rights. The range of rates is wide depending upon the location, infrastructure, and the industrial sector in which the business is operating.

In addition, owners of houses and apartments have to pay land tax under the law on non-agricultural land use. The tax is charged on the specific land area used based on the prescribed price per square metre at progressive tax rates ranging from 0.03% to 0.15%.

Stamp taxes

Certain assets, including houses, land, automobiles and motorcycles, etc., that are subject to registration of ownership are subject to stamp duty. The stamp duty rates vary depending on the asset transferred.

Payroll taxes

Social insurance (SI) and Unemployment insurance (UI) contributions are applicable to Vietnamese individuals only. Health insurance (HI) contributions are required for Vietnamese and foreign individuals that are employed under Vietnam labour contracts. Effective from 1 January 2018, SI contribution is also applicable to foreign individuals working in Vietnam under a work permit or practicing certificate or licence.

Accordingly, from 1 January 2018, the salary subject to SI/HI/UI contributions is the salary, certain allowances, and other regular payments according to labour law, but this is capped at 20 times the minimum salary for SI/HI contributions and 20 times the minimum regional salary for UI contributions. Effective from 1 July 2018, the minimum salary is increased from VND 1,300,000 per month to VND 1,390,000 per month. Effective from 1 January 2018, the minimum regional salary varies from VND 2,760,000 per month to VND 3,980,000 per month. These minimum salaries are subject to change each year.

Social insurance (SI) contributions

The level of compulsory SI contribution is 25.5% of total salary, of which 17.5% is the employers' obligation and the remaining 8% is the employees' obligation.

Health insurance (HI) contributions

HI contribution rates are 4.5% of total salary, with two-thirds contributed by the employer and one-third by the employee.

Unemployment insurance (UI) contributions

The employer and employee UI contributions are 1% on gross salary each.

Natural resources tax (NRT)

NRT is payable by industries exploiting Vietnam's natural resources, including petroleum, minerals, natural gas, forest products, natural seafood, natural bird's nests, and natural water. Natural water used for agriculture, forestry, fisheries, salt industries, and sea water for cooling purposes may be exempt from NRT, provided that certain conditions are satisfied. The tax rates vary depending on the natural resource being exploited, ranging from 1% to 40%, and are applied to the production output at a specified taxable value per unit. Various methods are available for the calculation of the taxable value of the resources, including cases where the commercial value of the resources cannot be determined. Crude oil, natural gas, and coal gas are taxed at progressive tax rates depending on the daily average production output.

Environment protection tax (EPT)

EPT is an indirect tax that is applicable to the production and importation of certain goods deemed detrimental to the environment, the most significant of which are petroleum and coal. The tax is calculated as an absolute amount on the quantity of the goods.

The tax rates are as follows:

Goods	Unit	Tax range (VND)
Petrol, diesel, grease, etc.	litre/kg	300 to 3,000
Coal	ton	10,000 to 20,000
HCFCs	kg	4,000
Plastic bags *	kg	40,000
Restricted use chemicals	kg	500 to 1,000

* Excludes plastic bags used for packaging or that are 'environmentally friendly'.

Branch income

Branches of foreign entities are subject to the same CIT regime as entities incorporated in Vietnam.

Income determination

Inventory valuation

At present, there are no provisions for valuing inventories or determining inventory flows. The tax treatment follows the accounting treatment.

Asset revaluation

Gains from the revaluation of assets for the purposes of capital contribution or transfer upon division, demerger, consolidation, merger, or conversion of business are subject to the standard CIT rate.

Capital gains

Gains made by a foreign investor on the transfer of an interest (as opposed to shares) in a limited liability company are subject to the standard CIT rate. The assignee is required to withhold the tax due from the payment to the assignor and account for this to the tax authorities. Where both the assignor and the assignee are foreign entities, the Vietnamese company in which the capital interest is transferred is responsible for the above administration.

Gains earned by a foreign investor from selling securities (i.e. bonds, shares of public joint-stock companies, irrespective of whether they are listed or non-listed) are subject to CIT at a deemed rate of 0.1% of the sales proceeds. The standard CIT rate will apply to any gains earned by a foreign company (not incorporated in Vietnam) upon a sale of shares in a non-public, joint-stock company.

There is a draft law proposed to tax transfer of capital outside Vietnam where the transferred capital includes capital from investment in Vietnam at 2% on sales proceeds effective from 1 January 2019. The draft law is still under discussion and revision.

Dividend income

Dividends received from investments in other companies in Vietnam are from after tax profits and are not subject to CIT.

Interest income

Certain types of interest income are entitled to tax incentives granted to the investment project, depending on the conditions on which tax incentives are granted.

Royalty income

Currently, royalty income is subject to tax at the standard CIT rate.

Other significant items

Tax incentives that are available for investment in encouraged sectors do not apply to other income (except for income that directly relates to the incentivised activities, such as disposal of scrap), which is broadly defined.

The following income items are subject to the standard CIT rate and are not entitled to tax incentives (including preferential tax rate and exemption/reduction):

- Income from transfer of the right to make capital contribution; income from transfer of immovable property (except for income from investment in social houses); income from transfer of investment projects, transfer of the right to take part in investment projects, and transfer of the right to exploration and exploitation of minerals.
- Income from activities of prospecting for, exploration of, and exploitation of oil, gas, and other rare and precious resources; income from activities of exploiting minerals.
- Income from providing services subject to SST in accordance with the provisions of the law on SST.

Foreign income

Foreign income, under the domestic tax law, is subject to the standard CIT rate with tax credits available (*see Foreign tax credit in the Tax credits and incentives section*).

Foreign income shall be taxed when earned. There are no provisions for tax deferral or preferential tax rates for foreign income.

Deductions

Depreciation and amortisation

Tax depreciation may differ from accounting depreciation. Depreciation in excess of the rates specified in the regulations on tax depreciation is not deductible. These regulations specify maximum and minimum permissible effective lives for various classes of assets, including intangibles. Current straight-line tax depreciation rates are as follows:

Assets	Rate (%)
Buildings	2 to 16.67
Office equipment	10 to 20
Automobiles	3.33 to 16.66
Machinery and equipment	5 to 33.33
Intangible assets	Not more than 5
Goodwill	33.33

The depreciation period of assets of the Build Operate Transfer (BOT) and Business Cooperation Contract (BCC) projects is the period the investors use them to recover their investment capital.

Start-up expenses

Pre-establishment expenses (i.e. expenses for setting up a company) and certain expenses (i.e. training, advertising before establishment, costs for the research stage, relocation cost) can be amortised over a period of up to three years from the commencement of operations. In order for pre-establishment and pre-operating expenses to be deductible for CIT purposes, supporting documents to substantiate the fact that these pre-operating expenses were necessarily and legitimately incurred for the establishment of the company should be available.

Interest expenses

Interest on loans corresponding to the portion of charter capital not yet contributed as scheduled is not deductible.

Interest on loans from non-economic and non-credit organisations exceeding 1.5 times the interest rate set by the State Bank of Vietnam is not deductible.

Interest on loans that has been capitalised is not deductible.

Tax deductibility of interest on loans is to be capped at 20% of earnings before interest, taxes, depreciation, and amortisation (EBITDA) (*see Transfer pricing in the Group taxation section*).

Bad debt

Provisions for bad debts are deductible if the provision is made in accordance with the guidance by the Ministry of Finance (MoF). Certain conditions must be satisfied in order to set up a provision for bad debts (e.g. the debts must be supported by original documentation, there must be confirmation from clients of the overdue amounts, the debts must be overdue under the terms of an economic contract). In the absence of satisfying the necessary conditions, the provision for bad debts will generally not be deductible until incurred and supported by invoices.

Charitable contributions

Donations are generally non-deductible, except certain donations for education, health care, natural disasters, building charitable homes for the poor, or scientific research.

Fines and penalties
Administrative penalties and fines are specifically considered non-deductible.

Taxes
Creditable input VAT, CIT, and other fees/charges are not deductible for CIT purposes.

Other significant items
The following other expenditures are specifically stated to be non-deductible:

- Employee remuneration expenses that are not actually paid or are not stated in a labour contract, collective labour agreement, or the financial regulations of the company.
- Staff welfare (including certain benefits provided to family member of staff) exceeding a cap of one month's average salary.
- Provisions for severance allowance (except for companies not subject to mandatory unemployment insurance contributions) and payments of severance allowance in excess of the prescribed amount per the Labour Code.
- Contributions to voluntary pension funds and the purchase of voluntary pension for employees exceeding VND 3 million per month per person.
- Reserves for research and development (R&D) that are not in accordance with the prevailing regulations.
- Provisions for stock devaluation, bad debts, financial investment losses, product warranties, or construction work that are not in accordance with the prevailing regulations.
- Unrealised foreign exchange gain/losses due to the revaluation of foreign currency items other than account payables at the end of a financial year.
- Management expenses allocated to PEs in Vietnam by the foreign company's head office that are not in accordance with the regulations.
- Certain expenses directly related to the issuance, purchase, or sale of shares.
- Services fees paid to related parties that do not meet certain conditions.

For certain businesses (e.g. insurance companies, securities trading, lotteries), the MoF provides specific guidance on deductible expenses for CIT purposes.

Net operating losses
Losses may be carried forward fully and consecutively for a maximum of five years. Carryback of losses is not permitted.

Payments to foreign affiliates
There are no special restrictions on the deductibility of royalties, loan interest, and service fees paid to foreign affiliates (except for those paid by branches). However, the payment must be defendable on an arm's-length basis as required by transfer pricing regulations (*see Transfer pricing in the Group taxation section*). Certain contracts for the transfer of technology and foreign loans must be registered with the competent authorities.

Group taxation

There is no provision for any form of consolidated filing or group loss relief in Vietnam.

Transfer pricing

Decree 20/2017/ND-CP was enacted on 24 February 2017 and shall be effective from 1 May 2017. The guiding Circular 41/2017/TT-BTC was enacted on 28 April 2017 and is effective from 1 May 2017.

Decree 20 is based closely on the existing Circular 66/2010/TT-BTC, and extends the interpretation of existing provisions and introduces additional concepts and principles from the Transfer Pricing Guidelines of the OECD and BEPS Action Plan.

Related party definition

The ownership threshold required to be a 'related party' under Decree 20 is 25%, higher than the prior 20% under Circular 66. In addition, Decree 20 removes from the related party definition of Circular 66 two entities having transactions between them accounting for more than 50% of their sales or purchases. Vietnam's transfer pricing rules also apply to domestic related-party transactions.

Transfer pricing methodologies

The acceptable methodologies for determining arm's-length pricing are analogous to those espoused by the OECD in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (i.e. comparable uncontrolled price, resale price, cost plus, profit split, and comparable profits methods).

Transfer pricing documentation

Compliance requirements include an annual declaration of related-party transactions and transfer pricing methodologies used, and a taxpayer confirmation of the arm's-length value of their transactions (or otherwise the making of voluntary adjustments), which is required to be filed together with the annual CIT return. Decree 20 requires that the transfer pricing method applied must ensure that there is no loss of tax revenue to the state budget, which could imply that no downward adjustments are allowed. Decree 20 also introduces a new transfer pricing declaration form that requires disclosure of more detailed information, including segmentation of profit and loss by related-party and third-party transactions.

Decree 20 gives the tax authorities the power to use internal databases for transfer pricing assessment purposes in cases where a taxpayer is deemed noncompliant with the requirements of the Decree.

Taxpayers engaged in related-party transactions solely with domestic related parties could be exempt from the requirement to disclose information on such transactions in the new transfer pricing declaration form, where both parties have the same tax rate and neither party enjoys tax incentives.

Companies that have related-party transactions must also prepare and maintain contemporaneous transfer pricing documentation. Decree 20 introduces a three-tiered transfer pricing documentation approach to collect more tax-related information on multinational companies' business operations, specifically a master file, a local file, and country-by-country (CbC) reporting. The three-tiered transfer pricing documentation has to be prepared before the submission date of the annual tax return, which gives taxpayers just 90 days (from the fiscal year-end date) to complete the year's transfer pricing documentation.

A taxpayer is exempt from preparing transfer pricing documentation (but not all other aspects of the Decree) if one of the following conditions is met:

- has revenue below VND 50 billion and total value of related-party transactions below VND 30 billion in a tax period
- concludes an Advance Pricing Agreement (APA) and submits annual APA report(s), or
- has revenue below VND 200 billion, performs simple functions, and achieves at least the following ratios of earnings before interest and tax to revenue on the following business: distribution (5%), manufacturing (10%), processing (15%).

As of early 2018, the GDT is in negotiations with the competent authorities of various overseas tax jurisdictions to conclude the first bilateral APAs for several taxpayers.

Substance-over-form principle

Decree 20 emphasises the need for closer scrutiny of all related-party transactions to ensure that value creation is actually generated from intra-group transactions. The substance-over-form principle is especially relevant to CIT deductions, and transfer pricing documentation will need to provide support for such related-party transactions.

20% EBITDA cap on total interest expense

Decree 20 provided a 20% EBITDA cap on total interest expense. While Decree 20 is the guiding tax administration applicable to associated enterprises, it seems that the 20% EBITDA cap is applied to both related-party and third-party loans.

Thin capitalisation

There are no thin capitalisation requirements in the tax legislation. However, the level of permitted debt funding will be limited by virtue of licensing requirements. The maximum amount of debt funding is the difference between the licensed investment capital and charter capital.

Decree 20, however, provides that deductible interest on loans shall be subject to the cap of 20% of EBITDA (*as above*).

Controlled foreign companies (CFCs)

Vietnam does not have any CFC legislation.

Tax credits and incentives

Foreign tax credit

In respect of Vietnamese enterprises earning income from overseas investment, CIT (or a kind of tax with a nature similar to CIT) paid in a foreign country or paid on behalf by its partner in the country receiving the investment (including tax levied on the dividend) is allowed to be creditable. The credit shall not exceed the CIT amount payable in Vietnam.

The foreign income tax that is entitled to exemption or reduction in accordance with the foreign law shall also be credited.

Inbound investment incentives

Tax incentives are granted based on regulated encouraged sectors, encouraged locations, and size of the projects.

The sectors that are encouraged by the Vietnamese government include education, health care, sport/culture, high technology, environmental protection, scientific research and technology development, infrastructural development, processing of agricultural and aquatic products, software production, and renewable energy.

The encouraged locations include qualifying economic and high-tech zones, certain industrial zones, and difficult socio-economic areas. Large manufacturing projects with investment capital of more than VND 6 trillion disbursed within three years of being licensed can also qualify for CIT incentives if:

- the minimum revenue is VND 10 trillion *per annum* by the fourth year of operations at the latest, and
- the minimum headcount is 3,000 by the fourth year of operations at the latest.

The preferential incentive rate applied for large manufacturing projects can be extended for a maximum additional 15 years if the project manufactures goods having 'international competitiveness' whose revenue exceeds VND 20 trillion *per annum* within five years from the first year of revenue generation, or whose average head count is over 6,000.

Large manufacturing projects include projects with investment capital of VND 12 trillion or more, disbursed within five years of being licensed (excluding those related to the manufacture of products subject to SST or those exploiting mineral resources) and using technologies appraised in accordance with relevant laws.

Further, new investment projects engaging in manufacturing industrial products prioritised for development will be entitled to CIT incentives if the products support:

- the high technology sector, or
- the garment, textile, and footwear; information technology (IT); automobiles assembly; or mechanics sector and were not produced domestically as of 1 January 2015, or, if produced domestically, they meet the quality standards of the European Union (EU) or equivalent.

The two preferential rates of 10% and 20% for 15 years and 10 years, respectively, are available starting from the commencement of generating revenue from the incentivised activities. From 1 January 2016, enterprises entitled to the pre-2016 preferential CIT rate of 20% will enjoy the rate of 17% instead. When the preferential rate expires, the CIT rate reverts to the standard rate. The preferential rate of 15% will apply for the entire project life in certain cases. Certain socialised sectors (e.g. education, health) enjoy the 10% rate for the entire life of the project.

Business expansion projects are now entitled to CIT incentives if any of the following criteria are met:

- Additional fixed assets costing at least VND 20 billion (or VND 10 billion if the projects are in certain specified regions with difficult socio-economic conditions) are invested.

- There is at least a 20% increase in the value of fixed assets compared with the period before expansion.
- There is at least a 20% increase in the designed capacity compared with the period before expansion.

Investment projects are allowed to access more favourable tax incentives available under an amended or new law on CIT for the remaining project period, from tax year 2015. This entitlement is specifically applicable to the following cases:

- Expansion projects licensed or implemented during the period from 2009 to 2013 that were not previously entitled to any CIT incentives.
- Investment projects commencing operations in industrial zones during the period from 2009 to 2013 that were not previously entitled to any CIT incentives.
- Investment projects located in areas that were not previously designated as encouraged.

Tax holidays

Investors may be considered for tax holidays and reductions. The holidays take the form of a complete exemption from CIT for a certain period beginning immediately after the enterprise first makes profits, followed by a further period where tax is charged at 50% of the applicable rate. However, where the enterprise has not derived profits within three years of the commencement of operations, the tax holidays/tax reduction will start from the fourth year of operation. Criteria for eligibility to these holidays and reductions are set out in the CIT regulations as follows:

- Four years of tax exemption and nine subsequent years of 50% reduction shall be applied to:
  - Income earned by enterprises carrying out new investment projects entitled to 10% CIT.
  - Income earned by enterprises carrying out new investment projects in the socialised sectors and difficult socio-economic areas.
- Four years of tax exemption and 50% tax reduction for five subsequent years shall be given to income earned by enterprises carrying out new investment projects in the socialised sectors and in regions not included in the list of difficult socio-economic areas.
- Two years of tax exemption and four subsequent years of 50% reduction shall be applied to:
  - Income earned by enterprises from carrying out new investment projects in regions with difficult socio-economic conditions.
  - Income earned by enterprises from carrying out new investment projects, including production of high-grade steel, production of energy saving products, production of machinery or equipment used to serve agricultural, forestry, fishery, or salt production, production of irrigational equipment, production and refinement of foodstuff for cattle, poultry, or aquatic products, and development of traditional trades.
  - Income earned by enterprises that carry out new investment projects in industrial zones (except for industrial zones located in regions with favourable socio-economic conditions).

From 1 January 2018, certain incentives, including a lower CIT rate, will be granted to small and medium enterprises (SMEs) (various criteria applied to be considered as SMEs).

Employment incentives

Additional tax reductions may be available for engaging in manufacturing, construction, and transportation activities that employ several female staff and/or ethnic minorities. CIT reduction must correspond with the actual payment for those employees.

Research and Development (R&D) Fund

Business entities in Vietnam are allowed to set up a tax deductible R&D Fund. Enterprises can appropriate up to 10% of annual profits before tax to the fund. Various conditions apply.

Withholding taxes

Foreign Contractor Tax (FCT) is withheld on payments to foreign contractors.

Payments to foreign contractors

FCT on payments to foreign contractors applies where a Vietnamese contracting party (including a foreign-invested enterprise incorporated in Vietnam) contracts with a foreign party that does not have a licensed presence in Vietnam, irrespective of whether the services are provided in Vietnam or overseas.

This FCT generally applies to payments derived from Vietnam, except for the pure supply of goods (i.e. where the responsibility, cost, and risk relating to the goods passes at or before the border gate of Vietnam and there are no associated services performed in Vietnam), services performed and consumed outside Vietnam, and various other services performed wholly outside Vietnam (e.g. certain repairs, training, advertising, promotion).

In addition, certain distribution arrangements where foreign entities are directly or indirectly involved in the distribution of goods or provision of services in Vietnam are subject to FCT (e.g. where the foreign entity retains ownership of the goods; bears distribution, advertising, or marketing costs; is responsible for the quality of goods or services; makes pricing decisions; or authorises/hires other Vietnamese entities to carry out part of the distribution of goods/provision of services in Vietnam).

Foreign contractors can apply to be deduction-method VAT payers if they adopt the Vietnamese accounting system. If accounting records are adequate, the foreign contractor will pay CIT on actual profits, but otherwise on a deemed-profit basis.

For direct (non-deduction-method) foreign contractors, VAT and CIT will be withheld by the contracting party at deemed rates. Various rates are specified according to the nature of the contract performed. For CIT, the FCT rate varies from 0.1% to 10%. For VAT, the FCT rate can also range from 2% to 5%. The VAT withheld by the contracting party is an allowable input credit in its VAT return.

A summary of VAT and CIT FCT rates follow:

Types of payment	Deemed VAT rate (%) (3)	Deemed CIT rate (%)
Supply of goods in Vietnam or associated with services rendered in Vietnam (including in-country import-export and imports, distribution of goods in Vietnam or delivery of goods under Incoterms where the seller bears risk relating to goods in Vietnam)	Exempt (1)	1
Services	5	5
Services together with supply of machinery and equipment (2)	3	2
Restaurant, hotel, and casino management services	5	10
Construction, installation without supply of materials, machinery, or equipment	5	2
Construction, installation with supply of materials, machinery, or equipment	3	2
Leasing of machinery, equipment, and drilling rigs	5	5
Leasing of aircraft and vessels	Exempt (4)	2
Transportation	3 (5)	2
Interest	Exempt	5
Royalties	Exempt/5 (6)	10
Insurance	Exempt/5 (7)	5
Re-insurance, commission for re-insurance	Exempt	0.1
Transfer of securities	Exempt	0.1
Financial derivatives	Exempt	2
Other activities	2	2

Notes

1. VAT will not be payable where goods are exempt from VAT or where import VAT is paid upon importation.
2. Where the contract does not separate the value of goods and services.
3. The supply of goods and/or services to the oil and gas industry is subject to the standard 10% VAT rate. Certain goods or services may be VAT exempt or subject to 5% VAT.
4. Where aircraft and vessels cannot be manufactured in Vietnam.
5. International transportation is subject to 0% VAT.
6. Software licences, transfer of technology, and transfer of intellectual property (IP) rights (including copyrights and industrial properties) are VAT exempt. Other royalties may attract VAT.
7. Certain types of insurance are exempt from VAT (*see Exempt goods and services under VAT in the Other taxes section*).

Interest

The FCT applied to interest payments to an overseas lender is 5%. Interest on pre-1999 loans may be exempt from FCT. Offshore loans provided by certain government or semi-governmental institutions may obtain an exemption from the interest FCT where a relevant double tax agreement (DTA) or inter-government agreement (IGA) applies.

Interest earned from bonds (except for tax-exempt bonds) and certificates of deposit are subject to 5% FCT. The sale of bonds and certificates of deposits are subject to deemed tax of 0.1% of the gross sales proceeds.

Royalties, licence fees, etc.

A 10% royalty FCT applies in the case of payments made to a foreign party for transfers of technology or software licence, unless the transfers are contributed as part of legal capital (akin to equity). Transfers of technology are defined very broadly. Certain contracts for the transfer of technology must be registered with the competent authorities.

Recently, the MoF has consistently sought to impose a 5% VAT on the payments for the right to use a trademark.

Management fees and head office charges

FCT applies on management fees and head office charges at the rates applicable to services (*see above*).

Cross-border leases

A Vietnam-based lessee is required to withhold tax from payments to an offshore lessor. 5% VAT and 5% CIT is applicable to the rental charge if it is an operating lease. If it is a finance lease, the interest portion will be exempt from VAT and subject to 5% CIT.

Tax treaties

The above FCT rates may be affected by a relevant DTA.

	FCT (%)	
Recipient	**Interest**	**Royalties**
Non-treaty	5	10
Treaty:		
Algeria (1, 3)	15	15
Australia	10	10
Austria (2, 3, 4)	10	7.5/10
Azerbaijan (3)	10	10
Bangladesh (2, 3)	15	15
Belarus (2, 3)	10	15
Belgium (2, 3, 4)	10	5/10/15
Brunei Darussalam (3)	10	10
Bulgaria (2, 3)	10	15
Canada (3, 4)	10	7.5/10
China (3)	10	10
Cuba	10	10
Czech Republic (3)	10	10
Denmark (2, 3, 4)	10	5/15
Egypt (1)	15	15
Estonia	0	10
France	0	10
Finland (3)	10	10
Germany (3, 4)	10	7.5/10
Hong Kong (3, 4)	10	7/10
Hungary	10	10
Iceland (3)	10	10
India (3)	10	10
Indonesia (2, 3)	15	15
Iran (3)	10	10
Israel (2, 3, 4)	10	5/7.5/15
Italy (3, 4)	10	7.5/10
Ireland (2, 3, 4)	10	5/10/15
Japan (3)	10	10
Kazakhstan (3)	10	10
Korea (North) (3)	10	10
Korea (South) (2, 3, 4)	10	5/15

Vietnam

	FCT (%)	
Recipient	**Interest**	**Royalties**
Kuwait (1, 3)	15	20
Laos	10	10
Luxembourg	10	10
Macedonia (1)	10	10
Malaysia (3)	10	10
Malta (4)	10	5/10/15
Mongolia (3)	10	10
Morocco (3)	10	10
Mozambique	10	10
Myanmar (3)	10	10
Netherlands (2, 3, 4)	10	5/10/15
New Zealand	10	10
Norway (3)	10	10
Oman (3)	10	10
Pakistan (2)	15	15
Palestine	10	10
Panama	10	10
Philippines (2, 3)	15	15
Poland (2, 4)	10	10/15
Portugal (4)	10	7.5/10
Qatar (3, 4)	10	5/10
Romania (2, 3)	10	15
Russia (2)	10	15
San Marino (4)	10/15	10/15
Saudi Arabia (3, 4)	10	7.5/10
Serbia (3)	10	10
Seychelles (2)	10	10
Singapore (2, 3, 4)	10	5/10
Slovakia (3, 4)	10	5/10/15
Spain (3)	10	10
Sri Lanka (2, 3)	10	15
Sweden (3, 4)	10	5/15
Switzerland	10	10
Taiwan (2)	10	15
Thailand (2, 3)	10/15	15
Tunisia (3)	10	10
Turkey (3)	10	10
Ukraine (3)	10	10
United Arab Emirates (3)	10	10
United Kingdom (3)	10	10
United States (1, 2, 3, 4)	10	5/10
Uruguay	10	10
Uzbekistan (2, 3)	10	15
Venezuela (3)	10	10

Notes

1. The treaty is not yet in force.
2. In most cases, the limits set by the DTA are higher than the present FCT rates under domestic law; consequently, the domestic rates will apply.

3. Interest derived by certain government bodies is exempt from FCT.
4. Royalty FCT rates vary for certain types of royalties.

Tax administration

Taxable period

The standard tax year is the calendar year. However, different accounting year-ends can be used if approval is obtained from the authorities.

Tax returns

The annual final CIT return and the audited financial statements must be filed no later than 90 days from the end of the financial year.

Payment of tax

Enterprises are required to make quarterly provisional CIT payments (no later than the 30th day of the next quarter) based on estimates. If the provisional quarterly CIT payments account for less than 80% of the final CIT liability, the shortfall in excess of 20% is subject to late payment interest (currently as high as 11% *per annum*), counting from the deadline for payment of the fourth quarter CIT liability.

Final payment of CIT is due with the final CIT return (i.e. the 90th day of the following financial year).

Penalties

There are detailed regulations setting out penalties for various tax offences. These range from relatively minor administrative penalties to tax penalties amounting to various multiples of the additional tax assessed.

In practice, imposition of penalties has been arbitrary and inconsistent. However, in recent periods there has been a much tougher stance adopted by the tax authorities. Hence, where tax is paid late (e.g. as a result of a tax audit investigation), there is a significant likelihood of penalties being imposed.

Tax audit process

Tax audits are carried out regularly and often cover a number of tax years. Prior to an audit, the tax authorities send the taxpayer a written notice specifying the timing and scope of the audit inspection.

Statute of limitations

The general statute of limitations for imposing tax is ten years (effective 1 July 2013) and for penalties is five years. Where the taxpayer does not register for tax or commits evasion liable to criminal prosecution, the tax authorities can collect unpaid tax and penalties at any time.

Topics of focus for tax authorities

Transfer pricing

Transfer pricing is commonly discussed in the press, and the enterprises that are attracting the attention of the tax authority are generally multinational companies that have many inter-company transactions, have reported losses for many years, and/or are expanding businesses.

CIT incentives

The regulations on the conditions to enjoy CIT incentives are complicated. The guidance to classify new investment and investment expansion (these are subject to different incentive regimes) is not entirely clear. In addition, the ability to apply tax incentives is conditional on compliance to the strict accounting system requirements. Taxpayers are required to self-assess their eligibility to the tax incentives. The tax authorities therefore in tax audits focus on reviewing the taxpayers' fulfilment of the conditions.

Documentation of expenses

The tax authorities are strictly reviewing the documentation of expenses, including contracts, invoices, evidence of work done/benefit received, etc. Insufficient documentation is resulting in disallowance of input VAT credit/refund and CIT deductibility.

FCT on supply of goods

The customs authority has been requested to provide the tax authority with information of companies engaged in in-country import/export transactions in an effort to collect under-declared FCT arising from these transactions.

Secondment arrangements

We have seen the tax authority seek to impose FCT on reimbursements of expatriate remuneration costs by Vietnamese entities. Companies need to ensure that supporting documents are available to show amounts have been reimbursed at cost.

Other issues

Foreign investment restrictions

In several fields, foreign investment will not be licensed or will only be licensed under special conditions. The List of Conditional Investment Sectors include, amongst 243 sectors, television, production and publishing cultural products, telecommunication, transportation by all means, cigarette production, exploring and processing natural resources, real-estate business, education, and medical services and distribution.

Exchange controls

All buying, selling, lending, and transfer of foreign currency needs to be made through credit institutions and other financial institutions authorised by the State Bank of Vietnam (SBV).

Outflow of foreign currency by transfer is authorised for certain transactions, such as payments for imports and services abroad, refund of loans contracted abroad and payment of interest accrued thereon, transfer of profits and dividends, and revenues from transfer of technology.

All monetary transactions in Vietnam must be undertaken in Vietnamese dong. Exceptions are applicable to payments for exports made between principals and their agents, and payments for goods and services purchased from institutions authorised to receive foreign currency payments such as for air tickets, shipping and air freight, insurance, and international communications.

Forms of doing business

According to the Law on Enterprises, a foreign-invested enterprise may be established as either a single member limited liability or a limited liability with more than one member, a joint-stock company, or a partnership.

Intellectual property (IP)

IP rights are protected by the Civil Code (1995 and 2005), the Law on Intellectual Property (2005), and a host of subordinate legislation.

Vietnam is signatory to the Paris Convention, the Madrid Agreement on International Trademark Registration, and the Patent Cooperation Treaty, and is a member of the World Intellectual Property Organisation. Vietnam has entered into an agreement on copyrights with the United States (US). According to the Vietnam-US Bilateral Trade Agreement, Vietnam is further under the obligation to adhere to the Berne Convention.

Zambia

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Significant developments

Following the 2018 Budget announcements, the following measures have been put in place with effect from 1 January 2018:

- Introduction of 5% Property Transfer Tax (PTT) on intellectual property (IP), such as trademarks, patents, copyrights, and industrial designs, with the tax base being the actual price or realised value.
- The scope of PTT has been widened to include the indirect transfer of holdings in a local entity. Accordingly, where there is a transfer of shares/shareholding of a shareholder that owns at least 10% of the shares in a local company, then the indirect change in ownership will be subject to PTT. PTT will be payable at 5% on the proportion of the realised value that the Zambian entity bears in relation to the total value of the shares transferred of the non-resident shareholding company.
- Companies in Zambia are now required to disclose all parties that become related to them within one month after they become related.
- The definition of management or consultancy fees has been clarified so that the creation, design, development, installation, and maintenance of any information technology solution or system will fall within the definition of management or consultancy fees.
- The base tax was increased from 150 Zambian kwacha (ZMW) *per annum* to ZMW 365 *per annum*. This generally applies to small businesses that are not capable of keeping records to enable effective tax assessment.
- The number of taxes that are to be collected by agents on behalf of the Zambia Revenue Authority (ZRA) have been broadened to include the base tax, presumptive tax, turnover tax, and withholding tax (WHT) on rental income.
- A late submission penalty of ZMW 75 for each month or part of a month that the turnover tax return is late was introduced.
- Introduction of a provisional filing deadline of 90 days from the date of registration for companies/persons that register for income tax after 31 March.
- The ZRA has clarified that donors and persons who are covered by the Diplomatic Immunities and Privileges Act are exempt from paying skills development levy (SDL).
- Effective 1 January 2018, the five-year tax holidays for corporate income tax (CIT) and WHT on dividends that were provided under the Zambia Development Agency Act (ZDA Act) have been discontinued. However, qualifying companies will benefit from accelerated tax depreciation (capital allowances) for capital expenditure incurred on qualifying projects.
- The sale of unprocessed and semi-processed tobacco is exempt from value-added tax (VAT) with effect from 1 January 2018.
- Penalties have been introduced in the VAT Act and the Customs and Excise Act for taxpayers that avail incomplete records, for failure to avail records for inspection, or

for failure to provide relevant information requested by an authorised ZRA officer within the stipulated time.
- Suppliers that fail to issue valid tax invoices from approved computer packages, pre-printed tax invoice books, or fiscal cash registers will be liable upon conviction to a penalty of up to 300,000 penalty units (ZMW 90,000) or imprisonment for a term not exceeding three years or both.
- The filing deadline for monthly VAT returns has changed from the 16th day to the 18th day of the following month, while the filing deadline for withholding VAT agents is the 16th day of the following month.
- Excise duty of 125% was introduced on methylated spirit, denatured alcohol, and undenatured alcohol.
- Income Tax (Transfer Pricing) (Amendment) Regulations, 2018 are now in force. The new regulations are intended to enhance and supplement the transfer pricing legislative provisions that have been in place since 1999.

Taxes on corporate income

Zambia principally operates a source-based system for the taxation of income. Income deemed to be from a Zambian source is generally subject to Zambian income tax. However, residence of a person/entity in Zambia will widen the scope of taxation to include interest and dividend income from abroad. Consequently, Zambian residents will also be subject to income tax on interest and dividends from a source outside Zambia.

A non-Zambian resident enterprise that has a permanent establishment (PE) in Zambia will be subject to CIT on its Zambian-source income. If there is no PE, Zambian-source income of the non-Zambian resident may still be subject to WHT, which is generally deducted at source (*see the Withholding taxes section*).

The standard rate of CIT applicable on taxable income of corporate entities (other than individuals) is 35%.

Small businesses that are not capable of keeping records to enable effective tax assessment are subject to base tax, which is levied at ZMW 365 *per annum*. This typically applies to small market traders.

The following sources of income are subject to different CIT rates:

Source of income	CIT rate (%)
Electronic communications networks or service licensees (income in excess of ZMW 250,000)	40
Farming	10
Agro-processing	10
Export of non-traditional products	15
Production of organic fertiliser and chemical manufacture of fertiliser	15

The rates applicable for mining operations (for both base metals and industrial minerals) are as follows:

Tax on mining operations* (for both base metals and industrial minerals**)	Rate
CIT	30%

Tax on mining operations* (for both base metals and industrial minerals**)	Rate
Additional variable profits	N/A

Income earned solely from mineral processing is subject to CIT at a rate of 35%***.

Notes

* Mining operations means an operation carried out under a mining right, excluding an operation carried out under a mineral processing licence only or an exploration licence.

** Industrial minerals include rocks or minerals other than gemstones, base metals, energy minerals, or precious metals used in their natural state or after physical or chemical transformation, including barites, dolomite, feldspar, fluorspar, graphite, gypsum, ironstone when used as a fluxing agent, kyanite, limestone, phyllite, magnesite, mica, nitrate, phosphate, pyrophyllite, salt, sand, clay, talc, laterite, gravel, potash, potassium minerals, granite, marble, clay, silica, diatomite, kaolin, bentonite, or quartz.

*** Mineral processing means the practice of beneficiating or liberating valuable minerals from their ores, which may combine a number of unit operations, such as crushing, grinding, sizing, screening, classification, washing, froth floatation, gravity concentration, electrostatic separation, magnetic separation, leaching, smelting, refining, calcining, and gasification or any other processes incidental thereto.

Reduced CIT rates apply in some other cases, including for certain companies listed on the Lusaka Stock Exchange.

Mineral royalty tax

The mineral royalty tax regime in Zambia has undergone a number of changes since 2015. However, with effect from 1 June 2016, the following mineral royalty rates apply:

Description	Rate (%)
For a holder of a mining licence:	
On the norm value of the base metals produced or recoverable under the licence, except when the base metal is copper.	5
On the gross value of the energy and industrial minerals produced or recoverable under the licence.	5
On the gross value of the gemstones produced or recoverable under the licence.	6
On the norm value of the precious metals produced or recoverable under the licence.	6
Where the base metal produced or recoverable under the licence is copper:	
On the norm value when the norm price of copper is less than 4,500 United States dollars (USD) per tonne.	4
On the norm value, when the norm price of copper is USD 4,500 per tonne or greater, but less than USD 6,000 per tonne.	5
On the norm value, when the norm price of copper is USD 6,000 per tonne or greater.	6

Local income taxes

There are no income taxes imposed by the provincial or local authorities on businesses.

Corporate residence

A person other than an individual will be resident in Zambia if it is incorporated or formed under the laws of Zambia or if the central management and control is exercised in Zambia.

Permanent establishment (PE)

Broadly, a non-Zambian resident may have a Zambian PE if it has a fixed place of business in Zambia or if it has a dependent agent that has and habitually exercises the authority to conclude contracts in Zambia.

The Zambian definition of a PE is generally similar to the Organisation for Economic Co-operation and Development (OECD) definition and contains a similar list of activities that are included and excluded from the definition of a fixed place of business.

The definition of a PE includes the furnishing of services, including consultancy services, by an enterprise through employees or other personnel present in Zambia for a period or periods exceeding, in aggregate, 90 days in any 12-month period commencing or ending in the fiscal year concerned.

Where a relevant double tax treaty (DTT) is in force, the definition of a PE in the treaty should take precedence over Zambian domestic legislation where the non-Zambian resident enterprise does not have a PE under the treaty definition.

Other taxes

Value-added tax (VAT)

The VAT rate is 16% and is applicable to supplies of standard-rated goods and services.

The export of goods from Zambia is zero-rated. However, the provision of services that are classified as standard-rated supplies from a Zambian place of business is subject to VAT at 16%, irrespective of whether the customer is a Zambian resident or a non-Zambian resident.

Standard-rated goods imported to Zambia are subject to import VAT at 16%.

The supply of standard-rated services to customers in Zambia by a non-Zambian supplier that has not been subject to VAT in the country from which the services are provided will be subject to VAT in Zambia. The non-Zambian supplier can appoint a local tax agent to account for output VAT on their services; this procedure enables the Zambian customer to reclaim the corresponding input VAT. Otherwise, the Zambian VAT-registered customer would be required to account for the output VAT referred to as 'reverse-charge VAT on the services procured from the non-resident supplier'. In this instance, there is no mechanism for the Zambian customer to recover reverse-charge VAT.

Customs duties

Goods imported into Zambia are generally subject to customs duties. In 2017, a surtax of 5% was introduced on selected goods that are imported into, manufactured in, or produced in the country.

Excise taxes

Certain goods and services, such as alcoholic drinks, tobacco, and mobile communications airtime, are subject to excise duty at the following rates:

Item	2018 rate (%)	2017 rate (%)
Alcoholic drinks:		
Less than 80% by volume	60	60
80% or higher by volume	125	125
Tobacco	0	0
Telephone airtime*	17.5	17.5

* Airtime includes minutes of voice calls, short message services (sms), multi-media services (mms), internet band width, and other similar services that a subscriber consumes on a mobile cellular telephone or other electronic communication device.

Property taxes

Zambia does not have a property tax other than Property Transfer Tax (*see below*).

Property Transfer Tax (PTT)

PTT applies on the transfer of land and buildings situated in Zambia and the transfer of shares issued by a company incorporated in Zambia, including on the indirect transfer by a non-resident company that indirectly holds at least 10% of the shareholding of a company incorporated in Zambia.

PTT on the transfer of land and buildings is payable at 5% of the realised value or the open market value.

PTT on the sale of shares is payable at 5% of the open market value or nominal value, whichever is greater.

PTT on the indirect transfer by a non-resident company that indirectly holds at least 10% of the shareholding in a Zambian incorporated company will be levied at 5%. The tax will be levied on the proportion of value that the Zambia entity bears to the total value of the shares transferred in the non-Zambian entity transferring its shares. In this instance, PTT is payable by the Zambian entity whose shareholding is indirectly transferred.

PTT is also payable on the transfer of a mining right at the rate of 10%.

PTT also applies on the transfer of IP at the rate of 5%.

The PTT liability is payable by the vendor.

Stamp taxes

Zambia does not have a stamp tax.

Turnover taxes

Turnover tax includes bands and presumptive amounts with a turnover of not more than ZMW 800,000 *per annum,* as follows:

Monthly turnover category (ZMW)	Tax payable
0 to 4,200.00	3% of monthly turnover above ZMW 3,000
4,200.01 to 8,300.00	ZMW 225 per month + 3% of monthly turnover above ZMW 4,200
8,300.01 to 12,500.00	ZMW 400 per month + 3% of monthly turnover above ZMW 8,300
12,500.01 to 16,500.00	ZMW 575 per month + 3% of monthly turnover above ZMW 12,500

Monthly turnover category (ZMW)	Tax payable
16,500.01 to 20,800.00	ZMW 800 per month + 3% of monthly turnover above ZMW 16,500
Above 20,800.00	ZMW 1,025 per month + 3% of monthly turnover above ZMW 20,800

Income that is subject to turnover tax will not be subject to income tax or VAT.

The definition of 'turnover' for turnover tax purposes excludes interest, rental income, dividends, or royalties. Furthermore, income earned from the provision of consultancy services or from mining operations does not qualify for turnover tax.

Registration taxes

The Patents and Companies Registration Agency (PACRA) applies a registration fee of 2.5% to increases in the authorised share capital of companies incorporated in Zambia.

Payroll taxes

Employers are required to deduct income tax arising on any emoluments under the 'Pay As You Earn' (PAYE) regulations.

Skills development levy (SDL)

Employers are required to pay a monthly levy amounting to 0.5% of the gross emoluments payable to employees.

Social security contributions

Both employers and employees are required to make contributions to the National Pension Scheme Authority (NAPSA). The contribution rate is 5% of the employee's total earnings (a total 10% contribution from both the employer and employee), subject to a limit as prescribed by the authority. The maximum contribution limit for 2018 is ZMW 995 per employee per month (i.e. a total of ZMW 1,991 from both the employer and employee per month).

Provincial/local taxes other than income taxes

Certain levies may be payable to local councils (e.g. Lusaka City Council).

Branch income

There is no specific legislation concerning the calculation of branch income.

In general, both Zambian resident companies and Zambian branches are required to prepare financial statements under International Financial Reporting Standards (IFRS). The accounting profit is adjusted to determine taxable profits for each source of income using the same rules applicable for determining taxable income of Zambian resident companies. The normal CIT rate is 35%. However, business in certain industry sectors may be subject to different CIT rates. The CIT rates applicable are described in the *Taxes on corporate income section.*

WHT applies on profits distributed by branches of foreign companies at the rate of 15%.

Income determination

As noted below, Zambian CIT rules set out a number of sources of income that are subject to CIT. Income from each source is calculated separately, and a CIT liability arises on each source with no ability to offset a loss from one source against income from another source.

Business income

Business gains or profits from a Zambian source are taxable by reference to a charge year. This charge year runs from 1 January to 31 December; however, entities can apply to the ZRA to have their accounts prepared for a different year end.

Inventory valuation

In calculating business income, IFRS should be followed for CIT purposes, including the determination of stock valuation.

Capital gains

Zambia does not have a capital gains tax regime, and, except where provided otherwise in the Income Tax Act or other legislation, capital gains are not subject to tax.

Dividend income

All dividend income from non-Zambian sources of a Zambian resident company is subject to CIT as a separate source.

In the case of dividend income received from another Zambian resident company, the WHT deducted on the payment of the dividend should represent the 'final tax', and the Zambian resident company receiving the dividend is not subject to an additional CIT liability.

Interest income

All interest income (from both Zambian and non-Zambian sources) of a Zambian resident company is subject to CIT as a separate source.

In the case of interest income from a Zambian source, the taxable amount for the recipient company is inclusive of the WHT deducted at source on the payment of the interest. The WHT is available as a credit for offset against the final CIT liability of the recipient Zambian resident company.

Rental income

WHT applies at 10% on rental payments. This is the final tax for a landlord, which will not be subject to a further CIT liability.

Royalty income

Zambian-source royalty income (which is very widely defined for these tax purposes) of a Zambian resident company is subject to CIT as a separate source, together with premiums or any like consideration for the use of any Zambian property.

The taxable amount for the recipient company is inclusive of the WHT deducted at source on the payment of the royalty. The WHT is available as a credit for offset against the CIT liability of the Zambian resident recipient company.

Partnership income

Where a business is carried on in partnership, the income to which each partner is entitled in a period is ascertained under the Zambian income tax rules, and each partner is assessed and charged separately. Accordingly, a partnership is broadly transparent for Zambian income tax purposes.

Unrealised gains/losses

Unrealised gains are not taxable, and, similarly, unrealised losses are not tax deductible.

Foreign currency exchange gains/losses

Foreign exchange gains are only taxable to the extent that they are revenue rather than capital in nature, in which case they are not taxed until they are realised. Foreign exchange losses are only deductible to the extent that they are revenue in nature and realised. By exception, foreign exchange losses of a capital nature incurred on borrowings used for the building and construction of an industrial or commercial building are deductible.

Other significant items

Other sources of income that are taxed under separate source include income from hedging activities.

Foreign income

As noted above, Zambia operates a source-based system of income tax. However, where an individual/corporate entity is resident in Zambia, then they will also be subject to income tax on non-Zambian source dividends and interest income.

There are no specific anti-avoidance rules preventing deferral of non-Zambian source income, although it should be noted that Zambia has a general anti-avoidance rule.

Deductions

Expenses are generally deductible against taxable income from the same source, provided that they are not of a capital nature and are incurred wholly and exclusively for the purposes of a business.

Provisions can only be deducted to the extent that they are specific. Even if a provision complies with IFRS, it will be disallowed (and any reversal of the provision will not be taxed) to the extent it is considered to be general in nature.

Depreciation and amortisation

Accounting depreciation and amortisation are not deductible; instead, a tax deduction referred to as 'capital allowances' is available on capital expenditure for business purposes.

Zambia has a system of capital allowances that provides for deductions in ascertaining business income. These are calculated at annual rates on qualifying capital expenditure, which currently apply as follows:

Category of qualifying expenditure	Rate of allowance (calculated on a straight-line basis)
Industrial buildings	Investment allowance of 10% *
	Initial allowance of 10% *
	Annual wear and tear allowance of 5% *
Other commercial buildings	Annual wear and tear allowance of 2%
Implements, machinery, and plant - farming and agro-processing	Annual wear and tear allowance of 100%
Implements, machinery, and plant - manufacturing, tourism, generation of electricity, and leasing	Annual wear and tear allowance of 50%
Implements, machinery and plant - other	Annual wear and tear allowance of 25%
Commercial vehicles	Annual wear and tear allowance of 25%
Non-commercial vehicles	Annual wear and tear allowance of 20%
Patents, designs, trademarks, and copyrights	Premium allowance on straight-line basis over the life of period for which the right is granted
Mining expenditure (only available for assets brought into use)	Mining deductions of 25%
Farm improvements	Farm improvement allowance of 100%
Construction and improvement of commercial and industrial buildings by person approved under the ZDA Act	Improvement allowance of 100%

* For industrial buildings, the investment allowance and the initial allowance can both be claimed in the year in which the building is put into use, together with the wear and tear allowance for that year.

Goodwill

Goodwill is not deductible as it is a capital expense.

Start-up expenses

A deduction is allowed for preliminary business expenses in the charge year in which that business commences, provided that the expenditure was incurred within 18 months before the commencement and provided that the expense would have been deductible if it had been incurred after the commencement.

There are special rules for prospecting expenditure in an area in Zambia over which a mining right has been granted. These enable the shareholders of the company undertaking the prospecting to claim a deduction for the prospecting expenditure, provided certain conditions are met.

Interest expenses

Interest expense is deductible, provided that the loan or advance was obtained for capital employed wholly and exclusively for business purposes (or in the production of another source of income).

Note, however, that incidental costs of obtaining finance, such as commitment and guarantee fees and any other incidental costs of a similar nature, are not deductible.

Bad debt

A specific bad debt is deductible if it can be proved that it is bad or likely to become bad.

No deduction is allowed for impairment provisions/bad debt incurred by banks and financial institutions for debts that are secured against collateral.

Charitable contributions

A payment to a public benefit organisation that is approved by the Zambian government or owned by the Zambian government is deductible.

Pension expenses

Payments made by an employer by way of a contribution to an approved fund established for the benefit of employees are deductible. Note that special rules apply for the deductibility of lump sum payments and payments in arrears. Payments to non-approved pension funds are not deductible.

Payments to directors

Payments to directors are deductible, provided they are incurred wholly and exclusively for the purposes of a business (or other source of income). A payment could, however, be disallowed if it is deemed to be merely a domestic or personal expense.

Research and development (R&D) expenses

All revenue expenditure on experiments or research relating to a business is deductible. A deduction against business income is also allowed for a contribution to a scientific or educational society or institution, which is required to be used solely for industrial research or scientific experimental work connected with the business. While capital expenditure on research is disallowed in the income statement, it may qualify for capital allowances.

Bribes, kickbacks, and illegal payments

Bribes, kickbacks, and illegal payments would normally be disallowed on the basis that they are not wholly and exclusively for the purposes of a business.

Fines and penalties

A penalty arising under the Income Tax Act is specifically disallowed. Other fines and penalties may be disallowed on the basis that they are not wholly and exclusively for the purposes of a business.

Taxes

Zambian CIT is not deductible. Other tax liabilities suffered should be deductible, provided they are revenue expenses and wholly and exclusively incurred for the purposes of the business (or other source of income). *See the Tax credits and incentives section regarding credits for non-Zambian tax suffered on non-Zambian source income*.

Other significant items

Other specific rules concerning expenses considered to be allowable include the following:

- Deductions for costs of an employer to establish and administer an approved share option scheme.
- Deductions for technical education.
- Deductions for mineral royalty tax payments.
- Deductions for SDL payments.
- A fixed deduction of ZMW 1,000 for employing a person with a disability.

Other items specifically disallowed include the following:

- A loss or expense that is recoverable under an insurance contract or indemnity.
- Expenditure on the provision of entertainment, hospitality, or gifts.

Benefits provided that are incapable of being turned into money or money's worth (e.g. the use of cars and accommodation provided by the employer) are taxable to the employer under corporate tax.

Special rules apply for determining the gains or profits of an insurance business.

Net operating losses

Losses can be carried forward to set against profits of the same source. Normally, losses are available to carry forward for a period of five years after the charge year in which the loss was incurred. In the case of a person carrying on a mining operation or hydro, wind, solar, and thermo power generation, the loss carryforward period is ten years.

The set off of a loss incurred by a person in a charge year from mining operations shall be limited to 50% of the taxable income of the person carrying on mining operations.

There is no ability to carry back losses.

Losses arising from one source cannot be set against income arising from another source.

Payments to foreign affiliates

Certain 'loans to effective shareholders' may give rise to CIT liabilities. Note that transfer pricing rules may also apply (*see Transfer pricing in the Group taxation section*).

Group taxation

There are no special CIT rules for groups of companies. Accordingly, CIT returns cannot be prepared on a consolidated basis for group purposes. Losses arising in one group company cannot be set against profits of another group company.

Transfer pricing

Transfer pricing rules apply to transactions between associated persons and require that transactions are undertaken on an arm's-length basis. Otherwise, the associated person benefiting from a reduction in income as a consequence of any non-arm's-length terms will have its CIT computation adjusted as if the transactions had been undertaken on an arm's-length basis.

OECD transfer pricing guidelines are generally accepted as the appropriate basis to determine arm's-length terms.

In addition to maintaining up-to-date transfer pricing documentation, companies should ensure that there is a good audit trail and sufficient documentary evidence to demonstrate that related-party transactions were undertaken in line with the arm's-length principle. Failure to provide transfer pricing documentation is an offence, with defaulters liable to various penalties.

Thin capitalisation

There are specific thin capitalisation rules. These relate to the issue of securities to an associated person, which require that the transaction is undertaken at an arm's-length rate by reference to:

- the appropriate level or extent of the issuing company's overall indebtedness
- whether the amount issued would have been provided as a loan on an arm's-length basis, and
- the rate of interest and other terms that would apply to such an arm's-length loan.

The debt-to-equity ratio of the borrowing party is an important test to determine whether there should be a thin capitalisation restriction. However, there is no defined debt-to-equity ratio in legislation or published guidance. This should be determined by reference to normal practice that would be adopted by two independent parties on the open market with respect to the particular situation. In practice, however, the generally accepted debt-to-equity ratio for non-mining companies is 1:1.

An exception applies to a company carrying on mining operations. In this case, the mining company's interest expense is restricted to the extent that its loans, in aggregate, exceed a 3:1 debt-to-equity ratio. For mining companies only, this thin capitalisation restriction applies to interest payable to both connected and unconnected parties.

Controlled foreign companies (CFCs)

Zambia does not have a CFC regime.

Tax credits and incentives

Foreign tax credit

Domestic legislation provides that, where a DTT is in force and the other territory has taxing rights to a source of foreign income, a tax credit will be available to reduce the Zambian tax liability by the amount of non-Zambian tax suffered.

Where income is received from a source where there is no applicable DTT, unilateral relief should be available to offset foreign tax against Zambian tax arising on the foreign income.

In the case of both treaty relief and unilateral relief, the tax credit cannot exceed the amount of Zambian tax arising on the foreign income before the reduction.

Withholding taxes

Payments of the following items of Zambian-source income may be subject to WHT. The relevant rates under domestic legislation are as follows:

Category of payment	Rate on payment to Zambian resident (%)	Rate on payment to non-Zambian resident (%)
Dividends	15 (1)	15 (1)
Interest	15	15

Category of payment	Rate on payment to Zambian resident (%)	Rate on payment to non-Zambian resident (%)
Interest from a Lusaka Stock Exchange listed Property Loan Stock Company	0	15
Coupon income (interest) on government bonds	15	15
Management or consultancy fee	15	20
Royalties	15	20
Rent from a Zambian source	10 (2)	10
Commissions	15	20
Construction and haulage contractors	0	20
Public entertainment fees to entertainers/sports persons	0	20

Notes

1. 0% if paid by a mining company or a company listed on the Lusaka Stock Exchange to individual shareholders.
2. 10% WHT on rent is a final tax.

The WHT liability arises by reference to the date of payment or, if earlier, the date of accrual (i.e. the date the recipient has a legal right to claim the payment). WHT is due to be paid within 14 days of the end of the month to which the payment or accrual relates.

Zambia has DTTs in force with the following territories, which generally provide reduced rates of WHT as follows:

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties**
Non-treaty	15	15	20
Treaty:			
Canada	15	15	15
China	5	10	5
Denmark	15	10	15
France	The 1950 France - Zambia DTT is accepted to apply (3)		
Finland	5 (1)/15	15	5 (1)/15
Germany	5 (1)/15	10	10
India	5 (1)/15	10	10
Ireland	7.5	10	8 (4)/10
Italy	5 (1)/15	10	10
Japan	0	10	10
Kenya	0	0	0
Mauritius	5 (1)/15	10	5
Netherlands	5 (2)/15	10	7.5
Norway	5 (1)/15	10	10
Seychelles	5 (1)/10	5	10
South Africa	The 1953 Rhodesia & Nyasaland - South Africa DTT is accepted to apply (3)		
Sweden	5 (1)/15	10	10
Switzerland	The 1954 Switzerland - United Kingdom DTT is accepted to apply (3)		
Tanzania	0	0	0
Uganda	0	0	0
United Kingdom	5 (5)/15	10	5

Notes

1. The non-resident recipient must own at least 25% of the share capital of the capital of the Zambian company.
2. The rate of 5% shall apply where the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends, or if the beneficial owner is a pension fund.
3. These old treaties do not follow the OECD model, and, accordingly, their application to particular circumstances must be confirmed.
4. The rate of 8% shall apply in the case of payment of royalties in respect of any copyright of scientific work, patent, trade mark, design or model, plan, secret formula or process, or information concerning industrial, commercial, or scientific experience.
5. This rate applies where the dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 of the treaty.

In all cases, advance clearance must be obtained to obtain the treaty benefit and take advantage of any reduced rate of WHT or tax exemption.

It may be possible to obtain confirmation that management and consultancy fees can be paid without deduction of WHT by reference to the provisions of the relevant treaty. For treaties following the OECD model, the article concerning 'Income Not Expressly Mentioned' is generally taken to be relevant.

Tax administration

Taxable period

CIT is determined by reference to a charge year, being the period of 12 months ending on 31 December.

Tax returns and payment of tax

The CIT rules require taxpayers to submit provisional tax returns in the first quarter of each charge year. Where there is a change in forecast, a revised return may be submitted at the end of either the second, third, or fourth quarters of the charge year. Provisional tax payments are required to be made quarterly. The provisional tax liabilities must be based on the estimated taxable income for the current charge year.

The quarterly returns for the 2018 tax charge year are due as follows:

- 1st quarter return due 31 March 2018 (or 5 March 2018 if submitted manually).
- 2nd quarter return due on 30 June 2018.
- 3rd quarter return due on 30 September 2018.
- 4th quarter return due on 31 December 2018.

By concession, the ZRA allows a 10-day grace period for the payment of taxes. Accordingly, each quarterly payment can be made on the 10th day of the month following the end of each quarter.

With effect from the 2017 tax charge year (i.e. tax charge year beginning on 1 January 2017), the final tax return needs to be submitted by 21 June following the end of the tax year. This must be accompanied by any balance of tax that remains unpaid. For example, the final tax return for the 2017 tax charge year is due for submission by 21 June 2018.

In the case of a manually filed tax return, the tax return needs to be submitted by 5 June following the end of the tax year. For example, the final tax return for the 2017 tax charge year, if submitted manually, is due for submission by 5 June 2018.

Tax audit process

The Commissioner-General of the ZRA has wide powers to require any person to attend to be examined at a time and place specified by notice, where it is determined that person is able to impart information necessary for the purposes of the Income Tax Act.

Furthermore, the Income Tax Act empowers the Commissioner General of the ZRA to access any type of information required for tax purposes held by legal practitioners, accountants, and financial institutions.

Statute of limitations

There is no provision that specifically provides for a statute of limitation. However, in practice, it is accepted that the revenue authorities cannot investigate any cases after six years following the end of the charge year except in cases of fraud or wilful default. This is on the basis that taxpayers are only required to maintain documentation for a period of six years from end of the relevant charge year.

Topics of focus for tax authorities

The ZRA is devoting a significant amount of time to transfer pricing audits, and this is expected to be an increasing focus of scrutiny, especially with the 2018 Regulations that were recently enacted.

In addition to the above, following the tax amnesty program that was available in 2017, the ZRA has placed significant emphasis on enforcement of tax laws and has thus increased audits across all tax types. This includes desktop audits as well as detailed on site audits.

Other issues

Advance income tax

With effect from 1 January 2017, advance income tax may apply at 15% (previously 6%) on the value of commercial imports where the importer is non-compliant. This can be credited against the importer’s CIT liability on submission of the annual tax return.

Exchange controls

The exchange monitoring regulations and foreign currency regulations in Zambia were repealed in March 2014.

Choice of business entity

A non-Zambian resident company can establish a business in Zambia, either as a branch of a foreign company or a subsidiary (i.e. a Zambian registered limited liability company).

Adoption of IFRS

Zambia has adopted IFRS, and the accounting profits determined thereby are adjusted for tax purposes (based on tax legislation) to determine the taxable income for purposes of determining the CIT liability.

Zimbabwe

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Significant developments

There have been no significant corporate tax developments in Zimbabwe during the past year.

Taxes on corporate income

The corporate income tax (CIT) rate for companies (other than mining companies with special mining leases, but including branches) continues unchanged at 25.75%. This rate includes a base rate of 25% plus a 3% AIDS levy.

Zimbabwe presently operates on a source-based tax system. This means that income from a source within, or deemed to be within, Zimbabwe will be subject to tax in Zimbabwe unless a specific exemption is available. The specific circumstances of a transaction should always be considered to determine whether the transaction gives rise to taxation in Zimbabwe.

Income earned by foreign companies from a source within, or deemed to be within, Zimbabwe will be subject to tax in Zimbabwe. In such a case, one should determine whether the foreign entity is obligated to register a local entity. A company is required to register a branch if it has established a place of business or is otherwise considered to be trading in Zimbabwe. A local subsidiary company may be registered as an alternative to a branch operation.

Non-residents who do not have a place of business in Zimbabwe may, however, be subject to withholding tax (WHT). *See the Withholding taxes section for additional details*.

Local income taxes

There are no provincial or local income taxes payable in Zimbabwe.

Corporate residence

Currently, the Zimbabwean tax system is based on source and not on residency. Zimbabwe is moving towards a residence-based taxation system, but the details are still to be announced. Income derived, or deemed to be derived, from sources within Zimbabwe is subject to tax. Under the proposed new legislation, the place of effective management concept may be used for a residence-based tax. Note that this new Income Tax Act is still being drafted, and there is no certainty as to when it will become law.

Source is the place where income originates or is earned, not the place of payment. If goods are sold pursuant to a contract entered into within Zimbabwe, the source of income is deemed to arise in Zimbabwe, regardless of the place of delivery or transfer of title.

Certain types of income arising outside Zimbabwe may, in the hands of a domestic company, be deemed to arise in Zimbabwe and be taxed as such. Examples include interest and certain copyright royalties arising outside Zimbabwe. Where the income is deemed to be from Zimbabwe, relief of the foreign tax suffered, up to a maximum of the Zimbabwe tax, may be allowed as a tax credit.

Permanent establishment (PE)

In the event that Zimbabwe has entered into a double taxation agreement (DTA) with the country where the foreign company resides, the entity will only be taxable in Zimbabwe if it operates through a PE, which, in most cases, includes a fixed place of business. The establishment of a local entity or branch will usually create a PE, although the provisions of the related tax treaty should be considered. If a PE exists, only the portion of the income attributable to the PE will be subject to tax in Zimbabwe.

The concept of a ‘permanent establishment’ was introduced into the Zimbabwe Income Tax Act effective from 1 January 2017. The wording is based on the base erosion and profit shifting (BEPS) guidelines that have been adopted by many countries.

Other taxes

Value-added tax (VAT)

VAT is a transaction tax, and the implications will vary for different transactions. Some transactions are taxed at a rate of 15% or 0%, while other transactions are exempt from VAT. Input tax deductions may be claimed, subject to certain provisions. Advice on VAT implications of specific transactions related to corporate operations should be obtained prior to execution of transactions.

VAT is levied on every taxable supply by a registered person. A taxable supply means any supply of goods or services in the course or furtherance of a taxable activity. A taxable activity means any activity that is carried on continuously or regularly in Zimbabwe that involves the supply of goods or services for consideration.

VAT is payable on all imports for local consumption into Zimbabwe, subject to certain exemptions (e.g. in terms of a technical assistance agreement, donations to the state, goods of which the local supply is zero-rated). Import VAT is payable on the import value plus the applicable customs duty.

A company/branch is required to register for VAT if it supplies goods or services on a regular basis for consideration and if its taxable supplies (standard-rated and zero-rated supplies) exceed 60,000 United States dollars (USD) in any 12-month period.

A registered VAT vendor is entitled to deduct input tax credits paid in the course of taxable supplies made to such person, provided that a tax invoice is available to support the input tax deduction. It is also important to take note of deemed input tax deductions and prohibited input deductions. Import VAT paid may only be deducted as input tax if the import was in furtherance of a taxable activity and the required documentation (e.g. stamped customs entries) is held by the importer.

VAT returns are due by the 25th day following the month to which the VAT relates.

It is mandatory for all registered taxpayers (i.e. everyone that has a tax Business Partner Number) to use electronic fiscal registers (EFRs) that can be linked to the Zimbabwe Revenue Authority (ZIMRA). Penalties of up to USD 25 per day per point of sale may be imposed.

The concept of appointing VAT agents was adopted in April 2017. Several large mining companies were designated as agents, and the legislation demands that they deduct 10% of a gross invoice as a VAT WHT. The agents must then issue the payees with a certificate showing that the VAT WHT has been deducted in order to enable the payee to claim this against the following month's VAT liability.

Customs duties

Zimbabwe is a member of the Southern African Development Community (SADC) as well as the Common Market for Eastern and Southern Africa (COMESA). Customs duties are payable according to the general customs tariffs that are legislated for in Zimbabwe. Preferential duty rates apply on imports from SADC or COMESA countries, while goods may be imported free of customs duties from Namibia in terms of the Zimbabwe-Namibia Free Trade Agreement.

25% surtaxes have been imposed on a number of imported goods (including footwear, clothing, and certain foodstuffs) in order to protect the local manufacturing sector.

A security deposit is required by Customs on all temporary importations of equipment to cover import VAT and customs duties (if applicable).

It is possible to import goods that are subject to customs duties into registered Customs' bonded warehouses, where goods are kept for later use. In this case, the payment of duties may be deferred until the goods are taken out of the bonded warehouse for home consumption or acquitted if the goods are subsequently exported.

Excise duties

Excise duties are levied on local production of excisable products and are included on most excisable products imported from other countries. Examples of the excise products and applicable rates include the following:

- Cigarettes: 40% + USD 7 per 1,000 sticks.
- Spirits: USD 2 per litre.
- Wine: USD 0.50 per litre.

Excise and fuel levies are also levied on petrol, diesel, and illuminating kerosene.

Property taxes

Property taxes are levied by cities, towns, and rural councils. Each of these bodies conducts periodic valuations of the properties in their area and annually set out a 'rates schedule' based on a percentage of the valuations. These may alter each year depending upon the entities' budgetary requirements for funds. Valuations of the properties are usually based on estimates, as there are very few qualified property valuators operating in Zimbabwe at present.

Transfer duty

Transfer duty is payable on the acquisition value of property purchased at the following rates:

Value of the property (USD)	Rate of transfer duty
0 to 5,000	USD 400
5,001 to 20,000	2% of the value above USD 5,000
20,001 to 50,000	3% of the value above USD 20,000
50,001 and above	4% of the value above USD 50,000

Transfer duty is normally payable by the buyer, but the agreement for the sale of the property will determine the person liable to pay these costs. In addition, conveyance costs of up to 4% (plus 15% VAT) must be added on.

Stamp duty

Certain transactions may attract stamp duty. The amount of stamp duty payable will differ and will be based on the nature of every individual transaction.

The basic transactions can be summarised as follows:

Transaction	Stamp duty
Bonds	0.4% (USD 0.40 for every USD 100 or part thereof)
Brokers notes - purchase of securities	0.25% (USD 0.25 per every USD 100 or part thereof)
Brokers notes - purchase/sale of any movable property other than a security	0.10% (USD 0.10 per every USD 100 or part thereof)
Brokers notes - purchase/sale of any immovable property	1% (USD 1.00 per every USD 100 or part thereof)
Off market share transfer instruments	2% or USD 2
Cheques	0.05% (USD 0.05)

Tax advice should be obtained for major transactions in respect of the transactions mentioned above in order to ensure that the correct stamp duty implications are considered.

Capital gains tax

It should be noted that capital gains tax is payable in Zimbabwe on the disposal of immovable property or shares that are held in listed (on the Zimbabwean Stock Exchange) or unlisted companies at the following rates:

Acquired pre-February 2009

- Listed securities: 1% of proceeds.
- Property: 5% of proceeds.
- Unlisted securities: 5% of proceeds.

Acquired post-February 2009

- Listed securities: 1% of proceeds.
- Property: 20% of capital gain.
- Unlisted securities: 20% of capital gain.

Payroll taxes

Zimbabwe operates a pay-as-you-earn (PAYE) system that is called the 'Final Deduction System' (FDS). This is based on the presumption that all employers must register for PAYE (both local and foreign-based employers), and that they are responsible for calculating, collecting, and paying the correct amount of PAYE every month to ZIMRA. Tax audits are carried out periodically (every year or two) to test the payroll systems.

The full burden of collecting the correct tax is placed on the employer, and, because of this, there is no requirement for employees to file annual tax returns in respect of employment income.

Social security contributions

Zimbabwe has a limited social security system. The National Social Security Scheme (NSSS) contributions are payable at the same rate of 3.5% of basic salary by the employer and employee, with a salary cap set at USD 700 per month.

Manpower training levy

Subject to some exceptions, employers are required to pay a 1% monthly training levy (on the gross wage bill) to the Zimbabwe Manpower Development Authority.

Workmen's compensation

Under the Workmen's Compensation Act, employers are required to contribute to a fund that provides cash benefits for industrial injury, disability, and death. Contribution rates are supposed to vary according to inherent occupational risk, from less than 2% in most low-risk commercial/administrative occupations to 11% for high-risk sectors.

Standards Development Fund

With a few exceptions, employers are required to pay 0.5% of their quarterly gross wage bill to the Standards Development Fund. The amount is payable on all payments made by the employer on behalf of the employee, including medical aid and pension contributions.

Branch income

Branch income that is received or has accrued from a source within, or deemed to be within, Zimbabwe is taxable in Zimbabwe in terms of the normal corporate tax rules.

A branch is regarded as an extension of its foreign head office. A branch may therefore not deduct fees paid to its foreign head office (unless a tax treaty makes provision for such deduction) as it is argued that a branch cannot transact with itself. Reimbursement of actual expenses may, however, be deducted, subject to the normal deduction rules.

A 15% WHT is imposed on any payments made in respect of head office charges.

The amount of fees charged by the head office to the Zimbabwe branch is also subject to a limitation, usually based on a maximum of 1% of total expenditure (excluding the charge itself and any capital allowances). Exchange control regulations also limit the remittability of administration and management fees to 2% of turnover.

Note that the move from a source-based system to a residence-based system may affect the level of profits that are attributed to Zimbabwe. These laws are still pending, and no date of implementation has been given.

Income determination

The Act tax base for CIT is taxable income rather than profits. The source and nature of the income determines whether the amount is taxable or not. In addition to amounts received or accrued from actual Zimbabwean sources, there are deeming provisions that bring income from foreign sources into Zimbabwean taxable income.

In general, all receipts from a Zimbabwe source are taxed, excluding amounts that are proven by the taxpayer as being capital receipts. Most expenditure items and some specified exemptions are deductible against income. Capital expenditure is generally not deductible, with amounts on specific items being deductible by way of annual allowances spread over a period.

Inventory valuation

The legislation permits three methods of inventory valuation: historic cost, cost of replacement, or net realisable value. Standard cost based on first in first out (FIFO) is normally used for accounts valuations and is an accepted basis for tax purposes. Last in first out (LIFO) is not permitted for tax or for accounting purposes. The tax valuation may differ from the accounting valuation; this is a rare occurrence in Zimbabwe but is acceptable.

Capital gains

See Capital gains tax in the Other taxes section.

Dividend income

Dividends received from Zimbabwe incorporated companies are tax exempt. When received from non-Zimbabwe companies, they are taxed at a flat rate of 20%; however, relief is granted by allowing any foreign tax suffered as a tax credit (up to a maximum of the 20% local rate of tax).

Interest income

Interest accruing to Zimbabwe resident companies from ‘financial institutions’ is subject to a 15% WHT and thereafter is exempt from CIT (the WHT becomes a final tax). Interest from other local or foreign sources is included in gross income and is taxed at the normal CIT rate. Relief will be granted for any foreign tax paid, up to the maximum Zimbabwe tax rate.

Partnership income

The partnership itself is not taxed directly; however, the taxable income of the partnership is calculated in the same way as corporate income and is then allocated amongst the partners in accordance to their agreed profit sharing ratios. This income is taxed in their hands at the basic CIT rate.

Rent/royalties income

Rents and royalties are generally treated as normal taxable income and are taxed at the basic CIT rate. Rent arising in respect of land and buildings situated outside of Zimbabwe, however, is exempt from local tax.

Foreign income

Where income (including business profits) is deemed to be from a Zimbabwe source, it will form a part of the local company's taxable income and will be subject to tax at the basic CIT rate. Relief in respect of foreign taxes suffered will be granted unless it is clear that the true source of the income is, in fact, Zimbabwe.

Deductions

The Act makes provisions for specific deductions. Some of the deductions (e.g. the deduction of foreign exchange losses, development and exploration costs, hire purchase allowances, and manufacturing allowances) can be more complex.

Capital allowances

The cost (including finance charges) of machinery, implements, and other articles used by the taxpayer in the production of income is deductible in four equal annual allowances. No apportionment is required where the asset was held for less than 12 months.

Industrial buildings (including hotels) constructed and used by the taxpayer in the production of income qualify for an initial allowance of 25% of construction cost in the year they enter service. Thereafter, an annual allowance of 25% is deductible for each year following the year of construction. Additions to existing buildings (not alterations or repairs) qualify for the same deductions. It is important to note that the allowance is calculated on the cost of construction and not the cost of acquisition. In the latter case, the allowances are set at 5% of the cost.

A mining exploration expenditure incurred before commencement of production is deductible in full in the first year of production against income derived from the mine. Subsequent development expenditure is presently written off in the year expended.

Capital allowances may also be deducted with respect to leasehold improvements.

A recovery or recoupment of allowances previously claimed should be included in the gross income of a taxpayer in the event that the allowance is recovered or recouped by way of disposal. The recoupment is calculated on the capital allowances previously granted.

Goodwill

Goodwill is currently not deductible for tax purposes in Zimbabwe.

Start-up expenses

Start-up expenses may be deducted if incurred within 18 months of commencement of business and not considered to be capital in nature.

Interest expenses

Zimbabwe has thin capitalisation rules based on a 3:1 debt-to-equity ratio. A portion of the overall interest may be disallowed if this ratio is exceeded. In addition, any disallowed interest will be treated as a deemed dividend and subjected to a 15% WHT.

Bad debt

Bad debts written off may be claimed, but not a provision for bad debts.

Charitable contributions

Donations (with varying maximum limits) made to specified charities and educational bodies may be claimed.

Entertainment expenses

Entertainment expenses are not deductible for tax purposes.

Fines and penalties

Fines and penalties are not deductible for tax purposes.

Taxes

Taxes are generally not allowed as a deduction against income unless they form a part of a cost of an allowable expense (e.g. VAT incurred on an expense line that may not be claimed as input tax).

Net operating losses

Assessed tax losses may be carried forward (but not backwards) for up to six years, provided the company continues to trade. This restriction does not apply to mining companies. Tax laws do not allow for losses to be transferred to other group companies, and anti-avoidance provisions may be triggered by transactions designed to transfer or exploit assessed losses.

Assessed losses are reduced in the event of a compromise agreement with creditors.

Payments to foreign affiliates

The law prohibits the deduction of amounts incurred in excess of specified limits in respect of management and general administration expenses, as well as interest. This applies to branches or subsidiaries of both local and foreign companies.

The limit on management and general administration expenses is based on such expenses exceeding 1% and 0.75%, respectively, for a company already in production and prior to production, of total tax-deductible expenses.

Group taxation

No taxation of combined operations is allowed in Zimbabwe, including where operations are conducted by more than one company.

Transfer pricing

Effective 1 January 2014, transfer pricing legislation was introduced under a provision titled 'tax avoidance'. This legislation does not detail any parameters or requirements that corporations should follow, nor has ZIMRA issued any practice notes.

This legislation was enhanced with effect from 1 January 2016 to enable the use of the Organisation for Economic Co-operation and Development (OECD) and United Nations (UN) guidelines in respect of cross-border transactions.

It is important to note that, in addition to cross-border transactions between connected persons being examined, the law also covers internal (domestic) transactions between connected persons.

Thin capitalisation

The limit on the deductibility of interest is based on a company incurring interest charged by a subsidiary, a fellow subsidiary, or a holding company when the debt-to-equity ratio exceeds 3:1.

Controlled foreign companies (CFCs)

Zimbabwe currently has no CFC rules.

Tax credits and incentives

Foreign tax credit

Where foreign income is taxed in Zimbabwe, a tax credit (limited to the amount of local tax suffered) will be set off against the local tax liability.

Special Economic Zones (SEZs)

Tax incentives have been announced for investors locating their business in SEZs. The businesses in these SEZs will be exempt from duty on goods and equipment that are consumed in establishing the business, will be tax exempt for the first five years, and will have a 15% tax rate thereafter.

Other incentives

Note that this is a high-level summary, and certain conditions should be met in order to utilise these incentives.

Person for whom incentive is available and duration of incentive	Tax incentive	Tax treatment for normal taxpayers
Taxpayers operating at designated growth point areas.	The capital allowance is calculated as 25% of the cost of construction of a commercial or industrial building in growth point areas in the year when the building enters service and 25% during the three years that follow the year of construction.	Capital allowances are calculated as 25% of the cost of construction of industrial building in the year when the building enters service and 25% during the three years that follow the year of construction.
Taxpayers operating at designated growth point areas.	Deduction of an investment allowance at 15% on cost of specified assets.	No investment allowance granted.
For all taxpayers in build, own, operate, and transfer (BOOT) or build, operate, and transfer (BOT) arrangements.	First five years: Taxed at 0%. Second five years: Taxed at 15%. Thereafter: Taxed at normal rate.	Taxed at 25%.

Person for whom incentive is available and duration of incentive	Tax incentive	Tax treatment for normal taxpayers
Exporting taxpayers.	An additional allowance of 100% of cost incurred in an export country in order to export Zimbabwean goods to such country may be deducted.	Export expenditure incurred is deductible for tax purposes.
For all manufacturing taxpayers exporting 50% or more of output (by volume).	Taxed at a reduced rate of 20%.	Taxed at 25%.
Mining company holding a special mining lease.	Taxed at a reduced rate of 15%.	Taxed at 25%.
Operator of a tourist facility in a tourist development zone.	First five years: Taxed at 0%. Thereafter: Taxed at normal rate.	Taxed at 25%.
Industrial park developer.	First five years: Taxed at 0%. Thereafter: Taxed at normal rate.	Taxed at 25%.

Withholding taxes

WHTs are applicable where dividends and royalties or similar payments are declared or distributed to non-Zimbabwean residents (and Zimbabwean residents in some instances).

Dividends

Dividends declared by a Zimbabwean company to a non-resident holding company will be subject to non-resident shareholders tax (NRST), a WHT. NRST is payable at a rate of 15% unless treaty relief is available. Dividends from companies listed on the Zimbabwe Stock Exchange have a rate of 10%. NRST is payable within ten days after declaration of the dividend.

Interest

WHT of 15%, calculated on the gross amount of interest, is payable on interest accruing to any person resident in Zimbabwe. This applies to interest arising from a registered banking institution or unit trust scheme. The tax withheld is a final tax, and the financial institution is responsible to withhold the tax.

Non-resident investors, however, are currently exempt from any WHT on interest.

Royalties or similar payments

WHT on royalties are payable once a Zimbabwean company pays a royalty to a non-Zimbabwean resident. WHT is levied at a rate of 15% and is payable within ten days of the date of payment. The WHT falls due upon accrual (i.e. when payable), and actual payment is not a factor.

A royalty includes payment for the use or right to use any patent or design, trademark, copyright, model, pattern, plan, formula or process, or any other property or right of a similar nature. It also includes the imparting of any scientific, technical, industrial, or commercial knowledge or information for use in Zimbabwe. The nature of the amount payable should therefore be carefully considered in order to determine whether the relevant amount represents a royalty.

Fees

Fees are defined to include amounts that are technical, managerial, administrative, or consultative in nature; costs are paid externally. There are some exceptions, but the definition is broad and brings in most costs that may be charged to a Zimbabwean person.

WHT is levied at a rate of 15% and is payable within ten days of the date of payment.

Summary of WHT payable

The non-residents WHT rates and treaty relief for Zimbabwean DTAs can be summarised as follows. It should be noted that the tax treaties contain certain requirements that should be met before the reduced tax rate may be applied.

The definitions of dividends, interest, and royalties in the various treaties should also be considered.

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Fees**
Non-resident	15 (1)	0	15	15
Treaty:				
Bulgaria	10	N/A	10	10
Canada	10	N/A	10	10
China	2.5/7.5 (2)	N/A	7.5	15
France	10	N/A	10	10
Germany	10	N/A	7.5	7.5
Malaysia	10	N/A	10	10
Mauritius	10	N/A	15	15
Netherlands	10	N/A	10	10
Norway	15	N/A	10	10
Poland	10	N/A	10	15
South Africa	5/10 (3)	N/A	10	5
Sweden	15	N/A	10	10
United Kingdom	5	N/A	10	10

Notes

1. Applies to unlisted companies. The rate for companies listed on the Zimbabwe Stock Exchange is reduced to 10%.
2. 2.5% where more than 25% of shares are held; 7.5% in all other cases.
3. 5% where 25% of shares are held; 10% in all other cases.

'N/A' means that the provisions of the tax treaty limit the rate to a rate that is higher than the local Zimbabwean rate. It should be noted that a treaty can only provide tax relief and cannot impose a higher tax rate.

WHT is payable within ten days of the date of distribution or accrual.

Zimbabwe has either negotiated, or is currently negotiating, tax treaties with the following countries:

- Botswana
- Democratic Republic of the Congo
- Indonesia
- Iran
- Jamaica
- Namibia
- Serbia and Montenegro
- Seychelles
- Tanzania
- Tunisia
- Zambia

Tax administration

Taxable period

The tax year-end is 31 December each year. Applications may be made for a different year-end if good reasons are given (e.g. to comply with the international group year-end). In the first year of trade, a longer or shorter period than 12 months may be accepted to tie in with a future year-end.

Tax returns

The CIT return is due by 30 April in the following tax year.

Payment of tax

Zimbabwe regulates the payment of CIT on four dates during the course of the current tax year; these are referred to as Quarterly Payment Dates (QPDs). The first payment of 10% is due by 25 March of the respective tax year. The second payment of 25% is due by 25 June of the respective tax year. The third payment of 30% is due by 25 September of the respective tax year. The fourth payment of 35% is due by 20 December of the respective tax year.

All taxes are expected to have been paid by the 25th day of December. If there is an adjustment after the year-end accounts have been finalised, a top-up payment must be made. There is no set date for this. However, in practice, this payment should not be more than 10% of the annual tax liability. ZIMRA often imposes a 10% *per annum* interest charge on any underpayments of QPDs.

WHT payments are due within ten days from the date of distribution or accrual.

Tax audit process

Tax audits do not, at present, have a set cycle; however, the aim is to establish a three-year cycle in the future.

Statute of limitations

The statute of limitations is generally three years unless ZIMRA considers that there is fraud or misrepresentation involved. In those circumstances, there is no set limit on how far back ZIMRA can go, but they usually do not go beyond six years in practice.

Topics of focus for tax authorities

ZIMRA is focused on ensuring that all compliance issues are in order and that VAT and payroll taxes have been correctly calculated.

Anti-avoidance

Current Zimbabwe legislation contains basic anti-avoidance sections that empower the Commissioner General to disregard the implications of a transaction or scheme if it can be proven that:

- such a transaction or scheme had been entered into to avoid or postpone the payment of any duty or levy imposed by the Act
- it was entered into or carried out by means or in a manner that would not normally be employed in the entering into or carrying out of a transaction, operation, or scheme of the nature of the transaction, operation, or scheme in question, or
- it has created rights or obligations that would not normally be created between persons dealing at arm's length under a transaction, operation, or scheme of the nature of the transaction, operation, or scheme in question.

The Commissioner General may, at the Commissioner General's sole discretion, impose this legislation on any transaction or scheme, which will place the burden of proof on the taxpayer to prove that any/all of the requirements noted above will not be applicable to the transaction or scheme.

Note that the anti-avoidance sections have been amended to include transfer pricing legislation (*see Transfer pricing in the Group taxation section*).

Other issues

Exchange control

Zimbabwe has been operating a multi-currency system since February 2009. The Zimbabwe dollar (ZWD) was demonetarised effective April 2009. This has had a significant impact on the country's exchange control regulations.

The Exchange Control Handbook in Zimbabwe is not available to the public; only banking institutions have access to these regulations.

Transactions that involve the transfer of funds to countries outside Zimbabwe are generally subject to bank approval.

There are shortages of foreign currency on the local market, and a priority list has been issued that gives preference to essential imports of goods and services. The non-essential offshore payments (i.e. profit distributions, etc.) have to join a queue at the commercial banks before they are remitted.

The issue of shares in a Zimbabwe platinum or diamond mining company to persons residing outside of Zimbabwe requires specific exchange control approvals. A limit of 49% is available for non-residents. A 51% local shareholding by indigenous persons is a requirement. Applications may be made for increased levels; each case will be decided on its own merits.

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